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STATUTORY INSTRUMENTS

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**1998 No. 3132**

**The Civil Procedure Rules 1998**

**PART 1**

**OVERRIDING OBJECTIVE**

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**The overriding objective**

**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**

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

**Application by the court of the overriding objective**

**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

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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)*

(b) interprets any rule [F1, subject to [F2 rules 76.2 and 79.2]].

#### Textual Amendments

- F1** Words in rule 1.2(b) inserted (14.3.2005) by [The Civil Procedure \(Amendment No. 2\) Rules 2005 \(S.I. 2005/656\)](#), rules 1, 3
- F2** Words in rule 1.2(b) substituted (4.12.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2008 \(S.I. 2008/3085\)](#), rules 1, 3

#### Commencement Information

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

### Duty of the parties

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

#### Commencement Information

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

### Court's duty to manage cases

**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;
- (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.

#### Commencement Information

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

## PART 2

## APPLICATION AND INTERPRETATION OF THE RULES

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**Application of the Rules**

**2.1.**—(1) Subject to paragraph (2), these Rules apply to all proceedings in—

- (a) county courts;
- (b) the High Court; and
- (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>
<b>1.</b> Insolvency proceedings	Insolvency Act 1986 <b>(1)</b> , ss.411 and 412
<b>2.</b> Non-contentious or common form probate proceedings	Supreme Court Act 1981 <b>(2)</b> , s.127
<b>3.</b> Proceedings in the High Court when acting as a Prize Court	Prize Courts Act 1894 <b>(3)</b> , s.3
<b>[<sup>F3</sup>4.</b> Proceedings before the Court of Mental Capacity Protection	Act 2005, s.51]

(1) 1986 c. 45.

(2) 1981 c. 54.

(3) 1894 c. 39.

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<i>Proceedings</i>	<i>Enactments</i>
5. Family proceedings	Matrimonial and Family Proceedings Act 1984 <sup>(5)</sup> , s.40
[ <sup>F4</sup> 6. Adoption proceedings]	[ <sup>F5</sup> Adoption Act 1976, s.66][ <sup>F6</sup> or Adoption and Children Act 2002, s.141]
[ <sup>F7</sup> 7. Election petitions in the High Court]	[ <sup>F8</sup> Representation of the People Act 1983, s.182]

### Textual Amendments

- F3** Words in rule 2.1 Table substituted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, **3(a)**
- F4** 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)**
- F5** 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)**
- F6** Words in rule 2.1 Table inserted (6.4.2006) by [The Civil Procedure \(Amendment No.4\) Rules 2005 \(S.I. 2005/3515\)](#), rules 1, **3**
- F7** Words in rule 2.1 Table inserted (2.6.2003) by [The Civil Procedure \(Amendment No. 2\) Rules 2003 \(S.I. 2003/1242\)](#), rules 1, **3(a)**
- F8** Words in rule 2.1 Table inserted (2.6.2003) by [The Civil Procedure \(Amendment No. 2\) Rules 2003 \(S.I. 2003/1242\)](#), rules 1, **3(b)**

### Commencement Information

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

## The glossary

**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)”.

### Commencement Information

- I6** [Rule 2.2](#) in force at 26.4.1999, see [Signature](#)

## Interpretation

**2.3.—(1)** In these Rules—

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

[<sup>F9</sup>“civil restraint order” means an order restraining a party—

(5) [1984 c. 42](#). Section 40 was amended by the Courts and Legal Services Act [1990 \(c. 41\)](#), Schedule 18, paragraph 50.

- (a) from making any further applications in current proceedings (a limited civil restraint order);
- (b) from issuing certain claims or making certain applications in specified courts (an extended civil restraint order); or
- (c) from issuing any claim or making any application in specified courts (a general civil restraint order).]

“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>F10</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;]

([<sup>F11</sup>Rule 6.23] provides for a party to give an address for service)

“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;

[<sup>F12</sup>“legal representative” means a—

- ((a)) barrister;
- ((b)) solicitor;
- ((c)) solicitor’s employee;
- ((d)) manager of a body recognised under section 9 of the Administration of Justice Act 1985; or
- ((e)) person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act),

who has been instructed to act for a party in relation to proceedings;]

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

[<sup>F13</sup>“protected party”] 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

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(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 [F14 rule or] practice direction.

(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

**F9** Words in rule 2.3(1) inserted (1.10.2004) by [The Civil Procedure \(Amendment No.2\) Rules 2004 \(S.I. 2004/2072\)](#), rules 1(b), **3**

**F10** 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**

**F11** Words in rule 2.3(1) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **3**

**F12** Words in rule 2.3(1) substituted (1.2.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(3), **3(a)**

**F13** Words in rule 2.3(1) substituted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, **3(b)**

**F14** Words in rule 2.3(2) substituted (25.3.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(c), **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

**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

**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**

- 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.

**Commencement Information**

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

**Court’s discretion as to where it deals with cases**

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

**Commencement Information**

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

**Time**

- 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.

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(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

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) [<sup>F15</sup>Subject to the provisions of Practice Direction 5C, 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.

#### Textual Amendments

**F15** Words in [rule 2.8\(5\)](#) substituted (1.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009](#) (S.I. 2009/3390), [rules 1\(5\)](#), [3\(b\)](#)

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

**C1** [Rule 2.8](#) applied (7.10.2001) by [The Railway Administration Order Rules 2001](#) (S.I. 2001/3352), [rules 1.1](#), [9.8\(1\)](#)

**C2** [Rule 2.8](#) applied (1.11.2009) by [The Water Industry \(Special Administration\) Rules 2009](#) (S.I. 2009/2477), [rules 2](#), [121\(1\)](#)

#### 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

**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.**

**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**

**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)

**Commencement Information**

**I15** [Rule 2.11](#) in force at 26.4.1999, see [Signature](#)

## PART 3

### THE COURT'S CASE MANAGEMENT POWERS

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

**C3** [Pt. 3](#) applied (with modifications) (1.10.2007) by [The Court of Protection Rules 2007 \(S.I. 2007/1744\)](#), rules 1, **184(a)**

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Sanctions for non-payment of certain fees	Rule 3.7
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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**

**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;
- (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;
- [<sup>F16</sup>(l)] order any party to file and serve an estimate of costs;]
- (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 [<sup>F17</sup>will] take into account whether or not a party has complied with [<sup>F18</sup>the Practice Direction (Pre-Action Conduct) and] 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>F19</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<sup>F20</sup> ....<sup>F21</sup> ...]

(7) A power of the court under these Rules to make an order includes a power to vary or revoke the order.

#### Textual Amendments

- F16** Rule 3.1(2)(II) inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **3**
- F17** Word in rule 3.1(4) substituted (6.4.2009) by [The Civil Procedure \(Amendment No.3\) Rules 2008 \(S.I. 2008/3327\)](#), rules 1, **3(a)**
- F18** Words in rule 3.1(4) inserted (6.4.2009) by [The Civil Procedure \(Amendment No.3\) Rules 2008 \(S.I. 2008/3327\)](#), rules 1, **3(b)**
- F19** Rule 3.1(6A) and words inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **4**
- F20** Words in rule 3.1(6A) omitted (6.4.2007) by virtue of [The Civil Procedure \(Amendment No.3\) Rules 2006 \(S.I. 2006/3435\)](#), rules 1, **3(a)**
- F21** Words in rule 3.1(6A) omitted (6.4.2007) by virtue of [The Civil Procedure \(Amendment No.3\) Rules 2006 \(S.I. 2006/3435\)](#), rules 1, **3(b)**

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

- C4** 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)**
- C5** Rule 3.1(2)(a) applied (1.11.2009) by [The Water Industry \(Special Administration\) Rules 2009 \(S.I. 2009/2477\)](#), rules 2, **121(2)**

#### Commencement Information

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

### Court officer's power to refer to a judge

**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

**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

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- (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.
- [<sup>F22</sup>(7) If the court of its own initiative strikes out a statement of case or dismisses an application [<sup>F23</sup>(including an application for permission to appeal or for permission to apply for judicial review)], and it considers that the claim or application is totally without merit—
- (a) the court's order must record that fact; and
  - (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.]

#### Textual Amendments

**F22** Rule 3.3(7) inserted (1.10.2004) by [The Civil Procedure \(Amendment No.2\) Rules 2004 \(S.I. 2004/2072\)](#), rules 1(b), 4

**F23** Words in rule 3.3(7) inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), 4

#### Commencement Information

**I18** Rule 3.3 in force at 26.4.1999, see [Signature](#)

### Power to strike out a statement of case

**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
- (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.

[<sup>F24</sup>(6) If the court strikes out a claimant's statement of case and it considers that the claim is totally without merit—

- (a) the court's order must record that fact; and
- (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.]

#### Textual Amendments

**F24** Rule 3.4(6) inserted (1.10.2004) by [The Civil Procedure \(Amendment No.2\) Rules 2004 \(S.I. 2004/2072\)](#), rules 1(b), 5

#### Commencement Information

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

### Judgment without trial after striking out

**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>F25</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>F26</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>F27</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.

*Status: Point in time view as at 31/01/2011.*

*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

- F25** Rule 3.5(3) inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **3(c)**
- F26** 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)**
- F27** 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

**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

**3.7.—**[<sup>F28</sup>(1) This rule applies where—

- (a) an allocation questionnaire or a [<sup>F29</sup>pre-trial check list (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 [<sup>F30</sup>pre-trial check list] or both;
- (c) these Rules do not require an allocation questionnaire or a [<sup>F31</sup>pre-trial check list] to be filed in relation to the claim in question; <sup>F32</sup>...
- (d) the court has made an order giving permission to proceed with a claim for judicial review [<sup>F33</sup>; or]

[<sup>F34</sup>(e) the fee payable for a hearing specified by the relevant Fees Order is not paid.]

(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 [<sup>F35</sup>pre-trial check list])

(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 [<sup>F36</sup>full or part] 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 [F37full or part] remission of the fee,by the date specified in the notice—
  - (i) [F38the claim will automatically be struck out without further order of the court]; and
  - (ii) the claimant [F39will] 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 [F40 and contains provisions about when a costs order is deemed to have been made and applying for an order under section 194(3) of the Legal Services Act 2007] )

- [F41(5) Where an application for—
  - (a) full or part remission of a fee is refused, the court will serve notice on the claimant requiring payment of the full fee by the date specified in the notice; or
  - (b) part remission of a fee is granted, the court will serve notice on the claimant requiring payment of the balance 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) [F42the claim will automatically be struck out without further order of the court]; and
  - (b) the claimant [F43will] be liable for the costs which the defendant has incurred unless the court orders otherwise.
- [F44(7) If—
  - (a) a claimant applies to have the claim reinstated; and
  - (b) the court grants relief,

the relief [F45will] be conditional on the claimant either paying the fee or filing evidence of [F46full or part] remission of the fee within the period specified in paragraph (8).

- (8) The period referred to in paragraph (7) is—
  - (a) if the order granting relief is made at a hearing at which a claimant is present or represented, 2 days from the date of the order;
  - (b) in any other case, 7 days from the date of service of the order on the claimant.]

#### Textual Amendments

- F28** 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
- F29** Words in rule 3.7(1)(a) substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002](#) (S.I. 2002/2058), rules 1(b), 3(a)
- F30** Words in rule 3.7(1)(b) substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002](#) (S.I. 2002/2058), rules 1(b), 3(b)
- F31** Words in rule 3.7(1)(c) substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002](#) (S.I. 2002/2058), rules 1(b), 3(b)
- F32** Word in rule 3.7(1)(c) omitted (6.4.2008) by virtue of [The Civil Procedure \(Amendment No.2\) Rules 2007](#) (S.I. 2007/3543), rules 1(b), 3(a)
- F33** Word in rule 3.7(1)(d) substituted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007](#) (S.I. 2007/3543), rules 1(b), 3(b)

*Status: Point in time view as at 31/01/2011.*

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

- F34** Rule 3.7(1)(e) inserted (6.4.2008) by The Civil Procedure (Amendment No.2) Rules 2007 (S.I. 2007/3543), rules 1(b), **3(c)**
- F35** Words in rule 3.7(1) substituted (2.12.2002) by The Civil Procedure (Amendment) Rules 2002 (S.I. 2002/2058), rules 1(b), **3(b)**
- F36** Words in rule 3.7(2) substituted (6.4.2008) by The Civil Procedure (Amendment No.2) Rules 2007 (S.I. 2007/3543), rules 1(b), **3(d)**
- F37** Words in rule 3.7(4)(b) substituted (6.4.2008) by The Civil Procedure (Amendment No.2) Rules 2007 (S.I. 2007/3543), rules 1(b), **3(e)**
- F38** Words in rule 3.7(4)(i) substituted (1.10.2005) by The Civil Procedure (Amendment No.3) Rules 2005 (S.I. 2005/2292), rules 1(c), **5(a)**
- F39** Word in rule 3.7(4)(ii) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **4(a)**
- F40** Words in rule 3.7(4)(ii) inserted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **4(b)**
- F41** Rule 3.7(5) substituted (6.4.2008) by The Civil Procedure (Amendment No.2) Rules 2007 (S.I. 2007/3543), rules 1(b), **3(f)**
- F42** Words in rule 3.7(6)(a) substituted (1.10.2005) by The Civil Procedure (Amendment No.3) Rules 2005 (S.I. 2005/2292), rules 1(c), **5(b)**
- F43** Word in rule 3.7(6)(b) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **4(c)**
- F44** Rule 3.7(7)(8) substituted for rule 3.7(7) (2.6.2003) by The Civil Procedure (Amendment No. 2) Rules 2003 (S.I. 2003/1242), rules 1, **4**
- F45** Word in rule 3.7(7) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **4(d)**
- F46** Words in rule 3.7(7) substituted (6.4.2008) by The Civil Procedure (Amendment No.2) Rules 2007 (S.I. 2007/3543), rules 1(b), **3(g)**

#### Commencement Information

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

[<sup>F47</sup>**3.7A.**—[<sup>F48</sup>(1) This rule applies where—

- (a) a defendant files a counterclaim without—
  - (i) payment of the fee specified by the relevant Fees Order; or
  - (ii) making an application for full or part remission of the fee; or
- (b) the proceedings continue on the counterclaim alone and—
  - (i) an allocation questionnaire or a pre-trial check list (listing questionnaire) is filed without payment of the fee specified by the relevant Fees Order;
  - (ii) the court dispenses with the need for an allocation questionnaire or a pre-trial check list or both;
  - (iii) these Rules do not require an allocation questionnaire or a pre-trial checklist to be filed in relation to the claim in question; or
  - (iv) the fee payable for a hearing specified by the relevant Fees Order is not paid.]

(2) The court will serve a notice on the defendant requiring payment of the fee specified in the relevant Fees Order if, at the time the fee is due, the defendant has not paid it or made an application for [<sup>F49</sup>full or part] remission.

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

(4) If the defendant does not—



(a) pay the fee; or  
(b) make an application for [<sup>F50</sup>full or part] remission of the fee,  
by the date specified in the notice, the counterclaim will automatically be struck out without further order of the court.

[<sup>F51</sup>(5) Where an application for—

- (a) full or part remission of a fee is refused, the court will serve notice on the defendant requiring payment of the full fee by the date specified in the notice; or  
(b) part remission of a fee is granted, the court will serve notice on the defendant requiring payment of the balance of the fee by the date specified in the notice.]

(6) If the defendant does not pay the fee by the date specified in the notice, the counterclaim will automatically be struck out without further order of the court.

(7) If—

- (a) the defendant applies to have the counterclaim reinstated; and  
(b) the court grants relief,

the relief will be conditional on the defendant either paying the fee or filing evidence of [<sup>F52</sup>full or part] remission of the fee within the period specified in paragraph (8).

(8) The period referred to in paragraph (7) is—

- (a) if the order granting relief is made at a hearing at which the defendant is present or represented, 2 days from the date of the order;  
(b) in any other case, 7 days from the date of service of the order on the defendant.]

#### Textual Amendments

- F47** Rule 3.7A inserted (1.10.2005) by The Civil Procedure (Amendment No.3) Rules 2005 (S.I. 2005/2292), rules 1(c), **6**
- F48** Rule 3.7A(1) substituted (6.4.2008) by The Civil Procedure (Amendment No.2) Rules 2007 (S.I. 2007/3543), rules 1(b), **4(a)**
- F49** Words in rule 3.7A(2) substituted (6.4.2008) by The Civil Procedure (Amendment No.2) Rules 2007 (S.I. 2007/3543), rules 1(b), **4(b)**
- F50** Words in rule 3.7A(4)(b) substituted (6.4.2008) by The Civil Procedure (Amendment No.2) Rules 2007 (S.I. 2007/3543), rules 1(b), **4(c)**
- F51** Rule 3.7A(5) substituted (6.4.2008) by The Civil Procedure (Amendment No.2) Rules 2007 (S.I. 2007/3543), rules 1(b), **4(d)**
- F52** Words in rule 3.7A(7) substituted (6.4.2008) by The Civil Procedure (Amendment No.2) Rules 2007 (S.I. 2007/3543), rules 1(b), **4(e)**

#### [<sup>F53</sup>Sanctions for dishonouring cheque

**3.7B.**—(1) This rule applies where any fee is paid by cheque and that cheque is subsequently dishonoured.

(2) The court will serve a notice on the paying party requiring payment of the fee which will specify the date by which the fee must be paid.

(3) If the fee is not paid by the date specified in the notice—

- (a) where the fee is payable by the claimant, the claim will automatically be struck out without further order of the court;

*Status: Point in time view as at 31/01/2011.*

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

- (b) where the fee is payable by the defendant, the defence will automatically be struck out without further order of the court,

and the paying party shall be liable for the costs which any other party 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)

(4) If—

- (a) the paying party applies to have the claim or defence reinstated; and  
(b) the court grants relief,

the relief shall be conditional on that party paying the fee within the period specified in paragraph (5).

(5) The period referred to in paragraph (4) is—

- (a) if the order granting relief is made at a hearing at which the paying party is present or represented, 2 days from the date of the order;  
(b) in any other case, 7 days from the date of service of the order on the paying party.

(6) For the purposes of this rule, “claimant” includes a Part 20 claimant and “claim form” includes a Part 20 claim.]

#### Textual Amendments

**F53** [Rule 3.7B](#) inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), 7

#### Sanctions have effect unless defaulting party obtains relief

**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

**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;
  - (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**

**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](#)

**[<sup>F54</sup>Power of the court to make civil restraint orders**

**3.11.** A practice direction may set out—

- (a) the circumstances in which the court has the power to make a civil restraint order against a party to proceedings;
- (b) the procedure where a party applies for a civil restraint order against another party; and
- (c) the consequences of the court making a civil restraint order.]

**Textual Amendments**

**F54** [Rule 3.11](#) inserted (1.10.2004) by [The Civil Procedure \(Amendment No.2\) Rules 2004 \(S.I. 2004/2072\)](#), rules 1(b), [6](#)

**PART 4**  
**FORMS**

**4.—(1)** The forms set out in a practice direction shall be used in the cases to which they apply.

*Status: Point in time view as at 31/01/2011.*

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

(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](#)

## PART 5 COURT DOCUMENTS

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

**C6** [Pt. 5](#) excluded in part (1.11.2009) by [The Water Industry \(Special Administration\) Rules 2009 \(S.I. 2009/2477\)](#), [rules 2](#), **81**

#### 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

**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

**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—

<sup>F55</sup>(i) . . . . .

(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.

**Textual Amendments**

**F55** Rule 5.2(1)(b)(i) omitted (25.3.2002) by virtue of [The Civil Procedure \(Amendment No. 4\) Rules 2001 \(S.I. 2001/2792\)](#), rules 1(c), 3 (with rule 24)

**Commencement Information**

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

**Signature of documents by mechanical means**

**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.

**Commencement Information**

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

**[<sup>F56</sup>Register of claims**

**5.4.—(1)** A court or court office may keep a publicly accessible register of claims which have been issued out of that court or court office.

(2) Any person who pays the prescribed fee may, during office hours, search any available register of claims.

( [<sup>F57</sup>Practice Direction 5A] contains details of available registers).]

**Textual Amendments**

**F56** Rule 5.4 substituted (2.10.2006) by [The Civil Procedure \(Amendment\) Rules 2006 \(S.I. 2006/1689\)](#), rules 1, 3(a)

**F57** Words in rule 5.4 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), 4(a)

**[<sup>F58</sup>Supply of documents to Attorney-General from court records**

**5.4A.—(1)** The Attorney-General may search for, inspect and take a copy of any documents within a court file for the purpose of preparing an application or considering whether to make an application under section 42 of the Supreme Court Act 1981 or section 33 of the Employment Tribunals Act 1996 (restriction of vexatious proceedings).

*Status: Point in time view as at 31/01/2011.*

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

- (2) The Attorney-General must, when exercising the right under paragraph (1)—
- (a) pay any prescribed fee; and
  - (b) file a written request, which must—
    - (i) confirm that the request is for the purpose of preparing an application or considering whether to make an application mentioned in paragraph (1); and
    - (ii) name the person who would be the subject of the application.]

#### Textual Amendments

**F58** Rule 5.4A inserted (1.6.2004) by [The Civil Procedure \(Amendment\) Rules 2004 \(S.I. 2004/1306\)](#), rules 1(a), **3**

#### [<sup>F59</sup>Supply of documents to a party from court records

**5.4B.**—(1) A party to proceedings may, unless the court orders otherwise, obtain from the records of the court a copy of any document listed in paragraph 4.2A of [<sup>F60</sup>Practice Direction 5A].

(2) A party to proceedings may, if the court gives permission, obtain from the records of the court a copy of any other document filed by a party or communication between the court and a party or another person.

#### Textual Amendments

**F59** Rules 5.4B-5.4D inserted (2.10.2006) by [The Civil Procedure \(Amendment\) Rules 2006 \(S.I. 2006/1689\)](#), rules 1, **3(b)**

**F60** Words in rule 5.4B(1) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **4(b)**

#### Supply of documents to a non-party from court records

**5.4C.**—(1) The general rule is that a person who is not a party to proceedings may obtain from the court records a copy of—

- (a) a statement of case, but not any documents filed with or attached to the statement of case, or intended by the party whose statement it is to be served with it;
- (b) a judgment or order given or made in public (whether made at a hearing or without a hearing).

[<sup>F61</sup>(1A) Where a non-party seeks to obtain a copy of a statement of case filed before 2nd October 2006—

- (a) this rule does not apply; and
- (b) the rules of court relating to access by a non-party to statements of case in force immediately before 2nd October 2006 apply as if they had not been revoked.

(The rules relating to access by a non-party to statements of case in force immediately before 2nd October 2006 were contained in the former rule 5.4(5) to 5.4(9). [<sup>F62</sup>Practice Direction 5A] sets out the relevant provisions as they applied to statements of case.)]

(2) A non-party may, if the court gives permission, obtain from the records of the court a copy of any other document filed by a party, or communication between the court and a party or another person.

- (3) A non-party may obtain a copy of a statement of case or judgment or order under paragraph (1) only if—
- (a) where there is one defendant, the defendant has filed an acknowledgment of service or a defence;
  - (b) where there is more than one defendant, either—
    - (i) all the defendants have filed an acknowledgment of service or a defence;
    - (ii) at least one defendant has filed an acknowledgment of service or a defence, and the court gives permission;
  - (c) the claim has been listed for a hearing; or
  - (d) judgment has been entered in the claim.
- (4) The court may, on the application of a party or of any person identified in a statement of case—
- (a) order that a non-party may not obtain a copy of [<sup>F63</sup>a statement of case] under paragraph (1);
  - (b) restrict the persons or classes of persons who may obtain a copy of [<sup>F63</sup>a statement of case];
  - (c) order that persons or classes of persons may only obtain a copy of [<sup>F63</sup>a statement of case] if it is edited in accordance with the directions of the court; or
  - (d) make such other order as it thinks fit.
- (5) A person wishing to apply for an order under paragraph (4) must file an application notice in accordance with Part 23.
- (6) Where the court makes an order under paragraph (4), a non-party who wishes to obtain a copy of the statement of case, or to obtain an unedited copy of the statement of case, may apply on notice to the party or person identified in the statement of case who requested the order, for permission.

#### Textual Amendments

- F59** Rules 5.4B-5.4D inserted (2.10.2006) by [The Civil Procedure \(Amendment\) Rules 2006 \(S.I. 2006/1689\)](#), rules 1, **3(b)**
- F61** Rule 5.4C(1A) inserted (18.12.2006) by [The Civil Procedure \(Amendment No.2\) Rules 2006 \(S.I. 2006/3132\)](#), rules 1, **3(a)**
- F62** Words in rule 5.4C(1A) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **4(c)**
- F63** Words in rule 5.4C(4) substituted (18.12.2006) by [The Civil Procedure \(Amendment No.2\) Rules 2006 \(S.I. 2006/3132\)](#), rules 1, **3(b)**

#### Supply of documents from court records - general

**5.4D.**—(1) A person wishing to obtain a copy of a document under rule 5.4B or rule 5.4C must pay any prescribed fee and—

- (a) if the court's permission is required, file an application notice in accordance with Part 23; or
- (b) if permission is not required, file a written request for the document.

(2) An application for an order under rule 5.4C(4) or for permission to obtain a copy of a document under rule 5.4B or rule 5.4C (except an application for permission under rule 5.4C(6)) may be made without notice, but the court may direct notice to be given to any person who would be affected by its decision.

(3) Rules 5.4, 5.4B and 5.4C do not apply in relation to any proceedings in respect of which a rule or practice direction makes different provision.]

*Status: Point in time view as at 31/01/2011.*

*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

**F59** Rules 5.4B-5.4D inserted (2.10.2006) by [The Civil Procedure \(Amendment\) Rules 2006 \(S.I. 2006/1689\)](#), rules 1, **3(b)**

#### [<sup>F64</sup>Filing and sending documents

**5.5.**—(1) A practice direction may make provision for documents to be filed or sent to the court by—

- (a) facsimile; or
  - (b) other electronic means.
- (2) Any such practice direction may—
- (a) provide that only particular categories of documents may be filed or sent to the court by such means;
  - (b) provide that particular provisions only apply in specific courts; and
  - (c) specify the requirements that must be fulfilled for any document filed or sent to the court by such means.]

#### Textual Amendments

**F64** [Rule 5.5](#) inserted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **4**

## [<sup>F65</sup>PART 6

### SERVICE OF DOCUMENTS

#### Textual Amendments

**F65** Pt. 6 substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rule 1(2), **Sch. 1**

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

- C7** Pt. 6 applied (25.2.2009) by [The Bank Insolvency \(England and Wales\) Rules 2009 \(S.I. 2009/356\)](#), rules 1, **270, 271** (with rule 3)
- C8** Pt. 6 applied (1.11.2009) by [The Water Industry \(Special Administration\) Rules 2009 \(S.I. 2009/2477\)](#), rules 2, **122**
- C9** Pt. 6 applied (15.11.2010) by [The Building Society Insolvency \(England and Wales\) Rules 2010 \(S.I. 2010/2581\)](#), rules 1, **263**
- C10** Pt. 6 applied (15.11.2010) by [The Building Society Insolvency \(England and Wales\) Rules 2010 \(S.I. 2010/2581\)](#), rules 1, **262**

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*Status: Point in time view as at 31/01/2011.*

*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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## I SCOPE OF THIS PART AND INTERPRETATION

### Part 6 rules about service apply generally

6.1. This Part applies to the service of documents, except where—

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

(Other Parts, for example, Part 54 (Judicial Review) and Part 55 (Possession Claims) contain specific provisions about service.)

### Interpretation

6.2. In this Part—

- (a) “bank holiday” means a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom where service is to take place;
- (b) “business day” means any day except Saturday, Sunday, a bank holiday, Good Friday or Christmas Day;
- (c) “claim” includes petition and any application made before action or to commence proceedings and “claim form”, “claimant” and “defendant” are to be construed accordingly; and
- [<sup>F66</sup>(d) “solicitor” includes any other person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act).]

#### Textual Amendments

**F66** Rule 6.2(d) substituted (1.2.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(3), **5(a)**

## II SERVICE OF THE CLAIM FORM IN THE JURISDICTION

### Methods of service

6.3.—(1) A claim form may be served by any of the following methods—

- (a) personal service in accordance with rule 6.5;
  - (b) first class post, document exchange or other service which provides for delivery on the next business day, in accordance with [<sup>F67</sup>Practice Direction 6A];
  - (c) leaving it at a place specified in rule 6.7, 6.8, 6.9 or 6.10;
  - (d) fax or other means of electronic communication in accordance with [<sup>F68</sup>Practice Direction 6A]; or
  - (e) any method authorised by the court under rule 6.15.
- (2) A company may be served—
- (a) by any method permitted under this Part; or
  - (b) by any of the methods of service [<sup>F69</sup>permitted under] the Companies Act 2006.
- (3) A limited liability partnership may be served—
- (a) by any method permitted under this Part; or

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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)*

- (b) by any of the methods of service [F70] permitted under the Companies Act 2006 as applied with modification by regulations made under the Limited Liability Partnerships Act 2000.]

#### Textual Amendments

- F67** Words in rule 6.3(1)(b) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **5(b)(i)**
- F68** Words in rule 6.3(1)(d) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **5(b)(i)**
- F69** Words in rule 6.3(2)(b) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **3(a)(i)**
- F70** Words in rule 6.3(3)(b) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **3(a)(ii)**

#### Who is to serve the claim form

**6.4.—**(1) The court will serve the claim form except where—

- (a) a rule or practice direction provides that the claimant must serve it;
- (b) the claimant notifies the court that the claimant wishes to serve it; or
- (c) the court orders or directs otherwise.

(2) Where the court is to serve the claim form, it is for the court to decide which method of service is to be used.

(3) Where the court is to serve the claim form, the claimant must, in addition to filing a copy for the court, provide a copy for each defendant to be served.

(4) Where the court has sent—

- (a) a notification of outcome of postal service to the claimant in accordance with rule 6.18; or
- (b) a notification of non-service by a bailiff in accordance with rule 6.19,

the court will not try to serve the claim form again.

#### Personal service

**6.5.—**(1) Where required by another Part, any other enactment, a practice direction or a court order, a claim form must be served personally.

(2) In other cases, a claim form may be served personally except—

- (a) where rule 6.7 applies; or
- (b) in any proceedings against the Crown.

(Part 54 contains provisions about judicial review claims and Part 66 contains provisions about Crown proceedings.)

(3) A claim form is served personally on—

- (a) an individual by leaving it with that individual;
- (b) a company or other corporation by leaving it with a person holding a senior position within the company or corporation; or
- (c) a partnership (where partners are being sued in the name of their firm) by leaving it with—
  - (i) a partner; or
  - (ii) a person who, at the time of service, has the control or management of the partnership business at its principal place of business.

(<sup>F71</sup>Practice Direction 6A] sets out the meaning of “senior position”.)

**Textual Amendments**

**F71** Words in rule 6.5 substituted (6.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), 5(b)(ii)

**Where to serve the claim form – general provisions**

**6.6.—**(1) The claim form must be served within the jurisdiction except where rule [<sup>F72</sup>6.7(2) or] 6.11 applies or as provided by Section IV of this Part.

(2) The claimant must include in the claim form an address at which the defendant may be served. That address must include a full postcode, unless the court orders otherwise.

(Paragraph 2.4 of [<sup>F73</sup>Practice Direction 16] contains provisions about postcodes.)

(3) Paragraph (2) does not apply where an order made by the court under rule 6.15 (service by an alternative method or at an alternative place) specifies the place or method of service of the claim form.

**Textual Amendments**

**F72** Words in rule 6.6(1) inserted (6.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), 5(c)

**F73** Words in rule 6.6(2) substituted (6.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), 5(h)

**[<sup>F74</sup>Service of the claim form on a solicitor within the jurisdiction or in any EEA state**

**6.7.—**(1) Subject to rule 6.5(1), where—

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

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

(‘Solicitor’ has the extended meaning set out in rule 6.2(d).)

(2) Subject to rule 6.5(1) and the provisions of Section IV of this Part, where—

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

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

(‘Solicitor’ has the extended meaning set out in rule 6.2(d).)]

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### Textual Amendments

**F74** Rule 6.7 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **5(d)**

### Service of the claim form where the defendant gives an address at which the defendant may be served

**6.8.** Subject to rules 6.5(1) and 6.7—

- (a) the defendant may be served with the claim form at an address within the jurisdiction which the defendant has given for the purpose of being served with the proceedings; or
- (b) in any claim by a tenant against a landlord, the claim form may be served at an address given by the landlord under section 48 of the Landlord and Tenant Act 1987.

### Service of the claim form where the defendant does not give an address at which the defendant may be served

**6.9.—**(1) This rule applies where—

- (a) rule 6.5(1) (personal service);
- (b) rule 6.7 (service of claim form on solicitor); and
- (c) rule 6.8 (defendant gives address at which the defendant may be served),

do not apply and the claimant does not wish to effect personal service under rule 6.5(2).

(2) Subject to paragraphs (3) to (6), the claim form must be served on the defendant at the place shown in the following table.

<i>Nature of defendant to be served</i>	<i>Place of service</i>
1. Individual	Usual or last known residence.
2. Individual being sued in the name of a business	Usual or last known residence of the individual; or principal or last known place of business.
3. Individual being sued in the business name of a partnership	Usual or last known residence of the individual; or principal or last known place of business of the partnership.
4. Limited liability partnership	Principal office of the partnership; or  any place of business of the partnership within the jurisdiction which has a real connection with the claim.
5. Corporation (other than a company) incorporated in England and Wales	Principal office of the corporation; or  any place within the jurisdiction where the corporation carries on its activities and which has a real connection with the claim.
6. Company registered in England and Wales	Principal office of the company; or

<i>Nature of defendant to be served</i>	<i>Place of service</i>
	any place of business of the company within the jurisdiction which has a real connection with the claim.
7. Any other company or corporation	Any place within the jurisdiction where the corporation carries on its activities; or  any place of business of the company within the jurisdiction.

(3) Where a claimant has reason to believe that the address of the defendant referred to in entries 1, 2 or 3 in the table in paragraph (2) is an address at which the defendant no longer resides or carries on business, the claimant must take reasonable steps to ascertain the address of the defendant’s current residence or place of business (“current address”).

- (4) Where, having taken the reasonable steps required by paragraph (3), the claimant—
- (a) ascertains the defendant’s current address, the claim form must be served at that address; or
  - (b) is unable to ascertain the defendant’s current address, the claimant must consider whether there is—
    - (i) an alternative place where; or
    - (ii) an alternative method by which, service may be effected.

(5) If, under paragraph (4)(b), there is such a place where or a method by which service may be effected, the claimant must make an application under rule 6.15.

(6) Where paragraph (3) applies, the claimant may serve on the defendant’s usual or last known address in accordance with the table in paragraph (2) where the claimant—

- (a) cannot ascertain the defendant’s current residence or place of business; and
- (b) cannot ascertain an alternative place or an alternative method under paragraph (4)(b).

**Service of the claim form in proceedings against the Crown**

- 6.10.** In proceedings against the Crown—
- (a) service on the Attorney General must be effected on the Treasury Solicitor; and
  - (b) service on a government department must be effected on the solicitor acting for that department.

(<sup>F75</sup>Practice Direction 66] gives the list published under section 17 of the Crown Proceedings Act 1947 of the solicitors acting in civil proceedings (as defined in that Act) for the different government departments on whom service is to be effected, and of their addresses.)

**Textual Amendments**

**F75** Words in [rule 6.10](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\), 5\(e\)](#)

**Service of the claim form by contractually agreed method**

- 6.11.—(1)** Where—

*Status: Point in time view as at 31/01/2011.*

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

- (a) a contract contains a term providing that, in the event of a claim being started in relation to the contract, the claim form may be served by a method or at a place specified in the contract; and
  - (b) a claim solely in respect of that contract is started,
- the claim form may, subject to paragraph (2), be served on the defendant by the method or at the place specified in the contract.
- (2) Where in accordance with the contract the claim form is to be served out of the jurisdiction, it may be served—
- (a) if permission to serve it out of the jurisdiction has been granted under rule 6.36; or
  - (b) without permission under rule 6.32 or 6.33.

### **Service of the claim form relating to a contract on an agent of a principal who is out of the jurisdiction**

- 6.12.**—(1) The court may, on application, permit a claim form relating to a contract to be served on the defendant’s agent where —
- (a) the defendant is out of the jurisdiction;
  - (b) the contract to which the claim relates was entered into within the jurisdiction with or through the defendant’s agent; and
  - (c) at the time of the application either the agent’s authority has not been terminated or the agent is still in business relations with the defendant.
- (2) An application under this rule—
- (a) must be supported by evidence setting out—
    - (i) details of the contract and that it was entered into within the jurisdiction or through an agent who is within the jurisdiction;
    - (ii) that the principal for whom the agent is acting was, at the time the contract was entered into and is at the time of the application, out of the jurisdiction; and
    - (iii) why service out of the jurisdiction cannot be effected; and
  - (b) may be made without notice.
- (3) An order under this rule must state the period within which the defendant must respond to the particulars of claim.
- (4) Where the court makes an order under this rule—
- (a) a copy of the application notice and the order must be served with the claim form on the agent; and
  - (b) unless the court orders otherwise, the claimant must send to the defendant a copy of the application notice, the order and the claim form.
- (5) This rule does not exclude the court’s power under rule 6.15 (service by an alternative method or at an alternative place).

### **Service of the claim form on children and protected parties**

- 6.13.**—(1) Where the defendant is a child who is not also a protected party, the claim form must be served on—
- (a) one of the child’s parents or guardians; or
  - (b) if there is no parent or guardian, an adult with whom the child resides or in whose care the child is.



- (2) Where the defendant is a protected party, the claim form must be served on—
- (a) one of the following persons with authority in relation to the protected party as—
    - (i) the attorney under a registered enduring power of attorney;
    - (ii) the donee of a lasting power of attorney; or
    - (iii) the deputy appointed by the Court of Protection; or
  - (b) if there is no such person, an adult with whom the protected party resides or in whose care the protected party is.
- (3) Any reference in this Section to a defendant or a party to be served includes the person to be served with the claim form on behalf of a child or protected party under paragraph (1) or (2).
- (4) The court may make an order permitting a claim form to be served on a child or protected party, or on a person other than the person specified in paragraph (1) or (2).
- (5) An application for an order under paragraph (4) may be made without notice.
- (6) The court may order that, although a claim form has been sent or given to someone other than the person specified in paragraph (1) or (2), it is to be treated as if it had been properly served.
- (7) 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 and “child” and “protected party” have the same meaning as in rule 21.1.)

#### **Deemed service**

**6.14.** A claim form served in accordance with this Part is deemed to be served on the second business day after completion of the relevant step under rule 7.5(1).

#### **Service of the claim form by an alternative method or at an alternative place**

**6.15.—**(1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place.

(2) On an application under this rule, the court may order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service.

- (3) An application for an order under this rule—
- (a) must be supported by evidence; and
  - (b) may be made without notice.
- (4) An order under this rule must specify—
- (a) the method or place of service;
  - (b) the date on which the claim form is deemed served; and
  - (c) the period for—
    - (i) filing an acknowledgment of service;
    - (ii) filing an admission; or
    - (iii) filing a defence.

#### **Power of court to dispense with service of the claim form**

**6.16.—**(1) The court may dispense with service of a claim form in exceptional circumstances.

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- (2) An application for an order to dispense with service may be made at any time and—
- (a) must be supported by evidence; and
  - (b) may be made without notice.

### **Notice and certificate of service relating to the claim form**

**6.17.**—(1) Where the court serves a claim form, the court will send to the claimant a notice which will include the date on which the claim form is deemed served under rule 6.14.

- (2) Where the claimant serves the claim form, the claimant—
- (a) must file a certificate of service within 21 days of service of the particulars of claim, unless all the defendants to the proceedings have filed acknowledgments of service within that time; and
  - (b) may not obtain judgment in default under Part 12 unless a certificate of service has been filed.
- (3) The certificate of service must state—
- (a) where rule 6.7, 6.8, 6.9 or 6.10 applies, the category of address at which the claimant believes the claim form has been served; and
  - (b) the details set out in the following table.

<i>Method of service</i>	<i>Details to be certified</i>
1. Personal service	Date of personal service.
2. First class post, document exchange or other service which provides for delivery on the next business day	Date of posting, or leaving with, delivering to or collection by the relevant service provider.
3. Delivery of document to or leaving it at a permitted place	Date when the document was delivered to or left at the permitted place.
4. Fax	Date of completion of the transmission.
5. Other electronic method	Date of sending the e-mail or other electronic transmission.
6. Alternative method or place	As required by the court.

### **Notification of outcome of postal service by the court**

- 6.18.**—(1) Where—
- (a) the court serves the claim form by post; and
  - (b) the claim form is returned to the court,

the court will send notification to the claimant that the claim form has been returned.

(2) The claim form will be deemed to be served unless the address for the defendant on the claim form is not the relevant address for the purpose of rules 6.7 to 6.10.

### **Notice of non-service by bailiff**

- 6.19.** Where—
- (a) the court bailiff is to serve a claim form; and

(b) the bailiff is unable to serve it on the defendant,  
the court will send notification to the claimant.

### III SERVICE OF DOCUMENTS OTHER THAN THE CLAIM FORM IN THE UNITED KINGDOM

#### Methods of service

- 6.20.**—(1) A document may be served by any of the following methods—
- (a) personal service, in accordance with rule 6.22;
  - (b) first class post, document exchange or other service which provides for delivery on the next business day, in accordance with [<sup>F76</sup>Practice Direction 6A];
  - (c) leaving it at a place specified in rule 6.23;
  - (d) fax or other means of electronic communication in accordance with [<sup>F77</sup>Practice Direction 6A]; or
  - (e) any method authorised by the court under rule 6.27.
- (2) A company may be served—
- (a) by any method permitted under this Part; or
  - (b) by any of the methods of service [<sup>F78</sup>permitted under] the Companies Act 2006.
- (3) A limited liability partnership may be served—
- (a) by any method permitted under this Part; or
  - (b) by any of the methods of service [<sup>F79</sup>permitted under the Companies Act 2006 as applied with modification by regulations made under the Limited Liability Partnerships Act 2000.]

#### Textual Amendments

- F76** Words in rule 6.20(1)(b) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **5(b)(i)**
- F77** Words in rule 6.20(1)(d) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **5(b)(i)**
- F78** Words in rule 6.20(2)(b) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **3(b)(i)**
- F79** Words in rule 6.20(3)(b) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **3(b)(ii)**

#### Who is to serve

- 6.21.**—(1) A party to proceedings will serve a document which that party has prepared except where—
- (a) a rule or practice direction provides that the court will serve the document; or
  - (b) the court orders otherwise.
- (2) The court will serve a document which it has prepared except where—
- (a) a rule or practice direction provides that a party must serve the document;
  - (b) the party on whose behalf the document is to be served notifies the court that the party wishes to serve it; or

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*Status: Point in time view as at 31/01/2011.*

*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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(c) the court orders otherwise.

(3) Where the court is to serve a document, it is for the court to decide which method of service is to be used.

(4) Where the court is to serve a document prepared by a party, that party must provide a copy for the court and for each party to be served.

### **Personal service**

**6.22.**—(1) Where required by another Part, any other enactment, a practice direction or a court order, a document must be served personally.

(2) In other cases, a document may be served personally except—

(a) where the party to be served has given an address for service under rule 6.23(2)(a); or

(b) in any proceedings by or against the Crown.

(3) A document may be served personally as if the document were a claim form in accordance with rule 6.5(3).

### **Address for service**

**6.23.**—(1) A party to proceedings must give an address at which that party may be served with documents relating to those proceedings. The address must include a full postcode unless the court orders otherwise.

(Paragraph 2.4 of [<sup>F80</sup>Practice Direction 16] contains provisions about postcodes.)

(2) A party's address for service must be—

(a) the business address [<sup>F81</sup>either] within the United Kingdom [<sup>F82</sup>or any other EEA state] of a solicitor acting for the party to be served; or

(b) where there is no solicitor acting for the party to be served, an address within the United Kingdom at which the party resides or carries on business.

(3) Where there is no solicitor acting for the party to be served and the party does not have an address within the United Kingdom at which that party resides or carries on business, the party must give an address for service within the United Kingdom.

(Part 42 contains provisions about change of solicitor. Rule 42.1 provides that where a party gives the business address of a solicitor as that party's address for service, that solicitor will be considered to be acting for the party until the provisions of Part 42 are complied with.)

(4) Any document to be served in proceedings must be sent or transmitted to, or left at, the party's address for service under paragraph (2) or (3) unless it is to be served personally or the court orders otherwise.

(5) Where, in accordance with [<sup>F83</sup>Practice Direction 6A], a party indicates or is deemed to have indicated that they will accept service by fax, the fax number given by that party must be at the address for service.

(6) Where a party indicates in accordance with [<sup>F84</sup>Practice Direction 6A] that they will accept service by electronic means other than fax, the e-mail address or electronic identification given by that party will be deemed to be at the address for service.

(7) In proceedings by or against the Crown, service of any document in the proceedings on the Crown must be effected in the same manner prescribed in rule 6.10 as if the document were a claim form.

(8) This rule does not apply where an order made by the court under rule 6.27 (service by an alternative method or at an alternative place) specifies where a document may be served.

**Textual Amendments**

- F80** Words in rule 6.23(1) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **5(h)**
- F81** Word in rule 6.23(2)(a) inserted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **5(f)(i)**
- F82** Words in rule 6.23(2)(a) inserted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **5(f)(ii)**
- F83** Words in rule 6.23(5) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **5(b)(i)**
- F84** Words in rule 6.23(6) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **5(b)(i)**

**Change of address for service**

**6.24.** Where the address for service of a party changes, that party must give notice in writing of the change as soon as it has taken place to the court and every other party.

**Service on children and protected parties**

**6.25.—(1)** An application for an order appointing a litigation friend where a child or protected party has no litigation friend must be served in accordance with rule 21.8(1) and (2).

(2) Any other document which would otherwise be served on a child or a protected party must be served on the litigation friend conducting the proceedings on behalf of the child or protected party.

(3) The court may make an order permitting a document to be served on the child or protected party or on some person other than the person specified in rule 21.8 or paragraph (2).

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

(5) The court may order that, although a document has been sent or given to someone other than the person specified in rule 21.8 or paragraph (2), the document is to be treated as if it had been properly served.

(6) 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.

**Deemed Service**

**6.26.** A document, other than a claim form, served in accordance with these Rules or any relevant practice direction is deemed to be served on the day shown in the following table—

<i>Method of service</i>	<i>Deemed date of service</i>
1. First class post (or other service which provides for delivery on the next business day)	The second day after it was posted, left with, delivered to or collected by the relevant service provider provided that day is a business day; or  if not, the next business day after that day.
2. Document exchange	The second day after it was left with, delivered to or collected by the relevant service provider provided that day is a business day; or  if not, the next business day after that day.

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<i>Method of service</i>	<i>Deemed date of service</i>
3. Delivering the document to or leaving it at a permitted address	If it is delivered to or left at the permitted address on a business day before 4.30p.m., on that day; or  in any other case, on the next business day after that day.
4. Fax	If the transmission of the fax is completed on a business day before 4.30p.m., on that day; or  in any other case, on the next business day after the day on which it was transmitted.
5. Other electronic method	If the e-mail or other electronic transmission is sent on a business day before 4.30p.m., on that day; or  in any other case, on the next business day after the day on which it was sent.
6. Personal service	If the document is served personally before 4.30p.m. on a business day, on that day; or  in any other case, on the next business day after that day.

(Paragraphs 10.1 to 10.7 of [<sup>F85</sup>Practice Direction 6A] contain examples of how the date of deemed service is calculated.)

#### **Textual Amendments**

**F85** Words in rule 6.26 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **5(b)(ii)**

#### **Service by an alternative method or at an alternative place**

**6.27.** Rule 6.15 applies to any document in the proceedings as it applies to a claim form and reference to the defendant in that rule is modified accordingly.

#### **Power to dispense with service**

**6.28.—**(1) The court may dispense with service of any document which is to be served in the proceedings.

(2) An application for an order to dispense with service must be supported by evidence and may be made without notice.

#### **Certificate of service**

**6.29.** Where a rule, practice direction or court order requires a certificate of service, the certificate must state the details required by the following table—

<i>Method of Service</i>	<i>Details to be certified</i>
1. Personal service	Date and time of personal service.
2. First class post, document exchange or other service which provides for delivery on the next business day	Date of posting, or leaving with, delivering to or collection by the relevant service provider.
3. Delivery of document to or leaving it at a permitted place	Date and time of when the document was delivered to or left at the permitted place.
4. Fax	Date and time of completion of the transmission.
5. Other electronic method	Date and time of sending the e-mail or other electronic transmission.
6. Alternative method or place permitted by the court	As required by the court.

*IV SERVICE OF THE CLAIM FORM AND OTHER DOCUMENTS OUT OF THE JURISDICTION*

**Scope of this Section**

**6.30.** This Section contains rules about—

- (a) service of the claim form and other documents out of the jurisdiction;
- (b) when the permission of the court is required and how to obtain that permission; and
- (c) the procedure for service.

(“Jurisdiction” is defined in rule 2.3(1).)

**Interpretation**

**6.31.** For the purposes of this Section—

- (a) “the Hague Convention” means the Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters signed at the Hague on 15 November 1965;
- (b) “the 1982 Act” means the Civil Jurisdiction and Judgments Act 1982;
- (c) “Civil Procedure Convention” means the Brussels and Lugano Conventions (as defined in section 1(1) of the 1982 Act) and any other Convention (including the Hague Convention) entered into by the United Kingdom regarding service out of the jurisdiction;
- (d) “the Judgments Regulation” means Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as amended from time to time and as applied by the Agreement made on 19 October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;
- (e) “the Service Regulation” means Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No. 1348/2000, as amended from time to time and as applied by the Agreement made on 19 October 2005 between the European Community

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and the Kingdom of Denmark on the service of judicial and extrajudicial documents on civil and commercial matters;

- (f) “Commonwealth State” means a state listed in Schedule 3 to the British Nationality Act 1981;
- (g) “Contracting State” has the meaning given by section 1(3) of the 1982 Act;
- (h) “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; and
- (i) “domicile” is to be determined—
  - (i) in relation to a Convention territory, in accordance with sections 41 to 46 of the 1982 Act; and
  - (ii) in relation to a Member State, in accordance with the Judgments Regulation and paragraphs 9 to 12 of Schedule 1 to the Civil Jurisdiction and Judgments Order 2001.
- [<sup>F86</sup>(j) “the Lugano Convention” means the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, between the European Community and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Kingdom of Denmark and signed by the European Community on 30<sup>th</sup> October 2007.]

#### Textual Amendments

**F86** Rule 6.31(j) inserted (1.1.2010) by [The Civil Jurisdiction and Judgments Regulations 2009 \(S.I. 2009/3131\)](#), regs. 1(1), 29 (with reg. 48)

#### Service of the claim form where the permission of the court is not required - Scotland and Northern Ireland

**6.32.**—(1) The claimant may serve the claim form on a defendant in Scotland or Northern Ireland where each claim made against the defendant to be served and included in the claim form 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 other part of the United Kingdom; and
- (b) (i) the defendant is domiciled in the United Kingdom;
- (ii) the proceedings are within paragraph 11 of Schedule 4 to the 1982 Act; or
- (iii) the defendant is a party to an agreement conferring jurisdiction, within paragraph 12 of Schedule 4 to the 1982 Act.

(2) The claimant may serve the claim form on a defendant in Scotland or Northern Ireland where each claim made against the defendant to be served and included in the claim form is a claim which the court has power to determine under any enactment other than the 1982 Act notwithstanding that—

- (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.



## Service of the claim form where the permission of the court is not required - out of the United Kingdom

**6.33.**—<sup>F87</sup>(1) The claimant may serve the claim form on the defendant out of the United Kingdom where each claim against the defendant to be served and included in the claim form is a claim which the court has power to determine under the 1982 Act or the Lugano Convention and—

- (a) no proceedings between the parties concerning the same claim are pending in the courts of any other 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) the proceedings are within article 16 of Schedule 1 to the 1982 Act or article 22 of the Lugano Convention; or  
(iii) the defendant is a party to an agreement conferring jurisdiction, within article 17 of Schedule 1 to the 1982 Act or article 23 of the Lugano Convention.]

(2) The claimant may serve the claim form on a defendant out of the United Kingdom where each claim made against the defendant to be served and included in the claim form is a claim which the court has power to determine under the Judgments Regulation and—

- (a) no proceedings between the parties concerning the same claim are pending in the courts of any other part of the United Kingdom or any other Member State; and
- (b) (i) the defendant is domiciled in the United Kingdom or in any Member State;  
(ii) the proceedings are within article 22 of the Judgments Regulation; or  
(iii) the defendant is a party to an agreement conferring jurisdiction, within article 23 of the Judgments Regulation.

(3) The claimant may serve the claim form on a defendant out of the United Kingdom where each claim made against the defendant to be served and included in the claim form is a claim which the court has power to determine other than under the 1982 Act or <sup>F88</sup>the Lugano Convention or the Judgments Regulation, notwithstanding that—

- (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.

### Textual Amendments

**F87** Rule 6.33(1) substituted (1.1.2010) by [The Civil Jurisdiction and Judgments Regulations 2009 \(S.I. 2009/3131\)](#), [regs. 1\(1\), 30](#) (with [reg. 48](#))

**F88** Words in rule 6.33(3) inserted (1.1.2010) by [The Civil Jurisdiction and Judgments Regulations 2009 \(S.I. 2009/3131\)](#), [regs. 1\(1\), 31](#) (with [reg. 48](#))

## Notice of statement of grounds where the permission of the court is not required for service

**6.34.**—(1) Where the claimant intends to serve a claim form on a defendant under rule 6.32 or 6.33, the claimant must—

- (a) file with the claim form a notice containing a statement of the grounds on which the claimant is entitled to serve the claim form out of the jurisdiction; and
- (b) serve a copy of that notice with the claim form.

(2) Where the claimant fails to file with the claim form a copy of the notice referred to in paragraph (1)(a), the claim form may only be served—

- (a) once the claimant files the notice; or
- (b) if the court gives permission.

*Status: Point in time view as at 31/01/2011.*

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

### **Period for responding to the claim form where permission was not required for service**

**6.35.**—(1) This rule sets out the period for—

- (a) filing an acknowledgment of service;
- (b) filing an admission; or
- (c) filing a defence,

where a claim form has been served out of the jurisdiction under rule 6.32 or 6.33.

(Part 10 contains rules about acknowledgments of service, Part 14 contains rules about admissions and Part 15 contains rules about defences.)

#### *Service of the claim form on a defendant in Scotland or Northern Ireland*

(2) Where the claimant serves on a defendant in Scotland or Northern Ireland under rule 6.32, the period—

- (a) for filing an acknowledgment of service or admission is 21 days after service of the particulars of claim; or
- (b) for filing a defence is—
  - (i) 21 days after service of the particulars of claim; or
  - (ii) where the defendant files an acknowledgment of service, 35 days after service of the particulars of claim.

(Part 7 provides that particulars of claim must be contained in or served with the claim form or served separately on the defendant within 14 days after service of the claim form.)

#### *Service of the claim form on a defendant in a Convention territory within Europe or a Member State*

(3) Where the claimant serves the claim form on a defendant in a Convention territory within Europe or a Member State under rule 6.33, the period—

- (a) for filing an acknowledgment of service or admission, is 21 days after service of the particulars of claim; or
- (b) for filing a defence is—
  - (i) 21 days after service of the particulars of claim; or
  - (ii) where the defendant files an acknowledgment of service, 35 days after service of the particulars of claim.

#### *Service of the claim form on a defendant in a Convention territory outside Europe*

(4) Where the claimant serves the claim form on a defendant in a Convention territory outside Europe under rule 6.33, the period—

- (a) for filing an acknowledgment of service or admission, is 31 days after service of the particulars of claim; or
- (b) for filing a defence is—
  - (i) 31 days after service of the particulars of claim; or
  - (ii) where the defendant files an acknowledgment of service, 45 days after service of the particulars of claim.

#### *Service on a defendant elsewhere*

(5) Where the claimant serves the claim form under rule 6.33 in a country not referred to in paragraph (3) or (4), the period for responding to the claim form is set out in [F89]Practice Direction 6B].

**Textual Amendments**

**F89** Words in rule 6.35(5) substituted (6.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), 5(g)(i)

**Service of the claim form where the permission of the court is required**

**6.36.** In any proceedings to which rule 6.32 or 6.33 does not apply, the claimant may serve a claim form out of the jurisdiction with the permission of the court if any of the grounds set out in paragraph 3.1 of [F90]Practice Direction 6B] apply.

**Textual Amendments**

**F90** Words in rule 6.36 substituted (6.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), 5(g)(i)

**Application for permission to serve the claim form out of the jurisdiction**

**6.37.—**(1) An application for permission under rule 6.36 must set out—

- (a) which ground in paragraph 3.1 of [F91]Practice Direction 6B] is relied on;
- (b) that the claimant believes that the claim has a reasonable prospect of success; and
- (c) the defendant's address or, if not known, in what place the defendant is, or is likely, to be found.

(2) Where the application is made in respect of a claim referred to in paragraph 3.1(3) of [F92]Practice Direction 6B], the application must also state the grounds on which the claimant believes that there is between the claimant and the defendant a real issue which it is reasonable for the court to try.

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

(4) In particular, 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 in Scotland or Northern Ireland, the court, in deciding whether to give permission, will—
  - (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.

(5) Where the court gives permission to serve a claim form out of the jurisdiction—

- (a) it will specify the periods within which the defendant may—
  - (i) file an acknowledgment of service;
  - (ii) file or serve an admission;
  - (iii) file a defence; or

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- (iv) file any other response or document required by a rule in another Part, any other enactment or a practice direction; and
- (b) it may—
  - (i) give directions about the method of service; and
  - (ii) give permission for other documents in the proceedings to be served out of the jurisdiction.

(The periods referred to in paragraphs (5)(a)(i), (ii) and (iii) are those specified in the Table in [<sup>F93</sup>Practice Direction 6B].)

#### **Textual Amendments**

- F91** Words in rule 6.37(1)(a) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **5(g)(i)**
- F92** Words in rule 6.37(2) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **5(g)(i)**
- F93** Words in rule 6.37 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **5(g)(ii)**

#### **Service of documents other than the claim form - permission**

**6.38.**—(1) Unless paragraph (2) or (3) applies, where the permission of the court is required for the claimant to serve the claim form out of the jurisdiction, the claimant must obtain permission to serve any other document in the proceedings out of the jurisdiction.

(2) Where—

- (a) the court gives permission for a claim form to be served on a defendant 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.

(3) The permission of the court is not required if a party has given an address for service in Scotland or Northern Ireland.

#### **Service of application notice on a non-party to the proceedings**

**6.39.**—(1) Where an application notice is to be served out of the jurisdiction on a person who is not a party to the proceedings rules 6.35 and 6.37(5)(a)(i), (ii) and (iii) do not apply.

(2) Where an application is served out of the jurisdiction on a person who is not a party to the proceedings, that person may make an application to the court under Part 11 as if that person were a defendant, but rule 11(2) does not apply.

(Part 11 contains provisions about disputing the court's jurisdiction.)

#### **Methods of service - general provisions**

**6.40.**—(1) This rule contains general provisions about the method of service of a claim form or other document on a party out of the jurisdiction.

*Where service is to be effected on a party in Scotland or Northern Ireland*

(2) Where a party serves any document on a party in Scotland or Northern Ireland, it must be served by a method permitted by Section II (and references to “jurisdiction” in that Section are modified accordingly) or Section III of this Part and rule 6.23(4) applies.

*Where service is to be effected on a defendant out of the United Kingdom*

(3) Where the claimant wishes to serve a claim form or any other document on a defendant out of the United Kingdom, it may be served—

- (a) by any method provided for by—
  - (i) rule 6.41 (service in accordance with the Service Regulation);
  - (ii) rule 6.42 (service through foreign governments, judicial authorities and British Consular authorities); or
  - (iii) rule 6.44 (service of claim form or other document on a State);
- (b) by any method permitted by a Civil Procedure Convention; or
- (c) by any other method permitted by the law of the country in which it is to be served.

(4) Nothing in paragraph (3) or in any court order authorises or requires any person to do anything which is contrary to the law of the country where the claim form or other document is to be served.

(A list of the countries with whom the United Kingdom has entered into a Civil Procedure Convention, and a link to the relevant Convention, may be found on the Foreign and Commonwealth Office website at—

[http://www.fco.gov.uk/en/about-the-fco/publications/treaties/lists-treaties/bilateral-civil-procedure.](http://www.fco.gov.uk/en/about-the-fco/publications/treaties/lists-treaties/bilateral-civil-procedure))

### **Service in accordance with the Service Regulation**

**6.41.**—(1) This rule applies where the claimant wishes to serve the claim form or other document in accordance with the Service Regulation.

- (2) The claimant must file—
  - (a) the claim form or other document;
  - (b) any translation; and
  - (c) any 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 (GL) the copy of the claim form; and
  - (b) forward the documents to the Senior Master.
- (4) Rule 6.47 does not apply to this rule.

(The Service Regulation is annexed to [F94 Practice Direction 6B].)

(Article 20(1) of the Service Regulation provides that the Regulation prevails over other provisions contained in any other agreement or arrangement concluded by Member States.)

#### **Textual Amendments**

**F94** Words in rule 6.41 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **5(g)(iii)**

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

**6.42.**—(1) Where the claimant wishes to serve a claim form or any other document on a defendant in any country which is a party to a Civil Procedure Convention providing for service in that country, it may be served—

- (a) through the authority designated under the Hague Convention (where relevant) 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 (subject to any provisions of the applicable convention about the nationality of persons who may be served by such a method).

(2) Where the claimant wishes to serve a claim form or any other document 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 or other document may be served, if the law of that country so permits—

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

(3) Where the claimant wishes to serve the claim form or other document in—

- (a) any Commonwealth State which is not a party to the Hague Convention;
- (b) the Isle of Man or the Channel Islands; or
- (c) any British overseas territory,

the methods of service permitted by paragraphs (1)(b) and (2) are not available and the claimant or the claimant's agent must effect service direct, unless [<sup>F95</sup>Practice Direction 6B] provides otherwise.

(A list of British overseas territories is reproduced in paragraph 5.2 of [<sup>F96</sup>Practice Direction 6B].)

#### **Textual Amendments**

**F95** Words in [rule 6.42\(3\)](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\)](#), [5\(g\)\(i\)](#)

**F96** Words in [rule 6.42](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\)](#), [5\(g\)\(ii\)](#)

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

**6.43.**—(1) This rule applies where the claimant wishes to serve a claim form or any other document under rule 6.42(1) or 6.42(2).

(2) Where this rule applies, the claimant must file—

- (a) a request for service of the claim form or other document specifying one or more of the methods in rule 6.42(1) or 6.42(2);
- (b) a copy of the claim form or other document;
- (c) any other documents or copies of documents required by [<sup>F97</sup>Practice Direction 6B]; and
- (d) any translation required under rule 6.45.

(3) Where the claimant files the documents specified in paragraph (2), the court officer will—

- (a) seal (GL) the copy of the claim form or other document; 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 or other document 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 form or other document to be served.
- (5) An official certificate which—
  - (a) states that the method requested under paragraph (2)(a) has been performed and the date of such performance;
  - (b) states, where more than one method is requested under paragraph (2)(a), which method was used; and
  - (c) is made by—
    - (i) a British Consular authority in the country where the method requested under paragraph (2)(a) was performed;
    - (ii) the government or judicial authorities in that country; or
    - (iii) the authority designated in respect of that country under the Hague Convention,is evidence of the facts stated in the certificate.
- (6) A document purporting to be an official certificate under paragraph (5) is to be treated as such a certificate, unless it is proved not to be.

#### **Textual Amendments**

**F97** Words in [rule 6.43\(2\)\(c\)](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\)](#), [5\(g\)\(i\)](#)

#### **Service of claim form or other document on a State**

- 6.44.**—(1) This rule applies where a claimant wishes to serve the claim form or other document on a State.
- (2) In this rule, “State” has the meaning given by section 14 of the State Immunity Act 1978.
  - (3) 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 or other document; and
    - (c) any translation required under rule 6.45.
  - (4) The Senior Master will send the documents filed under this rule to the Foreign and Commonwealth Office with a request that it arranges for them to be served.
  - (5) 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 is evidence of that fact.
  - (6) A document purporting to be such a certificate is to be treated as such a certificate, unless it is proved not to be.
  - (7) Where—
    - (a) section 12(6) of the State Immunity Act 1978 applies; and

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- (b) the State has agreed to a method of service other than through the Foreign and Commonwealth Office,

the claim form or other document 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) enables the service of a claim form or other document in a manner to which the State has agreed.)

### **Translation of claim form or other document**

**6.45.**—(1) Except where paragraph (4) or (5) applies, every copy of the claim form or other document filed under rule 6.43 (service through foreign governments, judicial authorities etc.) or 6.44 (service of claim form or other document on a State) must be accompanied by a translation of the claim form or other document.

(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 or other document 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 that person's name, address and qualifications for making the translation.

(4) The claimant is not required to file a translation of a claim form or other document filed under rule 6.43 (service through foreign governments, judicial authorities etc.) where the claim form or other document is to be served—

- (a) in a country of which English is an official language; or
- (b) on a British citizen (within the meaning of the British Nationality Act 1981),

unless a Civil Procedure Convention requires a translation.

(5) The claimant is not required to file a translation of a claim form or other document filed under rule 6.44 (service of claim form or other document on a State) where English is an official language of the State in which the claim form or other document is to be served.

(The Service Regulation contains provisions about the translation of documents.)

### **Undertaking to be responsible for expenses**

**6.46.** Every request for service filed under rule 6.43 (service through foreign governments, judicial authorities etc.) or rule 6.44 (service of claim form or other document on a 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.

### **Proof of service before obtaining judgment**

**6.47.** Where—

- (a) a hearing is fixed when the claim form 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 not obtain judgment against the defendant until the claimant files written evidence that the claim form has been duly served in accordance with this Part.

## *V SERVICE OF DOCUMENTS FROM FOREIGN COURTS OR TRIBUNALS*

### **Scope of this Section**

**6.48.** This Section—

- (a) applies to the service in England and Wales of any document in connection with civil or commercial proceedings in a foreign court or tribunal; but
- (b) does not apply where the Service Regulation (which has the same meaning as in rule 6.31(e)) applies.

### **Interpretation**

**6.49.** In this Section—

- (a) “convention country” means a country in relation to which there is a Civil Procedure Convention (which has the same meaning as in rule 6.31(c));
- (b) “foreign court or tribunal” means a court or tribunal in a country outside of the United Kingdom; and
- (c) “process server” means—
  - (i) a process server appointed by the Lord Chancellor to serve documents to which this Section applies, or
  - (ii) the process server’s agent.

### **Request for service**

**6.50.** The Senior Master will serve a document to which this Section applies upon receipt of—

- (a) a written request for service—
  - (i) where the foreign court or tribunal is in a convention country, from a consular or other authority of that country; or
  - (ii) from the Secretary of State for Foreign and Commonwealth Affairs, with a recommendation that service should be effected;
- (b) a translation of that request into English;
- (c) two copies of the document to be served; and
- (d) unless the foreign court or tribunal certifies that the person to be served understands the language of the document, two copies of a translation of it into English.

### **Method of service**

**6.51.** The Senior Master will determine the method of service.

### **After service**

**6.52.—**(1) Where service of a document has been effected by a process server, the process server must—

- (a) send to the Senior Master a copy of the document, and

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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)*

- (i) proof of service; or
- (ii) a statement why the document could not be served; and
- (b) if the Senior Master directs, specify the costs incurred in serving or attempting to serve the document.
- (2) The Senior Master will send to the person who requested service—
  - (a) a certificate, sealed with the seal of the [<sup>F98</sup>Senior Courts] for use out of the jurisdiction, stating—
    - (i) when and how the document was served or the reason why it has not been served; and
    - (ii) where appropriate, an amount certified by a costs judge to be the costs of serving or attempting to serve the document; and
  - (b) a copy of the document.]

#### Textual Amendments

**F98** Words in [rule 6.52\(2\)\(a\)](#) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), [rules 1\(2\)](#), [3\(c\)](#)

## PART 7

### HOW TO START PROCEEDINGS—THE CLAIM FORM

#### Contents of this Part

Where to start proceedings	Rule 7.1
How to start proceedings	Rule 7.2
Right to use one claim form to start two or more claims	Rule 7.3
Particulars of claim	Rule 7.4
Service of a claim form	Rule 7.5
Extension of time for serving a claim form	Rule 7.6
Application by defendant for service of a claim form	Rule 7.7
Form for defence etc. must be served with particulars of claim	Rule 7.8
Fixed date and other claims	Rule 7.9
Production Centre for claims	Rule 7.10

#### Where to start proceedings

**7.1** Restrictions on where proceedings may be started are set out in [<sup>F99</sup>the relevant practice directions supplementing this Part].

#### Textual Amendments

**F99** Words in [rule 7.1](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **6(a)**

#### Commencement Information

**I30** [Rule 7.1](#) in force at 26.4.1999, see [Signature](#)

### How to start proceedings

**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>F100</sup>(The [<sup>F101</sup>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)]

[<sup>F102</sup>(Part 78 provides procedures for European orders for payment and for the European small claims procedure.)]

#### Textual Amendments

**F100** 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)

**F101** Words in [rule 7.2](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **6(b)**

**F102** Words in [rule 7.2\(2\)](#) inserted (12.12.2008 for specified purposes, 1.1.2009 in so far as not already in force) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(3), **6(a)**

#### Commencement Information

**I31** [Rule 7.2](#) in force at 26.4.1999, see [Signature](#)

[<sup>F103</sup>**7.2A** [<sup>F104</sup>Practice Direction 7A] makes provision for procedures to be followed when claims are brought by or against a partnership within the jurisdiction.]

#### Textual Amendments

**F103** [Rule 7.2A](#) inserted (2.10.2006) by [The Civil Procedure \(Amendment\) Rules 2006 \(S.I. 2006/1689\)](#), rules 1, 4

**F104** Words in [rule 7.2A](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **6(c)**

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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)*

## Right to use one claim form to start two or more claims

**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

**I32** Rule 7.3 in force at 26.4.1999, see [Signature](#)

## Particulars of claim

**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)

[<sup>F105</sup>(3) Where the claimant serves particulars of claim separately from the claim form in accordance with paragraph (1)(b), the claimant must, within 7 days of service on the defendant, file a copy of the particulars except where—

- (a) paragraph 5.2(4) of [<sup>F106</sup>Practice Direction 7C] applies; or
- (b) paragraph 6.4 of [<sup>F107</sup>Practice Direction 7E] applies.]

(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)

**F108**  
...

### Textual Amendments

**F105** Rule 7.4(3) substituted (6.4.2009) by [The Civil Procedure \(Amendment No.3\) Rules 2008](#) (S.I. 2008/3327), rules 1, 4

**F106** Words in rule 7.4(3)(a) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009](#) (S.I. 2009/3390), rules 1(2), **6(d)(i)**

**F107** Words in rule 7.4(3)(b) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009](#) (S.I. 2009/3390), rules 1(2), **6(d)(ii)**

**F108** Words in rule 7.4 omitted (1.10.2008) by virtue of [The Civil Procedure \(Amendment\) Rules 2008](#) (S.I. 2008/2178), rules 1(2), **6(c)**

### Commencement Information

**I33** Rule 7.4 in force at 26.4.1999, see [Signature](#)

## [<sup>F109</sup>Service of a claim form

**7.5.**—(1) Where the claim form is served within the jurisdiction, the claimant must complete the step required by the following table in relation to the particular method of service chosen, before 12.00 midnight on the calendar day four months after the date of issue of the claim form.

<i>Method of service</i>	<i>Step required</i>
First class post, document exchange or other service which provides for delivery on the next business day	Posting, leaving with, delivering to or collection by the relevant service provider
Delivery of the document to or leaving it at the relevant place	Delivering to or leaving the document at the relevant place
Personal service under rule 6.5	Completing the relevant step required by rule 6.5(3)
Fax	Completing the transmission of the fax
Other electronic method	Sending the e-mail or other electronic transmission

(2) Where the claim form is to be served out of the jurisdiction, the claim form must be served in accordance with Section IV of Part 6 within 6 months of the date of issue.]

#### **Textual Amendments**

**F109** Rule 7.5 substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **6(d)**

#### **[<sup>F110</sup>Extension of time for serving a claim form**

**7.6.—**(1) The claimant may apply for an order extending the period for compliance with rule 7.5.

(2) The general rule is that an application to extend the time for compliance with rule 7.5 must be made—

- (a) within the period 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 compliance 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 failed to serve the claim form; or
- (b) the claimant has taken all reasonable steps to comply with rule 7.5 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 compliance with rule 7.5—

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

#### **Textual Amendments**

**F110** Rule 7.6 substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **6(d)**

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### Application by defendant for service of claim form

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.

#### Commencement Information

I34 [Rule 7.7](#) in force at 26.4.1999, see [Signature](#)

### Form for defence etc. must be served with particulars of claim

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.

#### Commencement Information

I35 [Rule 7.8](#) in force at 26.4.1999, see [Signature](#)

### Fixed date and other claims

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

I36 [Rule 7.9](#) in force at 26.4.1999, see [Signature](#)

## Production Centre for claims

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

(2) [<sup>F111</sup>Practice Direction 7C] 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) [<sup>F112</sup>Practice Direction 7C] may disapply or modify these Rules as appropriate in relation to claims issued by the Production Centre.

### Textual Amendments

**F111** Words in [rule 7.10\(2\)](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\)](#), [6\(e\)](#)

**F112** Words in [rule 7.10\(3\)](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\)](#), [6\(e\)](#)

### Commencement Information

**I37** [Rule 7.10](#) in force at 26.4.1999, see [Signature](#)

## [<sup>F113</sup>Human Rights

**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

**F113** [Rule 7.11](#) inserted (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), [rules 1](#), [6](#)

## [<sup>F114</sup>Electronic issue of claims

**7.12.**—(1) A practice direction may make provision for a claimant to start a claim by requesting the issue of a claim form electronically.

(2) The practice direction may, in particular—

- (a) specify—
  - (i) the types of claim which may be issued electronically; and
  - (ii) the conditions which a claim must meet before it may be issued electronically;
- (b) specify—
  - (i) the court where the claim will be issued; and
  - (ii) the circumstances in which the claim will be transferred to another 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)*

- (c) provide for the filing of other documents electronically where a claim has been started electronically;
- (d) specify the requirements that must be fulfilled for any document filed electronically; and
- (e) provide how a fee payable on the filing of any document is to be paid where that document is filed electronically.

(3) The practice direction may disapply or modify these Rules as appropriate in relation to claims started electronically.

[<sup>F115</sup>(Practice Direction 5C deals with electronic issue of claims started or continued under the Electronic Working scheme.)]]

#### Textual Amendments

**F114** Rule 7.12 inserted (1.2.2004) by The Civil Procedure (Amendment No. 5) Rules 2003 (S.I. 2003/3361), rules 1(a), 3

**F115** Words in rule 7.12 inserted (1.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(5), 6(f)

## PART 8

### 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

- 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—
- (a) he seeks the court’s decision on a question which is unlikely to involve a substantial dispute of fact; or
  - (b) 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—

(a) require or permit the use of the Part 8 procedure; and

(b) 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)

[<sup>F116</sup>(Part 78 provides procedures for European orders for payment and for the European small claims procedure.)]

#### Textual Amendments

**F116** Words in [rule 8.1\(6\)](#) inserted (12.12.2008 for specified purposes, 1.1.2009 in so far as not already in force) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), [rules 1\(3\)](#), [7](#)

#### Commencement Information

**I38** [Rule 8.1](#) in force at 26.4.1999, see [Signature](#)

### Contents of the claim form

**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>F117</sup>(The [<sup>F118</sup>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

**F117** 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](#))

**F118** Words in [rule 8.2](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\)](#), [7\(a\)](#)

Status: Point in time view as at 31/01/2011.

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**

**I39** Rule 8.2 in force at 26.4.1999, see **Signature**

**[<sup>F119</sup> Issue of claim form without naming defendants**

**8.2A.**—[<sup>F120</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**

**F119** Rule 8.2A inserted (2.5.2000) by **The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221)**, rules 1(b), **5**

**F120** 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**

**8.3.**—(1) The defendant must—

- (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).

<sup>F121</sup>(4) .....

[<sup>F122</sup>(The [<sup>F123</sup>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**

**F121** Rule 8.3(4) omitted (25.3.2002) by virtue of **The Civil Procedure (Amendment No. 5) Rules 2001 (S.I. 2001/4015)**, rules 1(c), **11**

**F122** 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)

**F123** Words in rule 8.3 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **7(b)**

**Commencement Information**

**I40** [Rule 8.3](#) in force at 26.4.1999, see [Signature](#)

**Consequence of not filing an acknowledgment of service**

**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**

**I41** [Rule 8.4](#) in force at 26.4.1999, see [Signature](#)

**Filing and serving written evidence**

**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.

(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.

**Commencement Information**

**I42** [Rule 8.5](#) in force at 26.4.1999, see [Signature](#)

**Evidence—general**

**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.

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(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)

#### Commencement Information

**I43** [Rule 8.6](#) in force at 26.4.1999, see [Signature](#)

### Part 20 claims

**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.

#### Commencement Information

**I44** [Rule 8.7](#) in force at 26.4.1999, see [Signature](#)

### Procedure where defendant objects to use of the Part 8 procedure

**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.

(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

**I45** [Rule 8.8](#) in force at 26.4.1999, see [Signature](#)

### Modifications to the general rules

**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**

**I46** [Rule 8.9](#) in force at 26.4.1999, see [Signature](#)

**PART 9**

**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**

- 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.

**Commencement Information**

**I47** [Rule 9.1](#) in force at 26.4.1999, see [Signature](#)

**Defence, admission or acknowledgment of service**

- 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.

F124 .....

**Textual Amendments**

**F124** Words in [rule 9.2](#) omitted (6.4.2010) by virtue of [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\)](#), [8](#)

*Status: Point in time view as at 31/01/2011.*

*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**

**I48** [Rule 9.2](#) in force at 26.4.1999, see [Signature](#)

## PART 10

### ACKNOWLEDGMENT OF SERVICE

#### Contents of this Part

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

#### Acknowledgment of service

**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)

**Commencement Information**

**I49** [Rule 10.1](#) in force at 26.4.1999, see [Signature](#)

#### Consequence of not filing an acknowledgment of service

**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**

**I50** [Rule 10.2](#) in force at 26.4.1999, see [Signature](#)

## The period for filing an acknowledgment of service

- 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) [F125rule [F1266.35]] (which specifies how the period for filing an acknowledgment of service is calculated where the claim form is served out of the jurisdiction [F127under rule 6.32 or 6.33]); F128 ...
  - (b) rule [F1296.12(3)] (which requires the court to specify the period for responding to the particulars of claim when it makes an order under that rule) [F130]; and
  - (c) rule [F1316.37(5)] (which requires the court to specify the period within which the defendant may file an acknowledgment of service calculated by reference to [F132Practice Direction 6B] when it makes an order giving permission to serve a claim form out of the jurisdiction).]

### Textual Amendments

- F125** 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](#)
- F126** Word in [rule 10.3\(2\)\(a\)](#) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), [rules 1\(2\), 8\(a\)\(i\)\(aa\)](#)
- F127** Words in [rule 10.3\(2\)\(a\)](#) inserted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), [rules 1\(2\), 8\(a\)\(i\)\(bb\)](#)
- F128** Word in [rule 10.3\(2\)\(a\)](#) omitted (1.10.2005) by virtue of [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), [rules 1\(c\), 17\(a\)](#)
- F129** Words in [rule 10.3\(2\)\(b\)](#) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), [rules 1\(2\), 8\(a\)\(ii\)](#)
- F130** [Rule 10.3\(2\)\(c\)](#) and word inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), [rules 1\(c\), 17\(b\)](#)
- F131** Word in [rule 10.3\(2\)\(c\)](#) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), [rules 1\(2\), 8\(a\)\(iii\)\(aa\)](#)
- F132** Words in [rule 10.3\(2\)\(c\)](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\), 9](#)

### Commencement Information

- I51** [Rule 10.3](#) in force at 26.4.1999, see [Signature](#)

## Notice to claimant that defendant has filed an acknowledgment of service

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

### Commencement Information

- I52** [Rule 10.4](#) in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 31/01/2011.*

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

## Contents of acknowledgment of service

**10.5** An acknowledgment of service must—

- (a) be signed by the defendant or [<sup>F133</sup>the defendant's] legal representative; and
- (b) include the defendant's address for service.

(Rule [<sup>F134</sup>6.23] provides that an address for service must be within the [<sup>F135</sup>United Kingdom])

[<sup>F136</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)]

### Textual Amendments

- F133** Words in rule 10.5(a) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **8(b)**
- F134** Word in rule 10.5(b) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **8(c)(i)**
- F135** Words in rule 10.5(b) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **8(c)(ii)**
- F136** Words in Pt. 10 inserted (26.3.2001) by The Civil Procedure (Amendment) Rules 2001 (S.I. 2001/256), rules 1(a), **6**

### Commencement Information

- I53** Rule 10.5 in force at 26.4.1999, see [Signature](#)

## PART 11

### 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

**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—

- [<sup>F137</sup>(a) be made within 14 days after filing an acknowledgment of service; and]
- (b) be supported by evidence.



F138 ...

- (5) If the defendant—
  - (a) files an acknowledgment of service; and
  - (b) does not make such an application within the period [<sup>F139</sup>specified in paragraph (4)],
 he is to be treated as having accepted that the court has jurisdiction to try the claim.
- (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; <sup>F140</sup> ...
  - (b) the defendant may file a further acknowledgment of service within 14 days or such other period as the court may direct [<sup>F141</sup>; and
  - (c) the court shall give directions as to the filing and service of the defence in a claim under Part 7 or the filing of evidence in a claim under Part 8 in the event that a further acknowledgment of service is filed.]
- (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.
- [<sup>F142</sup>(9) If a defendant makes an application under this rule, he must file and serve his written evidence in support with the application notice, but he need not before the hearing of the application file—
  - (a) in a Part 7 claim, a defence; or
  - (b) in a Part 8 claim, any other written evidence.]
- <sup>F143</sup>(10) .....

**Textual Amendments**

- F137** Rule 11(4)(a) substituted (25.3.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(c), **12(a)**
- F138** Words in rule 11 omitted (25.3.2002) by virtue of [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(c), **12(b)**
- F139** Words in rule 11(5) substituted (25.3.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(c), **12(c)**
- F140** Word in rule 11(7)(a) omitted (1.10.2005) by virtue of [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **18(a)**
- F141** Rule 11(7)(c) and word inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **18(b)**
- F142** Rule 11(9) substituted (25.3.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(c), **12(d)**
- F143** Rule 11(10) omitted (25.3.2002) by virtue of [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(c), **12(e)**

*Status: Point in time view as at 31/01/2011.*

*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

**I54** [Rule 11](#) in force at 26.4.1999, see [Signature](#)

## PART 12

### 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”

**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

**I55** [Rule 12.1](#) in force at 26.4.1999, see [Signature](#)

#### Claims in which default judgment may not be obtained

**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(7);
- (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

**I56** Rule 12.2 in force at 26.4.1999, see [Signature](#)

#### Conditions to be satisfied

**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>F144</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>F145</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)

(3) The claimant may not obtain a default judgment if—

[<sup>F146</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)

[<sup>F147</sup>(Rule 6.17 provides that, where the claim form is served by the claimant, the claimant may not obtain default judgment unless a certificate of service has been filed.)]

*Status: Point in time view as at 31/01/2011.*

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

[<sup>F148</sup>(Article 19(1) of the Service Regulation (which has the same meaning as in rule 6.31(e)) applies in relation to judgment in default where the claim form is served in accordance with that Regulation.)]

#### Textual Amendments

**F144** Rule 12.3(2) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **6(a)**

**F145** 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)**

**F146** 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)**

**F147** Words in rule 12.3 substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **9(a)**

**F148** Words in rule 12.3 substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **9(b)**

#### Commencement Information

**I57** [Rule 12.3](#) in force at 26.4.1999, see [Signature](#)

### Procedure for obtaining default judgment

**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 [<sup>F149</sup>,

and where the defendant is an individual, the claimant must provide the defendant's date of birth (if known) in Part C of the application notice.]

(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).

[<sup>F150</sup>(4) In civil proceedings against the Crown, as defined in rule 66.1(2), a request for a default judgment must be considered by a Master or district judge, who must in particular be satisfied that the claim form and particulars of claim have been properly served on the Crown in accordance with section 18 of the Crown Proceedings Act 1947 and [<sup>F151</sup>rule 6.10].]

#### Textual Amendments

- F149** Words in rule 12.4(2) inserted (6.4.2006) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(a), **19(a)**
- F150** Rule 12.4(4) inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **19(b)**
- F151** Word in rule 12.4(4) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **9(c)**

#### Commencement Information

- I58** [Rule 12.4](#) in force at 26.4.1999, see [Signature](#)

### Nature of judgment where default judgment obtained by filing a request

**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

- I59** [Rule 12.5](#) in force at 26.4.1999, see [Signature](#)

### Interest

**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—

*Status: Point in time view as at 31/01/2011.*

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

- (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>(8)</sup> or section 69 of the County Courts Act 1984<sup>(9)</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 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)

#### Commencement Information

**I60** Rule 12.6 in force at 26.4.1999, see [Signature](#)

#### Procedure for deciding an amount or value

**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.

#### Commencement Information

**I61** Rule 12.7 in force at 26.4.1999, see [Signature](#)

#### Claim against more than one defendant

**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.

<sup>(8)</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>(9)</sup> 1984 c. 28. Section 69 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 46.

(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.

**Commencement Information**

**I62** Rule 12.8 in force at 26.4.1999, see [Signature](#)

**Procedure for obtaining a default judgment for costs only**

**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)

**Commencement Information**

**I63** Rule 12.9 in force at 26.4.1999, see [Signature](#)

**Default judgment obtained by making an application**

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

<sup>F152</sup>(a) the claim is—

- (i) a claim against a child or <sup>F153</sup>protected party]; or
- (ii) a claim in tort by one spouse or civil partner against the other.]

(b) <sup>F154</sup>the claimant] 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>F155</sup>rule <sup>F156</sup>6.32(1), 6.33(1) or 6.33(2)] ( [<sup>F157</sup>service where permission of the court is not required] ...);
- (ii) against a defendant domiciled in Scotland or Northern Ireland or in any other Convention territory [<sup>F158</sup>or <sup>F159</sup>Member State]];
- (iii) against a State;
- (iv) against a diplomatic agent who enjoys immunity from civil jurisdiction by virtue of the Diplomatic Privileges Act 1964(11); or
- (v) against persons or organisations who enjoy immunity from civil jurisdiction pursuant to the provisions of the International Organisations Acts 1968 and 1981(12).]

(11) 1964 c. 81.

(12) 1968 c. 48; 1981 c. 9.

*Status: Point in time view as at 31/01/2011.*

*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

- F152** Rule 12.10(a) substituted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005](#) (S.I. 2005/2292), rules 1(c), **20**
- F153** Words in rule 12.10(a)(i) substituted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007](#) (S.I. 2007/2204), rules 1, **5(a)**
- F154** Words in rule 12.10(b) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008](#) (S.I. 2008/2178), rules 1(2), **9(d)(i)**
- F155** 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**
- F156** Words in rule 12.10(b)(i) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008](#) (S.I. 2008/2178), rules 1(2), **9(d)(ii)(aa)**
- F157** Words in rule 12.10(b)(i) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008](#) (S.I. 2008/2178), rules 1(2), **9(d)(ii)(bb)**
- F158** Words in rule 12.10(b)(ii) inserted (1.3.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001](#) (S.I. 2001/4015), rules 1(b), **13(b)**
- F159** Words in rule 12.10(b)(ii) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008](#) (S.I. 2008/2178), rules 1(2), **9(d)(iii)**

### Commencement Information

- I64** [Rule 12.10](#) in force at 26.4.1999, see [Signature](#)

### Supplementary provisions where applications for default judgment are made

**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 [<sup>F160</sup>protected party] or a claim in tort between spouses [<sup>F161</sup>or civil partners] must be supported by evidence.

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

[<sup>F162</sup>(a) the claim under the Civil Jurisdiction and Judgments Act 1982 or [<sup>F163</sup>the Lugano Convention or] the Judgments Regulation, was served in accordance with rules [<sup>F164</sup>6.32(1), 6.33(1) or 6.33(2)] as appropriate;]

(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 <sup>F165</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(13).

(Rule 23.1 defines “application notice”)

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

<sup>F166</sup>(a) “domicile” is to be determined—

(i) in relation to a Convention territory, in accordance with sections 41 to 46 of the Civil Jurisdiction and Judgments Act 1982;

(ii) in relation to a <sup>F167</sup>Member State], in accordance with the Judgments Regulation and paragraphs 9 to 12 of Schedule 1 to the Civil Jurisdiction and Judgments Order 2001;]

(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;

(c) “State” has the meaning given by section 14 of the State Immunity Act 1978; <sup>F168</sup>...

(d) “Diplomatic agent” has the meaning given by Article 1 (e) of Schedule 1 to the Diplomatic Privileges Act 1964; <sup>F169</sup>and]

<sup>F170</sup>(e) “the Judgments Regulation” means Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>F171</sup>, as amended from time to time and as applied by the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters]<sup>F172</sup>.]

[ “the Lugano Convention” means the Convention on jurisdiction and the recognition <sup>F173</sup>(f) and enforcement of judgments in civil and commercial matters, between the European Community and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Kingdom of Denmark and signed by the European Community on 30<sup>th</sup> October 2007.]]

#### Textual Amendments

**F160** Words in rule 12.11(3) substituted (1.10.2007) by The Civil Procedure (Amendment) Rules 2007 (S.I. 2007/2204), rules 1, **5(b)**

**F161** Words in rule 12.11(3) inserted (1.10.2005) by The Civil Procedure (Amendment No.3) Rules 2005 (S.I. 2005/2292), rules 1(c), **21**

**F162** Rule 12.11(4)(a) substituted (1.3.2002) by The Civil Procedure (Amendment No. 5) Rules 2001 (S.I. 2001/4015), rules 1(b), **14(a)**

**F163** Words in rule 12.11(4)(a) inserted (1.1.2010) by The Civil Jurisdiction and Judgments Regulations 2009 (S.I. 2009/3131), regs. 1(1), **32** (with reg. 48)

**F164** Words in rule 12.11(4)(a) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **9(e)**

**F165** 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**

**F166** Rule 12.11(6)(a) substituted (1.3.2002) by The Civil Procedure (Amendment No. 5) Rules 2001 (S.I. 2001/4015), rules 1(b), **14(b)(i)**

**F167** Words in rule 12.11(6)(a)(ii) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **9(f)(i)**

*Status: Point in time view as at 31/01/2011.*

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

- F168** Word in rule 12.11(6)(c) omitted (1.3.2002) by virtue of The Civil Procedure (Amendment No. 5) Rules 2001 (S.I. 2001/4015), rules 1(b), **14(b)(ii)**
- F169** Word in rule 12.11(6)(d) inserted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **9(f)(ii)**
- F170** Rule 12.11(6)(e)(f) inserted (1.3.2002) by The Civil Procedure (Amendment No. 5) Rules 2001 (S.I. 2001/4015), rules 1(b), **14(b)(iii)**
- F171** Words in rule 12.11(6)(e) inserted (1.7.2007) by The Civil Jurisdiction and Judgments Regulations 2007 (S.I. 2007/1655), reg. 1, **Sch. para. 30(a)**
- F172** Rule 12.11(6)(e): full stop substituted for word (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **9(f)(iii)**
- F173** Rule 12.11(6)(f) inserted (1.1.2010) by The Civil Jurisdiction and Judgments Regulations 2009 (S.I. 2009/3131), regs. 1(1), **33** (with reg. 48)

#### Commencement Information

- I65** Rule 12.11 in force at 26.4.1999, see [Signature](#)

## PART 13

### SETTING ASIDE OR VARYING DEFAULT JUDGMENT

#### Contents of this Part

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

#### Scope of this Part

**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)

#### Commencement Information

- I66** Rule 13.1 in force at 26.4.1999, see [Signature](#)

## Cases where the court must set aside judgment entered under Part 12

**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;
- (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

**I67** 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

**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>F174</sup>(Article 19(4) of the Service Regulation (which has the same meaning as in rule 6.31(e)) applies to applications to appeal a judgment in default when the time limit for appealing has expired.)]

### Textual Amendments

**F174** Words in rule 13.3 substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **10**

### Commencement Information

**I68** Rule 13.3 in force at 26.4.1999, see [Signature](#)

## Application to set aside or vary judgment—procedure

**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

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(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.

F175 ...

F176(1A) .....

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**

F175 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

F176 [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**

I69 [Rule 13.4](#) in force at 26.4.1999, see [Signature](#)

**Claimant’s duty to apply to set aside judgment**

F177 13.5 .....

**Textual Amendments**

F177 [Rule 13.5](#) revoked (30.6.2004) by [The Civil Procedure \(Amendment\) Rules 2004 \(S.I. 2004/1306\)](#), rules 1(b), 21(a)

**Abandoned claim restored where default judgment set aside**

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**

I70 [Rule 13.6](#) in force at 26.4.1999, see [Signature](#)

## PART 14

### 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

#### [<sup>F178</sup> Admissions made after commencement of proceedings]

- 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 <sup>F179</sup>protected party]; or
- (b) the claimant is a child or <sup>F179</sup>protected party] 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 <sup>F179</sup>protected party] or against a child or <sup>F179</sup>protected party], no settlement, compromise or payment shall be valid, so far as it relates to that person's claim, without the approval of the court)

<sup>F180</sup>(5) The permission of the court is required to amend or withdraw an admission.]

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

#### Textual Amendments

**F178** Rule 14.1 heading substituted (6.4.2007) by [The Civil Procedure \(Amendment No.3\) Rules 2006 \(S.I. 2006/3435\)](#), rules 1, **4(a)**

**F179** Words in rule 14.1(4) substituted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, **6**

**F180** Rule 14.1(5) substituted (6.4.2007) by [The Civil Procedure \(Amendment No.3\) Rules 2006 \(S.I. 2006/3435\)](#), rules 1, **4(b)**

#### Commencement Information

**I71** [Rule 14.1](#) in force at 26.4.1999, see [Signature](#)

### <sup>F181</sup>Admissions made before commencement of proceedings

**14.1A.**—(1) A person may, by giving notice in writing, admit the truth of the whole or any part of another party's case before commencement of proceedings (a 'pre-action admission').

(2) Paragraphs (3) to (5) of this rule apply to a pre-action admission made in the types of proceedings listed at paragraph 1.1(2) of <sup>F182</sup>Practice Direction 14] if one of the following conditions is met—

- (a) it is made after the party making it has received a <sup>F183</sup>letter before claim] in accordance with the <sup>F184</sup>Practice Direction (Pre-Action Conduct) or any] relevant pre-action protocol; or
  - (b) it is made before such <sup>F185</sup>letter before claim] has been received, but it is stated to be made under Part 14.
- (3) A person may, by giving notice in writing, withdraw a pre-action admission—
- (a) before commencement of proceedings, if the person to whom the admission was made agrees;
  - (b) after commencement of proceedings, if all parties to the proceedings consent or with the permission of the court.
- (4) After commencement of proceedings—
- (a) any party may apply for judgment on the pre-action admission; and
  - (b) the party who made the pre-action admission may apply to withdraw it.

(5) An application to withdraw a pre-action admission or to enter judgment on such an admission—

- (a) must be made in accordance with Part 23;
- (b) may be made as a cross-application.]

#### Textual Amendments

- F181** Rule 14.1A inserted (6.4.2007) by [The Civil Procedure \(Amendment No.3\) Rules 2006](#) (S.I. 2006/3435), rules 1, **4(c)** (with rule 5)
- F182** Words in rule 14.1A(2) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009](#) (S.I. 2009/3390), rules 1(2), **10**
- F183** Words in rule 14.1A(2)(a) substituted (6.4.2009) by [The Civil Procedure \(Amendment No.3\) Rules 2008](#) (S.I. 2008/3327), rules 1, **5(a)(i)**
- F184** Words in rule 14.1A(2)(a) inserted (6.4.2009) by [The Civil Procedure \(Amendment No.3\) Rules 2008](#) (S.I. 2008/3327), rules 1, **5(a)(ii)**
- F185** Words in rule 14.1A(2)(b) substituted (6.4.2009) by [The Civil Procedure \(Amendment No.3\) Rules 2008](#) (S.I. 2008/3327), rules 1, **5(b)**

#### [<sup>F186</sup> Admissions made under the RTA Protocol

**14.1B.**—(1) This rule applies to a pre-action admission made in a case to which the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (“the RTA Protocol”) applies.

- (2) The defendant may, by giving notice in writing withdraw an admission of causation—
- (a) before commencement of proceedings—
    - (i) during the initial consideration period (or any extension to that period) as defined in the RTA Protocol; or
    - (ii) at any time if the person to whom the admission was made agrees; or
  - (b) after commencement of proceedings—
    - (i) if all the parties to the proceedings consent; or
    - (ii) with the permission of the court.
- (3) The defendant may, by giving notice in writing withdraw any other pre-action admission after commencement of proceedings—
- (a) if all the parties to the proceedings consent; or
  - (b) with the permission of the court.
- (4) An application under rule 14.1B(2)(b)(ii) or (3)(b) to withdraw a pre-action admission must be made in accordance with Part 23.]

#### Textual Amendments

- F186** Rule 14.1B inserted (30.4.2010) by [The Civil Procedure \(Amendment\) Rules 2010](#) (S.I. 2010/621), rules 1(2), **3**

#### Period for making an admission

**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—

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- (a) [<sup>F187</sup>rule [<sup>F188</sup>6.35]] (which specifies how the period for filing or returning an admission is calculated where the claim form is served out of the jurisdiction [<sup>F189</sup>under rule 6.32 or 6.33]); and
- (b) rule [<sup>F190</sup>6.12(3)] (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

- F187** 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**
- F188** Word in rule 14.2(2)(a) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **11(a)(i)**
- F189** Words in rule 14.2(2)(a) inserted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **11(a)(ii)**
- F190** Word in rule 14.2(2)(b) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **11(b)**

#### Commencement Information

- I72** [Rule 14.2](#) in force at 26.4.1999, see [Signature](#)

### Admission by notice in writing—application for judgment

**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.

#### Commencement Information

- I73** [Rule 14.3](#) in force at 26.4.1999, see [Signature](#)

### Admission of whole of claim for specified amount of money

**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**

**I74** [Rule 14.4](#) in force at 26.4.1999, see [Signature](#)

**Admission of part of a claim for a specified amount of money**

- 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.
- (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—

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- (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**

**I75** [Rule 14.5](#) in force at 26.4.1999, see [Signature](#)

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

**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**

**I76** [Rule 14.6](#) in force at 26.4.1999, see [Signature](#)

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

**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**

**I77** [Rule 14.7](#) in force at 26.4.1999, see [Signature](#)

**Allocation of claims in relation to outstanding matters**

**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.

**Commencement Information**

**I78** [Rule 14.8](#) in force at 26.4.1999, see [Signature](#)

**Request for time to pay**

**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

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(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)

#### Commencement Information

**I79** [Rule 14.9](#) in force at 26.4.1999, see [Signature](#)

### Determination of rate of payment

**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.

#### Commencement Information

**I80** [Rule 14.10](#) in force at 26.4.1999, see [Signature](#)

### Determination of rate of payment by court officer

**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

**I81** [Rule 14.11](#) in force at 26.4.1999, see [Signature](#)

### Determination of rate of payment by judge

**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

**I82** Rule 14.12 in force at 26.4.1999, see [Signature](#)

### Right of re-determination

**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;
- (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

**I83** Rule 14.13 in force at 26.4.1999, see [Signature](#)

### Interest

**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>(14)</sup> or section 69 of the County Courts Act 1984<sup>(15)</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

<sup>(14)</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>(15)</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.

*Status: Point in time view as at 31/01/2011.*

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

- (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

**184** [Rule 14.14](#) in force at 26.4.1999, see [Signature](#)

## PART 15 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
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

#### Part not to apply where claimant uses the Part 8 procedure

**15.1** This Part does not apply where the claimant uses the procedure set out in Part 8 (alternative procedure for claims).

#### Commencement Information

**185** [Rule 15.1](#) in force at 26.4.1999, see [Signature](#)

## Filing a defence

**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)

### Commencement Information

**186** Rule 15.2 in force at 26.4.1999, see [Signature](#)

## Consequence of not filing a defence

**15.3** If a defendant fails to file a defence, the claimant may obtain default judgment if Part 12 allows it.

### Commencement Information

**187** Rule 15.3 in force at 26.4.1999, see [Signature](#)

## The period for filing a defence

**15.4.**—(1) The general rule is that the period for filing a defence is—

- (a) 14 days after service of the particulars of claim; or
- (b) 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)

(2) The general rule is subject to the following rules—

- (a) <sup>F191</sup>rule <sup>F192</sup>[<sup>F192</sup>6.35]] (which specifies how the period for filing a defence is calculated where the claim form is served out of the jurisdiction <sup>F193</sup>[<sup>F193</sup>under rule 6.32 or 6.33]);
- (b) rule 11 (which provides that, where the defendant makes an application disputing the court's jurisdiction, <sup>F194</sup>[<sup>F194</sup>the defendant] 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 <sup>F195</sup>[<sup>F195</sup>6.12(3)] (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

**F191** 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**

**F192** Word in rule 15.4(2)(a) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **12(a)(i)**

**F193** Words in rule 15.4(2)(a) inserted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **12(a)(ii)**

**F194** Words in rule 15.4(2)(b) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **12(b)**

*Status: Point in time view as at 31/01/2011.*

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

**F195** Word in [rule 15.4\(2\)\(d\)](#) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **12(c)**

#### Commencement Information

**I88** [Rule 15.4](#) in force at 26.4.1999, see [Signature](#)

### Agreement extending the period for filing a defence

**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

**I89** [Rule 15.5](#) in force at 26.4.1999, see [Signature](#)

### Service of copy of defence

**15.6** A copy of the defence must be served on every other party.

(Part 16 sets out what a defence must contain)

[<sup>F196</sup>(The [<sup>F197</sup>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

**F196** 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](#))

**F197** Words in [rule 15.6](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **11**

#### Commencement Information

**I90** [Rule 15.6](#) in force at 26.4.1999, see [Signature](#)

### Making a counterclaim

**15.7** Part 20 applies to a defendant who wishes to make a counterclaim.

#### Commencement Information

**I91** [Rule 15.7](#) in force at 26.4.1999, see [Signature](#)

### Reply to defence

**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**

**I92** [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**

**15.9** A party may not file or serve any statement of case after a reply without the permission of the court.

**Commencement Information**

**I93** [Rule 15.9](#) in force at 26.4.1999, see [Signature](#)

**Claimant's notice where defence is that money claimed has been paid**

**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)

**Commencement Information**

**I94** [Rule 15.10](#) in force at 26.4.1999, see [Signature](#)

**Claim stayed if it is not defended or admitted**

**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>.

*Status: Point in time view as at 31/01/2011.*

*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 claim is stayed<sup>(GL)</sup> under this rule any party may apply for the stay to be lifted.

**Commencement Information**

**I95** [Rule 15.11](#) in force at 26.4.1999, see [Signature](#)

## PART 16

### STATEMENTS OF CASE

#### Contents of this Part

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

#### Part not to apply where claimant uses Part 8 procedure

**16.1** This Part does not apply where the claimant uses the procedure set out in Part 8 (alternative procedure for claims).

**Commencement Information**

**I96** [Rule 16.1](#) in force at 26.4.1999, see [Signature](#)

#### Contents of the claim form

**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; <sup>F198</sup> ...
- [<sup>F199</sup>(cc) where the claimant's only claim is for a specified sum, contain a statement of the interest accrued on that sum; and]
- (d) contain such other matters as may be set out in a practice direction.

[<sup>F200</sup>(1A) In civil proceedings against the Crown, as defined in rule 66.1(2), the claim form must also contain—

- (a) the names of the government departments and officers of the Crown concerned; and
- (b) brief details of the circumstances in which it is alleged that the liability of the Crown arose.]

(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>F201</sup>(The [<sup>F202</sup>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

**F198** Word in rule 16.2(1)(c) omitted (6.4.2006) by virtue of [The Civil Procedure \(Amendment No.4\) Rules 2005 \(S.I. 2005/3515\)](#), rules 1, **5(a)**

**F199** Rule 16.2(cc) inserted (6.4.2006) by [The Civil Procedure \(Amendment No.4\) Rules 2005 \(S.I. 2005/3515\)](#), rules 1, **5(b)**

**F200** Rule 16.2(1A) inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **22**

**F201** 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)

**F202** Words in rule 16.2 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **12**

#### Commencement Information

**I97** Rule 16.2 in force at 26.4.1999, see [Signature](#)

#### Statement of value to be included in the claim form

**16.3.**—(1) This rule applies where the claimant is making a claim for money.

[<sup>F203</sup>(2) The claimant must, in the claim form, state—

- (a) the amount of money claimed;
- (b) that the claimant expects to recover—
  - (i) not more than £5,000;
  - (ii) more than £5,000 but not more than £25,000; or
  - (iii) more than £25,000; or
- (c) that the claimant cannot say how much is likely to be recovered.]

*Status: Point in time view as at 31/01/2011.*

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

(3) In a claim for personal injuries, the claimant must also state in the claim form whether the amount which [<sup>F204</sup>the claimant] 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>F205</sup>(4) In a claim which includes a claim by a tenant of residential premises against [<sup>F206</sup>a] 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 <sup>F207</sup>... 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 [<sup>F208</sup>£25,000];
- (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 [<sup>F209</sup>how much the claimant] expects to recover, the claimant must disregard any possibility—

- (a) that [<sup>F210</sup>the court may make an award of]—
  - (i) interest;
  - (ii) costs;
- (b) that the court may make a finding of contributory negligence <sup>F211</sup> ...;
- (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(16).

(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.

#### Textual Amendments

**F203** Rule 16.3(2) substituted (6.4.2009) by [The Civil Procedure \(Amendment No.3\) Rules 2008 \(S.I. 2008/3327\)](#), rules 1, **6(a)**

**F204** Words in rule 16.3(3) substituted (6.4.2009) by [The Civil Procedure \(Amendment No.3\) Rules 2008 \(S.I. 2008/3327\)](#), rules 1, **6(b)**

**F205** Rule 16.3(4) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **6**

- F206** Word in rule 16.3(4) substituted (6.4.2009) by The Civil Procedure (Amendment No.3) Rules 2008 (S.I. 2008/3327), rules 1, **6(c)(i)**
- F207** Word in rule 16.3(4)(b) omitted (6.4.2009) by virtue of The Civil Procedure (Amendment No.3) Rules 2008 (S.I. 2008/3327), rules 1, **6(c)(ii)**
- F208** Sum in rule 16.3(5)(a) substituted (6.4.2009) by The Civil Procedure (Amendment No.3) Rules 2008 (S.I. 2008/3327), rules 1, **6(d)**
- F209** Words in rule 16.3(6) substituted (6.4.2009) by The Civil Procedure (Amendment No.3) Rules 2008 (S.I. 2008/3327), rules 1, **6(e)(i)**
- F210** Words in rule 16.3(6)(a) substituted (6.4.2009) by The Civil Procedure (Amendment No.3) Rules 2008 (S.I. 2008/3327), rules 1, **6(e)(ii)**
- F211** Words in rule 16.3(6)(b) omitted (6.4.2009) by virtue of The Civil Procedure (Amendment No.3) Rules 2008 (S.I. 2008/3327), rules 1, **6(e)(iii)**

**Commencement Information**

**I98** Rule 16.3 in force at 26.4.1999, see [Signature](#)

**Contents of the particulars of claim**

**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**

**I99** Rule 16.4 in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 31/01/2011.*

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

## Contents of defence

**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, [<sup>F212</sup>the defendant] must give an address for service.

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

(Rule [<sup>F213</sup>6.23] provides that an address for service must be within the [<sup>F214</sup>United Kingdom])

### Textual Amendments

**F212** Words in rule 16.5(8) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **13(a)**

**F213** Word in rule 16.5(8) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **13(b)(i)**

**F214** Words in rule 16.5(8) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **13(b)(ii)**

### Commencement Information

**I100** [Rule 16.5](#) in force at 26.4.1999, see [Signature](#)

## Defence of set-off

**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**

**I101** [Rule 16.6](#) in force at 26.4.1999, see [Signature](#)

**Reply to defence**

**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**

**I102** [Rule 16.7](#) in force at 26.4.1999, see [Signature](#)

**Court's power to dispense with statements of case**

- 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**

**I103** [Rule 16.8](#) in force at 26.4.1999, see [Signature](#)

## PART 17

### 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

*Status: Point in time view as at 31/01/2011.*

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

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

**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>F215</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.]

F216 ...

(Part 22 requires amendments to a statement of case to be verified by a statement of truth unless the court orders otherwise)

#### Textual Amendments

**F215** Rule 17.1(3) inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **7(a)**

**F216** 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)**

#### Commencement Information

**I104** Rule 17.1 in force at 26.4.1999, see [Signature](#)

### Power of court to disallow amendments made without permission

**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

**I105** Rule 17.2 in force at 26.4.1999, see [Signature](#)

### Amendments to statements of case with the permission of the court

**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

**I106** Rule 17.3 in force at 26.4.1999, see [Signature](#)

### Amendments to statements of case after the end of a relevant limitation period

**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>(17)</sup>;
  - (ii) the Foreign Limitation Periods Act 1984<sup>(18)</sup>; [<sup>F217</sup>or]
  - [<sup>F218</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.

(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.

( [<sup>F219</sup>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

**F217** 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)**

**F218** 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)**

**F219** 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

**I107** Rule 17.4 in force at 26.4.1999, see [Signature](#)

<sup>(17)</sup> 1980 c. 58.

<sup>(18)</sup> 1984 c. 16.

*Status: Point in time view as at 31/01/2011.*

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

## PART 18

### 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

**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)

[<sup>F220</sup>(Part 53 (defamation) restricts requirements for providing further information about sources of information in defamation claims)]

#### Textual Amendments

**F220** 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

**I108** Rule 18.1 in force at 26.4.1999, see [Signature](#)

#### Restriction on the use of further information

**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

**I109** [Rule 18.2](#) in force at 26.4.1999, see [Signature](#)

[<sup>F221</sup>PART 19

## PARTIES AND GROUP LITIGATION

**Textual Amendments**

**F221** Pt. 19 substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), [Sch. 2](#)

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**Parties—general**

**19.1** Any number of claimants or defendants may be joined as parties to a claim.

*Status: Point in time view as at 31/01/2011.*

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

## ***I ADDITION AND SUBSTITUTION OF PARTIES***

### **Change of parties—general**

**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>(g1)</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**

**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**

**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.

[<sup>F222</sup>(4A) The Commissioners for HM Revenue and Customs may be added as a party to proceedings only if they consent in writing.]

(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.

#### Textual Amendments

**F222** Rule 19.4(4A) inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **23**

#### [<sup>F223</sup>Human Rights

#### Textual Amendments

**F223** 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.

( [<sup>F224</sup>Practice Direction 19A] makes provision for these notices)

#### Textual Amendments

**F223** 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**

**F224** Words in rule 19.4A substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **13(a)**

#### **Special provisions about adding or substituting parties after the end of a relevant limitation period**

**19.5.**—(1) This rule applies to a change of parties after the end of a period of limitation under—

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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)*

- (a) the Limitation Act 1980;
  - (b) the Foreign Limitation Periods Act 1984; [<sup>F225</sup>or]
  - [<sup>F226</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

**F225** 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)**

**F226** 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>F227</sup>Special rules about parties in claims for wrongful interference with goods

**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.

(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**

**F227** 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**

**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.**

**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;
- (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

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- (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.

**[<sup>F228</sup>Representation of beneficiaries by trustees etc.**

**19.7A.**—(1) A claim may be brought by or against trustees, executors or administrators in that capacity without adding as parties any persons who have a beneficial interest in the trust or estate (“the beneficiaries”).

(2) Any judgment or order given or made in the claim is binding on the beneficiaries unless the court orders otherwise in the same or other proceedings.]

**Textual Amendments**

**F228** Rule 19.7A inserted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **6(a)**

**[<sup>F229</sup>Postal Services Act 2000 (c. 26)**

**19.7B.**—(1) An application under 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 representative is made in accordance with Part 8.

(2) A copy of the application notice must be served on the universal service provider and on the person in whose name the applicant seeks to bring the proceedings.]

**Textual Amendments**

**F229** Rule 19.7B inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **24**

**Death**

**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.

**Power to make judgments binding on non-parties**

- [<sup>F230</sup>19.8A.—(1) This rule applies to any claim relating to—
- (a) the estate of a deceased person;
  - (b) property subject to a trust; or
  - (c) the sale of any property.
- (2) The court may at any time direct that notice of—
- (a) the claim; or
  - (b) any judgment or order given in the claim,
- be served on any person who is not a party but who is or may be affected by it.
- (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—
- (a) a notice of a claim or of a judgment or order under this rule must be—
    - (i) in the form required by the practice direction;
    - (ii) issued by the court; and
    - (iii) accompanied by a form of acknowledgment of service with any necessary modifications;
  - (b) a notice of a claim must also be accompanied by—
    - (i) a copy of the claim form; and
    - (ii) such other statements of case, witness statements or affidavits as the court may direct; and

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- (c) a notice of a judgment or order must also be accompanied by a copy of the judgment or order.
- (5) If a person served with notice of a claim files an acknowledgment of service of the notice within 14 days he will become a party to the claim.
- (6) If a person served with notice of a 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 a notice of a claim on a person, the claim form is amended so as substantially to alter the remedy 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) Any person served with a notice of a judgment or order under this rule—
- (a) shall be bound by the judgment or order as if he had been a party to the claim; but
  - (b) may, provided he acknowledges service—
    - (i) within 28 days after the notice is served on him, apply to the court to set aside or vary the judgment or order; and
    - (ii) take part in any proceedings relating to the judgment or order.
- (9) 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.
- (10) A notice under this rule is issued on the date entered on the notice by the court.]

#### Textual Amendments

**F230** Rule 19.8A substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **6(b)**

#### [<sup>F231</sup>Derivative claims— how started

- 19.9.**—(1) This rule—
- (a) applies to a derivative claim (where a company, other body corporate or trade union is alleged to be entitled to claim a remedy, and a claim is made by a member of it for it to be given that remedy), whether under Chapter 1 of Part 11 of the Companies Act 2006 or otherwise; but
  - (b) does not apply to a claim made pursuant to an order under section [<sup>F232</sup>996] of that Act.
- (2) A derivative claim must be started by a claim form.
- (3) The company, body corporate or trade union for the benefit of which a remedy is sought must be made a defendant to the claim.
- (4) After the issue of the claim form, the claimant must not take any further step in the proceedings without the permission of the court, other than—
- (a) a step permitted or required by rule 19.9A or 19.9C; or
  - (b) making an urgent application for interim relief.

### Textual Amendments

**F231** Rules 19.9-19.9F substituted for rule 19.9 (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rule 1, **Sch. 1** (with rule 21)

**F232** Word in [rule 19.9\(1\)\(b\)](#) substituted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(b), **5(a)**

## Derivative claims under Chapter 1 of Part 11 of the Companies Act 2006 – application for permission

**19.9A.**—(1) In this rule—

“the Act” means the Companies Act 2006;

“derivative claim” means a derivative claim under Chapter 1 of Part 11 of the Act;

“permission application” means an application referred to in section [<sup>F233</sup>261(1)], 262(2) or 264(2) of the Act;

“the company” means the company for the benefit of which the derivative claim is brought.

**19.9A.**—(2) When the claim form for a derivative claim is issued, the claimant must file—

- (a) an application notice under Part 23 for permission to continue the claim; and
- (b) the written evidence on which the claimant relies in support of the permission application.

(3) The claimant must not make the company a respondent to the permission application.

(4) Subject to paragraph (7), the claimant must notify the company of the claim and permission application by sending to the company as soon as reasonably practicable after the claim form is issued—

- (a) a notice in the form set out in [<sup>F234</sup>Practice Direction 19C], and to which is attached a copy of the provisions of the Act required by that form;
- (b) copies of the claim form and the particulars of claim;
- (c) the application notice; and
- (d) a copy of the evidence filed by the claimant in support of the permission application.

(5) The claimant may send the notice and documents required by paragraph (4) to the company by any method permitted by Part 6 as if the notice and documents were being served on the company.

(6) The claimant must file a witness statement confirming that the claimant has notified the company in accordance with paragraph (4).

(7) Where notifying the company of the permission application would be likely to frustrate some part of the remedy sought, the court may, on application by the claimant, order that the company need not be notified for such period after the issue of the claim form as the court directs.

(8) An application under paragraph (7) may be made without notice.

(9) Where the court dismisses the claimant’s permission application without a hearing, the court will notify the claimant and (unless the court orders otherwise) the company of that decision.

(10) The claimant may ask for an oral hearing to reconsider the decision to dismiss the permission application, but the claimant—

- (a) must make the request to the court in writing within seven days of being notified of the decision; and
- (b) must notify the company in writing, as soon as reasonably practicable, of that request unless the court orders otherwise.

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(11) Where the court dismisses the permission application at a hearing pursuant to paragraph (10), it will notify the claimant and the company of its decision.

(12) Where the court does not dismiss the application under section 261(2) of the Act, the court will—

- (a) order that the company and any other appropriate party must be made respondents to the permission application; and
- (b) give directions for the service on the company and any other appropriate party of the application notice and the claim form.

#### Textual Amendments

**F231** Rules 19.9-19.9F substituted for rule 19.9 (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), [rule 1](#), [Sch. 1](#) (with [rule 21](#))

**F233** Word in [rule 19.9A\(1\)](#) substituted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), [rules 1\(b\)](#), [5\(b\)](#)

**F234** Words in [rule 19.9A\(4\)\(a\)](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\)](#), [13\(b\)](#)

### Derivative claims under Chapter 1 of Part 11 of the Companies Act 2006 – members of companies taking over claims by companies or other members

**19.9B.**—(1) This rule applies to proceedings under section 262(1) or 264(1) of the Companies Act 2006.

(2) The application for permission must be made by an application notice in accordance with Part 23.

(3) Rule 19.9A (except for paragraphs (1), (2) and (4)(b) of that rule, and paragraph (12)(b) so far as it applies to the claim form) applies to an application under this rule and references to the claimant in rule 19.9A are to be read as references to the person who seeks to take over the claim.

#### Textual Amendments

**F231** Rules 19.9-19.9F substituted for rule 19.9 (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), [rule 1](#), [Sch. 1](#) (with [rule 21](#))

### Derivative claims – other bodies corporate and trade unions

**19.9C.**—(1) This rule sets out the procedure where—

- (a) either—
  - (i) a body corporate to which Chapter 1 of Part 11 of the Companies Act 2006 does not apply; or
  - (ii) a trade union,
 is alleged to be entitled to a remedy; and
- (b) either—
  - (i) a claim is made by a member for it to be given that remedy; or
  - (ii) a member of the body corporate or trade union seeks to take over a claim already started, by the body corporate or trade union or one or more of its members, for it to be given that remedy.

(2) The member who starts, or seeks to take over, the claim must apply to the court for permission to continue the claim.

(3) The application for permission must be made by an application notice in accordance with Part 23.

(4) The procedure for applications in relation to companies under section 261, 262 or 264 (as the case requires) of the Companies Act 2006 applies to the permission application as if the body corporate or trade union were a company.

[<sup>F235</sup>(5) Rules 19.9A (except for paragraph (1) of that rule) and 19.9B apply to the permission application as if the body corporate or trade union were a company.]

#### Textual Amendments

**F231** Rules 19.9-19.9F substituted for rule 19.9 (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\), rule 1, Sch. 1](#) (with rule 21)

**F235** Rule 19.9C(5) substituted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\), rules 1\(b\), 5\(c\)](#)

#### Derivative claims arising in the course of other proceedings

**19.9D.** If a derivative claim (except such a claim in pursuance of an order under section [<sup>F236</sup>996] of the Companies Act 2006) arises in the course of other proceedings—

- (a) in the case of a derivative claim under Chapter 1 of Part 11 of that Act, rule 19.9A or 19.9B applies, as the case requires; and
- (b) in any other case, rule 19.9C applies.

#### Textual Amendments

**F231** Rules 19.9-19.9F substituted for rule 19.9 (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\), rule 1, Sch. 1](#) (with rule 21)

**F236** Word in rule 19.9D substituted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\), rules 1\(b\), 5\(d\)](#)

#### Derivative claims – costs

**19.9E.** The court may order the company, body corporate or trade union for the benefit of which a derivative claim is brought to indemnify the claimant against liability for costs incurred in the permission application or in the derivative claim or both.

#### Textual Amendments

**F231** Rules 19.9-19.9F substituted for rule 19.9 (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\), rule 1, Sch. 1](#) (with rule 21)

#### Derivative claims – discontinuance and settlement

**19.9F.** Where the court has given permission to continue a derivative claim, the court may order that the claim may not be [<sup>F237</sup>discontinued, settled or compromised] without the permission of the court.]

*Status: Point in time view as at 31/01/2011.*

*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

- F231** Rules 19.9-19.9F substituted for rule 19.9 (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rule 1, **Sch. 1** (with rule 21)
- F237** Words in [rule 19.9F](#) substituted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(b), **5(e)**

### III GROUP LITIGATION

#### Definition

**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

**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.

(<sup>F238</sup>Practice Direction 19B] 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>(g1)</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.

#### Textual Amendments

- F238** Words in [rule 19.11](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **13(c)**

#### Effect of the GLO

**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**

**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**

**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.

### **Test claims**

**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.]

*Status: Point in time view as at 31/01/2011.*

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

## [<sup>F239</sup>PART 20

### COUNTERCLAIMS AND OTHER ADDITIONAL CLAIMS

#### Textual Amendments

**F239** Pt. 20 substituted (6.4.2006) by [The Civil Procedure \(Amendment No.4\) Rules 2005 \(S.I. 2005/3515\)](#), rule 1, Sch. 1

#### Contents of this Part

Purpose of this Part	Rule 20.1
Scope and interpretation	Rule 20.2
Application of these Rules to additional claims	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 additional claim for contribution or indemnity from another party	Rule 20.6
Procedure for making any other additional claim	Rule 20.7
Service of claim form	Rule 20.8
Matters relevant to question of whether an additional claim should be separate from the claim	Rule 20.9
Effect of service of an additional claim	Rule 20.10
Special provisions relating to default judgment on an additional claim other than a counterclaim or a contribution or indemnity notice	Rule 20.11
Procedural steps on service of an additional claim form on a non-party	Rule 20.12
Case management where a defence to an additional claim is filed	Rule 20.13

#### Purpose of this Part

**20.1.** The purpose of this Part is to enable counterclaims and other additional claims to be managed in the most convenient and effective manner.

#### Scope and interpretation

**20.2.—**(1) This Part applies to—

- (a) a counterclaim by a defendant against the claimant or against the claimant and some other person;



- (b) an additional claim by a defendant against any person (whether or not already a party) for contribution or indemnity or some other remedy; and
  - (c) where an additional claim has been made against a person who is not already a party, any additional claim made by that person against any other person (whether or not already a party).
- (2) In these Rules—
- (a) “additional claim” means any claim other than the claim by the claimant against the defendant; and
  - (b) unless the context requires otherwise, references to a claimant or defendant include a party bringing or defending an additional claim.

### **Application of these Rules to additional claims**

**20.3.**—(1) An additional 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 additional 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).
- (3) Part 12 (default judgment) applies to a counterclaim but not to other additional claims.
- (4) Part 14 (admissions) applies to a counterclaim, but only—
- (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 (admission by notice in writing - application for judgment),

apply to other additional claims.

(Rule 12.3(2) sets out how to obtain judgment in default of defence for a counterclaim against the claimant, and rule 20.11 makes special provision for default judgment for some additional claims).

### **Defendant’s counterclaim against the claimant**

**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.

### **Counterclaim against a person other than the claimant**

**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 an additional party.

(2) An application for an order under paragraph (1) may be made without notice unless the court directs 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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(3) Where the court makes an order under paragraph (1), it will give directions as to the management of the case.

### **Defendant's additional claim for contribution or indemnity from another party**

**20.6.**—(1) A defendant who has filed an acknowledgment of service or a defence may make an additional claim for contribution or indemnity against a person who is already a party to the proceedings by—

- (a) filing a notice containing a statement of the nature and grounds of his additional claim; and
  - (b) serving the notice on that party.
- (2) A defendant may file and serve a notice under this rule—
- (a) without the court's permission, if he files and serves it—
    - (i) with his defence; or
    - (ii) if his additional claim for contribution or indemnity is against a party added to the claim later, within 28 days after that party files his defence; or
  - (b) at any other time with the court's permission.

### **Procedure for making any other additional claim**

**20.7.**—(1) This rule applies to any additional claim except—

- (a) a counterclaim only against an existing party; and
- (b) a claim for contribution or indemnity made in accordance with rule 20.6.

(2) An additional claim is made when the court issues the appropriate claim form.

(Rule 7.2(2) provides that a claim form is issued on the date entered on the form by the court)

(3) A defendant may make an additional claim—

- (a) without the court's permission if the additional 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 an additional claim must be contained in or served with the additional claim.

(5) An application for permission to make an additional claim may be made without notice, unless the court directs otherwise.

### **Service of claim form**

**20.8.**—(1) Where an additional claim may be made without the court's permission, any claim form must—

- (a) in the case of a counterclaim against an additional party only, be served on every other party when a copy of the defence is served;
- (b) in the case of any other additional claim, be served on the person against whom it is made within 14 days after the date on which the additional claim is issued by the court.

(2) Paragraph (1) does not apply to a claim for contribution or indemnity made in accordance with rule 20.6.

(3) Where the court gives permission to make an additional claim it will at the same time give directions as to its service.

### **Matters relevant to question of whether an additional claim should be separate from the claim**

**20.9.**—(1) This rule applies where the court is considering whether to—

- (a) permit an additional claim to be made;
- (b) dismiss an additional claim; or
- (c) require an additional 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 additional claim and the claim made by the claimant against the defendant;
- (b) whether the additional claimant is seeking substantially the same remedy which some other party is claiming from him; and
- (c) whether the additional 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.

### **Effect of service of an additional claim**

**20.10.**—(1) A person on whom an additional claim is served becomes a party to the proceedings if he is not a party already.

(2) When an additional 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 additional claim.

### **Special provisions relating to default judgment on an additional claim other than a counterclaim or a contribution or indemnity notice**

**20.11.**—(1) This rule applies if—

- (a) the additional claim is not—
  - (i) a counterclaim; or
  - (ii) a claim by a defendant for contribution or indemnity against another defendant under rule 20.6; and
- (b) the party against whom an additional claim is made fails to file an acknowledgment of service or defence in respect of the additional claim.

(2) The party against whom the additional claim is made—

- (a) is deemed to admit the additional claim, and is bound by any judgment or decision in the proceedings in so far as it is relevant to any matter arising in the additional claim;
- (b) subject to paragraph (3), if default judgment under Part 12 is given against the additional claimant, the additional claimant may obtain judgment in respect of the additional claim by filing a request in the relevant practice form.

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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) An additional 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 or indemnity.

(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 or vary a judgment entered under paragraph (2)(b).

#### **Procedural steps on service of an additional claim form on a non-party**

**20.12.**—(1) Where an additional 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 additional claim form must be served on every existing party.

#### **Case management where a defence to an additional claim is filed**

**20.13.**—(1) Where a defence is filed to an additional 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 original claim and all additional claims are managed together.

[<sup>F240</sup>(Part 66 contains provisions about counterclaims and other Part 20 claims in relation to proceedings by or against the Crown.)]]

#### **Textual Amendments**

**F240** Words in rule 20.13 substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), 14

## [<sup>F241</sup>PART 21

### CHILDREN AND PROTECTED PARTIES

#### **Textual Amendments**

**F241** Pt. 21 substituted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rule 1, Sch. 2

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

**C11** Pt. 21 applied (1.11.2009) by [The Water Industry \(Special Administration\) Rules 2009 \(S.I. 2009/2477\)](#), rules 2, 97

**Contents of this Part**

Scope of this Part	Rule 21.1
Requirement for a litigation friend in proceedings by or against children and protected parties	Rule 21.2
Stage of proceedings at which a litigation friend becomes necessary	Rule 21.3
Who may be a litigation friend without a court order	Rule 21.4
How a person becomes a litigation friend without a court order	Rule 21.5
How a person becomes a litigation friend by court order	Rule 21.6
Court's power to change a litigation friend and to prevent a person acting as a litigation friend	Rule 21.7
Appointment of a litigation friend by court order- supplementary	Rule 21.8
Procedure where appointment of a litigation friend ceases	Rule 21.9
Compromise etc. by or on behalf of a child or protected party	Rule 21.10
Control of money recovered by or on behalf of a child or protected party	Rule 21.11
Expenses incurred by a litigation friend	Rule 21.12
Appointment of a guardian of a child's estate	Rule 21.13

**Scope of this Part****21.1.—(1)** This Part—

- (a) contains special provisions which apply in proceedings involving children and protected parties;
- (b) sets out how a person becomes a litigation friend; and
- (c) does not apply to proceedings under Part 75 where one of the parties to the proceedings is a child.

**(2)** In this Part—

- (a) 'the 2005 Act' means the Mental Capacity Act 2005;
- (b) 'child' means a person under 18;
- (c) 'lacks capacity' means lacks capacity within the meaning of the 2005 Act;

*Status: Point in time view as at 31/01/2011.*

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

- (d) ‘protected party’ means a party, or an intended party, who lacks capacity to conduct the proceedings;
- (e) ‘protected beneficiary’ means a protected party who lacks capacity to manage and control any money recovered by him or on his behalf or for his benefit in the proceedings.

(<sup>F242</sup>Rules 6.13 and 6.25 contain] provisions about the service of documents on children and protected parties.)

(Rule 48.5 deals with costs where money is payable by or to a child or protected party.)

#### Textual Amendments

**F242** Words in [rule 21.1](#) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), [rules 1\(2\)](#), [15\(a\)](#)

### Requirement for a litigation friend in proceedings by or against children and protected parties

**21.2.**—(1) A protected party 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 a 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.

### Stage of proceedings at which a litigation friend becomes necessary

**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 protected party 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 protected party has a litigation friend.

(3) If during proceedings a party lacks capacity to continue to conduct proceedings, no party may take any further step in the proceedings without the permission of the court until the protected party has a litigation friend.

(4) Any step taken before a child or protected party has a litigation friend has no effect unless the court orders otherwise.

### Who may be a litigation friend without a court order

**21.4.**—(1) This rule does not apply if the court has appointed a person to be a litigation friend.

(2) A deputy appointed by the Court of Protection under the 2005 Act with power to conduct proceedings on the protected party's behalf is entitled to be the litigation friend of the protected party in any proceedings to which his power extends.

(3) If nobody has been appointed by the court or, in the case of a protected party, has been appointed as a deputy as set out in paragraph (2), a person may act as a litigation friend if he—

- (a) can fairly and competently conduct proceedings on behalf of the child or protected party;
- (b) has no interest adverse to that of the child or protected party; and
- (c) where the child or protected party is a claimant, undertakes to pay any costs which the child or protected party 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 protected party.

### How a person becomes a litigation friend without a court order

**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 deputy appointed by the Court of Protection under the 2005 Act with power to conduct proceedings on the protected party's behalf must file an official copy<sup>(GL)</sup> of the order of the Court of Protection which confers his power to act either—

- (a) where the deputy is to act as a litigation friend for a claimant, at the time the claim is made; or
- (b) where the deputy is to act as a litigation friend for a defendant, at the time when he first takes a step in the proceedings on behalf of the defendant.

(3) Any other person must file a certificate of suitability stating that he satisfies the conditions specified in rule 21.4(3) either—

- (a) where the person is to act as a litigation friend for a claimant, at the time when the claim is made; or
- (b) where the person is to act as a litigation friend for a defendant, at the time when he first takes a step in the proceedings on behalf of the defendant.

(4) The litigation friend must—

- (a) serve the certificate of suitability on every person on whom, in accordance with rule [F243 6.13] (service on a parent, guardian etc.), the claim form should be served; and
- (b) file a certificate of service when [F244 filing] the certificate of suitability.

( [F245 Rules 6.17 and 6.29 set] out the details to be contained in a certificate of service.)

#### Textual Amendments

**F243** Word in rule 21.5(4)(a) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **15(b)(i)**

**F244** Word in rule 21.5(4)(b) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **15(b)(ii)**

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**F245** Word in rule 21.5 substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), 15(c)

### **How a person becomes a litigation friend by court order**

**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 protected party;
- (b) the child or protected party has no litigation friend;
- (c) the court has not made an order under rule 21.2(3) (order that a child can conduct proceedings without a litigation friend); and
- (d) either—
  - (i) someone who is not entitled to be a litigation friend files a defence; or
  - (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 protected party.

(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 satisfies the conditions in rule 21.4(3).

### **Court's power to change a litigation friend and to prevent person acting as a litigation friend**

**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; or
- (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 satisfies the conditions in rule 21.4(3).

### **Appointment of a litigation friend by court order – supplementary**

**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 [F<sup>246</sup>6.13] (service on parent, guardian etc.), the claim form must be served.

(2) Where an application for an order under rule 21.6 is in respect of a protected party, the application must also be served on the protected party 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 satisfies the conditions specified in rule 21.4(3).

#### Textual Amendments

**F246** Word in rule 21.8(1) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), 15(d)

#### Procedure where appointment of a litigation friend ceases

**21.9.**—(1) When a child who is not a protected party reaches the age of 18, the litigation friend's appointment ceases.

(2) Where a protected party regains or acquires capacity to conduct the proceedings, the litigation friend's appointment continues until it is ended by court order.

(3) An application for an order under paragraph (2) may be made by—

- (a) the former protected party;
- (b) the litigation friend; or
- (c) a party.

(4) The child or protected party 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 the child or protected party does not serve the notice required by paragraph (4) 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 brought by or defence raised by the child or protected party.

(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.

#### Compromise etc. by or on behalf of a child or protected party

**21.10.**—(1) Where a claim is made—

- (a) by or on behalf of a child or protected party; or
- (b) against a child or protected party,

no settlement, compromise or payment (including any voluntary interim 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 protected party, 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 protected party (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 is to obtain the approval of the court to a settlement or compromise of the 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)*

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.

(3) In proceedings to which Section III<sup>F247</sup> or Section VI] of Part 45 applies, the court will not make an order for detailed assessment of the costs payable to the child or protected party but will assess the costs in the manner set out in that Section.

(Rule 48.5 contains provisions about costs where money is payable to a child or protected party.)

#### Textual Amendments

**F247** Words in rule 21.10(3) inserted (30.4.2010) by [The Civil Procedure \(Amendment\) Rules 2010 \(S.I. 2010/621\)](#), rules 1(2), 4

### Control of money recovered by or on behalf of a child or protected party

**21.11.**—(1) Where in any proceedings—

- (a) money is recovered by or on behalf of or for the benefit of a child or protected party; or
- (b) money paid into court is accepted by or on behalf of a child or protected party,

the money will 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.

(3) Where money is recovered by or on behalf of a protected party or money paid into court is accepted by or on behalf of a protected party, before giving directions in accordance with this rule, the court will first consider whether the protected party is a protected beneficiary.

### Expenses incurred by a litigation friend

**21.12.**—(1) In proceedings to which rule 21.11 applies, a litigation friend who incurs expenses on behalf of a child or protected party in any proceedings is entitled on application to recover the amount paid or payable out of any money recovered or paid into court to the extent that it—

- (a) has been reasonably incurred; and
- (b) is reasonable in amount.

(2) Expenses may include all or part of—

- (a) an insurance premium, as defined by rule 43.2(1)(m); or
- (b) interest on a loan taken out to pay an insurance premium or other recoverable disbursement.

(3) No application may be made under the rule for expenses that —

- (a) are of a type that may be recoverable on an assessment of costs payable by or out of money belonging to a child or protected party; but
- (b) are disallowed in whole or in part on such an assessment.

(Expenses which are also ‘costs’ as defined in rule 43.2(1)(a) are dealt with under rule 48.5(2).)

(4) In deciding whether the expenses were reasonably incurred and reasonable in amount, the court will have regard to all the circumstances of the case including the factors set out in rule 44.5(3).

(5) When the court is considering the factors to be taken into account in assessing the reasonableness of the expenses, it will have regard to the facts and circumstances as they reasonably appeared to the litigation friend or to the child's or protected party's legal representative when the expense was incurred.

(6) Where the claim is settled or compromised, or judgment is given, on terms that an amount not exceeding £5,000 is paid to the child or protected party, the total amount the litigation friend may recover under paragraph (1) must not exceed 25% of the sum so agreed or awarded, unless the court directs otherwise. Such total amount must not exceed 50% of the sum so agreed or awarded.

### **Appointment of a guardian of a child's estate**

**21.13.**—(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 protected party);
  - (b) 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) 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.]

## **PART 22**

### **STATEMENTS OF TRUTH**

#### **Contents of this Part**

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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

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#### **Documents to be verified by a statement of truth**

**22.1.**—<sup>[F248]</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;

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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)*

- (d) an acknowledgement of service in a claim begun by way of the Part 8 procedure; <sup>F249</sup> ...
- (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); <sup>F250</sup> ...
- [<sup>F251</sup>(f) a certificate of service; and
- (g) any other document where a rule or practice direction requires.]]
- (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; <sup>F252</sup> ...
- (b) in the case of a witness statement, the maker of the witness statement<sup>F253</sup> ... [<sup>F254</sup>; or
- (c) in the case of a certificate of service, the person who signs the certificate,]
- 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.
- (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

**F248** 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**

**F249** Word in rule 22.1(1)(d) omitted (25.3.2002) by virtue of [The Civil Procedure \(Amendment No. 5\) Rules 2001](#) (S.I. 2001/4015), rules 1(c), **16(a)**

**F250** Word in rule 22.1(1)(e) omitted (1.4.2005) by virtue of [The Civil Procedure \(Amendment No. 4\) Rules 2004](#) (S.I. 2004/3419), rules 1, **4(1)(a)**

**F251** Rule 22.1(1)(f)(g) substituted for rule 22.1(1)(f) (1.4.2005) by [The Civil Procedure \(Amendment No. 4\) Rules 2004](#) (S.I. 2004/3419), rules 1, **4(1)(b)**

**F252** Word in rule 22.1(4)(a) omitted (1.4.2005) by virtue of [The Civil Procedure \(Amendment No. 4\) Rules 2004 \(S.I. 2004/3419\)](#), rules 1, [4\(2\)\(a\)](#)

**F253** Rule 22.1(4)(b) comma omitted (1.4.2005) by virtue of [The Civil Procedure \(Amendment No. 4\) Rules 2004 \(S.I. 2004/3419\)](#), rules 1, [4\(2\)\(b\)\(i\)](#)

**F254** Rule 22.1(4)(c) and word inserted (1.4.2005) by [The Civil Procedure \(Amendment No. 4\) Rules 2004 \(S.I. 2004/3419\)](#), rules 1, [4\(2\)\(b\)\(ii\)](#)

**Commencement Information**

**I110** Rule 22.1 in force at 26.4.1999, see [Signature](#)

**Failure to verify a statement of case**

**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**

**I111** [Rule 22.2](#) in force at 26.4.1999, see [Signature](#)

**Failure to verify a witness statement**

**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**

**I112** [Rule 22.3](#) in force at 26.4.1999, see [Signature](#)

**Power of the court to require a document to be verified**

**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**

**I113** [Rule 22.4](#) in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 31/01/2011.*

*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

### 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”

##### 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

**I114** Rule 23.1 in force at 26.4.1999, see [Signature](#)

#### Where to make an application

**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.

(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.

**Commencement Information**

**I115** Rule 23.2 in force at 26.4.1999, see [Signature](#)

**Application notice to be filed**

**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.

**Commencement Information**

**I116** Rule 23.3 in force at 26.4.1999, see [Signature](#)

**Notice of an application**

**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)

**Commencement Information**

**I117** Rule 23.4 in force at 26.4.1999, see [Signature](#)

**Time when an application is made**

**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.

**Commencement Information**

**I118** Rule 23.5 in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 31/01/2011.*

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

## What an application notice must include

**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

**I119** [Rule 23.6](#) in force at 26.4.1999, see [Signature](#)

## Service of a copy of an application notice

**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

**I120** [Rule 23.7](#) in force at 26.4.1999, see [Signature](#)

## Applications which may be dealt with without a hearing

**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.



**Commencement Information**

**I121** [Rule 23.8](#) in force at 26.4.1999, see [Signature](#)

**Service of application where application made without notice**

**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**

**I122** [Rule 23.9](#) in force at 26.4.1999, see [Signature](#)

**Application to set aside or vary order made without notice**

**23.10.**—<sup>[F255]</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**

**F255** [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**

**I123** [Rule 23.10](#) in force at 26.4.1999, see [Signature](#)

**Power of the court to proceed in the absence of a party**

**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 31/01/2011.*

*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

**I124** Rule 23.11 in force at 26.4.1999, see [Signature](#)

### [<sup>F256</sup> Dismissal of totally without merit applications

**23.12.** If the court dismisses an application [<sup>F257</sup>(including an application for permission to appeal or for permission to apply for judicial review)] and it considers that the application is totally without merit—

- (a) the court’s order must record that fact; and
- (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.]

### Textual Amendments

**F256** Rule 23.12 inserted (1.10.2004) by [The Civil Procedure \(Amendment No.2\) Rules 2004 \(S.I. 2004/2072\)](#), rules 1(b), **9**

**F257** Words in rule 23.12 inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **26**

## PART 24

### 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
ProcedureRule 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

**24.1** This Part sets out a procedure by which the court may decide a claim or a particular issue without a trial.

[<sup>F258</sup>(Part 53 makes special provision about summary disposal of defamation claims in accordance with the Defamation Act 1996)]

**Textual Amendments**

**F258** 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**

**I125** [Rule 24.1](#) in force at 26.4.1999, see [Signature](#)

**Grounds for summary judgment**

**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>F259</sup>compelling] reason why the case or issue should be disposed of at a trial.

(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**

**F259** 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**

**I126** [Rule 24.2](#) in force at 26.4.1999, see [Signature](#)

**Types of proceedings in which summary judgment is available**

**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>F260</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>F261</sup>.]<sup>F262</sup>...
- <sup>F263</sup>(c) .....

**Textual Amendments**

**F260** [Rule 24.3\(2\)\(a\)](#) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **7(a)**

**F261** [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)**

*Status: Point in time view as at 31/01/2011.*

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

**F262** 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)**

**F263** 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

**I127** [Rule 24.3](#) in force at 26.4.1999, see [Signature](#)

### Procedure

**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.

[<sup>F264</sup>(1A) In civil proceedings against the Crown, as defined in rule 66.1(2), a claimant may not apply for summary judgment until after expiry of the period for filing a defence specified in rule 15.4.]

(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>F265</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

**F264** [Rule 24.4\(1A\)](#) inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **27**

**F265** [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

**I128** [Rule 24.4](#) in force at 26.4.1999, see [Signature](#)

### Evidence for the purposes of a summary judgment hearing

**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—
- (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.

**Commencement Information**

**I129** [Rule 24.5](#) in force at 26.4.1999, see [Signature](#)

**Court's powers when it determines a summary judgment application**

**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)

**Commencement Information**

**I130** [Rule 24.6](#) in force at 26.4.1999, see [Signature](#)

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*Status: Point in time view as at 31/01/2011.*

*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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## PART 25

### [<sup>F266</sup>INTERIM REMEDIES AND SECURITY FOR COSTS]

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#### Textual Amendments

**F266** Pt. 25 heading substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **13(1)**

#### [<sup>F267</sup>Contents of this Part

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### I INTERIM REMEDIES

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How to apply for an interim remedy	Rule 25.3
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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
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

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[<sup>F268</sup> I INTERIM REMEDIES]

**Textual Amendments**

**F268** 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**

**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>(21)</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
  - (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>(22)</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>(23)</sup> or section 52 of the County Courts Act 1984<sup>(24)</sup> (order for disclosure of documents or inspection of property before a claim has been made);

(21) 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).

(22) 1997 c. 12.

(23) 1981 c. 54. Section 33 was amended by S.I. 1998/2940.

(24) 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.

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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)*

- (j) an order under section 34 of the Supreme Court Act 1981<sup>(25)</sup> or section 53 of the County Courts Act 1984<sup>(26)</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; <sup>F269</sup> ...
- (n) an order directing a party to prepare and file accounts relating to the dispute [<sup>F270</sup>;
- (o) an order directing any account to be taken or inquiry to be made by the court][<sup>F271</sup>; and
- (p) an order under Article 9 of Council Directive (EC) 2004/48 on the enforcement of intellectual property rights (order in intellectual property proceedings making the continuation of an alleged infringement subject to the lodging of guarantees).]

(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.

#### Textual Amendments

**F269** Word in rule 25.1(1)(m) omitted (2.12.2002) by virtue of [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), 7(a)

**F270** Rule 25.1(1)(o) inserted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), 7(b)

**F271** Rule 25.1(p) and word inserted (6.4.2006) by [The Civil Procedure \(Amendment No.4\) Rules 2005 \(S.I. 2005/3515\)](#), rules 1, 7(a)(ii)

#### Commencement Information

**I131** [Rule 25.1](#) in force at 26.4.1999, see [Signature](#)

#### Time when an order for an interim remedy may be made

**25.2.**—(1) An order for an interim remedy may be made at any time, including—

- (a) before proceedings are started; and
- (b) after judgment has been given.

(Rule 7.2 provides that proceedings are started when the court issues a claim form)

<sup>(25)</sup> 1981 c. 54. Section 34 was amended by [S.I. 1998/2940](#).

<sup>(26)</sup> 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](#).



(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 acknowledgement of service and Part 15 for filing a defence)

[<sup>F272</sup>(3) Where it grants an interim remedy before a claim has been commenced, the court should 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).

#### Textual Amendments

**F272** Rule 25.2(3) substituted (6.4.2006) by [The Civil Procedure \(Amendment No.4\) Rules 2005 \(S.I. 2005/3515\)](#), rules 1, **7(b)**

#### Commencement Information

**I132** Rule 25.2 in force at 26.4.1999, see [Signature](#)

### How to apply for an interim remedy

**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)

#### Commencement Information

**I133** Rule 25.3 in force at 26.4.1999, see [Signature](#)

### Application for an interim remedy where there is no related claim

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

(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))

#### Commencement Information

**I134** [Rule 25.4](#) in force at 26.4.1999, see [Signature](#)

### Inspection of property before commencement or against a non-party

**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.

#### Commencement Information

**I135** [Rule 25.5](#) in force at 26.4.1999, see [Signature](#)

### Interim payments—general procedure

**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.

(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)

#### **Commencement Information**

**I136** [Rule 25.6](#) in force at 26.4.1999, see [Signature](#)

#### **Interim payments—conditions to be satisfied and matters to be taken into account**

**25.7.**—<sup>F273</sup>(1) The court may only make an order for an interim payment where any of the following conditions are satisfied—

- (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) 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 whether or not that defendant is the only defendant or one of a number of defendants to the claim;
- (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; or
- (e) in a claim in which there are two or more defendants and the order is sought against any one or more of those defendants, the following conditions are satisfied—
  - (i) the court is satisfied that, if the claim went to trial, the claimant would obtain judgment for a substantial amount of money (other than costs) against at least one of the defendants (but the court cannot determine which); and
  - (ii) all the defendants are either—

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- (a) a defendant that is insured in respect of the claim;
- (b) a defendant whose liability will be met by an insurer under section 151 of the Road Traffic Act 1988 or an insurer acting under the Motor Insurers Bureau Agreement, or the Motor Insurers Bureau where it is acting itself; or
- (c) a defendant that is a public body.]

F274(2) .....

F275(3) .....

- (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.

**Textual Amendments**

- F273** Rule 25.7(1) substituted (1.4.2005) by [The Civil Procedure \(Amendment No. 4\) Rules 2004 \(S.I. 2004/3419\)](#), rules 1, **5(a)**
- F274** Rule 25.7(2) omitted (1.4.2005) by virtue of [The Civil Procedure \(Amendment No. 4\) Rules 2004 \(S.I. 2004/3419\)](#), rules 1, **5(b)**
- F275** Rule 25.7(3) omitted (1.4.2005) by virtue of [The Civil Procedure \(Amendment No. 4\) Rules 2004 \(S.I. 2004/3419\)](#), rules 1, **5(b)**

**Commencement Information**

- I137** Rule 25.7 in force at 26.4.1999, see [Signature](#)

**Powers of court where it has made an order for interim payment**

**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.

**Commencement Information**

**I138** Rule 25.8 in force at 26.4.1999, see [Signature](#)

**Restriction on disclosure of an interim payment**

**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**

**I139** Rule 25.9 in force at 26.4.1999, see [Signature](#)

**Interim injunction to cease if claim is stayed**

**25.10** If—

- (a) the court has granted an interim injunction<sup>(GL)</sup> [<sup>F276</sup> other than a freezing injunction]; 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.

**Textual Amendments**

**F276** Words in rule 25.10(a) inserted (25.3.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(c), 17

**Commencement Information**

**I140** Rule 25.10 in force at 26.4.1999, see [Signature](#)

**[<sup>F277</sup> Interim injunction to cease after 14 days if claim struck out**

**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.]

*Status: Point in time view as at 31/01/2011.*

*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

**F277** Rule 25.11 inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **8(b)**

### <sup>[F278]</sup> II SECURITY FOR COSTS

#### Textual Amendments

**F278** 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

**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.

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

**C12** [Rules 25.12-25.15](#) applied (with modifications) (1.10.2007) by [The Court of Protection Rules 2007 \(S.I. 2007/1744\)](#), rules 1, **25(7)**

#### Conditions to be satisfied

**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—
  - <sup>[F279]</sup>(a) the claimant is—
    - (i) resident out of the jurisdiction; but
    - (ii) not resident in a Brussels Contracting State, a <sup>[F280]</sup>State bound by the Lugano Convention] or a Regulation State, as defined in section 1(3) of the Civil Jurisdiction and Judgments Act 1982;]

- F281 (b) .....
- (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;
  - (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)

**Textual Amendments**

**F279** Rule 25.13(2)(a) substituted (1.4.2003) by [The Civil Procedure \(Amendment No. 2\) Rules 2002 \(S.I. 2002/3219\)](#), rules 1, **3(a)**

**F280** Words in rule 25.13(2)(a)(ii) substituted (1.1.2010) by [The Civil Jurisdiction and Judgments Regulations 2009 \(S.I. 2009/3131\)](#), regs. 1(1), **34** (with reg. 48)

**F281** Rule 25.13(2)(b) omitted (1.4.2003) by virtue of [The Civil Procedure \(Amendment No. 2\) Rules 2002 \(S.I. 2002/3219\)](#), rules 1, **3(b)**

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

**C12** [Rules 25.12-25.15](#) applied (with modifications) (1.10.2007) by [The Court of Protection Rules 2007 \(S.I. 2007/1744\)](#), rules 1, **25(7)**

**Security for costs other than from the claimant**

**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)

*Status: Point in time view as at 31/01/2011.*

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

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

**C12** Rules 25.12-25.15 applied (with modifications) (1.10.2007) by [The Court of Protection Rules 2007](#) (S.I. 2007/1744), rules 1, **25(7)**

**Security for costs of an appeal**

**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.]

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

**C12** Rules 25.12-25.15 applied (with modifications) (1.10.2007) by [The Court of Protection Rules 2007](#) (S.I. 2007/1744), rules 1, **25(7)**

## PART 26

### CASE MANAGEMENT—PRELIMINARY STAGE

#### Contents of this Part

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
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

**Scope of this Part**

**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)

**Commencement Information**

**I141** Rule 26.1 in force at 26.4.1999, see [Signature](#)

**Automatic transfer**

**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,

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**

**I142** Rule 26.2 in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 31/01/2011.*

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

### Allocation questionnaire

**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.

[<sup>F282</sup>(6A) The date for filing the completed allocation questionnaire may not be varied by agreement between the parties.]

(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)

([<sup>F283</sup>Rules 6.14 and 6.26 specify] when a document is deemed to be served)

#### Textual Amendments

**F282** Rule 26.3(6A) inserted (25.3.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(c), **19**

**F283** Words in rule 26.3 substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **16**

#### Commencement Information

**I143** [Rule 26.3](#) in force at 26.4.1999, see [Signature](#)

### Stay to allow for settlement of the case

**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 [<sup>F284</sup>, either in whole or in part,] be stayed for one month [<sup>F285</sup>, or for such specified period as it considers appropriate.]

(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.

#### Textual Amendments

**F284** Words in rule 26.4(2) inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **28(a)**

**F285** Words in rule 26.4(2) inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **28(b)**

#### Commencement Information

**I144** [Rule 26.4](#) in force at 26.4.1999, see [Signature](#)

### Allocation

**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.

*Status: Point in time view as at 31/01/2011.*

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

(5) If a party fails to file an allocation questionnaire, the court may give any direction it considers appropriate.

#### Commencement Information

**I145** Rule 26.5 in force at 26.4.1999, see [Signature](#)

#### Scope of each track

**26.6.**—(1) The small claims track is the normal track for—

- (a) any claim for personal injuries where—
  - (i) the <sup>F286</sup>... value of the claim is not more than £5,000; and
  - (ii) the <sup>F287</sup>... 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 [<sup>F288</sup>a 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 <sup>F289</sup>... 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 <sup>F290</sup>... 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)

[<sup>F291</sup>(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 value—
  - (i) for proceedings issued on or after 6th April 2009, of not more than £25,000; and
  - (ii) for proceedings issued before 6th April 2009, 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.

#### Textual Amendments

- F286** Word in rule 26.6(1)(a)(i) omitted (6.4.2009) by virtue of [The Civil Procedure \(Amendment No.3\) Rules 2008 \(S.I. 2008/3327\)](#), rules 1, [7\(a\)\(i\)](#)
- F287** Word in rule 26.6(1)(a)(ii) omitted (6.4.2009) by virtue of [The Civil Procedure \(Amendment No.3\) Rules 2008 \(S.I. 2008/3327\)](#), rules 1, [7\(a\)\(ii\)](#)
- F288** Words in rule 26.6(1)(b) substituted (6.4.2009) by [The Civil Procedure \(Amendment No.3\) Rules 2008 \(S.I. 2008/3327\)](#), rules 1, [7\(a\)\(iii\)](#)
- F289** Word in rule 26.6(1)(b)(iii) omitted (6.4.2009) by virtue of [The Civil Procedure \(Amendment No.3\) Rules 2008 \(S.I. 2008/3327\)](#), rules 1, [7\(a\)\(iv\)](#)
- F290** Word in rule 26.6(3) omitted (6.4.2009) by virtue of [The Civil Procedure \(Amendment No.3\) Rules 2008 \(S.I. 2008/3327\)](#), rules 1, [7\(b\)](#)
- F291** Rule 26.6(4) substituted (6.4.2009) by [The Civil Procedure \(Amendment No.3\) Rules 2008 \(S.I. 2008/3327\)](#), rules 1, [7\(c\)](#)

#### Commencement Information

- I146** [Rule 26.6](#) in force at 26.4.1999, see [Signature](#)

### General rule for allocation

**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).

(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>F292</sup>the] claim <sup>F293</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

- F292** 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\(a\)](#)
- F293** 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

- I147** [Rule 26.7](#) in force at 26.4.1999, see [Signature](#)

### Matters relevant to allocation to a track

**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;

*Status: Point in time view as at 31/01/2011.*

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

- (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).

#### Commencement Information

**I148** [Rule 26.8](#) in force at 26.4.1999, see [Signature](#)

#### Notice of allocation

**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

**I149** [Rule 26.9](#) in force at 26.4.1999, see [Signature](#)

#### Re-allocation

**26.10** The court may subsequently re-allocate a claim to a different track.

#### Commencement Information

**I150** [Rule 26.10](#) in force at 26.4.1999, see [Signature](#)

[<sup>F294</sup>Trial with a jury

**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**

**F294** 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

### THE SMALL CLAIMS TRACK

#### Contents of this Part

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Claim re-allocated from the small claims track to another track	Rule 27.15

#### Scope of this Part

**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.

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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)*

(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)

#### Commencement Information

**1151** Rule 27.1 in force at 26.4.1999, see [Signature](#)

#### Extent to which other Parts apply

**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>F295</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) [<sup>F296</sup>Subject to paragraph (3),] Part 18 (further information);
- (g) Part 36 (offers to settle <sup>F297</sup>...); 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.

[<sup>F298</sup>(3) The court of its own initiative may order a party to provide further information if it considers it appropriate to do so.]

#### Textual Amendments

**F295** 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**

**F296** Words in rule 27.2(1)(f) inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **29(a)**

**F297** Words in rule 27.2(1)(g) omitted (6.4.2007) by virtue of [The Civil Procedure \(Amendment No.3\) Rules 2006 \(S.I. 2006/3435\)](#), rules 1, **6(a)**



**F298** Rule 27.2(3) inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **29(b)**

**Commencement Information**

**I152** [Rule 27.2](#) in force at 26.4.1999, see [Signature](#)

**Court's power to grant a final remedy**

**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**

**I153** [Rule 27.3](#) in force at 26.4.1999, see [Signature](#)

**Preparation for the hearing**

**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 [<sup>F299</sup>Practice Direction 27]; and
- (b) “special directions” means directions given in addition to or instead of the standard directions.

**Textual Amendments**

**F299** Words in [rule 27.4\(3\)\(a\)\(ii\)](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **14**

**Commencement Information**

**I154** [Rule 27.4](#) in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 31/01/2011.*

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

## Experts

**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

**I155** [Rule 27.5](#) in force at 26.4.1999, see [Signature](#)

## Preliminary hearing

**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;
  - (b) inform them of the amount of time allowed for the final hearing; and
  - (c) give any appropriate directions.

### Commencement Information

**I156** [Rule 27.6](#) in force at 26.4.1999, see [Signature](#)

## Power of court to add to, vary or revoke directions

**27.7** The court may add to, vary or revoke directions.

### Commencement Information

**I157** [Rule 27.7](#) in force at 26.4.1999, see [Signature](#)

### Conduct of the hearing

- 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.

#### Commencement Information

**I158** Rule 27.8 in force at 26.4.1999, see [Signature](#)

### Non-attendance of parties at a final hearing

- 27.9.**—<sup>F300</sup>(1) If a party who does not attend a final hearing—
- (a) has given written notice to the court and the other party at least 7 days before the hearing date that he will not attend;
  - (b) has served on the other party at least 7 days before the hearing date any other documents which he has filed with the court; and
  - (c) has, in his written notice, requested the court to decide the claim in his absence and has confirmed his compliance with paragraphs (a) and (b) above,

the court will take into account that party's statement of case and any other documents he has filed and served 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
  - (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.

#### Textual Amendments

**F300** Rule 27.9(1) substituted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **30**

*Status: Point in time view as at 31/01/2011.*

*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**

**I159** [Rule 27.9](#) in force at 26.4.1999, see [Signature](#)

**Disposal without a hearing**

**27.10** The court may, if all parties agree, deal with the claim without a hearing.

**Commencement Information**

**I160** [Rule 27.10](#) in force at 26.4.1999, see [Signature](#)

**Setting judgment aside and re-hearing**

**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**

**I161** [Rule 27.11](#) in force at 26.4.1999, see [Signature](#)

**Right of appeal under Part 27**

<sup>F301</sup>**27.12** .....

**Textual Amendments**

**F301** [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**

<sup>F302</sup>**27.13** .....

**Textual Amendments**  
**F302** 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**

**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)

<sup>F303</sup>(2) The court may not order a party to pay a sum to another party in respect of that other party’s costs, fees and expenses, including those relating to an appeal, except—

- (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 or an order for specific performance a sum not exceeding the amount specified in <sup>F304</sup>[Practice Direction 27] for legal advice and assistance relating to that claim;
- (c) any court fees paid by that other party;
- (d) 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;
- (e) a sum not exceeding the amount specified in <sup>F305</sup>[Practice Direction 27] for any loss of earnings or loss of leave by a party or witness due to attending a hearing or to staying away from home for the purposes of attending a hearing;
- (f) a sum not exceeding the amount specified in <sup>F306</sup>[Practice Direction 27] for an expert’s fees; <sup>F307</sup>...
- (g) such further costs as the court may assess by the summary procedure and order to be paid by a party who has behaved unreasonably <sup>F308</sup>; and]

- <sup>F309</sup>(h) the Stage 1 and, where relevant, the Stage 2 fixed costs in rule 45.29 where—
  - (i) the claim was within the scope of the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (“the RTA Protocol”);
  - (ii) the claimant reasonably believed that the claim was valued at more than the small claims track limit in accordance with paragraph 4.1(4) of the RTA Protocol; and
  - (iii) the defendant admitted liability under the process set out in the RTA Protocol; but
  - (iv) the defendant did not pay those Stage 1 and, where relevant, Stage 2 fixed costs.]]

<sup>F310</sup><sup>F311</sup>(3)] A party’s rejection of an offer in settlement will not of itself constitute unreasonable behaviour under paragraph <sup>F312</sup>(2)(g)] but the court may take it into consideration when it is applying the unreasonableness test.

<sup>F313</sup> ...]

<sup>F314</sup>(3) .....

*Status: Point in time view as at 31/01/2011.*

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

(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(27) (a lay representative).

[<sup>F315</sup>(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 small claims track costs provisions will apply unless the parties agree that the fast track costs provisions are to apply.

(6) Where the parties agree that the fast track costs provisions are to apply, the claim [<sup>F316</sup>and any appeal] will be treated for the purposes of costs as if it were proceeding on the fast track except that trial costs will be in the discretion of the court and will not exceed the amount set out for the value of 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)

#### Textual Amendments

- F303** Rule 27.14(2) substituted (2.10.2006) by [The Civil Procedure \(Amendment\) Rules 2006](#) (S.I. 2006/1689), [rules 1, 5\(a\)](#)
- F304** Words in [rule 27.14\(2\)\(b\)](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009](#) (S.I. 2009/3390), [rules 1\(2\), 14](#)
- F305** Words in [rule 27.14\(2\)\(e\)](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009](#) (S.I. 2009/3390), [rules 1\(2\), 14](#)
- F306** Words in [rule 27.14\(2\)\(f\)](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009](#) (S.I. 2009/3390), [rules 1\(2\), 14](#)
- F307** Word in [rule 27.14\(2\)\(f\)](#) omitted (30.4.2010) by virtue of [The Civil Procedure \(Amendment\) Rules 2010](#) (S.I. 2010/621), [rules 1\(2\), 5\(a\)](#)
- F308** Word in [rule 27.14\(2\)\(g\)](#) substituted (30.4.2010) by [The Civil Procedure \(Amendment\) Rules 2010](#) (S.I. 2010/621), [rules 1\(2\), 5\(b\)](#)
- F309** [Rule 27.14\(2\)\(h\)](#) inserted (30.4.2010) by [The Civil Procedure \(Amendment\) Rules 2010](#) (S.I. 2010/621), [rules 1\(2\), 5\(c\)](#)
- F310** [Rule 27.14\(2A\)](#) inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005](#) (S.I. 2005/2292), [rules 1\(c\), 31\(a\)](#)
- F311** [Rule 27.14\(2A\)](#) renumbered as [rule 27.14\(3\)](#) (2.10.2006) by [The Civil Procedure \(Amendment\) Rules 2006](#) (S.I. 2006/1689), [rules 1, 5\(c\)](#)
- F312** Word in [rule 27.14\(3\)](#) substituted (2.10.2006) by [The Civil Procedure \(Amendment\) Rules 2006](#) (S.I. 2006/1689), [rules 1, 5\(d\)](#)
- F313** Words in [rule 27.14](#) omitted (6.4.2007) by virtue of [The Civil Procedure \(Amendment No.3\) Rules 2006](#) (S.I. 2006/3435), [rules 1, 6\(b\)](#)
- F314** [Rule 27.14\(3\)](#) omitted (2.10.2006) by virtue of [The Civil Procedure \(Amendment\) Rules 2006](#) (S.I. 2006/1689), [rules 1, 5\(b\)](#)
- F315** [Rule 27.14\(5\)\(6\)](#) substituted for [rule 27.14\(5\)](#) (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005](#) (S.I. 2005/2292), [rules 1\(c\), 31\(c\)](#)
- F316** Words in [rule 27.14\(6\)](#) inserted (2.10.2006) by [The Civil Procedure \(Amendment\) Rules 2006](#) (S.I. 2006/1689), [rules 1, 5\(e\)](#)

#### Commencement Information

I162

Rule 27.14 in force at 26.4.1999, see [Signature](#)

### **Claim re-allocated from the small claims track to another track**

**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.

#### **Commencement Information**

**I163** [Rule 27.15](#) in force at 26.4.1999, see [Signature](#)

## **PART 28**

### **THE FAST TRACK**

#### **Contents of this Part**

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

#### **Scope of this Part**

**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**

**I164** [Rule 28.1](#) in force at 26.4.1999, see [Signature](#)

#### **General provisions**

**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

*Status: Point in time view as at 31/01/2011.*

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

- (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

**I165** [Rule 28.2](#) in force at 26.4.1999, see [Signature](#)

#### Directions

**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

**I166** [Rule 28.3](#) in force at 26.4.1999, see [Signature](#)

#### Variation of case management timetable

**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 [<sup>F317</sup>pre-trial check list] 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)

#### Textual Amendments

**F317** Words in [rule 28.4\(1\)\(a\)](#) substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), [rules 1\(b\)](#), [8](#)



### Commencement Information

**I167** Rule 28.4 in force at 26.4.1999, see [Signature](#)

### [<sup>F318</sup>Pre-trial check list (listing questionnaire)

**28.5.—(1)** The court will send the parties a pre-trial check list (listing questionnaire) for completion and return by the date specified in the notice of allocation unless it considers that the claim can proceed to trial without the need for a pre-trial check list.

(2) The date specified for filing a pre-trial check list will not be more than 8 weeks before the trial date or the beginning of the trial period.

[<sup>F319</sup>(3) If no party files the completed pre-trial checklist by the date specified, the court will order that unless a completed pre-trial checklist is filed within 7 days from service of that order, the claim, defence and any counterclaim will be struck out without further order of the court.]

[<sup>F320</sup>(4) If—

- (a) a party files a completed pre-trial checklist but another party does not;
- (b) a party has failed to give all the information requested by the pre-trial checklist; 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 give such directions as it thinks appropriate.]]

### Textual Amendments

**F318** Rule 28.5 substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **9**

**F319** Rule 28.5(3) substituted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **32(a)**

**F320** Rule 28.5(4) inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **32(b)**

### Fixing or confirming the trial date and giving directions

**28.6.—(1)** As soon as practicable after the date specified for filing a completed [<sup>F321</sup>pre-trial check list] 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.

### Textual Amendments

**F321** Words in [rule 28.6\(1\)](#) substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **8**

*Status: Point in time view as at 31/01/2011.*

*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

**I168** [Rule 28.6](#) in force at 26.4.1999, see [Signature](#)

#### Conduct of trial

**28.7** Unless the trial judge otherwise directs, the trial will be conducted in accordance with any order previously made.

#### Commencement Information

**I169** [Rule 28.7](#) in force at 26.4.1999, see [Signature](#)

## PART 29 THE MULTI-TRACK

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

**C13** [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

**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)

**Commencement Information**

**I170** [Rule 29.1](#) in force at 26.4.1999, see [Signature](#)

**Case management**

**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 [<sup>F322</sup>pre-trial check list].

**Textual Amendments**

**F322** Words in [rule 29.2\(3\)\(b\)](#) substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), [rules 1\(b\)](#), [8](#)

**Commencement Information**

**I171** [Rule 29.2](#) in force at 26.4.1999, see [Signature](#)

**Case management conference and pre-trial review**

**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**

**I172** [Rule 29.3](#) in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 31/01/2011.*

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

## Steps taken by the parties

### 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
- (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

**I173** [Rule 29.4](#) in force at 26.4.1999, see [Signature](#)

## Variation of case management timetable

**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 [<sup>F323</sup>pre-trial check list] 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)

#### Textual Amendments

**F323** Words in [rule 29.5\(1\)\(c\)](#) substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), [rules 1\(b\), 8](#)

#### Commencement Information

**I174** [Rule 29.5](#) in force at 26.4.1999, see [Signature](#)

## [<sup>F324</sup>Pre-trial check list (listing questionnaire)]

**29.6.**—(1) The court will send the parties a pre-trial check list (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 proceed to trial without the need for a pre-trial check list.

(2) Each party must file the completed pre-trial check list by the date specified by the court.

[<sup>F325</sup>(3) If no party files the completed pre-trial checklist by the date specified, the court will order that unless a completed pre-trial checklist is filed within 7 days from service of that order, the claim, defence and any counterclaim will be struck out without further order of the court.]

[<sup>F326</sup>(4) If—

- (a) a party files a completed pre-trial checklist but another party does not;
- (b) a party has failed to give all the information requested by the pre-trial checklist; 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 give such directions as it thinks appropriate.]]

#### Textual Amendments

- F324** Rule 29.6 substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **10**
- F325** Rule 29.6(3) substituted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **33(a)**
- F326** Rule 29.6(4) inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **33(b)**

#### Pre-trial review

**29.7** If, on receipt of the parties' [<sup>F327</sup>pre-trial check lists], the court decides—

- (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.

#### Textual Amendments

- F327** Words in rule 29.7 substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **11**

#### Commencement Information

- I175** Rule 29.7 in force at 26.4.1999, see [Signature](#)

#### Setting a trial timetable and fixing or confirming the trial date or week

**29.8** As soon as practicable after—

- (a) each party has filed a completed [<sup>F328</sup>pre-trial check list];
- (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.

#### Textual Amendments

- F328** Words in rule 29.8(a) substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **8**

*Status: Point in time view as at 31/01/2011.*

*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

**I176** [Rule 29.8](#) in force at 26.4.1999, see [Signature](#)

#### Conduct of trial

**29.9** Unless the trial judge otherwise directs, the trial will be conducted in accordance with any order previously made.

#### Commencement Information

**I177** [Rule 29.9](#) in force at 26.4.1999, see [Signature](#)

## PART 30

### TRANSFER

#### Contents of this Part

Scope of this Part	Rule 30.1
Transfer between county courts and within the High Court	Rule 30.2
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

**30.1.**—<sup>F329</sup>(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)

<sup>F330</sup>(2) [<sup>F331</sup>Practice Direction 30 makes] provision about the transfer of proceedings between the court and a tribunal.]

#### Textual Amendments

**F329** Rule 30.1 renumbered as rule 30.1(1) (6.10.2003) by [The Civil Procedure \(Amendment No. 4\) Rules 2003 \(S.I. 2003/2113\)](#), rules 1(c), **5(a)**

**F330** Rule 30.1(2) inserted (6.10.2003) by [The Civil Procedure \(Amendment No. 4\) Rules 2003 \(S.I. 2003/2113\)](#), rules 1(c), **5(b)**

**F331** Words in rule 30.1(2) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **15(a)**

**Commencement Information**

**I178** [Rule 30.1](#) in force at 26.4.1999, see [Signature](#)

**Transfer between county courts and within the High Court**

**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.

(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**

**I179** [Rule 30.2](#) in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 31/01/2011.*

*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

**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>(28)</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;
  - [<sup>F332</sup>(f) the facilities available to the court at which the claim is being dealt with, particularly in relation to—
    - (i) any disabilities of a party or potential witness;
    - (ii) any special measures needed for potential witnesses; or
    - (iii) security;]
  - [<sup>F333</sup>(g) whether the making of a declaration of incompatibility under section 4 of the Human Rights Act 1998 has arisen or may arise];
  - [<sup>F334</sup>(h) in the case of civil proceedings by or against the Crown, as defined in rule 66.1(2), the location of the relevant government department or officers of the Crown and, where appropriate, any relevant public interest that the matter should be tried in London.]

#### Textual Amendments

**F332** Rule 30.3(2)(f) substituted (31.1.2011) by [The Civil Procedure \(Amendment No.2\) Rules 2010 \(S.I. 2010/1953\)](#), rules 1(3), **3**; S.I. 2010/2988, **art. 2**

**F333** 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)**

**F334** Rule 30.3(2)(h) inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **34**

#### Commencement Information

**I180** Rule 30.3 in force at 26.4.1999, see [Signature](#)

### Procedure

**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.

<sup>(28)</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.



#### Commencement Information

**I181** Rule 30.4 in force at 26.4.1999, see [Signature](#)

### Transfer between Divisions and to and from a specialist list

**30.5.**—(1) The High Court may order proceedings in any Division of the High Court to be transferred to another Division.

[<sup>F335</sup>(2) A judge dealing with claims in a specialist list may order proceedings to be transferred to or from that 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.

#### Textual Amendments

**F335** Rule 30.5(2) substituted (6.4.2006) by [The Civil Procedure \(Amendment No.4\) Rules 2005 \(S.I. 2005/3515\)](#), rules 1, 8

#### Commencement Information

**I182** Rule 30.5 in force at 26.4.1999, see [Signature](#)

### Power to specify place where hearings are to be held

**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.

[<sup>F336</sup>(Practice Direction 54D <sup>F337</sup>... contains provisions about where hearings may be held in proceedings in the Administrative Court.)]

#### Textual Amendments

**F336** Words in rule 30.6 inserted (6.4.2009) by [The Civil Procedure \(Amendment No.3\) Rules 2008 \(S.I. 2008/3327\)](#), rules 1, 8

**F337** Words in rule 30.6 omitted (6.4.2010) by virtue of [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), 15(b)

#### Commencement Information

**I183** Rule 30.6 in force at 26.4.1999, see [Signature](#)

### Transfer of control of money in court

**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 [<sup>F338</sup>protected party]) be transferred to another court if that court would be more convenient.

*Status: Point in time view as at 31/01/2011.*

*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

**F338** Words in [rule 30.7](#) substituted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), [rules 1, 9](#)

#### Commencement Information

**I184** [Rule 30.7](#) in force at 26.4.1999, see [Signature](#)

### [<sup>F339</sup>Transfer of competition law claims

**30.8.**—(1) This rule applies if, in any proceedings in the Queen’s Bench Division [<sup>F340</sup>(other than proceedings in the Commercial or Admiralty Courts)], a district registry of the High Court or a county court, a party’s statement of case raises an issue relating to the application of—

- (a) Article 81 or Article 82 of the Treaty establishing the European Community; or
- (b) Chapter I or II of Part I of the Competition Act 1998.

(2) Rules 30.2 and 30.3 do not apply.

(3) The court must transfer the proceedings to the Chancery Division of the High Court at the Royal Courts of Justice.

[<sup>F341</sup>(4) If any such proceedings which have been commenced in the Queen’s Bench Division or a Mercantile Court fall within the scope of [rule 58.1\(2\)](#), any party to those proceedings may apply for the transfer of the proceedings to the Commercial Court, in accordance with [rule 58.4\(2\)](#) and [rule 30.5\(3\)](#). If the application is refused, the proceedings must be transferred to the Chancery Division of the High Court at the Royal Courts of Justice.]]

#### Textual Amendments

**F339** [Rule 30.8](#) substituted (1.6.2004) by [The Civil Procedure \(Amendment\) Rules 2004 \(S.I. 2004/1306\)](#), [rules 1\(a\), 5](#)

**F340** Words in [rule 30.8\(1\)](#) inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), [rules 1\(c\), 35\(a\)](#)

**F341** [Rule 30.8\(4\)](#) inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), [rules 1\(c\), 35\(b\)](#)

## PART 31

### DISCLOSURE AND INSPECTION OF DOCUMENTS

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

**C14** Pt. 31 applied (with modifications) (5.4.2010) by [The Criminal Procedure Rules 2010 \(S.I. 2010/60\)](#), [Preamble](#), [rule 61.9](#) (with [rule 2](#))

#### Contents of this Part

Scope of this Part	Rule 31.1
Meaning of disclosure	Rule 31.2

Right of inspection of a disclosed document	Rule 31.3
Meaning of document	Rule 31.4
Disclosure limited to standard disclosure	Rule 31.5
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
Disclosure of copies	Rule 31.9
Procedure for standard disclosure	Rule 31.10
Duty of disclosure continues during proceedings	Rule 31.11
Specific disclosure or inspection	Rule 31.12
Disclosure in stages	Rule 31.13
Documents referred to in statements of case etc.	Rule 31.14
Inspection and copying of documents	Rule 31.15
Disclosure before proceedings start	Rule 31.16
Orders for disclosure against a person not a party	Rule 31.17
Rules not to limit other powers of the court to order disclosure	Rule 31.18
Claim to withhold inspection or disclosure of a document	Rule 31.19
Restriction on use of a privileged document inspection of which has been inadvertently allowed	Rule 31.20
Consequence of failure to disclose documents or permit inspection	Rule 31.21
Subsequent use of disclosed documents [F342 and completed Electronic Documents Questionnaires]	Rule 31.22

### Scope of this Part

**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

**1185** Rule 31.1 in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 31/01/2011.*

*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 disclosure

**31.2** A party discloses a document by stating that the document exists or has existed.

### Commencement Information

**I186** [Rule 31.2](#) in force at 26.4.1999, see [Signature](#)

## Right of inspection of a disclosed document

**31.3.—(1)** A party to whom a document has been disclosed has a right to inspect that document except where—

- (a) the document is no longer in the control of the party who disclosed it;
- (b) the party disclosing the document has a right or a duty to withhold inspection of it; or
- (c) 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)

- (a) he is not required to permit inspection of documents within that category or class; but
- (b) 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

**I187** [Rule 31.3](#) in force at 26.4.1999, see [Signature](#)

## Meaning of document

**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.

### Commencement Information

**I188** [Rule 31.4](#) in force at 26.4.1999, see [Signature](#)

## Disclosure limited to standard disclosure

**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)

**Commencement Information**

**I189** [Rule 31.5](#) in force at 26.4.1999, see [Signature](#)

**Standard disclosure—what documents are to be disclosed**

**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.

**Commencement Information**

**I190** [Rule 31.6](#) in force at 26.4.1999, see [Signature](#)

**Duty of search**

**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;
  - (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**

**I191** [Rule 31.7](#) in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 31/01/2011.*

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

### **Duty of disclosure limited to documents which are or have been in party's control**

**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**

**1192** [Rule 31.8](#) in force at 26.4.1999, see [Signature](#)

### **Disclosure of copies**

**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**

**1193** [Rule 31.9](#) in force at 26.4.1999, see [Signature](#)

### **Procedure for standard disclosure**

**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.

- (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.

**Commencement Information**

**I194** [Rule 31.10](#) in force at 26.4.1999, see [Signature](#)

**Duty of disclosure continues during proceedings**

- 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.

**Commencement Information**

**I195** [Rule 31.11](#) in force at 26.4.1999, see [Signature](#)

**Specific disclosure or inspection**

- 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;
  - (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**

**I196** [Rule 31.12](#) in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 31/01/2011.*

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

**Disclosure in stages**

**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**

**I197** Rule 31.13 in force at 26.4.1999, see [Signature](#)

**Documents referred to in statements of case etc.**

**31.14.**—<sup>F343</sup>(1) A party may inspect a document mentioned in—

- (a) a statement of case;
- (b) a witness statement;
- (c) a witness summary; <sup>F344</sup>or]
- (d) an affidavit<sup>(GL)</sup><sub>[<sup>F345</sup>.]</sub>

<sup>F346</sup>(e) . . . . .

(Rule 35.10(4) makes provision in relation to instructions referred to in an expert’s report)

<sup>F347</sup>(2) Subject to rule 35.10(4), a party may apply for an order for inspection of any document mentioned in an expert’s report which has not already been disclosed in the proceedings.]

**Textual Amendments**

**F343** Rule 31.14 renumbered as rule 31.14(1) (25.3.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(c), **20(a)**

**F344** Word in rule 31.14(1)(c) inserted (25.3.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(c), **20(b)**

**F345** Full stop in rule 31.14(1)(d) substituted for word (25.3.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(c), **20(c)**

**F346** Rule 31.14(1)(e) omitted (25.3.2002) by virtue of [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(c), **20(d)**

**F347** Rule 31.14(2) inserted (25.3.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(c), **20(e)**

**Commencement Information**

**I198** Rule 31.14 in force at 26.4.1999, see [Signature](#)

**Inspection and copying of documents**

**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**

**I199** Rule 31.15 in force at 26.4.1999, see [Signature](#)

**Disclosure before proceedings start**

**31.16.**—(1) This rule applies where an application is made to the court under any Act for disclosure before proceedings have started(**29**).

- (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**

**I200** Rule 31.16 in force at 26.4.1999, see [Signature](#)

**Orders for disclosure against a person not a party**

**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(**30**).

- (2) The application must be supported by evidence.

(29) 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).

(30) 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).

*Status: Point in time view as at 31/01/2011.*

*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 court may make an order under this rule only where—
- (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**

**I201** [Rule 31.17](#) in force at 26.4.1999, see [Signature](#)

**Rules not to limit other powers of the court to order disclosure**

- 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**

**I202** [Rule 31.18](#) in force at 26.4.1999, see [Signature](#)

**Claim to withhold inspection or disclosure of a document**

- 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.

(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.

**Commencement Information**

**I203** [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**

**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.

**Commencement Information**

**I204** [Rule 31.20](#) in force at 26.4.1999, see [Signature](#)

**Consequence of failure to disclose documents or permit inspection**

**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.

**Commencement Information**

**I205** [Rule 31.21](#) in force at 26.4.1999, see [Signature](#)

**Subsequent use of disclosed documents [<sup>F348</sup>and completed Electronic Documents Questionnaires]**

**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.

*Status: Point in time view as at 31/01/2011.*

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

- (3) An application for such an order may be made—
- (a) by a party; or
  - (b) by any person to whom the document belongs.

[<sup>F349</sup>(4) For the purpose of this rule, an Electronic Documents Questionnaire which has been completed and served by another party pursuant to Practice Direction 31B is to be treated as if it is a document which has been disclosed.]

#### Textual Amendments

**F348** Words in rule 31.22 heading inserted (1.10.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2010 \(S.I. 2010/1953\)](#), rules 1(2), **4(b)**

**F349** Rule 31.22(4) inserted (1.10.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2010 \(S.I. 2010/1953\)](#), rules 1(2), **4(c)**

#### Commencement Information

**I206** [Rule 31.22](#) in force at 26.4.1999, see [Signature](#)

#### [<sup>F350</sup>False, disclosure statements

**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

**F350** Rule 31.23 inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **16**

## PART 32

### EVIDENCE

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

**C15** [Pt. 32](#) applied (1.11.2009) by [The Water Industry \(Special Administration\) Rules 2009 \(S.I. 2009/2477\)](#), rules 2, **75**

#### Contents of this Part

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Use at trial of witness statements which have been served	Rule 32.5
Evidence in proceedings other than at trial	Rule 32.6
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Witness summaries	Rule 32.9
Consequence of failure to serve witness statement or summary	Rule 32.10
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Availability of witness statements for inspection	Rule 32.13
False statements	Rule 32.14
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**

**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**

**I207** Rule 32.1 in force at 26.4.1999, see [Signature](#)

### **Evidence of witnesses—general rule**

**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.

*Status: Point in time view as at 31/01/2011.*

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

- (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.

**Commencement Information**

**I208** [Rule 32.2](#) in force at 26.4.1999, see [Signature](#)

**Evidence by video link or other means**

**32.3** The court may allow a witness to give evidence through a video link or by other means.

**Commencement Information**

**I209** [Rule 32.3](#) in force at 26.4.1999, see [Signature](#)

**Requirement to serve witness statements for use at trial**

**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**

**I210** [Rule 32.4](#) in force at 26.4.1999, see [Signature](#)

**Use at trial of witness statements which have been served**

**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**

I211 Rule 32.5 in force at 26.4.1999, see [Signature](#)

**Evidence in proceedings other than at trial**

**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.

(2) At hearings other than the trial, a party may <sup>F351</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.

**Textual Amendments**

F351 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](#)

**Commencement Information**

I212 Rule 32.6 in force at 26.4.1999, see [Signature](#)

**Order for cross-examination**

**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.

**Commencement Information**

I213 Rule 32.7 in force at 26.4.1999, see [Signature](#)

**Form of witness statement**

**32.8** A witness statement must comply with the requirements set out in [<sup>F352</sup>Practice Direction 32].

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

*Status: Point in time view as at 31/01/2011.*

*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

**F352** Words in [rule 32.8](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\), 16](#)

#### Commencement Information

**I214** [Rule 32.8](#) in force at 26.4.1999, see [Signature](#)

### Witness summaries

**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.

(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

**I215** [Rule 32.9](#) in force at 26.4.1999, see [Signature](#)

### Consequence of failure to serve witness statement or summary

**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

**I216** [Rule 32.10](#) in force at 26.4.1999, see [Signature](#)

### Cross-examination on a witness statement

**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**

**I217** [Rule 32.11](#) in force at 26.4.1999, see [Signature](#)

**Use of witness statements for other purposes**

**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**

**I218** [Rule 32.12](#) in force at 26.4.1999, see [Signature](#)

**Availability of witness statements for inspection**

**32.13.**—(1) A witness statement which stands as evidence in chief<sup>(GL)</sup> is open to inspection [<sup>F353</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.

(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 [<sup>F354</sup>protected party].
- (4) The court may exclude from inspection words or passages in the statement.

**Textual Amendments**

**F353** 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**

**F354** Words in [rule 32.13\(3\)\(e\)](#) substituted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, **10**

**Commencement Information**

**I219** [Rule 32.13](#) in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 31/01/2011.*

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

### False statements

**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

**I220** [Rule 32.14](#) in force at 26.4.1999, see [Signature](#)

### Affidavit evidence

**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

**I221** [Rule 32.15](#) in force at 26.4.1999, see [Signature](#)

### Form of affidavits

**32.16** An affidavit<sup>(GL)</sup> must comply with the requirements set out in [<sup>F355</sup>Practice Direction 32].

#### Textual Amendments

**F355** Words in [rule 32.16](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009](#) (S.I. 2009/3390), [rules 1\(2\)](#), [16](#)

#### Commencement Information

**I222** [Rule 32.16](#) in force at 26.4.1999, see [Signature](#)

### Affidavit made outside the jurisdiction

**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**

**I223** [Rule 32.17](#) in force at 26.4.1999, see [Signature](#)

**Notice to admit facts**

**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**

**I224** [Rule 32.18](#) in force at 26.4.1999, see [Signature](#)

**Notice to admit or produce documents**

**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.

**Commencement Information**

**I225** [Rule 32.19](#) in force at 26.4.1999, see [Signature](#)

**[<sup>F356</sup>Notarial acts and instruments**

**32.20** A notarial act or instrument may be received in evidence without further proof as duly authenticated in accordance with the requirements of law unless the contrary is proved.]

**Textual Amendments**

**F356** [Rule 32.20](#) inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), [rules 1\(c\)](#), [36](#)

*Status: Point in time view as at 31/01/2011.*

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

## PART 33

### MISCELLANEOUS RULES ABOUT EVIDENCE

#### Contents of this Part

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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
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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

#### Introductory

**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

**I226** Rule 33.1 in force at 26.4.1999, see [Signature](#)

#### Notice of intention to rely on hearsay evidence

**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(**31**) by serving a witness statement on the other parties in accordance with the court’s order.

(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.

(31) 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.

(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

I227 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

**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>F357</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

F357 Rule 33.3(aa) inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, 10

#### Commencement Information

I228 Rule 33.3 in force at 26.4.1999, see [Signature](#)

### Power to call witness for cross-examination on hearsay evidence

**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.

(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.

*Status: Point in time view as at 31/01/2011.*

*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

**I229** Rule 33.4 in force at 26.4.1999, see [Signature](#)

## Credibility

**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.

### Commencement Information

**I230** Rule 33.5 in force at 26.4.1999, see [Signature](#)

## Use of plans, photographs and models as evidence

**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>(32)</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.

(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.

<sup>(32)</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.

(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**

**I231** [Rule 33.6](#) in force at 26.4.1999, see [Signature](#)

**Evidence of finding on question of foreign law**

**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(**33**).

- (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**

**I232** [Rule 33.7](#) in force at 26.4.1999, see [Signature](#)

**Evidence of consent of trustee to act**

**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**

**I233** [Rule 33.8](#) in force at 26.4.1999, see [Signature](#)

**[<sup>F358</sup>Human Rights**

- 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—
- (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

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- (b) may reach its own conclusion in the light of that finding and of the evidence heard by that other court or tribunal.]

**Textual Amendments**

**F358** 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

### [<sup>F359</sup>WITNESSES, DEPOSITIONS AND EVIDENCE FOR FOREIGN COURTS]

**Textual Amendments**

**F359** Pt. 34 heading substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **12(a)**

#### Contents of this Part

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

### [<sup>F360</sup>II—EVIDENCE FOR FOREIGN COURTS]



Interpretation	Rule 34.16
Application for order	Rule 34.17
Examination	Rule 34.18
Dealing with deposition	Rule 34.19
Claim to privilege	Rule 34.20
Order under 1975 Act as applied by Patents Act 1977	Rule 34.21 ]

[<sup>F361</sup>III TAKING OF EVIDENCE—MEMBER STATES OF THE EUROPEAN UNION

Interpretation	Rule 34.22
Where a person to be examined is in another Regulation State	Rule 34.23
Evidence for courts of other Regulation States	Rule 34.24]

[<sup>F362</sup>I WITNESSES AND DEPOSITIONS]

**Textual Amendments**

**F362** Pt. 34 Section 1 heading inserted (2.12.2002) by virtue of [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **12(c)**

[<sup>F363</sup>Scope of this Section

- 34.1.**—(1) This Section of this Part provides—
- (a) for the circumstances in which a person may be required to attend court to give evidence or produce a document; and
  - (b) for a party to obtain evidence before a hearing to be used at the hearing.
- (2) In this Section, reference to a hearing includes a reference to the trial.]

**Textual Amendments**

**F363** Rule 34.1 substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **12(c)**

**Witness summonses**

- 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.

*Status: Point in time view as at 31/01/2011.*

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

- (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**

**I234** [Rule 34.2](#) in force at 26.4.1999, see [Signature](#)

**Issue of a witness summons**

- 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**

**I235** [Rule 34.3](#) in force at 26.4.1999, see [Signature](#)

**Witness summons in aid of inferior court or of tribunal**

- 34.4.**—(1) The court may issue a witness summons in aid of an inferior court or of a tribunal.
- (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.

**Commencement Information**

**I236** [Rule 34.4](#) in force at 26.4.1999, see [Signature](#)

**Time for serving a witness summons**

- 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.

**Commencement Information**

**I237** [Rule 34.5](#) in force at 26.4.1999, see [Signature](#)

**Who is to serve a witness summons**

**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.

**Commencement Information**

**I238** [Rule 34.6](#) in force at 26.4.1999, see [Signature](#)

**Right of witness to travelling expenses and compensation for loss of time**

**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 [<sup>F364</sup>Practice Direction 34A].

**Textual Amendments**

**F364** Words in [rule 34.7\(b\)](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\)](#), [17](#)

**Commencement Information**

**I239** [Rule 34.7](#) in force at 26.4.1999, see [Signature](#)

**Evidence by deposition**

**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)

*Status: Point in time view as at 31/01/2011.*

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

(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 [<sup>F365</sup>Practice Direction 34A].

(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)

#### Textual Amendments

**F365** Words in rule 34.8(6)(b) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), 17

#### Commencement Information

**I240** [Rule 34.8](#) in force at 26.4.1999, see [Signature](#)

### Conduct of examination

**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

**I241** [Rule 34.9](#) in force at 26.4.1999, see [Signature](#)

### Enforcing attendance of witness

**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.

**Commencement Information**

**I242** [Rule 34.10](#) in force at 26.4.1999, see [Signature](#)

**Use of deposition at a hearing**

**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).

**Commencement Information**

**I243** [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**

**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.

**Commencement Information**

**I244** [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**

**34.13.**—<sup>F366</sup>(1) This rule applies where a party wishes to take a deposition from a person who is—

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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)*

- (a) out of the jurisdiction; and
  - (b) not in a Regulation State within the meaning of Section III of this Part.
- (1A) 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>F367</sup>a] country <sup>F368</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

**F366** Rule 34.13(1)(1A) substituted for rule 34.13(1) (1.1.2004) by [The Civil Procedure \(Amendment No. 4\) Rules 2003 \(S.I. 2003/2113\)](#), [rules 1\(a\)](#), [7](#)

**F367** Word in rule 34.13(4) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), [rules 1](#), [11\(a\)\(i\)](#)

**F368** 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

**I245** Rule 34.13 in force at 26.4.1999, see [Signature](#)

#### <sup>F369</sup>Letter of request – Proceeds of Crime Act 2002

**34.13A.**—(1) This rule applies where a party to existing or contemplated proceedings in—

- (a) the High Court; or
- (b) a magistrates' court,

under Part 5 of the Proceeds of Crime Act 2002 (civil recovery of the proceeds etc. of unlawful conduct) wishes to take a deposition from a person who is out of the jurisdiction.

(2) The High Court may, on the application of such a party, order the issue of a letter of request to the judicial authorities of the country in which the proposed deponent is.

(3) Paragraphs (4) to (7) of rule 34.13 shall apply irrespective of where the proposed deponent is, and rule 34.23 shall not apply in cases where the proposed deponent is in a Regulation State within the meaning of Section III of this Part.]

#### Textual Amendments

**F369** Rule 34.13A inserted (1.2.2004) by [The Civil Procedure \(Amendment No. 5\) Rules 2003](#) (S.I. 2003/3361), rules 1(a), **6**

#### Fees and expenses of examiner [<sup>F370</sup>of the court]

**34.14.**—[<sup>F371</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.

(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.

#### Textual Amendments

**F370** 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)**

**F371** Rule 34.14(1) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999](#) (S.I. 1999/1008), rules 1, **11(b)(ii)**

#### Commencement Information

**I246** Rule 34.14 in force at 26.4.1999, see [Signature](#)

#### Examiners of the court

**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.

#### Commencement Information

**I247** Rule 34.15 in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 31/01/2011.*

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

## <sup>F372</sup>II—EVIDENCE FOR FOREIGN COURTS

### Textual Amendments

**F372** Pt. 34 Section 2 inserted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rule 1(b), **Sch. 2 Pt. 2**

### <sup>F373</sup>Scope and interpretation

**34.16.**—(1) This Section applies to an application for an order under the 1975 Act for evidence to be obtained, other than an application made as a result of a request by a court in [<sup>F374</sup>another Regulation State].

(2) In this Section—

- (a) “the 1975 Act” means the Evidence (Proceedings in Other Jurisdictions) Act 1975; and
- (b) “Regulation State” has the same meaning as in Section III of this Part.]

### Textual Amendments

**F373** [Rule 34.16](#) substituted (1.1.2004) by [The Civil Procedure \(Amendment No. 4\) Rules 2003 \(S.I. 2003/2113\)](#), rules 1(a), **8**

**F374** Words in [rule 34.16\(1\)](#) substituted (1.6.2004) by [The Civil Procedure \(Amendment\) Rules 2004 \(S.I. 2004/1306\)](#), rules 1(a), **6**

### Application for order

**34.17** An application for an order under the 1975 Act for evidence to be obtained—

- (a) must be—
  - (i) made to the High Court;
  - (ii) supported by written evidence; and
  - (iii) accompanied by the request as a result of which the application is made, and where appropriate, a translation of the request into English; and
- (b) may be made without notice.

### Examination

**34.18.**—(1) The court may order an examination to be taken before—

- (a) any fit and proper person nominated by the person applying for the order;
- (b) an examiner of the court; or
- (c) any other person whom the court considers suitable.

(2) Unless the court orders otherwise—

- (a) the examination will be taken as provided by rule 34.9; and
- (b) rule 34.10 applies.

(3) The court may make an order under rule 34.14 for payment of the fees and expenses of the examination.



## Dealing with deposition

**34.19.**—(1) The examiner must send the deposition of the witness to the Senior Master unless the court orders otherwise.

(2) The Senior Master will—

(a) give a certificate sealed with the seal of the [<sup>F375</sup>Senior Courts] for use out of the jurisdiction identifying the following documents—

- (i) the request;
- (ii) the order of the court for examination; and
- (iii) the deposition of the witness; and

(b) send the certificate and the documents referred to in paragraph (a) to—

- (i) the Secretary of State; or
  - (ii) where the request was sent to the Senior Master by another person in accordance with a Civil Procedure Convention, to that other person,
- for transmission to the court or tribunal requesting the examination.

### Textual Amendments

**F375** Words in [rule 34.19\(2\)\(a\)](#) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), [rules 1\(2\), 4](#)

## Claim to privilege

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

- (a) a witness claims to be exempt from giving evidence on the ground specified in section 3(1) (b) of the 1975 Act; and
- (b) that claim is not supported or conceded as referred to in section 3(2) of that Act.

(2) The examiner may require the witness to give the evidence which he claims to be exempt from giving.

(3) Where the examiner does not require the witness to give that evidence, the court may order the witness to do so.

(4) An application for an order under paragraph (3) may be made by the person who obtained the order under section 2 of the 1975 Act.

(5) Where such evidence is taken—

- (a) it must be contained in a document separate from the remainder of the deposition;
- (b) the examiner will send to the Senior Master—
  - (i) the deposition; and
  - (ii) a signed statement setting out the claim to be exempt and the ground on which it was made.

(6) On receipt of the statement referred to in paragraph (5)(b)(ii), the Senior Master will—

- (a) retain the document containing the part of the witness's evidence to which the claim to be exempt relates; and
- (b) send the statement and a request to determine that claim to the foreign court or tribunal together with the documents referred to in rule 34.17.

(7) The Senior Master will—

*Status: Point in time view as at 31/01/2011.*

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

- (a) if the claim to be exempt is rejected by the foreign court or tribunal, send the document referred to in paragraph (5)(a) to that court or tribunal;
- (b) if the claim is upheld, send the document to the witness; and
- (c) in either case, notify the witness and person who obtained the order under section 2 of the foreign court or tribunal’s decision.

### **Order under 1975 Act as applied by Patents Act 1977**

**34.21** Where an order is made for the examination of witnesses under section 1 of the 1975 Act as applied by section 92 of the Patents Act 1977 the court may permit an officer of the European Patent Office to—

- (a) attend the examination and examine the witnesses; or
- (b) request the court or the examiner before whom the examination takes place to put specified questions to them.]

### **[<sup>F376</sup>III TAKING OF EVIDENCE—MEMBER STATES OF THE EUROPEAN UNION**

#### **Textual Amendments**

**F376** Pt. 34 Section 3 inserted (1.1.2004) by [The Civil Procedure \(Amendment No. 4\) Rules 2003 \(S.I. 2003/2113\)](#), rule 1(a), [Sch. 1 Pt. 2](#)

### **Interpretation**

**34.22** In this Section—

- (a) “designated court” has the meaning given in [<sup>F377</sup>Practice Direction 34A];
- (b) “Regulation State” has the same meaning as “Member State” in the Taking of Evidence Regulation, that is all Member States except Denmark;
- (c) “the Taking of Evidence Regulation” means Council Regulation ([EC](#)) No. 1206/2001 of 28 May 2001 on co-operation between the courts of the Member States in the taking of evidence in civil and commercial matters.

(The Taking of Evidence Regulation is annexed to the relevant practice direction)

#### **Textual Amendments**

**F377** Words in [rule 34.22\(a\)](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\)](#), [17](#)

### **Where a person to be examined is in another Regulation State**

**34.23.**—(1) [<sup>F378</sup>Subject to rule 34.13A, this] rule applies where a party wishes to take a deposition from a person [<sup>F379</sup>who is in another Regulation State].

(2) The court may order the issue of a request to a designated court (“the requested court”) in the Regulation State in which the proposed deponent is.

(3) If the court makes an order for the issue of a request, the party who sought the order must file—

- (a) a draft Form A as set out in the annex to the Taking of Evidence Regulation (request for the taking of evidence);

- (b) except where paragraph (4) applies, a translation of the form;
  - (c) an undertaking to be responsible for costs sought by the requested court in relation to—
    - (i) fees paid to experts and interpreters; and
    - (ii) where requested by that party, the use of special procedures or communications technology; and
  - (d) an undertaking to be responsible for the court’s expenses.
- (4) There is no need to file a translation if—
- (a) English is one of the official languages of the Regulation State where the examination is to take place; or
  - (b) the Regulation State has indicated, in accordance with the Taking of Evidence Regulation, that English is a language which it will accept.
- (5) Where article 17 of the Taking of Evidence Regulation (direct taking of evidence by the requested court) allows evidence to be taken directly in another Regulation State, the court may make an order for the submission of a request in accordance with that article.
- (6) If the court makes an order for the submission of a request under paragraph (5), the party who sought the order must file—
- (a) a draft Form I as set out in the annex to the Taking of Evidence Regulation (request for direct taking of evidence);
  - (b) except where paragraph (4) applies, a translation of the form; and
  - (c) an undertaking to be responsible for the court’s expenses.

#### **Textual Amendments**

**F378** Words in [rule 34.23\(1\)](#) substituted (1.2.2004) by [The Civil Procedure \(Amendment No. 5\) Rules 2003 \(S.I. 2003/3361\)](#), [rules 1\(a\), 7](#)

**F379** Words in [rule 34.23\(1\)](#) substituted (1.6.2004) by [The Civil Procedure \(Amendment\) Rules 2004 \(S.I. 2004/1306\)](#), [rules 1\(a\), 7](#)

#### **Evidence for courts of other Regulation States**

**34.24.**—(1) This rule applies where a court in another Regulation State (“the requesting court”) issues a request for evidence to be taken from a person who is in the jurisdiction.

- (2) An application for an order for evidence to be taken—
  - (a) must be made to a designated court;
  - (b) must be accompanied by—
    - (i) the form of request for the taking of evidence as a result of which the application is made; and
    - (ii) where appropriate, a translation of the form of request; and
  - (c) may be made without notice.
- (3) Rule 34.18(1) and (2) apply.
- (4) The examiner must send—
  - (a) the deposition to the court for transmission to the requesting court; and
  - (b) a copy of the deposition to the person who obtained the order for evidence to be taken.]

*Status: Point in time view as at 31/01/2011.*

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

## PART 35

### EXPERTS AND ASSESSORS

#### Contents of this Part

Duty to restrict expert evidence	Rule 35.1
[ <sup>F380</sup> Interpretation and definitions]	Rule 35.2
Experts—overriding duty to the court	Rule 35.3
Court’s power to restrict expert evidence	Rule 35.4
General requirement for expert evidence to be given in written report	Rule 35.5
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Power of court to direct party to provide information	Rule 35.9
Contents of report	Rule 35.10
Use by one party of expert’s report disclosed by another	Rule 35.11
Discussions between experts	Rule 35.12
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

#### Duty to restrict expert evidence

**35.1** Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings.

#### Commencement Information

**I248** [Rule 35.1](#) in force at 26.4.1999, see [Signature](#)

#### [<sup>F381</sup> Interpretation and definitions

**35.2.**—(1) A reference to an ‘expert’ in this Part is a reference to a person who has been instructed to give or prepare expert evidence for the purpose of proceedings.

(2) ‘Single joint expert’ means an expert instructed to prepare a report for the court on behalf of two or more of the parties (including the claimant) to the proceedings.]

#### Textual Amendments

**F381** Rule 35.2 substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **5(b)**

### Experts—overriding duty to the court

**35.3.—**(1) [<sup>F382</sup>It is the duty of experts to help the court on matters within their expertise].

(2) This duty overrides any obligation to the person from whom [<sup>F383</sup>experts have received instructions or by whom they are paid.]

#### Textual Amendments

**F382** Words in [rule 35.3\(1\)](#) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **5(c)**

**F383** Words in [rule 35.3\(2\)](#) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **5(d)**

#### Commencement Information

**I249** [Rule 35.3](#) in force at 26.4.1999, see [Signature](#)

### Court's power to restrict expert evidence

**35.4.—**(1) No party may call an expert or put in evidence an expert's report without the court's permission.

[<sup>F384</sup>(2) When parties apply for permission they must identify—

- (a) the field in which expert evidence is required; and
- (b) where practicable, the name of the proposed expert.]

(3) If permission is granted <sup>F385</sup>... it shall be in relation only to the expert named or the field identified under paragraph (2).

[<sup>F386</sup>(3A) Where a claim has been allocated to the small claims track or the fast track, if permission is given for expert evidence, it will normally be given for evidence from only one expert on a particular issue.

(Paragraph 7 of [<sup>F387</sup>Practice Direction] 35 sets out some of the circumstances the court will consider when deciding whether expert evidence should be given by a single joint expert.)]

[<sup>F388</sup>(4) The court may limit the amount of a party's expert's fees and expenses that may be recovered from any other party.]

#### Textual Amendments

**F384** [Rule 35.4\(2\)](#) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **5(e)**

**F385** Words in [rule 35.4\(3\)](#) omitted (1.10.2009) by virtue of [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **5(f)**

**F386** [Rule 35.4\(3A\)](#) and words inserted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **5(g)**

*Status: Point in time view as at 31/01/2011.*

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

**F387** Words in rule 35.4 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **18(a)**

**F388** Rule 35.4(4) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **5(h)**

#### Commencement Information

**I250** [Rule 35.4](#) in force at 26.4.1999, see [Signature](#)

### General requirement for expert evidence to be given in a written report

**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 [<sup>F389</sup>small claims track or 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.

#### Textual Amendments

**F389** Words in [rule 35.5\(2\)](#) inserted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **5(i)**

#### Commencement Information

**I251** [Rule 35.5](#) in force at 26.4.1999, see [Signature](#)

### Written questions to experts

**35.6.**—[<sup>F390</sup>(1) A party may put written questions about an expert's report (which must be proportionate) to—

- (a) an expert instructed by another party; or
- (b) a single joint expert appointed under rule 35.7.]
- (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 <sup>F391</sup>...; 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
- (ii) that the party may not recover the fees and expenses of that expert from any other party.

#### Textual Amendments

**F390** Rule 35.6(1) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **5(j)(i)**

**F391** Words in rule 35.6(4)(a) omitted (1.10.2009) by virtue of [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **5(j)(ii)**

#### Commencement Information

**I252** Rule 35.6 in force at 26.4.1999, see [Signature](#)

### [<sup>F392</sup>Court's power to direct that evidence is to be given by a single joint expert

**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 a single joint expert.

(2) Where the parties who wish to submit the evidence (“the relevant parties”) cannot agree who should be the single joint expert, the court may—

- (a) select the expert from a list prepared or identified by the relevant parties; or
- (b) direct that the expert be selected in such other manner as the court may direct.]

#### Textual Amendments

**F392** Rule 35.7 substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **5(k)**

### Instructions to a single joint expert

**35.8.**—(1) Where the court gives a direction under rule 35.7 for a single joint expert to be used, [<sup>F393</sup>any relevant] party may give instructions to the expert.

[<sup>F394</sup>(2) When a party gives instructions to the expert that party must, at the same time, send a copy to the other relevant 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 [<sup>F395</sup>some or all of the relevant] parties pay that amount into court.

(5) Unless the court otherwise directs, the [<sup>F396</sup>relevant] parties are jointly and severally liable<sup>(GL)</sup> for the payment of the expert's fees and expenses.

#### Textual Amendments

**F393** Words in rule 35.8(1) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **5(l)**

**F394** Rule 35.8(2) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **5(m)**

*Status: Point in time view as at 31/01/2011.*

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

**F395** Words in rule 35.8(4)(b) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **5(n)**

**F396** Word in rule 35.8(5) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **5(o)**

#### Commencement Information

**I253** [Rule 35.8](#) in force at 26.4.1999, see [Signature](#)

### Power of court to direct a party to provide information

**35.9** Where a party has access to information which is not reasonably [<sup>F397</sup>available to another 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.

#### Textual Amendments

**F397** Words in rule 35.9 substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **5(p)**

#### Commencement Information

**I254** [Rule 35.9](#) in force at 26.4.1999, see [Signature](#)

### Contents of report

**35.10.**—(1) An expert's report must comply with the requirements set out in [<sup>F398</sup>[<sup>F399</sup>Practice Direction] 35].

[<sup>F400</sup>(2) At the end of an expert's report there must be a statement that the expert understands and has complied with their duty to the court.]

(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.

#### Textual Amendments

**F398** Words in rule 35.10(1) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **5(q)(i)**

**F399** Words in rule 35.10(1) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **18(b)**

**F400** [Rule 35.10\(2\)](#) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **5(q)(ii)**



**Commencement Information**

**I255** [Rule 35.10](#) in force at 26.4.1999, see [Signature](#)

**Use by one party of expert's report disclosed by another**

**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**

**I256** [Rule 35.11](#) in force at 26.4.1999, see [Signature](#)

**Discussions between experts**

**35.12.**—(1) The court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to—

- [<sup>F401</sup>(a) identify and discuss the expert issues in the proceedings; and
- (b) where possible, reach an agreed opinion on those issues.]

(2) The court may specify the issues which the experts must discuss.

[<sup>F402</sup>(3) The court may direct that following a discussion between the experts they must prepare a statement for the court setting out those issues on which—

- (a) they agree; and
- (b) they disagree, with a summary of their reasons for disagreeing.]

(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.

**Textual Amendments**

**F401** [Rule 35.12\(1\)\(a\)\(b\)](#) substituted (25.3.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001](#) (S.I. 2001/4015), [rules 1\(c\)](#), [21](#)

**F402** [Rule 35.12\(3\)](#) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009](#) (S.I. 2009/2092), [rules 1\(2\)](#), [5\(r\)](#)

**Commencement Information**

**I257** [Rule 35.12](#) in force at 26.4.1999, see [Signature](#)

**Consequence of failure to disclose expert's report**

**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.

**Commencement Information**

**I258** [Rule 35.13](#) in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 31/01/2011.*

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

**Expert’s right to ask court for directions**

**35.14.**—<sup>F403</sup>(1) Experts may file written requests for directions for the purpose of assisting them in carrying out their functions.]

<sup>F404</sup>(2) Experts must, unless the court orders otherwise, provide copies of the proposed requests for directions under paragraph (1)—

- (a) to the party instructing them, at least 7 days before they file the requests; and
- (b) to all other parties, at least 4 days before they file them.]

(3) The court, when it gives directions, may also direct that a party be served with <sup>F405</sup>a copy of the directions.]

<sup>F406</sup>(a) .....

<sup>F406</sup>(b) .....

**Textual Amendments**

**F403** Rule 35.14(1) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **5(s)(i)**

**F404** Rule 35.14(2) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **5(s)(ii)**

**F405** Words in rule 35.14(3) inserted (25.3.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(c), **22(b)(i)**

**F406** Rule 35.14(3)(a)(b) omitted (25.3.2002) by virtue of [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(c), **22(b)(ii)**

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**Commencement Information**

**I259** Rule 35.14 in force at 26.4.1999, see [Signature](#)

<sup>F407</sup>**Assessors**

**35.15.**—(1) This rule applies where the court appoints one or more persons under section 70 of the Senior Courts Act 1981 or section 63 of the County Courts Act 1984 as an assessor.

(2) An assessor will assist the court in dealing with a matter in which the assessor has skill and experience.

(3) An assessor will take such part in the proceedings as the court may direct and in particular the court may direct an assessor to—

- (a) prepare a report for the court on any matter at issue in the proceedings; and
- (b) attend the whole or any part of the trial to advise the court on any such matter.

(4) If an assessor prepares a report for the court before the trial has begun—

- (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 an assessor is to be determined by the court and will 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 an 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.]

#### Textual Amendments

**F407** Rule 35.15 substituted (1.10.2009) by The Civil Procedure (Amendment) Rules 2009 (S.I. 2009/2092), rules 1(2), **5(t)**

## [<sup>F408</sup>PART 36

### OFFERS TO SETTLE

#### Textual Amendments

**F408** Pt. 36 substituted (6.4.2007) by The Civil Procedure (Amendment No.3) Rules 2006 (S.I. 2006/3435), rule 1, **Sch. 1** (with rule 7(2)-(7))

#### Contents of this Part

[ <sup>F409</sup> Scope of this Part	Rule 36.A1
<b>Section I – Part 36 offers to settle</b>	
Scope of this Section	Rule 36.1]
Form and content of a Part 36 offer	Rule 36.2
Part 36 offers – general provisions	Rule 36.3
Part 36 offers – defendants’ offers	Rule 36.4
Personal injury claims for future pecuniary loss	Rule 36.5
Offer to settle a claim for provisional damages	Rule 36.6
Time when a Part 36 offer is made and accepted	Rule 36.7
Clarification of a Part 36 offer	Rule 36.8
Acceptance of a Part 36 offer	Rule 36.9
Costs consequences of acceptance of a Part 36 offer	Rule 36.10
The effect of acceptance of a Part 36 offer	Rule 36.11
Acceptance of a Part 36 offer made by one or more, but not all, defendants	Rule 36.12
Restriction on disclosure of a Part 36 offer	Rule 36.13
Costs consequences following judgment	Rule 36.14
[ <sup>F410</sup> Deduction of benefits and lump sum payments]	Rule 36.15
[ <sup>F411</sup> Section II – RTA Protocol offers to settle	
Scope of this Section	Rule 36.16

*Status: Point in time view as at 31/01/2011.*

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

Form and content of an RTA Protocol offer	Rule 36.17
Time when an RTA Protocol offer is made	Rule 36.18
General provisions	Rule 36.19
Restrictions on disclosure of an RTA Protocol offer	Rule 36.20
Costs consequences following judgment	Rule 36.21
Deduction of benefits	Rule 36.22]

### [<sup>F412</sup>Scope of this Part

**36.A1.**—(1) This Part contains rules about—

- (a) offers to settle; and
- (b) the consequences where an offer to settle is made in accordance with this Part.

(2) Section I of this Part contains rules about offers to settle other than where Section II applies.

(3) Section II of this Part contains rules about offers to settle where the parties have followed the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (“the RTA Protocol”) and have started proceedings under Part 8 in accordance with Practice Direction 8B.

#### Textual Amendments

**F412** [Rule 36.A1](#), Section 1 heading and rule 36.1(1) and heading substituted for rule 36.1(1) and heading (30.4.2010) by [The Civil Procedure \(Amendment\) Rules 2010 \(S.I. 2010/621\)](#), rules 1(2), **6(b)**

## SECTION I

### PART 36 OFFERS TO SETTLE

#### Scope of this Section

**36.1.**—(1) This Section does not apply to an offer to settle to which Section II of this Part applies.]

(2) Nothing in this [<sup>F413</sup>Section] prevents a party making an offer to settle in whatever way he chooses, but if the offer is not made in accordance with rule 36.2, it will not have the consequences specified in rules 36.10, 36.11 and 36.14.

(Rule 44.3 requires the court to consider an offer to settle that does not have the costs consequences set out in this [<sup>F414</sup>Section] in deciding what order to make about costs)

#### Textual Amendments

**F413** Word in [rule 36.1\(2\)](#) substituted (30.4.2010) by [The Civil Procedure \(Amendment\) Rules 2010 \(S.I. 2010/621\)](#), rules 1(2), **6(c)**

**F414** Word in [rule 36.1](#) substituted (30.4.2010) by [The Civil Procedure \(Amendment\) Rules 2010 \(S.I. 2010/621\)](#), rules 1(2), **6(d)**

#### Form and content of a Part 36 offer

**36.2.**—(1) An offer to settle which is made in accordance with this rule is called a Part 36 offer.

(2) A Part 36 offer must—

- (a) be in writing;
- (b) state on its face that it is intended to have the consequences of [<sup>F415</sup>Section I of] Part 36;
- (c) specify a period of not less than 21 days within which the defendant will be liable for the claimant's costs in accordance with rule 36.10 if the offer is accepted;
- (d) 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; and
- (e) state whether it takes into account any counterclaim.

(Rule 36.7 makes provision for when a Part 36 offer is made)

(3) Rule 36.2(2)(c) does not apply if the offer is made less than 21 days before the start of the trial.

(4) In appropriate cases, a Part 36 offer must contain such further information as is required by rule 36.5 (Personal injury claims for future pecuniary loss), rule 36.6 (Offer to settle a claim for provisional damages), and rule 36.15 (Deduction of benefits).

(5) An offeror may make a Part 36 offer solely in relation to liability.

#### Textual Amendments

**F415** Words in rule 36.2(2)(b) inserted (30.4.2010) by [The Civil Procedure \(Amendment\) Rules 2010 \(S.I. 2010/621\)](#), rules 1(2), **6(e)**

### Part 36 offers – general provisions

**36.3.**—(1) In this Part—

- (a) the party who makes an offer is the ‘offeror’;
- (b) the party to whom an offer is made is the ‘offeree’; and
- (c) ‘the relevant period’ means—
  - (i) in the case of an offer made not less than 21 days before trial, the period stated under rule 36.2(2)(c) or such longer period as the parties agree;
  - (ii) otherwise, the period up to end of the trial or such other period as the court has determined.

(2) A Part 36 offer—

- (a) may be made at any time, including before the commencement of proceedings; and
- (b) may be made in appeal proceedings.

(3) A Part 36 offer which offers to pay or offers to accept a sum of money will be treated as inclusive of all interest until—

- (a) the date on which the period stated under rule 36.2(2)(c) expires; or
- (b) if rule 36.2(3) applies, a date 21 days after the date the offer was made.

(4) A Part 36 offer shall have the consequences set out [<sup>F416</sup>in this Section] only in relation to the costs of the proceedings in respect of which it is made, and not in relation to the costs of any appeal from the final decision in those proceedings.

(5) Before expiry of the relevant period, a Part 36 offer may be withdrawn or its terms changed to be less advantageous to the offeree, only if the court gives permission.

(6) After expiry of the relevant period and provided that the offeree has not previously served notice of acceptance, the offeror may withdraw the offer or change its terms to be less advantageous to the offeree without the permission of the court.

*Status: Point in time view as at 31/01/2011.*

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

(7) The offeror does so by serving written notice of the withdrawal or change of terms on the offeree.

(Rule 36.14(6) deals with the costs consequences following judgment of an offer that is withdrawn)

#### **Textual Amendments**

**F416** Words in rule 36.3(4) substituted (30.4.2010) by [The Civil Procedure \(Amendment\) Rules 2010 \(S.I. 2010/621\)](#), rules 1(2), **6(f)**

#### **Part 36 offers – defendants’ offers**

**36.4.**—(1) Subject to rule 36.5(3) and rule 36.6(1), a Part 36 offer by a defendant to pay a sum of money in settlement of a claim must be an offer to pay a single sum of money.

(2) But, an offer that includes an offer to pay all or part of the sum, if accepted, at a date later than 14 days following the date of acceptance will not be treated as a Part 36 offer unless the offeree accepts the offer.

#### **Personal injury claims for future pecuniary loss**

**36.5.**—(1) This rule applies to a claim for damages for personal injury which is or includes a claim for future pecuniary loss.

(2) An offer to settle such a claim will not have the consequences set out in rules 36.10, 36.11 and 36.14 unless it is made by way of a Part 36 offer under this rule.

(3) A Part 36 offer to which this rule applies may contain an offer to pay, or an offer to accept—

(a) the whole or part of the damages for future pecuniary loss in the form of—

(i) a lump sum; or

(ii) periodical payments; or

(iii) both a lump sum and periodical payments;

(b) the whole or part of any other damages in the form of a lump sum.

(4) A Part 36 offer to which this rule applies—

(a) must state the amount of any offer to pay the whole or part of any damages in the form of a lump sum;

(b) may state—

(i) what part of the lump sum, if any, relates to damages for future pecuniary loss; and

(ii) what part relates to other damages to be accepted in the form of a lump sum;

(c) must state what part of the offer relates to damages for future pecuniary loss to be paid or accepted in the form of periodical payments and must specify—

(i) the amount and duration of the periodical payments;

(ii) the amount of any payments for substantial capital purchases and when they are to be made; and

(iii) that each amount is to vary by reference to the retail prices index (or to some other named index, or that it is not to vary by reference to any index); and

(d) must state either that any damages which take the form of periodical payments will be funded in a way which ensures that the continuity of payment is reasonably secure in

accordance with section 2(4) of the Damages Act 1996 or how such damages are to be paid and how the continuity of their payment is to be secured.

(5) Rule 36.4 applies to the extent that a Part 36 offer by a defendant under this rule includes an offer to pay all or part of any damages in the form of a lump sum.

(6) Where the offeror makes a Part 36 offer to which this rule applies and which offers to pay or to accept damages in the form of both a lump sum and periodical payments, the offeree may only give notice of acceptance of the offer as a whole.

(7) If the offeree accepts a Part 36 offer which includes payment of any part of the damages in the form of periodical payments, the claimant must, within 7 days of the date of acceptance, apply to the court for an order for an award of damages in the form of periodical payments under rule 41.8.

(<sup>F417</sup>Practice Direction 41B) contains information about periodical payments under the Damages Act 1996)

#### Textual Amendments

**F417** Words in [rule 36.5\(7\)](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\)](#), [19](#)

#### Offer to settle a claim for provisional damages

**36.6.**—(1) An offeror may make a Part 36 offer in respect of a claim which includes a claim for provisional damages.

(2) Where he does so, the Part 36 offer must specify whether or not the offeror is proposing that the settlement shall include an award of provisional damages.

(3) Where the offeror is offering to agree to the making of an award of provisional damages the Part 36 offer must also state—

- (a) that the sum offered 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 offer;
- (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) Rule 36.4 applies to the extent that a Part 36 offer by a defendant includes an offer to agree to the making of an award of provisional damages.

(5) If the offeree accepts the Part 36 offer, the claimant must, within 7 days of the date of acceptance, apply to the court for an order for an award of provisional damages under rule 41.2.

#### Time when a Part 36 offer is made

**36.7.**—(1) A Part 36 offer is made when it is served on the offeree.

(2) A change in the terms of a Part 36 offer will be effective when notice of the change is served on the offeree.

(Rule 36.3 makes provision about when permission is required to change the terms of an offer to make it less advantageous to the offeree)

*Status: Point in time view as at 31/01/2011.*

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

### Clarification of a Part 36 offer

**36.8.**—(1) The offeree may, within 7 days of a Part 36 offer being made, request the offeror to clarify the offer.

(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.

(Part 23 contains provisions about making an application to the court)

(3) If the court makes an order under paragraph (2), it must specify the date when the Part 36 offer is to be treated as having been made.

### Acceptance of a Part 36 offer

**36.9.**—(1) A Part 36 offer is accepted by serving written notice of the acceptance on the offeror.

(2) Subject to rule 36.9(3), a Part 36 offer may be accepted at any time (whether or not the offeree has subsequently made a different offer) unless the offeror serves notice of withdrawal on the offeree.

[<sup>F418</sup>(Rule 21.10 deals with compromise etc. by or on behalf of a child or protected party.)]

(3) The court’s permission is required to accept a Part 36 offer where—

- (a) rule 36.12(4) applies;
- (b) rule 36.15(3)(b) applies, the relevant period has expired and further deductible [<sup>F419</sup>amounts] have been paid to the claimant since the date of the offer;
- (c) an apportionment is required under rule 41.3A; or
- (d) the trial has started.

(Rule 36.12 deals with offers by some but not all of multiple defendants)

[<sup>F420</sup>(Rule 36.15 defines “deductible amounts”.)]

(Rule 41.3A requires an apportionment in proceedings under the Fatal Accidents Act 1976 and Law Reform (Miscellaneous Provisions) Act 1934)

(4) Where the court gives permission under paragraph (3), unless all the parties have agreed costs, the court will make an order dealing with costs, and may order that the costs consequences set out in rule 36.10 will apply.

(5) Unless the parties agree, a Part 36 offer may not be accepted after the end of the trial but before judgment is handed down.

#### Textual Amendments

**F418** Words in rule 36.9(2) substituted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, **11**

**F419** Word in rule 36.9(3)(b) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **17(b)(i)**

**F420** Words in rule 36.9 substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **17(b)(ii)**

### Costs consequences of acceptance of a Part 36 offer

**36.10.**—(1) Subject to paragraph (2) and paragraph (4)(a), where a Part 36 offer is accepted within the relevant period the claimant will be entitled to [<sup>F421</sup>the] costs of the proceedings up to the date on which notice of acceptance was served on the offeror.



(2) Where—

- (a) a defendant's Part 36 offer relates to part only of the claim; and
- (b) at the time of serving notice of acceptance within the relevant period the claimant abandons the balance of the claim,

the claimant will be entitled to [<sup>F422</sup>the] costs of the proceedings up to the date of serving notice of acceptance unless the court orders otherwise.

(3) Costs under paragraphs (1) and (2) of this rule will be assessed on the standard basis if the amount of costs is not agreed.

(Rule 44.4(2) explains the standard basis for assessment of costs)

[<sup>F423</sup>(Rule 44.12 contains provisions about when a costs order is deemed to have been made and applying for an order under section 194(3) of the Legal Services Act 2007.)]

(4) Where—

- (a) a Part 36 offer that was made less than 21 days before the start of trial is accepted; or
- (b) a Part 36 offer is accepted after expiry of the relevant period,

if the parties do not agree the liability for costs, the court will make an order as to costs.

(5) Where paragraph (4)(b) applies, unless the court orders otherwise—

- (a) the claimant will be entitled to [<sup>F424</sup>the] costs of the proceedings up to the date on which the relevant period expired; and
- (b) the offeree will be liable for the offeror's costs for the period from the date of expiry of the relevant period to the date of acceptance.

(6) The claimant's costs include any costs incurred in dealing with the defendant's counterclaim if the Part 36 offer states that it takes into account the counterclaim.

#### Textual Amendments

**F421** Word in rule 36.10(1) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), 17(c)(i)

**F422** Word in rule 36.10(2) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), 17(c)(ii)

**F423** Words in rule 36.10 inserted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), 17(c)(iii)

**F424** Word in rule 36.10(5)(a) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), 17(c)(iv)

#### The effect of acceptance of a Part 36 offer

**36.11.**—(1) If a Part 36 offer is accepted, the claim will be stayed (GL).

(2) In the case of acceptance of a Part 36 offer which relates to the whole claim the stay (GL) will be upon the terms of the offer.

(3) If a Part 36 offer which relates to part only of the claim is accepted—

- (a) the claim will be stayed (GL) as to that part upon the terms of the offer; and
- (b) subject to rule 36.10(2), unless the parties have agreed costs, the liability for costs shall be decided by the court.

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*Status: Point in time view as at 31/01/2011.*

*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 approval of the court is required before a settlement can be binding, any stay (GL) which would otherwise arise on the acceptance of a Part 36 offer will take effect only when that approval has been given.

(5) Any stay (GL) 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.

(6) Unless the parties agree otherwise in writing, where a Part 36 offer by a defendant that is or that includes an offer to pay a single sum of money is accepted, that sum must be paid to the offeree within 14 days of the date of—

- (a) acceptance; or
- (b) the order when the court makes an order under rule 41.2 (order for an award of provisional damages) or rule 41.8 (order for an award of periodical payments), unless the court orders otherwise.

(7) If the accepted sum is not paid within 14 days or such other period as has been agreed the offeree may enter judgment for the unpaid sum.

(8) Where—

- (a) a Part 36 offer (or part of a Part 36 offer) which is not an offer to which paragraph (6) applies is accepted; and
- (b) a party alleges that the other party has not honoured the terms of the offer,

that party may apply to enforce the terms of the offer without the need for a new claim.

#### **Acceptance of a Part 36 offer made by one or more, but not all, defendants**

**36.12.**—(1) This rule applies where the claimant wishes to accept a Part 36 offer 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 if—

- (a) he discontinues his claim against those defendants who have not made the offer; and
- (b) those defendants give written consent to the acceptance of the offer.

(3) If the claimant alleges that the defendants have a several liability (GL) to him, the claimant may—

- (a) accept the offer; and
- (b) continue with his claims against the other defendants if he is entitled to do so.

(4) In all other cases the claimant must apply to the court for an order permitting him to accept the Part 36 offer.

#### **Restriction on disclosure of a Part 36 offer**

**36.13.**—(1) A Part 36 offer will be treated as ‘without prejudice (GL) except as to costs’.

(2) The fact that a Part 36 offer has been made must not be communicated to the trial judge or to the judge (if any) allocated in advance to conduct the trial until the case has been decided.

(3) Paragraph (2) does not apply—

- (a) where the defence of tender before claim (GL) has been raised;
- (b) where the proceedings have been stayed (GL) under rule 36.11 following acceptance of a Part 36 offer; or
- (c) where the offeror and the offeree agree in writing that it should not apply.

## Costs consequences following judgment

**36.14.**—(1) This rule applies where upon judgment being entered—

- (a) a claimant fails to obtain a judgment more advantageous than a defendant’s Part 36 offer; or
- (b) judgment against the defendant is at least as advantageous to the claimant as the proposals contained in a claimant’s Part 36 offer.

(2) Subject to paragraph (6), where rule 36.14(1)(a) applies, the court will, unless it considers it unjust to do so, order that the defendant is entitled to—

- (a) his costs from the date on which the relevant period expired; and
- (b) interest on those costs.

(3) Subject to paragraph (6), where rule 36.14(1)(b) applies, the court will, unless it considers it unjust to do so, order that the claimant is entitled to—

- (a) interest on the whole or part of any sum of money (excluding interest) awarded at a rate not exceeding 10% above base rate (GL) for some or all of the period starting with the date on which the relevant period expired;
- (b) his costs on the indemnity basis from the date on which the relevant period expired; and
- (c) interest on those costs at a rate not exceeding 10% above base rate (GL).

(4) 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 was made, including in particular how long before the trial started the offer was made;
- (c) the information available to the parties at the time when the Part 36 offer 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 to be made or evaluated.

(5) 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 (GL).

(6) Paragraphs (2) and (3) of this rule do not apply to a Part 36 offer—

- (a) that has been withdrawn;
- (b) that has been changed so that its terms are less advantageous to the offeree, and the offeree has beaten the less advantageous offer;
- (c) made less than 21 days before trial, unless the court has abridged the relevant period.

(Rule 44.3 requires the court to consider an offer to settle that does not have the costs consequences set out in this [F425Section] in deciding what order to make about costs)

### Textual Amendments

**F425** Word in rule 36.14 substituted (30.4.2010) by [The Civil Procedure \(Amendment\) Rules 2010 \(S.I. 2010/621\)](#), rules 1(2), **6(g)**

## [F426Deduction of benefits and lump sum payments

**36.15.**—(1) In this rule and rule 36.9—

- (a) “the 1997 Act” means the Social Security (Recovery of Benefits) Act 1997;

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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)*

- (b) “the 2008 Regulations” means the Social Security (Recovery of Benefits)(Lump Sum Payments) Regulations 2008;
- (c) “recoverable amount” means—
- (i) “recoverable benefits” as defined in section 1(4)(c) of the 1997 Act; and
  - (ii) “recoverable lump sum payments” as defined in regulation 4 of the 2008 Regulations;
- (d) “deductible amount” means—
- (i) any benefits by the amount of which damages are to be reduced in accordance with section 8 of, and Schedule 2 to the 1997 Act (“deductible benefits”); and
  - (ii) any lump sum payment by the amount of which damages are to be reduced in accordance with regulation 12 of the 2008 Regulations (“deductible lump sum payments”); and
- (e) “certificate”—
- (i) in relation to recoverable benefits is construed in accordance with the provisions of the 1997 Act; and
  - (ii) in relation to recoverable lump sum payments has the meaning given in section 29 of the 1997 Act as applied by regulation 2 of, and modified by Schedule 1 to the 2008 Regulations.
- (2) This rule applies where a payment to a claimant following acceptance of a Part 36 offer would be a compensation payment as defined in section 1(4)(b) or 1A(5)(b) of the 1997 Act.]
- (3) A defendant who makes a Part 36 offer should state either—
- (a) that the offer is made without regard to any liability for recoverable [<sup>F427</sup>amounts]; or
  - (b) that it is intended to include any deductible [<sup>F428</sup>amounts].
- (4) Where paragraph (3)(b) applies, paragraphs (5) to (9) of this rule will apply to the Part 36 offer.
- (5) Before making the Part 36 offer, the offeror must apply for a certificate <sup>F429</sup>....
- (6) Subject to paragraph (7), the Part 36 offer must state—
- (a) the amount of gross compensation;
  - (b) the name and amount of any deductible [<sup>F430</sup>amount] by which [<sup>F431</sup>the] gross amount is reduced; and
  - (c) the net amount [<sup>F432</sup>of compensation].
- [<sup>F433</sup>(7) If at the time the offeror makes the Part 36 offer, the offeror has applied for, but has not received a certificate, the offeror must clarify the offer by stating the matters referred to in paragraphs (6)(b) and (6)(c) not more than 7 days after receipt of the certificate.]
- (8) For the purposes of rule 36.14(1)(a), a claimant fails to recover more than any sum offered (including a lump sum offered under rule 36.5) if [<sup>F434</sup>the claimant] fails upon judgment being entered to recover a sum, once deductible [<sup>F435</sup>amounts] identified in the judgment have been deducted, greater than the net amount stated under paragraph (6)(c).
- [<sup>F436</sup>(Section 15(2) of the 1997 Act provides that the court must specify the compensation payment attributable to each head of damage. Schedule 1 to the 2008 Regulations modifies section 15 of the 1997 Act in relation to lump sum payments and provides that the court must specify the compensation payment attributable to each or any dependant who has received a lump sum payment.)]
- (9) Where—

- (a) further deductible [<sup>F437</sup> amounts] have accrued since the Part 36 offer was made; and
- (b) the court gives permission to accept the Part 36 offer,

the court may direct that the amount of the offer payable to the offeree shall be reduced by a sum equivalent to the deductible [<sup>F437</sup> amounts] paid to the claimant since the date of the offer.

(Rule 36.9(3)(b) states that permission is required to accept an offer where the relevant period has expired and further deductible [<sup>F437</sup> amounts] have been paid to the claimant)

#### **Textual Amendments**

- F426** Rule 36.15(1)(2) and heading substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **17(d)(i)**
- F427** Word in rule 36.15(3)(a) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **17(d)(ii)(aa)**
- F428** Word in rule 36.15(3)(b) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **17(d)(ii)(bb)**
- F429** Words in rule 36.15(5) omitted (1.10.2008) by virtue of [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **17(d)(iii)**
- F430** Word in rule 36.15(6)(b) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **17(d)(iv)(aa)**
- F431** Word in rule 36.15(6)(b) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **17(d)(iv)(bb)**
- F432** Words in rule 36.15(6)(c) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **17(d)(v)**
- F433** Rule 36.15(7) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **17(d)(vi)**
- F434** Words in rule 36.15(8) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **17(d)(vii)(aa)**
- F435** Word in rule 36.15(8) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **17(d)(vii)(bb)**
- F436** Words in rule 36.15(8) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **17(d)(viii)**
- F437** Word in rule 36.15(9) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **17(d)(ix)**

## <sup>F438</sup>SECTION II

### RTA PROTOCOL OFFERS TO SETTLE

#### **Textual Amendments**

- F438** Pt. 36 Section 2 inserted (30.4.2010) by [The Civil Procedure \(Amendment\) Rules 2010 \(S.I. 2010/621\)](#), rule 1(2), **Sch. 1**

#### **Scope of this Section**

**36.16.**—(1) Where this Section applies Section I does not apply.

(2) This Section applies to an offer to settle where the parties have followed the RTA Protocol and started proceedings under Part 8 in accordance with Practice Direction 8B (“the Stage 3 Procedure”).

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*Status: Point in time view as at 31/01/2011.*

*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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(3) A reference to the “Court Proceeding Pack Form” is a reference to the form used in the RTA Protocol.

(4) Nothing in this Section prevents a party making an offer to settle in whatever way that party chooses, but if the offer is not made in accordance with this Section, it will not have any costs consequences.

#### **Form and content of an RTA Protocol offer**

**36.17.**—(1) An offer to settle which is made in accordance with this rule is called an RTA Protocol offer.

(2) An RTA Protocol offer must—

- (a) be set out in the Court Proceedings Pack (Part B) Form; and
- (b) contain the final total amount of the offer from both parties.

#### **Time when an RTA Protocol offer is made**

**36.18.** The RTA Protocol offer is deemed to be made on the first business day after the Court Proceedings Pack (Part A and Part B) Form is sent to the defendant.

#### **General provisions**

**36.19.** An RTA Protocol offer—

- (a) is treated as exclusive of all interest; and
- (b) has the consequences set out in this Section only in relation to the fixed costs of the Stage 3 Procedure as provided for in rule 45.29, and not in relation to the costs of any appeal from the final decision of those proceedings.

#### **Restrictions on disclosure of an RTA Protocol offer**

**36.20.**—(1) The amount of the RTA Protocol offer must not be communicated to the court until the claim is determined.

- (2) Any other offer to settle must not be communicated to the court at all.
- (3) Once the claim is determined, the court will examine the RTA Protocol offer.

#### **Costs consequences following judgment**

**36.21.**—(1) This rule applies where, on the determination by the court, the claimant obtains judgment against the defendant for an amount of damages that is—

- (a) less than or equal to the amount of the defendant’s RTA Protocol offer;
- (b) more than the defendant’s RTA Protocol offer but less than the claimant’s RTA Protocol offer; or
- (c) equal to or more than the claimant’s RTA Protocol offer.

(2) Where paragraph (1)(a) applies, the court will order the claimant to pay—

- (a) the fixed costs in rule 45.38; and
- (b) interest on those fixed costs from the first business day after the deemed date of the RTA Protocol offer under rule 36.18.

(3) Where paragraph (1)(b) applies, the court will order the defendant to pay the fixed costs in rule 45.32.

- (4) Where paragraph (1)(c) applies, the court will order the defendant to pay—
- (a) interest on the whole of the damages awarded at a rate not exceeding 10% above base rate for some or all of the period starting with the date specified in rule 36.18;
  - (b) the fixed costs in rule 45.32; and
  - (c) interest on those costs at a rate not exceeding 10% above base rate.

### Deduction of benefits

**36.22.** For the purposes of rule 36.21(1)(a) the amount of the judgment is less than the RTA Protocol offer where the judgment is less than that offer once deductible amounts identified in the judgment are deducted.

(‘Deductible amount’ is defined in rule 36.15(1)(d).)]

## [<sup>F439</sup>PART 37

### MISCELLANEOUS PROVISIONS ABOUT PAYMENTS INTO COURT

#### Textual Amendments

**F439** Pt. 37 substituted (6.4.2007) by [The Civil Procedure \(Amendment No.3\) Rules 2006 \(S.I. 2006/3435\)](#), rule 1, [Sch. 2](#)

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

**C16** Pt. 37 applied (1.11.2009) by [The Water Industry \(Special Administration\) Rules 2009 \(S.I. 2009/2477\)](#), rules 2, [107](#)

### Contents of this Part

Money paid into court under a court order	Rule 37.1
Money paid into court where defendant wishes to rely on a defence of tender before claim	Rule 37.2
Payment out of money paid into court	Rule 37.3
Payment into court under enactments	Rule 37.4

### Money paid into court under a court order

**37.1** A party who makes a payment into court under a court order must—

- (a) serve notice of the payment on every other party; and
- (b) in relation to each such notice, file a certificate of service.

### Money paid into court where defendant wishes to rely on a defence of tender before claim

**37.2.—(1)** Where a defendant wishes to rely on a defence of tender before claim (GL) 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 will not be available to him until he does so.

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*Status: Point in time view as at 31/01/2011.*

*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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### **Payment out of money paid into court**

**37.3** Money paid into court under a court order or in support of a defence of tender before claim (GL) may not be paid out without the court’s permission except where—

- (a) a Part 36 offer is accepted without needing the permission of the court; and
- (b) the defendant agrees that a sum paid into court by him should be used to satisfy the offer (in whole or in part).

(Rule 36.9 sets out when the court’s permission is required to accept a Part 36 offer)

### **Payment into court under enactments**

**37.4** A practice direction may set out special provisions with regard to payments into court under various enactments.]

## **PART 38**

### **DISCONTINUANCE**

#### **Contents of this Part**

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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

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#### **Scope of this Part**

**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)



**Commencement Information**

**I260** [Rule 38.1](#) in force at 26.4.1999, see [Signature](#)

**Right to discontinue claim**

**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**

**I261** [Rule 38.2](#) in force at 26.4.1999, see [Signature](#)

**Procedure for discontinuing**

**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**

**I262** [Rule 38.3](#) in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 31/01/2011.*

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

### Right to apply to have notice of discontinuance set aside

**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

**I263** Rule 38.4 in force at 26.4.1999, see [Signature](#)

### When discontinuance takes effect where permission of the court is not needed

**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

**I264** Rule 38.5 in force at 26.4.1999, see [Signature](#)

### Liability for costs

**38.6.**—(1) Unless the court orders otherwise, a claimant who discontinues is liable for the costs which a defendant against whom [<sup>F440</sup>the claimant] discontinues incurred on or before the date on which notice of discontinuance was served on [<sup>F441</sup>the defendant].

(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 [<sup>F442</sup>the] right to costs arises on discontinuance [<sup>F443</sup>and contains provisions about when a costs order is deemed to have been made and applying for an order under section 194(3) of the Legal Services Act 2007])

#### Textual Amendments

**F440** Words in rule 38.6(1) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **18(a)(i)**

**F441** Words in rule 38.6(1) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **18(a)(ii)**

**F442** Word in rule 38.6 inserted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **18(b)(i)**

**F443** Words in rule 38.6 inserted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **18(b)(ii)**

#### Commencement Information

**I265** Rule 38.6 in force at 26.4.1999, see [Signature](#)

#### Discontinuance and subsequent proceedings

**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.

#### Commencement Information

**I266** Rule 38.7 in force at 26.4.1999, see [Signature](#)

#### Stay of remainder of partly discontinued proceedings where costs not paid

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

- (a) proceedings are partly discontinued;
- [<sup>F444</sup>(b)** a claimant is liable to—
  - (i) pay costs under rule 38.6; or
  - (ii) make a payment pursuant to an order under section 194(3) of the Legal Services Act 2007; and]
- (c) the claimant fails to pay those costs [<sup>F445</sup>or make the payment] within [<sup>F446</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 [<sup>F447</sup>or the payment to be made].

(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 [<sup>F448</sup>the claimant] is liable to pay under rule 38.6 [<sup>F449</sup>or makes the payment pursuant to an order under section 194(3) of the Legal Services Act 2007]

**[<sup>F450</sup>(Rules 44.3C and 44.12 contain provisions about applying for an order under section 194(3) of the Legal Services Act 2007.)]**

#### Textual Amendments

- F444** Rule 38.8(1)(b) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008](#) (S.I. 2008/2178), rules 1(2), **19(a)**
- F445** Words in rule 38.8(1)(c) inserted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008](#) (S.I. 2008/2178), rules 1(2), **19(b)(i)**
- F446** 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)
- F447** Words in rule 38.8(1)(c)(ii) inserted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008](#) (S.I. 2008/2178), rules 1(2), **19(b)(ii)**
- F448** Words in rule 38.8(2) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008](#) (S.I. 2008/2178), rules 1(2), **19(c)(i)**

*Status: Point in time view as at 31/01/2011.*

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

**F449** Words in rule 38.8(2) inserted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **19(c)(ii)**

**F450** Words in rule 38.8 inserted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **19(d)**

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**Commencement Information**

**I267** [Rule 38.8](#) in force at 26.4.1999, see [Signature](#)

## PART 39

### 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

**39.1** In this Part, reference to a hearing includes a reference to the trial.

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**Commencement Information**

**I268** [Rule 39.1](#) in force at 26.4.1999, see [Signature](#)

#### General rule—hearing to be in public

**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 <sup>F451</sup>protected party];
- (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.

#### Textual Amendments

**F451** Words in rule 39.2(3)(d) substituted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, 12

#### Commencement Information

**I269** Rule 39.2 in force at 26.4.1999, see [Signature](#)

### Failure to attend the trial

**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>F452</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

**F452** 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

**I270** [Rule 39.3](#) in force at 26.4.1999, see [Signature](#)

### Timetable for trial

**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.

*Status: Point in time view as at 31/01/2011.*

*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**

**I271** [Rule 39.4](#) in force at 26.4.1999, see [Signature](#)

**Trial bundles**

**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**

**I272** [Rule 39.5](#) in force at 26.4.1999, see [Signature](#)

**Representation at trial of companies or other corporations**

**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**

**I273** [Rule 39.6](#) in force at 26.4.1999, see [Signature](#)

**Impounded documents**

**39.7.**—(1) Documents impounded by order of the court must not be released from the custody of the court except in compliance—

- (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**

**I274** [Rule 39.7](#) in force at 26.4.1999, see [Signature](#)

**Claims under the Race Relations Act 1976**

**39.8** <sup>F453</sup> .....

**Textual Amendments**

**F453** Rule 39.8 omitted (2.10.2006) by virtue of [The Civil Procedure \(Amendment\) Rules 2006 \(S.I. 2006/1689\)](#), rules 1, 6

**PART 40****[<sup>F454</sup>JUDGMENTS, ORDERS, SALE OF LAND ETC]****Textual Amendments**

**F454** Pt. 40 heading substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **18(1)**

**[<sup>F455</sup>Contents of this Part**

<b>I JUDGMENTS AND ORDERS</b>	Rule 40.1
Scope of this Section	
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	

*Status: Point in time view as at 31/01/2011.*

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

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>F456</sup>I JUDGMENTS AND ORDERS]**

#### **Textual Amendments**

**F456** 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>F457</sup>S Scope of this section**

**40.1** This Section sets out rules about judgments and orders which apply except where any other of these Rules [<sup>F458</sup>or a practice direction] makes a different provision in relation to the judgment or order in question.]

#### **Textual Amendments**

**F457** Rule 40.1 substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **18(3)**

**F458** Words in rule 40.1 inserted (1.4.2005) by [The Civil Procedure \(Amendment No. 4\) Rules 2004 \(S.I. 2004/3419\)](#), rules 1, **6**

#### **Standard requirements**

**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); <sup>F459</sup>...
- (c) a consent order under rule 40.6(2) (consent orders made by court officers) [<sup>F460</sup>;
- (d) an order made by a court officer under rule 70.5 (orders to enforce awards as if payable under a court order); or
- (e) an order made by a court officer under rule 71.2 (orders to obtain information from judgment debtors).]

(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.

[<sup>F461</sup>(3) Paragraph (4) applies where a party applies for permission to appeal against a judgment or order at the hearing at which the judgment or order was made.

(4) Where this paragraph applies, the judgment or order shall state—



- (a) whether or not the judgment or order is final;
- (b) whether an appeal lies from the judgment or order and, if so, to which appeal court;
- (c) whether the court gives permission to appeal; and
- (d) if not, the appropriate appeal court to which any further application for permission may be made.

(Paragraph 4.3B of [<sup>F462</sup>Practice Direction 52] deals with the court's power to adjourn a hearing where a judgment or order is handed down and no application for permission to appeal is made at that hearing)]

#### Textual Amendments

- F459** Word in rule 40.2(1)(b) omitted (25.3.2002) by virtue of The Civil Procedure (Amendment No. 4) Rules 2001 (S.I. 2001/2792), rules 1(c), 4(a) (with rule 24)
- F460** Rule 40.2(1)(d)(e) inserted (25.3.2002) by The Civil Procedure (Amendment No. 4) Rules 2001 (S.I. 2001/2792), rules 1(c), 4(b) (with rule 24)
- F461** Rule 40.2(3)(4) inserted (6.4.2006) by The Civil Procedure (Amendment No.4) Rules 2005 (S.I. 2005/3515), rules 1, 9
- F462** Words in rule 40.2 substituted (6.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), 20(a)

#### Commencement Information

- I275** Rule 40.2 in force at 26.4.1999, see [Signature](#)

### Drawing up and filing of judgments and orders

**40.3.**—(1) [<sup>F463</sup>Except as is provided at paragraph (4) below or by any Practice Direction, 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.

[<sup>F464</sup>(4) Except for orders made by the court of its own initiative and unless the court otherwise orders, every judgment or order made in claims proceeding in the Queen's Bench Division at the Royal Courts of Justice, other than in the Administrative Court, will be drawn up by the parties, and rule 40.3 is modified accordingly.]

Status: Point in time view as at 31/01/2011.

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**

**F463** Words in rule 40.3(1) substituted (1.10.2005) by The Civil Procedure (Amendment No.3) Rules 2005 (S.I. 2005/2292), rules 1(c), **37(a)**

**F464** Rule 40.3(4) inserted (1.10.2005) by The Civil Procedure (Amendment No.3) Rules 2005 (S.I. 2005/2292), rules 1(c), **37(b)**

**Commencement Information**

**I276** Rule 40.3 in force at 26.4.1999, see [Signature](#)

**Service of judgments and orders**

**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.

[<sup>F465</sup>(Rule 6.21 sets out who is to serve a document other than the claim form.)]

<sup>F466</sup> .....

**Textual Amendments**

**F465** Words in rule 40.4 substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **20**

**F466** Words in rule 40.4 omitted (2.12.2002) by virtue of The Civil Procedure (Amendment) Rules 2002 (S.I. 2002/2058), rules 1(b), **13**

**Commencement Information**

**I277** 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**

**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**

**I278** Rule 40.5 in force at 26.4.1999, see [Signature](#)

**Consent judgments and orders**

**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;
    - (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**

**I279** Rule 40.6 in force at 26.4.1999, see [Signature](#)

**When judgment or order takes effect**

**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.

*Status: Point in time view as at 31/01/2011.*

*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**

**I280** [Rule 40.7](#) in force at 26.4.1999, see [Signature](#)

**Time from which interest begins to run**

**40.8.**—(1) Where interest is payable on a judgment pursuant to section 17 of the Judgments Act 1838<sup>(34)</sup> or section 74 of the County Courts Act 1984<sup>(35)</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.

**Commencement Information**

**I281** [Rule 40.8](#) in force at 26.4.1999, see [Signature](#)

**Who may apply to set aside or vary a judgment or order**

**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**

**I282** [Rule 40.9](#) in force at 26.4.1999, see [Signature](#)

**Judgment against a State in default of acknowledgment of service**

**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<sup>(36)</sup>.

**Commencement Information**

**I283** [Rule 40.10](#) in force at 26.4.1999, see [Signature](#)

<sup>(34)</sup> 1838 c. 110. Section 17 was amended by S.I. 1998/ 2940.

<sup>(35)</sup> 1984 c. 28. Section 74 was amended by section 2 of the Private International Law (Miscellaneous Provisions) Act 1995 (c. 42).

<sup>(36)</sup> 1978 c. 33.

### **Time for complying with a judgment or order**

**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**

**I284** Rule 40.11 in force at 26.4.1999, see [Signature](#)

### **Correction of errors in judgments and orders**

**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**

**I285** Rule 40.12 in force at 26.4.1999, see [Signature](#)

### **Cases where court gives judgment both on claim and counterclaim**

**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**

**I286** Rule 40.13 in force at 26.4.1999, see [Signature](#)

### **Judgment in favour of certain part owners relating to the detention of goods**

**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,

*Status: Point in time view as at 31/01/2011.*

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

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>(37)</sup>, but does not affect the remedies and jurisdiction mentioned in subsection (8) of that section.

#### Commencement Information

**I287** Rule 40.14 in force at 26.4.1999, see [Signature](#)

## <sup>F467</sup> II SALE OF LAND ETC. AND CONVEYANCING COUNSEL

#### Textual Amendments

**F467** 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

**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.

**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.

**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

**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 [<sup>F468</sup>Costs Practice Direction])

### Textual Amendments

**F468** Words in rule 40.18 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **20(b)**

## Party may object to report

**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)]

## [<sup>F469</sup>III DECLARATORY JUDGMENTS

### Textual Amendments

**F469** Pt. 40 Section 3 inserted (26.3.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(a), **13**

**40.20** The court may make binding declarations whether or not any other remedy is claimed.]

## PART 41

### [<sup>F470</sup>DAMAGES]

### Textual Amendments

**F470** Pt. 41 heading substituted (1.4.2005) by [The Civil Procedure \(Amendment No. 3\) Rules 2004 \(S.I. 2004/3129\)](#), rules 1, **10**

### [<sup>F471</sup>Contents of this Part

#### I – PROCEEDINGS TO WHICH SECTION 32A OF THE SUPREME COURT ACT 1981 OR SECTION 51 OF THE COUNTY COURTS ACT 1984 APPLIES

Application and definitions	Rule 41.1
Order for an award of provisional damages	Rule 41.2

*Status: Point in time view as at 31/01/2011.*

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

Application for further damages Rule 41.3

## II – PERIODICAL PAYMENTS UNDER THE DAMAGES ACT 1996

Scope and interpretation	Rule 41.4
Statement of case	Rule 41.5
Court’s indication to parties	Rule 41.6
Factors to be taken into account	Rule 41.7
The award	Rule 41.8
Continuity of payment	Rule 41.9
Assignment or charge	Rule 41.10]

### **[<sup>F472</sup>I – PROCEEDINGS TO WHICH SECTION 32A OF THE SUPREME COURT ACT 1981 OR SECTION 51 OF THE COUNTY COURTS ACT 1984 APPLIES]**

#### **Textual Amendments**

**F472** Pt. 41 Section 1 heading inserted (1.4.2005) by [The Civil Procedure \(Amendment No. 3\) Rules 2004 \(S.I. 2004/3129\)](#), rule 1, **Sch. 1 Pt. 1**

#### **Application and definitions**

**41.1.**—(1) [<sup>F473</sup>This Section of this Part] applies to proceedings to which SCA s.32A or CCA s.51 applies.

(2) In this [<sup>F474</sup>Section]—

- (a) “SCA s.32A” means section 32A of the Supreme Court Act 1981(**38**);
- (b) “CCA s.51” means section 51 of the County Courts Act 1984(**39**); and
- (c) “award of provisional damages” means an award of damages for personal injuries under which—
  - (i) 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
  - (ii) the injured person is entitled to apply for further damages at a future date if he develops the disease or suffers the deterioration.

#### **Textual Amendments**

**F473** Words in [rule 41.1\(1\)](#) substituted (1.4.2005) by [The Civil Procedure \(Amendment No. 3\) Rules 2004 \(S.I. 2004/3129\)](#), rules 1, **11(b)(i)**

**F474** Word in [rule 41.1\(2\)](#) substituted (1.4.2005) by [The Civil Procedure \(Amendment No. 3\) Rules 2004 \(S.I. 2004/3129\)](#), rules 1, **11(b)(ii)**

**(38)** 1981 c. 54. Section 32A was inserted by section 6(1) of the Administration of Justice Act 1982 (c. 53)

**(39)** 1984 c. 28.



**Commencement Information**

**I288** Rule 41.1 in force at 26.4.1999, see [Signature](#)

**Order for an award of provisional damages**

**41.2.**—(1) The court may make an order for an award of provisional damages if—

- (a) the particulars of claim include a claim for provisional damages; and
- (b) the court is satisfied that SCA s.32A or CCA s.51 applies.

(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).

**Commencement Information**

**I289** Rule 41.2 in force at 26.4.1999, see [Signature](#)

**Application for further damages**

**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.

<sup>F475</sup>(6) .....

**Textual Amendments**

**F475** Rule 41.3(6) omitted (1.4.2005) by virtue of [The Civil Procedure \(Amendment No. 4\) Rules 2004 \(S.I. 2004/3419\)](#), rules 1, 7

*Status: Point in time view as at 31/01/2011.*

*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

**I290** Rule 41.3 in force at 26.4.1999, see [Signature](#)

[<sup>F476</sup>**41.3A.**—(1) Where—

- (a) a claim includes claims arising under—
  - (i) the Fatal Accidents Act 1976; and
  - (ii) the Law Reform (Miscellaneous Provisions) Act 1934; and
- (b) a single sum of money is ordered or agreed to be paid in satisfaction of the claims,

the court will apportion the money between the different claims.

(2) 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 single sum of money is ordered or agreed to be paid in satisfaction of the claim, the court will apportion it between the persons entitled to it.

(3) Unless it has already been apportioned by the court, a jury or agreement between the parties, the court will apportion money under paragraphs (1) and (2)—

- (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, on application by one of the parties in accordance with Part 23.]

### Textual Amendments

**F476** Rule 41.3A inserted (6.4.2007) by [The Civil Procedure \(Amendment No.3\) Rules 2006 \(S.I. 2006/3435\)](#), rules 1, 9

## [<sup>F477</sup>**II – PERIODICAL PAYMENTS UNDER THE DAMAGES ACT 1996**

### Textual Amendments

**F477** Pt. 41 Section 2 inserted (1.4.2005) by [The Civil Procedure \(Amendment No. 3\) Rules 2004 \(S.I. 2004/3129\)](#), rule 1, [Sch. 1 Pt. 2](#)

### Scope and interpretation

**41.4.**—(1) This Section of this Part contains rules about the exercise of the court’s powers under section 2(1) of the 1996 Act to order that all or part of an award of damages in respect of personal injury is to take the form of periodical payments.

- (2) In this Section—
  - (a) “the 1996 Act” means the Damages Act 1996;
  - (b) “damages” means damages for future pecuniary loss; and
  - (c) “periodical payments” means periodical payments under section 2(1) of the 1996 Act.

### Statement of case

**41.5.**—(1) In a claim for damages for personal injury, each party in its statement of case may state whether it considers periodical payments or a lump sum is the more appropriate form for all

or part of an award of damages and where such statement is given must provide relevant particulars of the circumstances which are relied on.

(2) Where a statement under paragraph (1) is not given, the court may order a party to make such a statement.

(3) Where the court considers that a statement of case contains insufficient particulars under paragraph (1), the court may order a party to provide such further particulars as it considers appropriate.

### Court's indication to parties

**41.6.** The court shall consider and indicate to the parties as soon as practicable whether periodical payments or a lump sum is likely to be the more appropriate form for all or part of an award of damages.

### Factors to be taken into account

**41.7.** When considering—

- (a) its indication as to whether periodical payments or a lump sum is likely to be the more appropriate form for all or part of an award of damages under rule 41.6; or
- (b) whether to make an order under section 2(1)(a) of the 1996 Act,

the court shall have regard to all the circumstances of the case and in particular the form of award which best meets the claimant's needs, having regard to the factors set out in [<sup>F478</sup>Practice Direction 41B].

#### Textual Amendments

**F478** Words in rule 41.7 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **21**

### The award

**41.8.—**(1) Where the court awards damages in the form of periodical payments, the order must specify—

- (a) the annual amount awarded, how each payment is to be made during the year and at what intervals;
- (b) the amount awarded for future—
  - (i) loss of earnings and other income; and
  - (ii) care and medical costs and other recurring or capital costs;
- (c) that the claimant's annual future pecuniary losses, as assessed by the court, are to be paid for the duration of the claimant's life, or such other period as the court orders; and
- (d) that the amount of the payments shall vary annually by reference to the retail prices index, unless the court orders otherwise under section 2(9) of the 1996 Act.

(2) Where the court orders that any part of the award shall continue after the claimant's death, for the benefit of the claimant's dependants, the order must also specify the relevant amount and duration of the payments and how each payment is to be made during the year and at what intervals.

(3) Where an amount awarded under paragraph (1)(b) is to increase or decrease on a certain date, the order must also specify—

*Status: Point in time view as at 31/01/2011.*

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

- (a) the date on which the increase or decrease will take effect; and
  - (b) the amount of the increase or decrease at current value.
- (4) Where damages for substantial capital purchases are awarded under paragraph (1)(b)(ii), the order must also specify—
- (a) the amount of the payments at current value;
  - (b) when the payments are to be made; and
  - (c) that the amount of the payments shall be adjusted by reference to the retail prices index, unless the court orders otherwise under section 2(9) of the 1996 Act.

### Continuity of payment

**41.9.**—(1) An order for periodical payments shall specify that the payments must be funded in accordance with section 2(4) of the 1996 Act, unless the court orders an alternative method of funding.

- (2) Before ordering an alternative method of funding, the court must be satisfied that—
  - (a) the continuity of payment under the order is reasonably secure; and
  - (b) the criteria set out in [F479]Practice Direction 41B] are met.
- (3) An order under paragraph (2) must specify the alternative method of funding.

#### Textual Amendments

**F479** Words in rule 41.9(2)(b) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), 21

### Assignment or charge

**41.10.** Where the court under section 2(6)(a) of the 1996 Act is satisfied that special circumstances make an assignment or charge of periodical payments necessary, it shall, in deciding whether or not to approve the assignment or charge, also have regard to the factors set out in [F480]Practice Direction 41B].]

#### Textual Amendments

**F480** Words in rule 41.10 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), 21

## PART 42

### CHANGE OF SOLICITOR

#### Contents of this Part

Solicitor acting for a party	Rule 42.1
Change of solicitor—duty to give notice	Rule 42.2
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

**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

**I291** Rule 42.1 in force at 26.4.1999, see [Signature](#)

### Change of solicitor—duty to give notice

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

- (a) a party for whom a solicitor [<sup>F481</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—

[<sup>F482</sup>(a) notice is filed and served in accordance with paragraph (2); 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>F483</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.

[<sup>F484</sup>(Rules 6.23 and 6.24 contain provisions about a party's address for service.)]

("LSC funded client" and "assisted person" are defined in rule 43.2)

*Status: Point in time view as at 31/01/2011.*

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

- (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.]

#### Textual Amendments

- F481** 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**
- F482** Rule 42.2(5)(a) substituted (1.6.2004) by [The Civil Procedure \(Amendment\) Rules 2004](#) (S.I. 2004/1306), rules 1(a), **8**
- F483** 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)
- F484** Words in rule 42.2 substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008](#) (S.I. 2008/2178), rules 1(2), **21**

#### Commencement Information

- I292** [Rule 42.2](#) in force at 26.4.1999, see [Signature](#)

#### Order that a solicitor has ceased to act

**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.

#### Commencement Information

- I293** [Rule 42.3](#) in force at 26.4.1999, see [Signature](#)

#### Removal of solicitor who has ceased to act on application of another party

- 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.

(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

**I294** [Rule 42.4](#) in force at 26.4.1999, see [Signature](#)

## PART 43

### SCOPE OF COST RULES AND DEFINITIONS

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

- C17** [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))
- C18** [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)
- C19** [Pt. 43](#) applied (with modifications) (7.10.2001) by [The Railway Administration Order Rules 2001 \(S.I. 2001/3352\)](#), rules 1.1, **6.21**
- C20** [Pt. 43](#) applied (with modifications) (24.2.2003) by [S.I. 1991/1247](#), **rule 10.27(1)** (as inserted by [The Family Proceedings \(Amendment\) Rules 2003 \(S.I. 2003/184\)](#), rules 1(1), **16**)
- C21** [Pt. 43](#) applied (with modifications) (24.2.2003) by [S.I. 1987/2024](#), **rule 60(1)(3)–(7)** (as substituted by [The Non-Contentious Probate \(Amendment\) Rules 2003 \(S.I. 2003/185\)](#), rules 1, **5** (with rule 3))
- C22** [Pt. 43](#) applied (with modifications) (30.12.2005) by [The Family Procedure \(Adoption\) Rules 2005 \(S.I. 2005/2795\)](#), **rule 5(3)**
- C23** [Pt. 43](#) applied (1.11.2009) by [The Water Industry \(Special Administration\) Rules 2009 \(S.I. 2009/2477\)](#), rules 2, **87**

#### 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

**43.1** This Part contains definitions and interpretation of certain matters set out in the rules about costs contained in Parts 44 to 48.

*Status: Point in time view as at 31/01/2011.*

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

(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

**I295** Rule 43.1 in force at 26.4.1999, see [Signature](#)

### Definitions and application

**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 [<sup>F485</sup>, 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 [<sup>F486</sup>Senior Courts];
- [<sup>F487</sup>(ba) “Costs Office” means the Senior Courts Costs Office;]
- (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 [<sup>F488</sup>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 [<sup>F489</sup>that] capacity [<sup>F490</sup>...];
- (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; [<sup>F491</sup>...]
- [<sup>F492</sup>(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;]
- [<sup>F493</sup>(j)] “fixed costs” means the amounts which are to be allowed in respect of solicitors' charges in the circumstances set out in [<sup>F494</sup>Section I of] Part 45.
- [<sup>F495</sup>(k) “funding arrangement” means an arrangement where a person has—
  - (i) entered into a conditional fee agreement [<sup>F496</sup>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 [<sup>F497</sup>that person's] 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);  
<sup>F498</sup> ...
- (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[<sup>F499</sup>;]
- [<sup>F500</sup>(p) "free of charge" has the same meaning as in section 194(10) of the Legal Services Act 2007;
- (q) "pro bono representation" means legal representation provided free of charge; and
- (r) "the prescribed charity" has the same meaning as in section 194(8) of the Legal Services Act 2007.]

<sup>F501</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.
- [<sup>F502</sup>(3) Where advocacy or litigation services are provided to a client under a conditional fee agreement, costs are recoverable under Parts 44 to 48 notwithstanding that the client is liable to pay his legal representative's fees and expenses only to the extent that sums are recovered in respect of the [<sup>F503</sup>proceedings], whether by way of costs or otherwise.
- (4) In paragraph (3), the reference to a conditional fee agreement is to an agreement which satisfies all the conditions applicable to it by virtue of section 58 of the Courts and Legal Services Act 1990.]

#### Textual Amendments

- F485** 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)
- F486** Words in rule 43.2(1)(b) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009](#) (S.I. 2009/2092), rules 1(2), **6(a)**
- F487** Rule 43.2(1)(ba) inserted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009](#) (S.I. 2009/2092), rules 1(2), **6(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)*

- F488** Words in rule 43.2(1)(d)(iv) substituted (1.10.2009) by The Civil Procedure (Amendment) Rules 2009 (S.I. 2009/2092), rules 1(2), **6(c)**
- F489** Word in rule 43.2(1)(e) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **22(a)**
- F490** Words in rule 43.2(1)(e) omitted (1.10.2009) by virtue of The Civil Procedure (Amendment) Rules 2009 (S.I. 2009/2092), rules 1(2), **6(d)**
- F491** 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)
- F492** 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)
- F493** 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)
- F494** Words in rule 43.2(1)(j) inserted (6.10.2003) by The Civil Procedure (Amendment No. 4) Rules 2003 (S.I. 2003/2113), rules 1(c), **10**
- F495** 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)
- F496** 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)**
- F497** Words in rule 43.2(1)(k)(iii) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **22(b)**
- F498** Word in rule 43.2(1)(n) omitted (1.10.2008) by virtue of The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **22(c)**
- F499** Rule 43.2(1)(o): semicolon substituted for full stop (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **22(d)**
- F500** Rule 43.2(1)(p)-(r) inserted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **22(e)**
- F501** Words in rule 43.2(1) omitted (2.6.2003) by virtue of The Civil Procedure (Amendment No. 2) Rules 2003 (S.I. 2003/1242), rules 1, **5(a)**
- F502** Rule 43.2(3)(4) inserted (2.6.2003) by The Civil Procedure (Amendment No. 2) Rules 2003 (S.I. 2003/1242), rules 1, **5(b)** (with rule 6)
- F503** Word in rule 43.2(3) substituted (9.6.2003) by The Civil Procedure (Amendment No. 3) Rules 2003 (S.I. 2003/1329), rules 1, **3**

#### Commencement Information

**I296** Rule 43.2 in force at 26.4.1999, see [Signature](#)

#### Meaning of summary assessment

**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

**I297** Rule 43.3 in force at 26.4.1999, see [Signature](#)

#### Meaning of detailed assessment

**43.4** “Detailed assessment” means the procedure by which the amount of costs is decided by a costs officer in accordance with Part 47.

**Commencement Information**I298 Rule 43.4 in force at 26.4.1999, see [Signature](#)**PART 44****GENERAL RULES ABOUT COSTS****Modifications etc. (not altering text)**

- C24** 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))
- C25** 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)
- C26** Pt. 44 applied (with modifications) (7.10.2001) by [The Railway Administration Order Rules 2001 \(S.I. 2001/3352\)](#), rules 1.1, **6.21**
- C27** Pt. 44 applied in part (with modifications) (24.2.2003) by S.I. 1987/2024, **rule 60(1)(3)–(7)** (as substituted by [The Non-Contentious Probate \(Amendment\) Rules 2003 \(S.I. 2003/185\)](#), rules 1, **5** (with rule 3))
- C28** Pt. 44 applied in part (with modifications) (24.2.2003) by S.I. 1991/1247, **rule 10.27(1)** (as inserted by [The Family Proceedings \(Amendment\) Rules 2003 \(S.I. 2003/184\)](#), rules 1(1), **16**)
- C29** Pt. 44 applied in part (with modifications) (30.12.2005) by [The Family Procedure \(Adoption\) Rules 2005 \(S.I. 2005/2795\)](#), **rule 5(3)**
- C30** Pt. 44 applied in part (with modifications) (1.10.2007) by [The Court of Protection Rules 2007 \(S.I. 2007/1744\)](#), rules 1, **160**
- C31** Pt. 44 applied (1.11.2009) by [The Water Industry \(Special Administration\) Rules 2009 \(S.I. 2009/2477\)](#), rules 2, **87**

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*Status: Point in time view as at 31/01/2011.*

*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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### Scope of this Part

**44.1** This Part contains general rules about [<sup>F510</sup>costs, entitlement to costs and orders in respect of pro bono representation].

(The definitions contained in Part 43 are relevant to this Part)

#### Textual Amendments

**F510** Words in [rule 44.1](#) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), [rules 1\(2\)](#), [23\(b\)](#)

#### Commencement Information

**I299** [Rule 44.1](#) in force at 26.4.1999, see [Signature](#)

### Solicitor’s duty to notify client

**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**

**I300** [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**

- 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 [<sup>F511</sup>, and which is not an offer to which costs consequences under Part 36 apply].

F512  
...

- (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 [<sup>F513</sup>the Practice Direction (Pre-Action Conduct) or] 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—

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- (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.

#### Textual Amendments

- F511** Words in rule 44.3(4)(c) substituted (6.4.2007) by [The Civil Procedure \(Amendment No.3\) Rules 2006 \(S.I. 2006/3435\)](#), rules 1, **10(a)(i)**
- F512** Words in rule 44.3 omitted (6.4.2007) by virtue of [The Civil Procedure \(Amendment No.3\) Rules 2006 \(S.I. 2006/3435\)](#), rules 1, **10(a)(ii)**
- F513** Words in rule 44.3(5)(a) inserted (6.4.2009) by [The Civil Procedure \(Amendment No.3\) Rules 2008 \(S.I. 2008/3327\)](#), rules 1, **9(b)**

#### Commencement Information

- I301** [Rule 44.3](#) in force at 26.4.1999, see [Signature](#)

### [<sup>F514</sup>Costs orders relating to funding arrangements

**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

**F514** 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

**44.3B.**—(1) [<sup>F515</sup>Unless the court orders otherwise, 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 <sup>F516</sup>... during which [<sup>F517</sup>that party] failed to provide information about a funding arrangement in accordance with a rule, practice direction or court order;
- (d) any percentage increase where [<sup>F518</sup>that party] has failed to comply with—
  - (i) a requirement in the [<sup>F519</sup>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 [<sup>F520</sup>conditional fee agreement;]

[ any insurance premium where that party has failed to provide information about the <sup>F521</sup>(e) insurance policy in question by the time required by a rule, practice direction or court order.

(Paragraph 9.3 of the Practice Direction (Pre-Action Conduct) provides that a party must inform any other party as soon as possible about a funding arrangement entered into before the start of proceedings.)]

(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

**F514** 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)

**F515** Words in rule 44.3B(1) substituted (1.10.2009) by The Civil Procedure (Amendment) Rules 2009 (S.I. 2009/2092), rules 1(2), 7(b)(i) (with rule 23)

**F516** Words in rule 44.3B(1)(c) omitted (1.10.2009) by virtue of The Civil Procedure (Amendment) Rules 2009 (S.I. 2009/2092), rules 1(2), 7(b)(ii)(aa) (with rule 23)

**F517** Words in rule 44.3B(1)(c) substituted (1.10.2009) by The Civil Procedure (Amendment) Rules 2009 (S.I. 2009/2092), rules 1(2), 7(b)(ii)(bb) (with rule 23)

**F518** Words in rule 44.3B(1)(d) substituted (1.10.2009) by The Civil Procedure (Amendment) Rules 2009 (S.I. 2009/2092), rules 1(2), 7(b)(iii)(aa) (with rule 23)

**F519** Words in rule 44.3B(1)(d)(i) substituted (6.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), 22(a)(i)

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**F520** Words in rule 44.3B(1)(d) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **7(b)(iii)(bb)** (with rule 23)

**F521** Rule 44.3B(1)(e) and words inserted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **7(b)(iv)** (with rule 23)

## <sup>F522</sup>Orders in respect of pro bono representation

**44.3C.**—(1) In this rule, “the 2007 Act” means the Legal Services Act 2007.

(2) Where the court makes an order under section 194(3) of the 2007 Act—

- (a) the court may order the payment to the prescribed charity of a sum no greater than the costs specified in Part 45 to which the party with pro bono representation would have been entitled in accordance with that Part and in respect of that representation had it not been provided free of charge; or
- (b) where Part 45 does not apply, the court may determine the amount of the payment (other than a sum equivalent to fixed costs) to be made by the paying party to the prescribed charity by—
  - (i) making a summary assessment; or
  - (ii) making an order for detailed assessment,

of a sum equivalent to all or part of the costs the paying party would have been ordered to pay to the party with pro bono representation in respect of that representation had it not been provided free of charge.

(3) Where the court makes an order under section 194(3) of the 2007 Act, the order must specify that the payment by the paying party must be made to the prescribed charity.

(4) The receiving party must send a copy of the order to the prescribed charity within 7 days of receipt of the order.

(5) Where the court considers making or makes an order under section 194(3) of the 2007 Act, Parts 43 to 48 apply, where appropriate, with the following modifications—

- (a) references to “costs orders”, “orders about costs” or “orders for the payment of costs” are to be read, unless otherwise stated, as if they refer to an order under section 194(3);
- (b) references to “costs” are to be read, as if they referred to a sum equivalent to the costs that would have been claimed by, incurred by or awarded to the party with pro bono representation in respect of that representation had it not been provided free of charge; and
- (c) references to “receiving party” are to be read, as meaning a party who has pro bono representation and who would have been entitled to be paid costs in respect of that representation had it not been provided free of charge.]

### Textual Amendments

**F522** [Rule 44.3C](#) inserted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **23(c)**

### Basis of assessment

**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>F523</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(40), 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**  
**F523** 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](#))

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**Commencement Information**  
**I302** [Rule 44.4](#) in force at 26.4.1999, see [Signature](#)

**Factors to be taken into account in deciding the amount of costs**

- 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—
    - (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—

(40) 1974 c. 47.

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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)*

- (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

**I303** [Rule 44.5](#) in force at 26.4.1999, see [Signature](#)

#### Fixed costs

**44.6** A party may recover the fixed costs specified in Part 45 in accordance with that Part.

#### Commencement Information

**I304** [Rule 44.6](#) in force at 26.4.1999, see [Signature](#)

#### Procedure for assessing costs

**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 [<sup>F524</sup>Costs Practice Direction] sets out the factors which will affect the court's decision under this rule)

#### Textual Amendments

**F524** Words in [rule 44.7](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\)](#), [22\(a\)\(ii\)](#)

#### Commencement Information

**I305** [Rule 44.7](#) in force at 26.4.1999, see [Signature](#)

#### Time for complying with an order for costs

**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>F525</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>F526</sup>; or]
  - <sup>F527</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

**F525** 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)

**F526** 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)

**F527** 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

**I306** [Rule 44.8](#) in force at 26.4.1999, see [Signature](#)

### Costs on the small claims track and fast track

- 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>F528</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

**F528** [Rule 44.9\(2\)](#) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **17**

#### Commencement Information

**I307** [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

- 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,
- 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.

*Status: Point in time view as at 31/01/2011.*

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

(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)

**Commencement Information**  
**I308** [Rule 44.10](#) in force at 26.4.1999, see [Signature](#)

**Costs following allocation and re-allocation**

**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)

**Commencement Information**  
**I309** [Rule 44.11](#) in force at 26.4.1999, see [Signature](#)

**Cases where costs orders deemed to have been made**

**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);
- <sup>F529</sup>(b) rule 36.10(1) or (2) (claimant’s entitlement to costs where a Part 36 offer is accepted)
- <sup>F530</sup>(c) .....
- (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.

<sup>F531</sup>(1A) Where such an order is deemed to be made in favour of a party with pro bono representation, that party may apply for an order under section 194(3) of the Legal Services Act 2007.]

(2) Interest payable pursuant to section 17 of the Judgments Act 1838(41) or section 74 of the County Courts Act 1984(42) 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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(41) 1838 c. 110. Section 17 was amended by S.I. 1998/2940.  
(42) 1984 c. 28. Section 74 was amended by section (2) of the Private International Law (Miscellaneous Provisions) Act 1995 (c. 42).

**Textual Amendments**

- F529** Rule 44.12(1)(b) substituted (6.4.2007) by [The Civil Procedure \(Amendment No.3\) Rules 2006 \(S.I. 2006/3435\)](#), rules 1, **10(b)(i)**
- F530** Rule 44.12(1)(c) omitted (6.4.2007) by virtue of [The Civil Procedure \(Amendment No.3\) Rules 2006 \(S.I. 2006/3435\)](#), rules 1, **10(b)(ii)**
- F531** Rule 44.12(1A) inserted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **23(d)**

**Commencement Information**

- I310** [Rule 44.12](#) in force at 26.4.1999, see [Signature](#)

**[<sup>F532</sup>Costs-only proceedings**

**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

[<sup>F533</sup>(c) <sup>F534</sup>..., no proceedings have been started.]

<sup>F535</sup>(1A) .....  
<sup>F536</sup> ...

(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) [<sup>F537</sup>Except as provided in paragraph (4A) [<sup>F538</sup>(and subject to rule 44.12B)], in] proceedings to which this rule applies the court—

- (a) may
  - (i) make an order for costs [<sup>F539</sup>to be determined by detailed assessment]; or
  - (ii) dismiss the claim;
 and
- (b) must dismiss the claim if it is opposed.

[<sup>F540</sup>(4A) In proceedings to which Section II [<sup>F541</sup>or Section VI] of Part 45 applies, the court shall assess the costs in the manner set out in that Section.]

(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**

- F532** 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)
- F533** Rule 44.12A(1)(c) substituted (6.10.2003) by [The Civil Procedure \(Amendment No. 4\) Rules 2003 \(S.I. 2003/2113\)](#), rules 1(c), **11(a)**

*Status: Point in time view as at 31/01/2011.*

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

- F534** Words in rule 44.12A(1)(c) omitted (1.4.2005) by virtue of The Civil Procedure (Amendment No. 4) Rules 2004 (S.I. 2004/3419), rules 1, **8(a)**
- F535** Rule 44.12A(1A) omitted (1.4.2005) by virtue of The Civil Procedure (Amendment No. 4) Rules 2004 (S.I. 2004/3419), rules 1, **8(b)**
- F536** Words in rule 44.12A omitted (1.4.2005) by virtue of The Civil Procedure (Amendment No. 4) Rules 2004 (S.I. 2004/3419), rules 1, **8(c)**
- F537** Words in rule 44.12A(4) inserted (6.10.2003) by The Civil Procedure (Amendment No. 4) Rules 2003 (S.I. 2003/2113), rules 1(c), **11(c)**
- F538** Words in rule 44.12A(4) inserted (1.10.2009) by The Civil Procedure (Amendment) Rules 2009 (S.I. 2009/2092), rules 1(2), **7(c)** (with rule 23)
- F539** Words in rule 44.12A(4)(a)(i) inserted (2.12.2002) by The Civil Procedure (Amendment) Rules 2002 (S.I. 2002/2058), rules 1(b), **14**
- F540** Rule 44.12A(4A) inserted (6.10.2003) by The Civil Procedure (Amendment No. 4) Rules 2003 (S.I. 2003/2113), rules 1(c), **11(d)**
- F541** Words in rule 44.12A(4A) inserted (30.4.2010) by The Civil Procedure (Amendment) Rules 2010 (S.I. 2010/621), rules 1(2), **7(a)**

**[<sup>F542</sup>Costs-only proceedings – costs in respect of insurance premium in publication cases**

- 44.12B.**—(1) If in proceedings to which rule 44.12A applies it appears to the court that—
- (a) if proceedings had been started, they would have been publication proceedings;
  - (b) one party admitted liability and made an offer of settlement on the basis of that admission;
  - (c) agreement was reached after that admission of liability and offer of settlement; and
  - (d) either—
    - (i) the party making the admission of liability and offer of settlement was not provided by the other party with the information about an insurance policy as required by the Practice Direction (Pre-Action Conduct); or
    - (ii) that party made the admission of liability and offer of settlement before, or within 42 days of, being provided by the other party with that information,

no costs may be recovered by the other party in respect of the insurance premium.

- (2) In this rule, “publication proceedings” means proceedings for—
- (a) defamation;
  - (b) malicious falsehood; or
  - (c) breach of confidence involving publication to the public at large.]

**Textual Amendments**

- F542** Rule 44.12B inserted (1.10.2009) by The Civil Procedure (Amendment) Rules 2009 (S.I. 2009/2092), rules 1(2), **7(d)** (with rule 23)

**[<sup>F543</sup>Costs-only application after a claim is started under Part 8 in accordance with Practice Direction 8B**

- 44.12C.**—(1) This rule sets out the procedure 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) proceedings have been started under Part 8 in accordance with Practice Direction 8B.
- (2) Either party may make an application for the court to determine the costs.
- (3) Where an application is made under this rule the court will assess the costs in accordance with rule 45.34 or rule 45.37.
- (4) Rule 48.3 (amount of costs where costs are payable pursuant to a contract) does not apply to an application under this rule.

(Practice Direction 8B sets out the procedure for a claim where the parties have followed the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents.)]

#### Textual Amendments

**F543** Rule 44.12C inserted (30.4.2010) by [The Civil Procedure \(Amendment\) Rules 2010 \(S.I. 2010/621\)](#), rules 1(2), **7(b)**

#### Special situations

**44.13.**—<sup>F544</sup>(1) Where the court makes an order which does not mention costs—

<sup>F545</sup>(a) subject to paragraphs (1A) and (1B), the general rule is that no party is entitled—

- (i) to costs; or
- (ii) to seek an order under section 194(3) of the Legal Services Act 2007, in relation to that order; but]

(b) this does not affect any entitlement of a party to recover costs out of a fund held by <sup>F546</sup>that party] as trustee or personal representative, or pursuant to any lease, mortgage or other security.]

<sup>F547</sup>(1A) Where the court makes—

- (a) an order granting permission to appeal;
- (b) an order granting permission to apply for judicial review; or
- (c) any other order or direction sought by a party on an application without notice, and its order does not mention costs, it will be deemed to include an order for applicant's costs in the case.

(1B) Any party affected by a deemed order for costs under paragraph (1A) may apply at any time to vary the 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.

#### Textual Amendments

**F544** Rule 44.13(1) substituted (25.3.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(c), **24**

**F545** Rule 44.13(1)(a) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **23(e)(i)**

**F546** Words in rule 44.13(1)(b) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **23(e)(ii)**

*Status: Point in time view as at 31/01/2011.*

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

**F547** Rule 44.13(1A)(1B) inserted (1.10.2005) by The Civil Procedure (Amendment No.3) Rules 2005 (S.I. 2005/2292), rules 1(c), **38(b)**

#### Commencement Information

**I311** Rule 44.13 in force at 26.4.1999, see **Signature**

### Court's powers in relation to misconduct

**44.14.**—(1) The court may make an order under this rule where—

[<sup>F548</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

**F548** 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

**I312** Rule 44.14 in force at 26.4.1999, see **Signature**

### [<sup>F549</sup>Providing information about funding arrangements

**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 [<sup>F550</sup>pre-trial check list (listing questionnaire)],

he must file and serve a new estimate of costs with the notice.

(The [<sup>F551</sup>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 [<sup>F552</sup>pre-trial check list], 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)

#### Textual Amendments

- F549** 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)
- F550** Words in rule 44.15(3)(b) substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002](#) (S.I. 2002/2058), rules 1(b), **15(a)**
- F551** Words in rule 44.15(3) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009](#) (S.I. 2009/3390), rules 1(2), **22(a)(iii)**
- F552** Words in rule 44.15(3) substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002](#) (S.I. 2002/2058), rules 1(b), **15(b)**

#### Adjournment where legal representative seeks to challenge disallowance of any amount of percentage increase

[<sup>F553</sup>**44.16.**—(1) This rule applies where the Conditional Fee Agreements Regulations 2000 or the Collective Conditional Fee Agreements Regulations 2000 continues to apply to an agreement which provides for a success fee.

(2) 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 client to be—

- (i) notified of the order sought; and
- (ii) separately represented.

(Regulation 3(2)(b) of the Conditional Fee Agreements Regulations 2000, which applies to Conditional Fee Agreements entered into before 1st November 2005, 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. Regulation 5(2)(b) of the Collective Conditional Fee Agreements Regulations 2000, which applies to Collective Conditional Fee Agreements entered into before 1st November 2005, makes similar provision in relation to collective conditional fee agreements.])

#### Textual Amendments

- F549** 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)
- F553** Rule 44.16 substituted (6.4.2006) by [The Civil Procedure \(Amendment No.4\) Rules 2005](#) (S.I. 2005/3515), rules 1, **10**

*Status: Point in time view as at 31/01/2011.*

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

## Application of costs rules

**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 [<sup>F554</sup>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

**F549** 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)

**F554** Words in rule 44.17 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009](#) (S.I. 2009/3390), rules 1(2), **22(a)(ii)**

## [<sup>F555</sup>Costs capping orders – General

**44.18.**—(1) A costs capping order is an order limiting the amount of future costs (including disbursements) which a party may recover pursuant to an order for costs subsequently made.

(2) In this rule, “future costs” means costs incurred in respect of work done after the date of the costs capping order but excluding the amount of any additional liability.

(3) This rule does not apply to protective costs orders.

(4) A costs capping order may be in respect of—

- (a) the whole litigation; or
- (b) any issues which are ordered to be tried separately.

(5) The court may at any stage of proceedings make a costs capping order against all or any of the parties, if—

- (a) it is in the interests of justice to do so;
- (b) there is a substantial risk that without such an order costs will be disproportionately incurred; and
- (c) it is not satisfied that the risk in sub-paragraph (b) can be adequately controlled by—
  - (i) case management directions or orders made under Part 3; and
  - (ii) detailed assessment of costs.

(6) In considering whether to exercise its discretion under this rule, the court will consider all the circumstances of the case, including—

- (a) whether there is a substantial imbalance between the financial position of the parties;
- (b) whether the costs of determining the amount of the cap are likely to be proportionate to the overall costs of the litigation;
- (c) the stage which the proceedings have reached; and
- (d) the costs which have been incurred to date and the future costs.

(7) A costs capping order, once made, will limit the costs recoverable by the party subject to the order unless a party successfully applies to vary the order. No such variation will be made unless—

- (a) there has been a material and substantial change of circumstances since the date when the order was made; or
- (b) there is some other compelling reason why a variation should be made.

**Textual Amendments**

**F555** Rules 44.18-44.20 inserted (6.4.2009) by [The Civil Procedure \(Amendment No.3\) Rules 2008 \(S.I. 2008/3327\)](#), rules 1, **9(c)**

**Application for a costs capping order**

**44.19.**—(1) An application for a costs capping order must be made on notice in accordance with Part 23.

(2) The application notice must—

(a) set out—

- (i) whether the costs capping order is in respect of the whole of the litigation or a particular issue which is ordered to be tried separately; and
- (ii) why a costs capping order should be made; and

(b) be accompanied by an estimate of costs setting out—

- (i) the costs (and disbursements) incurred by the applicant to date; and
- (ii) the costs (and disbursements) which the applicant is likely to incur in the future conduct of the proceedings.

(3) The court may give directions for the determination of the application and such directions may—

(a) direct any party to the proceedings—

- (i) to file a schedule of costs in the form set out in the [<sup>F556</sup>Costs Practice Direction];
- (ii) to file written submissions on all or any part of the issues arising;

(b) fix the date and time estimate of the hearing of the application;

(c) indicate whether the judge hearing the application will sit with an assessor at the hearing of the application; and

(d) include any further directions as the court sees fit.

**Textual Amendments**

**F555** Rules 44.18-44.20 inserted (6.4.2009) by [The Civil Procedure \(Amendment No.3\) Rules 2008 \(S.I. 2008/3327\)](#), rules 1, **9(c)**

**F556** Words in rule 44.19(3)(a)(i) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **22(b)**

**Application to vary a costs capping order**

**44.20.** An application to vary a costs capping order must be made by application notice pursuant to Part 23.]

*Status: Point in time view as at 31/01/2011.*

*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

**F555** Rules 44.18-44.20 inserted (6.4.2009) by [The Civil Procedure \(Amendment No.3\) Rules 2008 \(S.I. 2008/3327\)](#), rules 1, **9(c)**

## PART 45

### FIXED COSTS

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

**C32** Pt. 45 applied (with modifications) (7.10.2001) by [The Railway Administration Order Rules 2001 \(S.I. 2001/3352\)](#), rules 1.1, **6.21**

**C33** Pt. 45 applied (1.11.2009) by [The Water Industry \(Special Administration\) Rules 2009 \(S.I. 2009/2477\)](#), rules 2, **87**

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*Status: Point in time view as at 31/01/2011.*

*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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[<sup>F564</sup>SECTION VII SCALE COSTS FOR CLAIMS IN A PATENTS COUNTY COURT

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[<sup>F565</sup>FIXED COSTS

**Textual Amendments**

**F565** Pt. 45 Section 1 substituted (1.4.2005) by [The Civil Procedure \(Amendment No. 4\) Rules 2004 \(S.I. 2004/3419\)](#), rule 1, **Sch. 1 Pt. 2**

**Scope of this Section**

**45.1.**—(1) This Section 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 Section applies.

(2) This Section applies where—

- (a) the only claim is a claim for a specified sum of money where the value of the claim exceeds £25 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;
- (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 the value of the claim exceeds £25;
- (c) the claim is for the recovery of land, including a possession claim under Part 55, whether or not the claim includes a claim for a sum of money and the defendant gives up possession, pays the amount claimed, if any, and the fixed commencement costs stated in the claim form;
- (d) the claim is for the recovery of land, including a possession claim under Part 55, where one of the grounds for possession is arrears of rent, for which the court gave a fixed date for the hearing when it issued the claim and judgment is given for the possession of land (whether or not the order for possession is suspended on terms) and the defendant—
- (i) has neither delivered a defence, or counterclaim, nor otherwise denied liability; or
  - (ii) has delivered a defence which is limited to specifying his proposals for the payment of arrears of rent;
- (e) the claim is a possession claim under Section II of Part 55 (accelerated possession claims of land let on an assured shorthold tenancy) and a possession order is made where the defendant has neither delivered a defence, or counterclaim, nor otherwise denied liability;
- (f) the claim is a demotion claim under Section III of Part 65 or a demotion claim is made in the same claim form in which a claim for possession is made under Part 55 and that demotion claim is successful; or
- (g) a judgment creditor has taken steps under Parts 70 to 73 to enforce a judgment or order.
- (<sup>F566</sup>Practice Direction 7B] sets out the types of case where a court will give a fixed date for a hearing when it issues a claim)
- (3) Any appropriate court fee will be allowed in addition to the costs set out in this Section.
- (4) The claim form may include a claim for fixed commencement costs.

#### Textual Amendments

**F566** Words in rule 45.1 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **23(a)**

#### Amount of fixed commencement costs in a claim for the recovery of money or goods

**45.2.**—(1) The amount of fixed commencement costs in a claim to which rule 45.1(2)(a) or (b) applies—

- (a) shall be calculated by reference to Table 1; and
- (b) 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 Table 1 that applies to the claim.

*Status: Point in time view as at 31/01/2011.*

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

(2) The amounts shown in Table 4 are to be allowed in addition, if applicable.

**Amount of fixed commencement costs in a claim for the recovery of land or a demotion claim**

**45.2A.**—(1) The amount of fixed commencement costs in a claim to which rule 45.1(2)(c), (d) or (f) applies shall be calculated by reference to Table 2.

(2) The amounts shown in Table 4 are to be allowed in addition, if applicable.

**TABLE 1**

<b>FIXED COSTS ON COMMENCEMENT OF A CLAIM FOR THE RECOVERY OF MONEY OR GOODS</b>			
Relevant band	Where the claim form is served by the court or by any method other than personal service by the claimant	Where— • the claim form is served personally by the claimant; and • there is only one defendant	Where there is more than one defendant, for each additional defendant personally served at separate addresses by the claimant
Where— • the value of the claim exceeds £25 but does not exceed £500	£50	£60	£15
Where— • the value of the claim exceeds £500 but does not exceed £1,000	£70	£80	£15
Where— • the value of the claim exceeds £1,000 but does not exceed £5,000; or • the only claim is for delivery of goods and no value is specified or stated on the claim form	£80	£90	£15
Where— • the value of the claim exceeds £5,000	£100	£110	£15



**TABLE 2**

**FIXED COSTS ON COMMENCEMENT OF A CLAIM FOR THE RECOVERY OF LAND OR A DEMOTION CLAIM**

Where the claim form is served by the court or by any method other than personal service by the claimant	Where— <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>	Where there is more than one defendant, for each additional defendant personally served at separate addresses by the claimant
£69.50	£77.00	£15.00

**When defendant only liable for fixed commencement costs**

**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.

<sup>F567</sup>(2) .....

**Textual Amendments**

**F567** Rule 45.3(2) omitted (6.4.2007) by virtue of [The Civil Procedure \(Amendment No.3\) Rules 2006 \(S.I. 2006/3435\)](#), rules 1, 11

**Costs on entry of judgment in a claim for the recovery of money or goods**

**45.4** Where—

- (a) the claimant has claimed fixed commencement costs under rule 45.2; and
- (b) judgment is entered in a claim to which rule 45.1(2)(a) or (b) applies in the circumstances specified in Table 3, the amount to be included in the judgment for the claimant’s solicitor’s charges is the total of—
  - (i) the fixed commencement costs; and
  - (ii) the relevant amount shown in Table 3.

**Costs on entry of judgment in a claim for the recovery of land or a demotion claim**

**45.4A.—(1) Where—**

- (a) the claimant has claimed fixed commencement costs under rule 45.2A; and
- (b) judgment is entered in a claim to which rule 45.1(2)(d) or (f) applies, the amount to be included in the judgment for the claimant’s solicitor’s charges is the total of—
  - (i) the fixed commencement costs; and
  - (ii) the sum of £57.25.

(2) Where an order for possession is made in a claim to which rule 45.1(2)(e) applies, the amount allowed for the claimant’s solicitor’s charges for preparing and filing—

*Status: Point in time view as at 31/01/2011.*

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

- (a) the claim form;  
 (b) the documents that accompany the claim form; and  
 (c) the request for possession,  
 is £79.50.

**TABLE 3**

	<b>Where the amount of the judgment exceeds £25 but does not exceed £5,000</b>	<b>Where the amount of the judgment exceeds £5,000</b>
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 of part of claim) and court decides the date or time 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 within the meaning of the Consumer Credit Act 1974 and no other entry in this table applies	£60	£85

**Miscellaneous fixed costs**

**45.5** Table 4 shows the amount to be allowed in respect of solicitor's charges in the circumstances mentioned.

**TABLE 4**

<b>MISCELLANEOUS FIXED COSTS</b>	
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	£15.00
[ <sup>F568</sup> Where service by an alternative method or at an alternative place is permitted by an order under rule 6.15 for each individual served	£53.25]
Where a document is served out of the jurisdiction—	
(a) (a) in Scotland, Northern Ireland, the Isle of Man or the Channel Islands;	£68.25
(b) (b) in any other place	£77.00

**Textual Amendments**

**F568** Words in [rule 45.5](#) Table 4 substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008](#) (S.I. 2008/2178), [rules 1\(2\), 24](#)

**Fixed enforcement costs**

**45.6** Table 5 shows the amount to be allowed in respect of solicitors' costs in the circumstances mentioned. The amounts shown in Table 4 are to be allowed in addition, if applicable.

**TABLE 5**

<b>FIXED ENFORCEMENT COSTS</b>	
For an application under rule 70.5(4) that an award may be enforced as if payable under a court order, where the amount outstanding under the award:	
exceeds £25 but does not exceed £250	£30.75
exceeds £250 but does not exceed £600	£41.00
exceeds £600 but does not exceed £2,000	£69.50
exceeds £2,000	£75.50
On attendance to question a judgment debtor (or officer of a company or other corporation) who has been ordered to attend court under rule 71.2 where the questioning takes place	

*Status: Point in time view as at 31/01/2011.*

*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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## **FIXED ENFORCEMENT COSTS**

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before a court officer, including attendance by a responsible representative of the solicitor	for each half hour or part, £15.00
	(When the questioning takes place before a judge, he may summarily assess any costs allowed.)
On the making of a final third party debt order under rule 72.8(6)(a) or an order for the payment to the judgment creditor of money in court under rule 72.10(1)(b):	
if the amount recovered is less than £150	one-half of the amount recovered
otherwise	£98.50
On the making of a final charging order under rule 73.8(2)(a):	£110
	The court may also allow reasonable disbursements in respect of search fees and the registration of the order.
Where a certificate is issued and registered under Schedule 6 to the Civil Jurisdiction and Judgments Act 1982, the costs of registration	£39.00
Where permission is given under RSC Order 45, rule 3 to enforce a judgment or order giving possession of land and costs are allowed on the judgment or order, the amount to be added to the judgment or order for costs—	
(a) (a) basic costs	£42.50
(b) (b) where notice of the proceedings is to be to more than one person, for each additional person	£2.75
Where a writ of execution as defined in the RSC Order 46, rule 1, is issued against any party	£51.75
Where a request is filed for the issue of a warrant of execution under CCR Order 26, rule 1, for a sum exceeding £25	£2.25
Where an application for an attachment of earnings order is made and costs are allowed under CCR Order 27, rule 9 or CCR Order 28, rule 10, for each attendance on the hearing of the application	£8.50]

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

- C34** Rule 45.6 applied (with modifications) (30.12.2005) by [The Family Procedure \(Adoption\) Rules 2005 \(S.I. 2005/2795\)](#), [rule 5\(3\)](#)

<sup>F569</sup>~~[<sup>F570</sup>~~ **II ROAD TRAFFIC ACCIDENTS—FIXED RECOVERABLE COSTS ...**

**Textual Amendments**

- F569** Words in Pt. 45 Section 2 heading omitted (1.4.2005) by virtue of [The Civil Procedure \(Amendment No. 4\) Rules 2004 \(S.I. 2004/3419\)](#), [rules 1, 10](#)
- F570** Pt. 45 Section 2 inserted (6.10.2003) by [The Civil Procedure \(Amendment No. 4\) Rules 2003 \(S.I. 2003/2113\)](#), [rule 1\(c\)](#), [Sch. 2 Pt. II](#) (with rule 18)

**Scope and interpretation**

**45.7.**—<sup>F571</sup>(1) This Section sets out the costs which are to be allowed in—

- (a) costs-only proceedings under the procedure set out in rule 44.12A; or
- (b) proceedings for approval of a settlement or compromise under rule 21.10(2),

in cases to which this Section applies.]

<sup>F572</sup>  
...

(2) This Section applies where—

- (a) the dispute arises from a road traffic accident;
- (b) the agreed damages include damages in respect of personal injury, damage to property, or both;
- (c) the total value of the agreed damages does not exceed £10,000; and
- (d) if a claim had been issued for the amount of the agreed damages, the small claims track would not have been the normal track for that claim.

<sup>F573</sup>(3) This Section does not apply where—

- (a) the claimant is a litigant in person; or
- (b) Section VI of this Part applies.]

(4) In this Section—

- (a) “road traffic accident” means an accident resulting in bodily injury to any person or damage to property caused by, or arising out of, the use of a motor vehicle on a road or other public place in England and Wales;
- (b) “motor vehicle” means a mechanically propelled vehicle intended for use on roads; and
- (c) “road” means any highway and any other road to which the public has access and includes bridges over which a road passes.

**Textual Amendments**

- F571** Rule 45.7(1) substituted (1.4.2005) by [The Civil Procedure \(Amendment No. 4\) Rules 2004 \(S.I. 2004/3419\)](#), [rules 1, 11\(a\)](#)

*Status: Point in time view as at 31/01/2011.*

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

**F572** Words in rule 45.7(1) omitted (1.4.2005) by virtue of [The Civil Procedure \(Amendment No. 4\) Rules 2004 \(S.I. 2004/3419\)](#), rules 1, **11(b)**

**F573** Rule 45.7(3) substituted (30.4.2010) by [The Civil Procedure \(Amendment\) Rules 2010 \(S.I. 2010/621\)](#), rules 1(2), **8(b)**

### Application of fixed recoverable costs

**45.8** Subject to rule 45.12, the only costs which are to be allowed are—

- (a) fixed recoverable costs calculated in accordance with rule 45.9;
- (b) disbursements allowed in accordance with rule 45.10; and
- (c) a success fee allowed in accordance with rule 45.11.

(Rule 45.12 provides for where a party issues a claim for more than the fixed recoverable costs).

### Amount of fixed recoverable costs

**45.9.—(1)** Subject to paragraphs (2) and (3), the amount of fixed recoverable costs is the total of—

- (a) £800;
- (b) 20% of the damages agreed up to £5,000; and
- (c) 15% of the damages agreed between £5,000 and £10,000.

(2) Where the claimant—

- (a) lives or works in an area set out in the [<sup>F574</sup>Costs Practice Direction]; and
- (b) instructs a solicitor or firm of solicitors who practise in that area,

the fixed recoverable costs shall include, in addition to the costs specified in paragraph (1), an amount equal to 12.5% of the costs allowable under that paragraph.

(3) Where appropriate, value added tax (VAT) may be recovered in addition to the amount of fixed recoverable costs and any reference in this Section to fixed recoverable costs is a reference to those costs net of any such VAT.

### Textual Amendments

**F574** Words in rule 45.9(2)(a) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **23(b)**

### Disbursements

**45.10.—(1)** The court—

- (a) may allow a claim for a disbursement of a type mentioned in paragraph (2); but
- (b) must not allow a claim for any other type of disbursement.

(2) The disbursements referred to in paragraph (1) are—

- (a) the cost of obtaining—
  - (i) medical records;
  - (ii) a medical report;
  - (iii) a police report;
  - (iv) an engineer’s report; or

- (v) a search of the records of the Driver Vehicle Licensing Authority;
  - (b) the amount of an insurance premium [<sup>F575</sup>or, where a [<sup>F576</sup>membership organisation] undertakes to meet liabilities incurred to pay the costs of other parties to proceedings, a sum not exceeding such additional amount of costs as would be allowed under section 30 in respect of provision made against the risk of having to meet such liabilities];
- [<sup>F577</sup>(“membership organisation” is defined in rule 43.2(1)(n))]
- (c) where they are necessarily incurred by reason of one or more of the claimants being a child or [<sup>F578</sup>protected party] as defined in Part 21—
    - (i) fees payable for instructing counsel; or
    - (ii) court fees payable on an application to the court;
  - (d) any other disbursement that has arisen due to a particular feature of the dispute.
- (“insurance premium” is defined in rule 43.2)

#### Textual Amendments

- F575** Words in rule 45.10(2)(b) inserted (1.2.2004) by [The Civil Procedure \(Amendment No. 5\) Rules 2003 \(S.I. 2003/3361\)](#), rules 1(a), **8**
- F576** Words in rule 45.10(2)(b) substituted (1.10.2004) by [The Civil Procedure \(Amendment No.2\) Rules 2004 \(S.I. 2004/2072\)](#), rules 1(b), **11(a)**
- F577** Words in rule 45.10(2) inserted (1.10.2004) by [The Civil Procedure \(Amendment No.2\) Rules 2004 \(S.I. 2004/2072\)](#), rules 1(b), **11(b)**
- F578** Words in rule 45.10(2)(c) substituted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, **13**

#### Success fee

**45.11.**—(1) A claimant may recover a success fee if he has entered into a funding arrangement of a type specified in rule 43.2(k)(i).

[<sup>F579</sup>(2) The amount of the success fee shall be 12.5% of the fixed recoverable costs calculated in accordance with rule 45.9(1), disregarding any additional amount which may be included in the fixed recoverable costs by virtue of rule 45.9(2).]

#### Textual Amendments

- F579** [Rule 45.11\(2\)](#) substituted (1.3.2004) by [The Civil Procedure \(Amendment No. 5\) Rules 2003 \(S.I. 2003/3361\)](#), rules 1(b), **9**

#### Claims for an amount of costs exceeding fixed recoverable costs

**45.12.**—(1) The court will entertain a claim for an amount of costs (excluding any success fee or disbursements) greater than the fixed recoverable costs but only if it considers that there are exceptional circumstances making it appropriate to do so.

- (2) If the court considers such a claim appropriate, it may—
  - (a) assess the costs; or
  - (b) make an order for the costs to be assessed.
- (3) If the court does not consider the claim appropriate, it must make an order for fixed recoverable costs only.

*Status: Point in time view as at 31/01/2011.*

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

### Failure to achieve costs greater than fixed recoverable costs

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

- (a) costs are assessed in accordance with rule 45.12(2); and
- (b) the court assesses the costs (excluding any VAT) as being an amount which is less than 20% greater than the amount of the fixed recoverable costs.

(2) The court must order the defendant to pay to the claimant the lesser of—

- (a) the fixed recoverable costs; and
- (b) the assessed costs.

### Costs of the costs-only proceedings [<sup>F580</sup>or the detailed assessment]

**45.14** Where—

- (a) the court makes an order for fixed recoverable costs in accordance with rule 45.12(3); or
- (b) rule 45.13 applies,

the court must—

- (i) make no award for the payment of the claimant’s costs in bringing the proceedings under rule 44.12A; and
- (ii) order that the claimant pay the defendant’s costs of defending those proceedings.]

#### Textual Amendments

**F580** Words in [rule 45.14](#) heading inserted (1.4.2005) by [The Civil Procedure \(Amendment No. 4\) Rules 2004 \(S.I. 2004/3419\)](#), [rules 1, 12](#)

### [<sup>F581</sup>III—FIXED PERCENTAGE INCREASE IN ROAD TRAFFIC ACCIDENT CLAIMS

#### Textual Amendments

**F581** [Pt. 45](#) Section 3 inserted (1.6.2004) by [The Civil Procedure \(Amendment\) Rules 2004 \(S.I. 2004/1306\)](#), [rule 1\(a\)](#), [Sch. 1 Pt. 2](#)

### Scope and interpretation

**45.15.**—(1) This Section sets out the percentage increase which is to be allowed in the cases to which this Section applies.

(Rule 43.2(1)(l) defines ‘percentage increase’ as 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)

(2) This Section applies where—

- (a) the dispute arises from a road traffic accident; and
- (b) the claimant has entered into a funding arrangement of a type specified in rule 43.2(k)(i).

(Rule 43.2(k)(i) defines a funding arrangement as including an arrangement where a person has entered into a conditional fee agreement or collective conditional fee agreement which provides for a success fee)



(3) This Section does not apply if the proceedings are costs only proceedings to which Section II of this Part applies.

(4) This Section does not apply—

- (a) to a claim which has been allocated to the small claims track;
- (b) to a claim not allocated to a track, but for which the small claims track is the normal track;  
F582 ...
- (c) where the road traffic accident which gave rise to the dispute occurred before 6th October 2003 [F583; or]

[ to a claim to which Section VI of this Part applies.]

F584(d)

(5) The definitions in rule 45.7(4) apply to this Section as they apply to Section II.

(6) In this Section—

- (a) a reference to `fees' is a reference to fees for work done under a conditional fee agreement or collective conditional fee agreement;
- (b) a reference to `trial' is a reference to the final contested hearing or to the contested hearing of any issue ordered to be tried separately;
- (c) a reference to a claim concluding at trial is a reference to a claim concluding by settlement after the trial has commenced or by judgment; and
- (d) “trial period” means a period of time fixed by the court within which the trial is to take place and where the court fixes more than one such period in relation to a claim, means the most recent period to be fixed.

#### Textual Amendments

**F582** Word in rule 45.15(4)(b) omitted (30.4.2010) by virtue of [The Civil Procedure \(Amendment\) Rules 2010 \(S.I. 2010/621\)](#), rules 1(2), **8(c)(i)**

**F583** Word in rule 45.15(4)(c) substituted (30.4.2010) by [The Civil Procedure \(Amendment\) Rules 2010 \(S.I. 2010/621\)](#), rules 1(2), **8(c)(ii)**

**F584** Rule 45.15(4)(d) inserted (30.4.2010) by [The Civil Procedure \(Amendment\) Rules 2010 \(S.I. 2010/621\)](#), rules 1(2), **8(c)(iii)**

#### Percentage increase of solicitors' fees

**45.16.** Subject to rule 45.18, the percentage increase which is to be allowed in relation to solicitors' fees is—

- (a) 100% where the claim concludes at trial; or
- (b) 12.5% where—
  - (i) the claim concludes before a trial has commenced; or
  - (ii) the dispute is settled before a claim is issued.

#### Percentage increase of counsel's fees

**45.17.—(1)** Subject to rule 45.18, the percentage increase which is to be allowed in relation to counsel's fees is—

- (a) 100% where the claim concludes at trial;
- (b) if the claim has been allocated to the fast track—

*Status: Point in time view as at 31/01/2011.*

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

- (i) 50% if the claim concludes 14 days or less before the date fixed for the commencement of the trial; or
- (ii) 12.5% if the claim concludes more than 14 days before the date fixed for the commencement of the trial or before any such date has been fixed;
- (c) if the claim has been allocated to the multi-track—
  - (i) 75% if the claim concludes 21 days or less before the date fixed for the commencement of the trial; or
  - (ii) 12.5% if the claim concludes more than 21 days before the date fixed for the commencement of the trial or before any such date has been fixed;
- (d) 12.5% where—
  - (i) the claim has been issued but concludes before it has been allocated to a track; or
  - (ii) in relation to costs-only proceedings, the dispute is settled before a claim is issued.
- (2) Where a trial period has been fixed, if—
  - (a) the claim concludes before the first day of that period; and
  - (b) no trial date has been fixed within that period before the claim concludes,
 the first day of that period is treated as the date fixed for the commencement of the trial for the purposes of paragraph (1).
- (3) Where a trial period has been fixed, if—
  - (a) the claim concludes before the first day of that period; but
  - (b) before the claim concludes, a trial date had been fixed within that period,
 the trial date is the date fixed for the commencement of the trial for the purposes of paragraph (1).
- (4) Where a trial period has been fixed and the claim concludes—
  - (a) on or after the first day of that period; but
  - (b) before commencement of the trial,
 the percentage increase in paragraph (1)(b)(i) or (1)(c)(i) shall apply as appropriate, whether or not a trial date has been fixed within that period.
- (5) For the purposes of this rule, in calculating the periods of time, the day fixed for the commencement of the trial (or the first day of the trial period, where appropriate) is not included.

#### **Application for an alternative percentage increase where the fixed increase is 12.5%**

- 45.18.**—(1) This rule applies where the percentage increase to be allowed—
- (a) in relation to solicitors' fees under the provisions of rule 45.16; or
  - (b) in relation to counsel's fees under rule 45.17,
- is 12.5%.
- (2) A party may apply for a percentage increase greater or less than that amount if—
    - (a) the parties agree damages of an amount greater than £500,000 or the court awards damages of an amount greater than £500,000; or
    - (b) the court awards damages of £500,000 or less but would have awarded damages greater than £500,000 if it had not made a finding of contributory negligence; or
    - <sup>[F585]</sup>(c) the parties agree damages of £500,000 or less and it is reasonable to expect that if the court had made an award of damages, it would have awarded damages greater than £500,000, disregarding any reduction the court may have made in respect of contributory negligence.]

(3) In paragraph (2), a reference to a lump sum of damages includes a reference to periodical payments of equivalent value.

(4) If the court is satisfied that the circumstances set out in paragraph (2) apply it must—

- (a) assess the percentage increase; or
- (b) make an order for the percentage increase to be assessed.

#### **Textual Amendments**

**F585** Rule 45.18(2)(c) substituted (1.4.2005) by [The Civil Procedure \(Amendment No. 4\) Rules 2004 \(S.I. 2004/3419\)](#), rules 1, **13**

#### **Assessment of alternative percentage increase**

**45.19.**—(1) This rule applies where the percentage increase of fees is assessed under rule 45.18(4).

(2) If the percentage increase is assessed as greater than 20% or less than 7.5%, the percentage increase to be allowed shall be that assessed by the court.

(3) If the percentage increase is assessed as no greater than 20% and no less than 7.5%—

- (a) the percentage increase to be allowed shall be 12.5%; and
- (b) the costs of the application and assessment shall be paid by the applicant.]

#### ***[<sup>F586</sup>IV – FIXED PERCENTAGE INCREASE IN EMPLOYERS LIABILITY CLAIMS***

#### **Textual Amendments**

**F586** Pt. 45 Section 4 inserted (1.10.2004) by [The Civil Procedure \(Amendment No.2\) Rules 2004 \(S.I. 2004/2072\)](#), rule 1(b), **Sch. Pt. 2**

#### **Scope and interpretation**

**45.20.**—(1) Subject to paragraph (2), this Section applies where—

- (a) the dispute is between an employee and his employer arising from a bodily injury sustained by the employee in the course of his employment; and
- (b) the claimant has entered into a funding arrangement of a type specified in rule 43.2(1)(k)(i).

(2) This Section does not apply—

- (a) where the dispute—
    - (i) relates to a disease;
    - (ii) relates to an injury sustained before 1<sup>st</sup> October 2004; or
    - (iii) arises from a road traffic accident (as defined in rule 45.7(4)(a)); or[ relates to an injury to which Section V of this Part applies; or]
- <sup>F587</sup>(iv)

(b) to a claim—

- (i) which has been allocated to the small claims track; or

*Status: Point in time view as at 31/01/2011.*

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

- (ii) not allocated to a track, but for which the small claims track is the normal track.
- (3) For the purposes of this Section—
  - (a) “employee” has the meaning given to it by section 2(1) of the Employers' Liability (Compulsory Insurance) Act 1969; and
  - (b) a reference to “fees” is a reference to fees for work done under a conditional fee agreement or collective conditional fee agreement.

#### **Textual Amendments**

**F587** Rule 45.20(2)(a)(iv) inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **39**

#### **Percentage increase of solicitors' and counsel's fees**

**45.21.** In the cases to which this Section applies, subject to rule 45.22 the percentage increase which is to be allowed in relation to solicitors' and counsel's fees is to be determined in accordance with rules 45.16 and 45.17, subject to the modifications that—

- (a) the percentage increase which is to be allowed in relation to solicitors' fees under rule 45.16(b) is—
  - (i) 27.5% if a membership organisation has undertaken to meet the claimant's liabilities for legal costs in accordance with section 30 of the Access to Justice Act 1999; and
  - (ii) 25% in any other case; and
- (b) the percentage increase which is to be allowed in relation to counsel's fees under rule 45.17(1)(b)(ii), (1)(c)(ii) or (1)(d) is 25%.

(“membership organisation” is defined in rule 43.2(1)(n))

#### **Alternative percentage increase**

**45.22.**—(1) In the cases to which this Section applies, rule 45.18(2)-(4) applies where—

- (a) the percentage increase of solicitors' fees to be allowed in accordance with rule 45.21 is 25% or 27.5%; or
- (b) the percentage increase of counsel's fees to be allowed is 25%.

(2) Where the percentage increase of fees is assessed by the court under rule 45.18(4) as applied by paragraph (1) above—

- (a) if the percentage increase is assessed as greater than 40% or less than 15%, the percentage increase to be allowed shall be that assessed by the court; and
- (b) if the percentage increase is assessed as no greater than 40% and no less than 15%—
  - (i) the percentage increase to be allowed shall be 25% or 27.5% (as the case may be); and
  - (ii) the costs of the application and assessment shall be paid by the applicant.]

**[<sup>F588</sup>V FIXED RECOVERABLE SUCCESS FEES  
IN EMPLOYER'S LIABILITY DISEASE CLAIMS**

**Textual Amendments**

**F588** Pt. 45 Section 5 inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rule 1(c), **Sch. 1**

**Scope and Interpretation**

- 45.23.**—(1) Subject to paragraph (2), this Section applies where—
- (a) the dispute is between an employee (or, if the employee is deceased, the employee's estate or dependants) and his employer (or a person alleged to be liable for the employer's alleged breach of statutory or common law duties of care); and
  - (b) the dispute relates to a disease with which the employee is diagnosed that is alleged to have been contracted as a consequence of the employer's alleged breach of statutory or common law duties of care in the course of the employee's employment; and
  - (c) the claimant has entered into a funding arrangement of a type specified in rule 43.2(1)(k)(i).
- (2) This Section does not apply where—
- (a) the claimant sent a letter of claim to the defendant containing a summary of the facts on which the claim is based and main allegations of fault before 1<sup>st</sup> October 2005; or
  - (b) rule 45.20(2)(b) applies.
- (3) For the purposes of this Section—
- (a) rule 45.15(6) applies;
  - (b) "employee" has the meaning given to it by section 2(1) of the Employers' Liability (Compulsory Insurance) Act 1969;
  - (c) "Type A claim" means a claim relating to a disease or physical injury alleged to have been caused by exposure to asbestos;
  - (d) "Type B claim" means a claim relating to—
    - (i) a psychiatric injury alleged to have been caused by work-related psychological stress;
    - (ii) a work-related upper limb disorder which is alleged to have been caused by physical stress or strain, excluding hand/arm vibration injuries; and
  - (e) "Type C claim" means a claim relating to a disease not falling within either type A or type B.

(The Table annexed to the [<sup>F589</sup>Costs Practice Direction] contains a non-exclusive list of diseases within Type A and Type B).

**Textual Amendments**

**F589** Words in rule 45.23 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **23(c)**

*Status: Point in time view as at 31/01/2011.*

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

### **Percentage increase of solicitors' fees**

**45.24.**—(1) In the cases to which this Section applies, subject to rule 45.26, the percentage increase which is to be allowed in relation to solicitors' fees is—

- (a) 100% if the claim concludes at trial; or
- (b) where—
  - (i) the claim concludes before a trial has commenced; or
  - (ii) the dispute is settled before a claim is issued,
 to be determined by rule 45.24(2).

(2) Where rule 45.24(1)(b) applies, the percentage increase which is to be allowed in relation to solicitors' fees is—

- (a) in type A claims—
  - (i) 30% if a membership organisation has undertaken to meet the claimant's liabilities for legal costs in accordance with section 30 of the Access to Justice Act 1999; and
  - (ii) 27.5% in any other case;
- (b) in type B claims, 100%; and
- (c) in type C claims—
  - (i) 70% if a membership organisation has undertaken to meet the claimant's liabilities for legal costs in accordance with section 30 of the Access to Justice Act 1999; and
  - (ii) 62.5% in any other case.

("Membership organisation" is defined in rule 43.2(1)(n)).

### **Percentage increase of counsel's fees**

**45.25.**—(1) In the cases to which this Section applies, subject to rule 45.26, the percentage increase which is to be allowed in relation to counsel's fees is—

- (a) 100% if the claim concludes at trial; or
- (b) where—
  - (i) the claim concludes before a trial has commenced; or
  - (ii) the dispute is settled before a claim is issued,
 to be determined by rule 45.25(2).

(2) Where rule 45.25(1)(b) applies, the percentage increase which is to be allowed in relation to counsel's fees is—

- (a) if the claim has been allocated to the fast track, the amount shown in Table 6; and
- (b) if the claim has been allocated to the multi-track, the amount shown in Table 7.

(3) Where a trial period has been fixed, rules 45.17(2) to 45.17(5) apply for the purposes of determining the date fixed for the commencement of the trial.

### **Table 6**

Claims allocated to the fast track

	If the claim concludes 14 days or less before the date fixed for commencement of the trial	If the claim concludes more than 14 days before the date fixed for commencement of the trial or before any such date has been fixed
Type A claim	50%	27.5%
Type B claim	100%	100%
Type C claim	62.5%	62.5%

**Table 7****Claims allocated to the multi-track**

	If the claim concludes 21 days or less before the date fixed for commencement of the trial	If the claim concludes more than 21 days before the date fixed for commencement of the trial or before any such date has been fixed
Type A claim	75%	27.5%
Type B claim	100%	100%
Type C claim	75%	62.5%

**Alternative percentage increase**

**45.26.**—(1) In cases to which this Section applies and subject to paragraph (2) below, rules 45.18(2) to (4) apply where the percentage increase is the amount allowed under rules 45.24 and 45.25.

(2) For the purposes of this section, the sum of £250,000 shall be substituted for the sum of £500,000 in rules 45.18(2)(a) to (c).

(3) Where the percentage increase of fees is assessed by the court under rule 45.18(4), as applied by paragraph 1 above, the percentage increase to be allowed shall be the amount shown in Table 8.

(4) The percentage increase cannot be varied where the case concludes at trial.

**Table 8**

Type of claim	Amount Allowed	
A	If the percentage increase is assessed as greater than 40% or less than 15%, the percentage increase that is assessed by the court.	If the percentage increase is assessed as no greater than 40% and no less than 15%— (i) 27.5%; and (ii) the costs of the application and assessment shall be paid by the applicant.
B	If the percentage increase is assessed as less than 75%, the percentage increase that is assessed by the court.	If the percentage increase is assessed as no less than 75%— (i) 100%; and (ii) the costs of the application and

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Type of claim	Amount Allowed	
C	If the percentage increase is assessed as greater than 75% or less than 50%, the percentage increase that is assessed by the court.	assessment shall be paid by the applicant.  If the percentage increase is assessed as no greater than 75% and no less than 50%— (i) 62.5%; and (ii) the costs of the application and assessment shall be paid by the applicant.]

### *<sup>F590</sup>SECTION VI*

#### *PRE-ACTION PROTOCOL FOR LOW VALUE PERSONAL INJURY CLAIMS IN ROAD TRAFFIC ACCIDENTS*

#### **Textual Amendments**

**F590** Pt. 45 Section 6 inserted (30.4.2010) by [The Civil Procedure \(Amendment\) Rules 2010 \(S.I. 2010/621\)](#), rule 1(2), [Sch. 2](#)

#### **Scope and interpretation**

**45.27.**—(1) This Section applies to claims that have been or should have been started under Part 8 in accordance with Practice Direction 8B (“the Stage 3 Procedure”).

(2) Where a party has not complied with the RTA Protocol rule 45.36 will apply.

(3) “RTA Protocol” means the Pre-Action Protocol for Personal Injury Claims in Road Traffic Accidents.

(4) A reference to “Claim Notification Form” is a reference to the form used in the RTA Protocol.

#### **Application of fixed costs, disbursements and success fee**

**45.28.** The only costs allowed are—

- (a) fixed costs in rule 45.29;
- (b) disbursements in accordance with rule 45.30; and
- (c) a success fee in accordance with rule 45.31.

#### **Amount of fixed costs**

**45.29.**—(1) Subject to paragraph (4), the amount of fixed costs is set out in Table 1.

(2) In Table 1—

- (a) “Type A fixed costs” means the legal representative’s costs;
- (b) “Type B fixed costs” means the advocate’s costs; and
- (c) “Type C fixed costs” means the costs for the advice on the amount of damages where the claimant is a child.

(3) Advocate has the same meaning as in rule 46.1(2)(a).



(4) Subject to rule 45.36(2) the court will not award more or less than the amounts shown in Table 1.

(5) Where the claimant—

- (a) lives or works in an area set out in the Costs Practice Direction; and
- (b) instructs a legal representative who practices in that area,

the fixed costs will include, in addition to the costs set out in Table 1, an amount equal to 12.5% of the Stage 1 and 2 and Stage 3 Type A fixed costs.

(6) Where appropriate, value added tax (VAT) may be recovered in addition to the amount of fixed costs and any reference in this Section to fixed costs is a reference to those costs net of any such VAT.

**Table 1 – fixed costs in relation to the RTA Protocol**

Stage 1 fixed costs	£400
Stage 2 fixed costs	£800
Stage 3—	
Type A fixed costs	£250
Type B fixed costs	£250
Type C fixed costs	£150

## Disbursements

**45.30.**—(1) The court—

- (a) may allow a claim for a disbursement of a type mentioned in paragraph (2); but
- (b) must not allow a claim for any other type of disbursement.

(2) The disbursements referred to in paragraph (1) are—

- (a) the cost of obtaining—
  - (i) medical records;
  - (ii) a medical report or reports as provided for in the RTA Protocol;
  - (iii) an engineer’s report;
  - (iv) a search of the records of the—
    - (aa) Driver Vehicle Licensing Authority;
    - (bb) Motor Insurance Database;
- (b) the amount of the insurance premium or, where a membership organisation undertakes to meet liabilities incurred to pay the costs of other parties to proceedings, a sum not exceeding such additional amount of costs as would be allowed under section 30 of the Access to Justice Act 1999 in respect of provision made against the risk of having to meet such liabilities;
- (c) court fees as a result of Part 21 being applicable;
- (d) court fees payable where proceedings are started as a result of a limitation period that is about to expire;
- (e) court fees in respect of the Stage 3 Procedure;
- (f) any other disbursement that has arisen due to a particular feature of the dispute.

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(insurance premium is defined in rule 43.2(1)(m).)

(membership organisation is defined in rule 43.2(1)(n).)

### Success fee

**45.31.**—(1) A party who has entered into a funding arrangement of a type specified in rule 43.2(1)(k)(i) in respect of any element of the fixed costs in rule 45.29 may recover a success fee on that element of the fixed costs.

(2) A reference to a success fee in this Section is a reference to a success fee in accordance with paragraph (1).

(3) Where the court—

(a) determines the claim at a Stage 3 hearing or on the papers; and

(b) awards an amount of damages that is more than the defendant's RTA Protocol offer,

the amount of the claimant's success fee is—

(i) 12.5% of the Stage 1 and 2 fixed costs; and

(ii) 100% of the relevant Stage 3 fixed costs.

(RTA Protocol offer is defined in rule 36.17.)

(4) Where the court—

(a) determines the claim at a Stage 3 hearing or on the papers; and

(b) awards an amount of damages that is equal to or less than the defendant's RTA Protocol offer,

the amount of the defendant's success fee is 100% of the relevant Stage 3 fixed costs.

(5) Where the claimant is a child and the court—

(a) does not approve a settlement at a settlement hearing;

(b) determines the claim at a Stage 3 hearing; and

(c) awards an amount of damages that is more than the amount of the settlement considered by the court at the first settlement hearing;

the amount of the claimant's success fee is—

(i) 12.5% of the Stage 1 and 2 fixed costs;

(ii) 100% of the relevant Stage 3 fixed costs.

(6) Where paragraphs (3) to (5) do not apply the success fee is—

(a) 12.5% of Stage 1 and 2 fixed costs; and

(b) 12.5% of the relevant Stage 3 fixed costs.

(7) The amount of the success fee set out in paragraphs (3) to (6) will be calculated without regard to any additional amount which may be included in the fixed costs by virtue of rule 45.29(5).

### Where the claimant obtains judgment for an amount more than the defendant's RTA Protocol offer

**45.32.**—(1) Where rule 36.21(1)(b) or (c) applies, the court will order the defendant to pay—

(a) where not already paid by the defendant, the Stage 1 and 2 fixed costs;

(b) where the claim is determined —

(i) on the papers, Stage 3 Type A fixed costs;

- (ii) at a Stage 3 hearing, Stage 3 Type A and B fixed costs; or
- (iii) at a Stage 3 hearing and the claimant is a child, Type A, B and C fixed costs;
- (c) disbursements allowed in accordance with rule 45.30; and
- (d) a success fee in accordance with rule 45.31(3).

**Settlement at Stage 2 where the claimant is a child**

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

- (a) the claimant is a child;
- (b) there is a settlement at Stage 2 of the RTA Protocol; and
- (c) an application is made to the court to approve the settlement.

(2) Where the court approves the settlement at a settlement hearing it will order the defendant to pay—

- (a) the Stage 1 and 2 fixed costs;
- (b) the Stage 3 Type A, B and C fixed costs;
- (c) disbursements allowed in accordance with rule 45.30; and
- (d) a success fee in accordance with rule 45.31(6).

(3) Where the court does not approve the settlement at a settlement hearing it will order the defendant to pay the Stage 1 and 2 fixed costs.

(4) Paragraphs (5) and (6) apply where the court does not approve the settlement at the first settlement hearing but does approve the settlement at a second settlement hearing.

(5) At the second settlement hearing the court will order the defendant to pay—

- (a) the Stage 3 Type A and C fixed costs for the first settlement hearing;
- (b) disbursements allowed in accordance with rule 45.30;
- (c) the Stage 3 Type B fixed costs for one of the hearings; and
- (d) a success fee in accordance with rule 45.31(6) on the Stage 1 and 2 fixed costs and the Stage 3 Type A, B and C fixed costs.

(6) The court in its discretion may also order—

- (a) the defendant to pay—
  - (i) an additional amount of either or both the Stage 3—
    - (aa) Type A fixed costs;
    - (bb) Type B fixed costs; and
  - (ii) a success fee in accordance with rule 45.31(6) on the additional Stage 3 fixed costs in sub-paragraph (a)(i); or
- (b) the claimant to pay an amount equivalent to either or both the Stage 3—
  - (i) Type A fixed costs;
  - (ii) Type B fixed costs.

**Settlement at Stage 3 where the claimant is a child**

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

- (a) the claimant is a child;
- (b) there is a settlement after proceedings are started under the Stage 3 Procedure;

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- (c) the settlement is more than the defendant's RTA Protocol offer; and
  - (d) an application is made to the court to approve the settlement.
- (2) Where the court approves the settlement at the settlement hearing it will order the defendant to pay—
- (a) the Stage 1 and 2 fixed costs;
  - (b) the Stage 3 Type A, B and C fixed costs;
  - (c) disbursements allowed in accordance with rule 45.30; and
  - (d) a success fee in accordance with rule 45.31(6).
- (3) Where the court does not approve the settlement at the settlement hearing it will order the defendant to pay the Stage 1 and 2 fixed costs.
- (4) Paragraphs (5) and (6) apply where the court does not approve the settlement at the first settlement hearing but does approve the settlement at the Stage 3 hearing.
- (5) At the Stage 3 hearing the court will order the defendant to pay—
- (a) the Stage 3 Type A and C fixed costs for the settlement hearing;
  - (b) disbursements allowed in accordance with rule 45.30;
  - (c) the Stage 3 Type B fixed costs for one of the hearings; and
  - (d) a success fee in accordance with rule 45.31(6) on the Stage 1 and 2 fixed costs and the Stage 3 Type A, B and C fixed costs.
- (6) The court in its discretion may also order—
- (a) the defendant to pay—
    - (i) an additional amount of either or both the Stage 3—
      - (aa) Type A fixed costs;
      - (bb) Type B fixed costs; and
    - (ii) a success fee in accordance with rule 45.31(6) on the additional Stage 3 fixed costs in sub-paragraph (a)(i); or
  - (b) the claimant to pay an amount equivalent to either or both of the Stage 3—
    - (i) Type A fixed costs;
    - (ii) Type B fixed costs.
- (7) Where the settlement is not approved at the Stage 3 hearing the court will order the defendant to pay the Stage 3 Type A fixed costs.

**Where the court orders the claim is not suitable to be determined under the Stage 3 Procedure and the claimant is a child**

**45.35.** Where—

- (a) the claimant is a child; and
- (b) at a settlement hearing or the Stage 3 hearing the court orders that the claim is not suitable to be determined under the Stage 3 Procedure,

the court will order the defendant to pay—

- (i) the Stage 1 and 2 fixed costs; and
- (ii) the Stage 3 Type A, B and C fixed costs.

### **Failure to comply or electing not to continue with the RTA Protocol – costs consequences**

**45.36.**—(1) This rule applies where the claimant—

- (a) does not comply with the process set out in the RTA Protocol; or
- (b) elects not to continue with that process,

and starts proceedings under Part 7.

(2) Where a judgment is given in favour of the claimant but—

- (a) the court determines that the defendant did not proceed with the process set out in the RTA Protocol because the claimant provided insufficient information on the Claim Notification Form;
- (b) the court considers that the claimant acted unreasonably—
  - (i) by discontinuing the process set out in the RTA Protocol and starting proceedings under Part 7;
  - (ii) by valuing the claim at more than £10,000, so that the claimant did not need to comply with the RTA Protocol; or
  - (iii) except for paragraph (2)(a), in any other way that caused the process in the RTA Protocol to be discontinued; or
- (c) the claimant did not comply with the RTA Protocol at all despite the claim falling within the scope of the RTA Protocol;

the court may order the defendant to pay no more than the fixed costs in rule 45.29 together with the disbursements allowed in accordance with rule 45.30 and success fee in accordance with rule 45.31(3).

(3) Where the claimant starts proceedings under paragraph 7.22 of the RTA Protocol and the court orders the defendant to make an interim payment of no more than the interim payment made under paragraph 7.14(2) or (3) of that Protocol the court will, on the final determination of the proceedings, order the defendant to pay no more than—

- (a) the Stage 1 and 2 fixed costs;
- (b) the disbursements allowed in accordance with rule 45.30; and
- (c) a success fee in accordance with rule 45.31(3).

### **Where the parties have settled after proceedings have started**

**45.37.**—(1) This rule applies where an application is made under rule 44.12C (costs-only application after a claim is started under Part 8 in accordance with Practice Direction 8B).

(2) Where the settlement is more than the defendant's RTA Protocol offer the court will order the defendant to pay—

- (a) the Stage 1 and 2 fixed costs where not already paid by the defendant;
- (b) the Stage 3 Type A fixed costs;
- (c) disbursements allowed in accordance with rule 45.30; and
- (d) a success fee in accordance with rule 45.31(6).

(3) Where the settlement is less than or equal to the defendant's RTA Protocol offer the court will order the defendant to pay—

- (a) the Stage 1 and 2 fixed costs where not already paid by the defendant;
- (b) disbursements allowed in accordance with rule 45.30; and
- (c) a success fee in accordance with rule 45.31(6).

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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)*

- (4) The court may, in its discretion, order either party to pay the costs of the application.

**Where the claimant obtains judgment for an amount equal to or less than the defendant’s RTA Protocol offer**

**45.38.** Where rule 36.21(1)(a) applies, the court will order the claimant to pay—

- (a) where the claim is determined—
  - (i) on the papers, Stage 3 Type A fixed costs; or
  - (ii) at a hearing, Stage 3 Type A and B fixed costs;
- (b) disbursements allowed in accordance with rule 45.30; and
- (c) a success fee in accordance with rule 45.31(4).

**Adjournment**

**45.39.** Where the court adjourns a settlement hearing or a Stage 3 hearing it may, in its discretion, order a party to pay—

- (a) an additional amount of the Stage 3 Type B fixed costs; and
- (b) any court fee for that adjournment.

**Account of payment of Stage 1 fixed costs**

**45.40.** Where a claim no longer continues under the RTA Protocol the court will, when making any order as to costs including an order for fixed recoverable costs under Section II of this Part, take into account the Stage 1 fixed costs together with any success fee on those costs that have been paid by the defendant.]

*<sup>F591</sup>SECTION VII*

*SCALE COSTS FOR CLAIMS IN A PATENTS COUNTY COURT*

**Textual Amendments**

**F591** Pt. 45 Section 7 inserted (1.10.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2010 \(S.I. 2010/1953\)](#), rule 1(2), **Sch. 1**

**Scope and interpretation**

- 45.41.**—(1) Subject to paragraph (2) this Section applies to proceedings in a patents county court.
- (2) This Section does not apply where—
- (a) the court considers that a party has behaved in a manner which amounts to an abuse of the court’s process; or
  - (b) the claim concerns the infringement or revocation of a patent or registered design the validity of which has been certified by a court in earlier proceedings.
- (3) The court will make a summary assessment of the costs of the party in whose favour any order for costs is made. Rules 44.3(8), 44.3A(2)(b) and (c), 44.7(b) and Part 47 do not apply to this Section.
- (4) “Scale costs” means costs as defined in rule 43.2(1)(a).

**Amount of scale costs**

**45.42.**—(1) Subject to rule 45.43 the court will not order a party to pay total costs of more than—

- (a) £50,000 on the final determination of a claim in relation to liability; and
- (b) £25,000 on an inquiry as to damages or account of profits.

(2) The amounts in paragraph (1) apply after the court has applied the provision on set off in accordance with rule 44.3(9)(a).

(3) The maximum amount of scale costs that the court will award for each stage of the claim is set out in the Costs Practice Direction.

(4) The amount of the scale costs awarded by the court in accordance with paragraph (3) will depend on the nature and complexity of the claim.

(5) Where appropriate, value added tax (VAT) may be recovered in addition to the amount of the scale costs and any reference in this Section to scale costs is a reference to those costs net of any such VAT.

**Summary assessment of the costs of an application where a party has behaved unreasonably**

**45.43.** Costs awarded to a party under rule 63.26(2) are in addition to the total costs that may be awarded to that party under rule 45.42.]

**PART 46****FAST TRACK TRIAL COSTS****Contents of this Part**

Scope of this Part	46.1
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**

**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

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- (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 [<sup>F592</sup>protected parties] )

#### Textual Amendments

**F592** Words in rule 46.1(2) substituted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, **14(a)**

#### Commencement Information

**I313** [Rule 46.1](#) in force at 26.4.1999, see [Signature](#)

### Amount of fast track trial costs

**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>
[ <sup>F593</sup> No more than £3,000]	[ <sup>F594</sup> £485]
More than £3,000 but not more than £10,000	[ <sup>F595</sup> £690]
More than £10,000 [ <sup>F596</sup> but not more than £15,000]	[ <sup>F597</sup> £1,035]
[ <sup>F598</sup> For proceedings issued on or after 6th April 2009, more than £15,000]	£1,650]

- (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.

- (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 [<sup>F599</sup>of 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 [<sup>F600</sup>£15,000], if the claim form states that the claimant cannot reasonably say how much [<sup>F601</sup>is likely to be recovered].

(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 [<sup>F602</sup>the] 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.

F603

**Textual Amendments**

- F593** Words in rule 46.2(1) Table substituted (1.10.2007) by The Civil Procedure (Amendment) Rules 2007 (S.I. 2007/2204), rules 1, **14(b)(i)** (with rule 22)
- F594** Sum in rule 46.2(1) Table substituted (1.10.2007) by The Civil Procedure (Amendment) Rules 2007 (S.I. 2007/2204), rules 1, **14(b)(ii)** (with rule 22)
- F595** Sum in rule 46.2(1) Table substituted (1.10.2007) by The Civil Procedure (Amendment) Rules 2007 (S.I. 2007/2204), rules 1, **14(b)(iii)** (with rule 22)
- F596** Words in rule 46.2(1) Table inserted (6.4.2009) by The Civil Procedure (Amendment No.3) Rules 2008 (S.I. 2008/3327), rules 1, **10(a)(i)**
- F597** Sum in rule 46.2(1) Table substituted (1.10.2007) by The Civil Procedure (Amendment) Rules 2007 (S.I. 2007/2204), rules 1, **14(b)(iv)** (with rule 22)
- F598** Rule 46.2(1) Table entry inserted (6.4.2009) by The Civil Procedure (Amendment No.3) Rules 2008 (S.I. 2008/3327), rules 1, **10(a)(ii)**
- F599** Words in rule 46.2(3)(b) substituted (6.4.2009) by The Civil Procedure (Amendment No.3) Rules 2008 (S.I. 2008/3327), rules 1, **10(b)(i)**
- F600** Sum in rule 46.2(b)(iii) substituted (6.4.2009) by The Civil Procedure (Amendment No.3) Rules 2008 (S.I. 2008/3327), rules 1, **10(b)(ii)(aa)**
- F601** Words in rule 46.2(b)(iii) substituted (6.4.2009) by The Civil Procedure (Amendment No.3) Rules 2008 (S.I. 2008/3327), rules 1, **10(b)(ii)(bb)**
- F602** Word in rule 46.2(6)(c) substituted (6.4.2009) by The Civil Procedure (Amendment No.3) Rules 2008 (S.I. 2008/3327), rules 1, **10(c)**
- F603** Words in rule 46.2 omitted (6.4.2009) by virtue of The Civil Procedure (Amendment No.3) Rules 2008 (S.I. 2008/3327), rules 1, **10(d)**

**Commencement Information**

- I314** Rule 46.2 in force at 26.4.1999, see **Signature**

*Status: Point in time view as at 31/01/2011.*

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

### **Power to award more or less than the amount of fast track trial costs**

**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 [<sup>F604</sup>£345] in respect of the legal representative’s attendance at the trial.

(Legal representative is defined in rule 2.3)

[<sup>F605</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 [<sup>F606</sup>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 [<sup>F607</sup>£485.]

(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 [<sup>F608</sup>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

- F604** Sum in rule 46.3(2) substituted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), [rules 1, 14\(c\)](#) (with [rule 22](#))
- F605** 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](#))
- F606** Words in [rule 46.3](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\), 24\(a\)](#)
- F607** Sum in rule 46.3(4) substituted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), [rules 1, 14\(d\)](#) (with [rule 22](#))
- F608** Words in [rule 46.3\(5\)\(b\)](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\), 24\(b\)](#)

#### Commencement Information

- I315** [Rule 46.3](#) in force at 26.4.1999, see [Signature](#)

#### Fast track trial costs where there is more than one claimant or defendant

- 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.
- (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.

*Status: Point in time view as at 31/01/2011.*

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

(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

**I316** Rule 46.4 in force at 26.4.1999, see [Signature](#)

## PART 47

### PROCEDURE FOR DETAILED ASSESSMENT OF COSTS AND DEFAULT PROVISIONS

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

- C35** 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)
- C36** Pt. 47 applied (with modifications) (7.10.2001) by [The Railway Administration Order Rules 2001 \(S.I. 2001/3352\)](#), rules 1.1, **6.21**
- C37** Pt. 47 applied (with modifications) (24.2.2003) by [S.I. 1987/2024](#), **rule 60(1)(3)–(7)** (as substituted by [The Non-Contentious Probate \(Amendment\) Rules 2003 \(S.I. 2003/185\)](#), rules 1, **5** (with rule 3))
- C38** Pt. 47 applied (with modifications) (30.12.2005) by [The Family Procedure \(Adoption\) Rules 2005 \(S.I. 2005/2795\)](#), **rule 5(3)** (with rule 5(4))
- C39** Pt. 47 applied (with modifications) (1.1.2006) by [The Proceeds of Crime Act 2002 \(Legal Expenses in Civil Recovery Proceedings\) Regulations 2005 \(S.I. 2005/3382\)](#), regs. 1, **13(2)(a)**
- C40** Pt. 47 applied in part (with modifications) (1.10.2007) by [The Court of Protection Rules 2007 \(S.I. 2007/1744\)](#), rules 1, **160**
- C41** Pt. 47 applied (1.11.2009) by [The Water Industry \(Special Administration\) Rules 2009 \(S.I. 2009/2477\)](#), rules 2, **87**

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## VII COSTS OF DETAILED ASSESSMENT PROCEEDINGS

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*Status: Point in time view as at 31/01/2011.*

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

Offers to settle without prejudice save as to costs of the detailed assessment proceedings Rule 47.19

[<sup>F611</sup>VIII. APPEALS FROM AUTHORISED COURT OFFICERS IN DETAILED ASSESSMENT PROCEEDINGS

Right to appeal Rule 47.20

Court to hear appeal Rule 47.21

Appeal procedure Rule 47.22

Powers of the court on appeal Rule 47.23]

(The definitions contained in Part 43 are relevant to this Part)

### **SECTION I—GENERAL RULES ABOUT DETAILED ASSESSMENT**

#### **Time when detailed assessment may be carried out**

**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 [<sup>F612</sup>Costs Practice Direction] gives further guidance about when proceedings are concluded for the purpose of this rule)

#### **Textual Amendments**

**F612** Words in [rule 47.1](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\), 25\(b\)](#)

#### **Commencement Information**

**I317** [Rule 47.1](#) in force at 26.4.1999, see [Signature](#)

#### **No stay of detailed assessment where there is an appeal**

**47.2** Detailed assessment is not stayed pending an appeal unless the court so orders.

#### **Commencement Information**

**I318** [Rule 47.2](#) in force at 26.4.1999, see [Signature](#)

#### **Powers of an authorised court officer**

**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 <sup>F613</sup>protected party).

(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 <sup>F614</sup>Costs Practice Direction] sets out the relevant procedure)

#### Textual Amendments

**F613** Words in rule 47.3(1)(c) substituted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, **15(a)**

**F614** Words in rule 47.3 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **25(b)**

#### Commencement Information

**I319** [Rule 47.3](#) in force at 26.4.1999, see [Signature](#)

### Venue for detailed assessment proceedings

**47.4.**—(1) All applications and requests in detailed assessment proceedings must be made to or filed at the appropriate office.

(The <sup>F615</sup>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 <sup>F616</sup>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)

#### Textual Amendments

**F615** Words in rule 47.4 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **25(b)**

**F616** Words in rule 47.4(2) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **8**

#### Commencement Information

**I320** [Rule 47.4](#) in force at 26.4.1999, see [Signature](#)

## **SECTION II—COSTS PAYABLE BY ONE PARTY TO ANOTHER— COMMENCEMENT OF DETAILED ASSESSMENT PROCEEDINGS**

### <sup>F617</sup>Application of this Section

**47.5** This Section of Part 47 applies where a cost officer is to make a detailed assessment of—

*Status: Point in time view as at 31/01/2011.*

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

- (a) costs which are payable by one party to another; or
- (b) the sum which is payable by one party to the prescribed charity pursuant to an order under section 194(3) of the Legal Services Act 2007.]

#### Textual Amendments

**F617** Rule 47.5 substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **25(a)**

#### Commencement of detailed assessment proceedings

**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 [<sup>F618</sup>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 [<sup>F619</sup>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)

#### Textual Amendments

**F618** Words in [rule 47.6\(2\)](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **25(a)**

**F619** Words in [rule 47.6](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **25(b)**

#### Commencement Information

**I321** [Rule 47.6](#) in force at 26.4.1999, see [Signature](#)

#### Period for commencing detailed assessment proceedings

**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.



<i>Source of right to detailed assessment</i>	<i>Time by which detailed assessment proceedings must be commenced</i>
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 to set the notice of discontinuance aside under rule 38.4
Acceptance of an offer to settle F620 ... under Part 36	3 months after the date when the right to costs arose.

**Textual Amendments**

**F620** Words in rule 47.7 Table omitted (6.4.2007) by virtue of [The Civil Procedure \(Amendment No.3\) Rules 2006 \(S.I. 2006/3435\)](#), rules 1, 12

**Commencement Information**

**I322** [Rule 47.7](#) in force at 26.4.1999, see [Signature](#)

**Sanction for delay in commencing detailed assessment proceedings**

**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(43); or
- (ii) section 74 of the County Courts Act 1984(44),

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 [F621Community 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 [F622Legal Services Commission].

(43) 1838 c. 110. Section 17 was amended by S.I. 1998/2940.

(44) 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 31/01/2011.*

*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

**F621** 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)

**F622** 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

**I323** [Rule 47.8](#) in force at 26.4.1999, see [Signature](#)

### Points of dispute and consequence of not serving

**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 [<sup>F623</sup>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)

#### Textual Amendments

**F623** Words in rule 47.9 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **25(b)**

#### Commencement Information

**I324** [Rule 47.9](#) in force at 26.4.1999, see [Signature](#)

### Procedure where costs are agreed

**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>F624</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

**F624** 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

**I325** 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**

**47.11.—**(1) Where the receiving party is permitted by rule 47.9 to obtain a default costs certificate, [<sup>F625</sup>that party] does so by filing a request in the relevant practice form.

(The [<sup>F626</sup>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>F627</sup>(3) Where a receiving party obtains a default costs certificate, the costs payable to [<sup>F628</sup>that party] for the commencement of detailed assessment proceedings [<sup>F629</sup>will] be the sum set out in the [<sup>F630</sup>Costs Practice Direction].]

[<sup>F631</sup>(4) A receiving party who obtains a default costs certificate in detailed assessment proceedings pursuant to an order under section 194(3) of the Legal Services Act 2007 must send a copy of the default costs certificate to the prescribed charity.]

#### Textual Amendments

**F625** Words in rule 47.11(1) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **25(b)(i)**

**F626** Words in rule 47.11 substituted (6.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), **25(b)**

**F627** Rule 47.11(3) inserted (26.4.1999) by The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **18**

**F628** Words in rule 47.11(3) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **25(b)(ii)(aa)**

**F629** Word in rule 47.11(3) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **25(b)(ii)(bb)**

**F630** Words in rule 47.11(3) substituted (6.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), **25(a)**

**F631** Rule 47.11(4) inserted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **25(b)(iii)**

#### Commencement Information

**I326** Rule 47.11 in force at 26.4.1999, see [Signature](#)

*Status: Point in time view as at 31/01/2011.*

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

### Setting aside default costs certificate

**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 [<sup>F632</sup>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)

[<sup>F633</sup>(5) Where the court sets aside or varies a default costs certificate in detailed assessment proceedings pursuant to an order under section 194(3) of the Legal Services Act 2007, the receiving party must send a copy of the order setting aside or varying the default costs certificate to the prescribed charity.]

#### Textual Amendments

**F632** Words in [rule 47.12](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009](#) (S.I. 2009/3390), [rules 1\(2\)](#), [25\(b\)](#)

**F633** [Rule 47.12\(5\)](#) inserted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008](#) (S.I. 2008/2178), [rules 1\(2\)](#), [25\(c\)](#)

#### Commencement Information

**I327** [Rule 47.12](#) in force at 26.4.1999, see [Signature](#)

## **SECTION IV—COSTS PAYABLE BY ONE PARTY TO ANOTHER —PROCEDURE WHERE POINTS OF DISPUTE ARE SERVED**

### Optional reply

**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>F634</sup>(The [<sup>F635</sup>Costs Practice Direction] sets out the meaning of reply)]

**Textual Amendments**

**F634** 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)

**F635** Words in rule 47.13 substituted (6.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), **25(b)**

**Commencement Information**

**I328** Rule 47.13 in force at 26.4.1999, see **Signature**

**Detailed assessment hearing**

**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>F636</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(**45**); or
- (ii) section 74 of the County Courts Act 1984(**46**),

but must not impose any other sanction except in accordance with rule 44.14 (powers in relation to misconduct).

(6) No [<sup>F637</sup>party] other than—

- (a) the receiving party;
- (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 [<sup>F638</sup>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)

(45) 1838 c. 110. Section 17 was amended by S.I. 1998/2940.

(46) 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 31/01/2011.*

*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

- F636** 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**
- F637** Word in rule 47.14(6) substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002](#) (S.I. 2002/2058), rules 1(b), **17**
- F638** Words in rule 47.14 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009](#) (S.I. 2009/3390), rules 1(2), **25(b)**

#### Commencement Information

- I329** [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

**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.

[<sup>F639</sup>(4) Where the court—

- (a) issues an interim costs certificate; or
- (b) amends or cancels an interim certificate,

in detailed assessment proceedings pursuant to an order under section 194(3) of the Legal Services Act 2007, the receiving party must send a copy of the interim costs certificate or the order amending or cancelling the interim costs certificate to the prescribed charity.]

#### Textual Amendments

- F639** [Rule 47.15\(4\)](#) inserted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008](#) (S.I. 2008/2178), rules 1(2), **25(d)**

#### Commencement Information

- I330** [Rule 47.15](#) in force at 26.4.1999, see [Signature](#)

#### Final costs certificate

**47.16.**—(1) In this rule a completed bill means a bill <sup>F640</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 [F641]Costs Practice Direction] deals with the form of a final costs certificate)

[F642] (6) Where the court issues a final costs certificate in detailed assessment proceedings pursuant to an order under section 194(3) of the Legal Services Act 2007, the receiving party must send a copy of the final costs certificate to the prescribed charity.]

#### Textual Amendments

**F640** 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**

**F641** Words in rule 47.16 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **25(b)**

**F642** Rule 47.16(6) inserted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **25(e)**

#### Commencement Information

**I331** [Rule 47.16](#) in force at 26.4.1999, see [Signature](#)

### **[F643] 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

**F643** [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 [F644]a LSC funded client or] an assisted person where costs are payable out of the [F645]Community Legal Service Fund]**

**47.17.**—(1) Where the court is to assess costs of [F646]a LSC funded client or] an assisted person which are payable out of the [F645]Community Legal Service Fund], [F647]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 [F648]the LSC funded client or] the assisted person, if notice of [F647]that person's] interest has been given to the court in accordance with [F649]community legal service or] legal aid regulations.

(4) Where the solicitor has certified that [F650]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.

*Status: Point in time view as at 31/01/2011.*

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

- (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

- F644** 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)
- F645** 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)
- F646** 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)
- F647** 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)
- F648** 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)
- F649** 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**
- F650** 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

- I332** [Rule 47.17](#) in force at 26.4.1999, see [Signature](#)

#### [<sup>F651</sup>Detailed assessment procedure where costs are payable out of a fund other than the Community Legal Service Fund

**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

- F651** [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**

**47.18.**—(1) The receiving party is entitled to [<sup>F652</sup>the] 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.

[<sup>F653</sup>(1A) Paragraph (1) does not apply where the receiving party has pro bono representation in the detailed assessment proceedings but that party may apply for an order in respect of that representation under section 194(3) of the Legal Services Act 2007.]

(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
- (c) whether it was reasonable for a party to claim the costs of a particular item or to dispute that item.

**Textual Amendments**

**F652** Word in [rule 47.18\(1\)](#) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), [rules 1\(2\)](#), [25\(f\)\(i\)](#)

**F653** [Rule 47.18\(1A\)](#) inserted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), [rules 1\(2\)](#), [25\(f\)\(ii\)](#)

**Commencement Information**

**I333** [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**

**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 [<sup>F654</sup>Costs Practice Direction] provides that rule 47.19 does not apply where the receiving party is [<sup>F655</sup>a LSC funded client or] an assisted person [<sup>F656</sup>, unless the court orders otherwise])

**Textual Amendments**

**F654** Words in [rule 47.19](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\)](#), [25\(b\)](#)

*Status: Point in time view as at 31/01/2011.*

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

**F655** 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)

**F656** Words in rule 47.19 inserted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **18**

#### Commencement Information

**I334** [Rule 47.19](#) in force at 26.4.1999, see [Signature](#)

### <sup>[F657]</sup> SECTION VIII—APPEALS FROM AUTHORISED COURT OFFICERS IN DETAILED ASSESSMENT PROCEEDINGS

#### Textual Amendments

**F657** 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

**47.20.**—<sup>[F658]</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>[F659]</sup>(2) For the purposes of this Section, a LSC funded client or an assisted person is not a party to detailed assessment proceedings.]

#### Textual Amendments

**F658** 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)

**F659** 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

**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

**47.22.**—(1) The appellant must file an appeal notice within <sup>[F660]</sup>21 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>[F661]</sup>hearing] to those parties.

#### Textual Amendments

**F660** Word in rule 47.22 substituted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, **15(b)**

**F661** 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

**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

### COSTS—SPECIAL CASES

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

- C42** 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)
- C43** Pt. 48 applied (with modifications) (7.10.2001) by The Railway Administration Order Rules 2001 (S.I. 2001/3352), rules 1.1, **6.21**
- C44** Pt. 48 applied (with modifications) (24.2.2003) by S.I. 1987/2024, **rule 60(1)(3)–(7)** (as substituted by The Non-Contentious Probate (Amendment) Rules 2003 (S.I. 2003/185), rules 1, **5** (with rule 3))
- C45** Pt. 48 applied (with modifications) (30.12.2005) by The Family Procedure (Adoption) Rules 2005 (S.I. 2005/2795), **rule 5(3)**
- C46** Pt. 48 applied in part (with modifications) (1.10.2007) by The Court of Protection Rules 2007 (S.I. 2007/1744), rules 1, **160**
- C47** Pt. 48 applied (1.11.2009) by The Water Industry (Special Administration) Rules 2009 (S.I. 2009/2477), rules 2, **87**

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*Status: Point in time view as at 31/01/2011.*

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

## II COSTS RELATING TO SOLICITORS AND OTHER LEGAL REPRESENTATIVES

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### **SECTION 1—COSTS PAYABLE BY OR TO PARTICULAR PERSONS**

#### **Pre-commencement disclosure and orders for disclosure against a person who is not a party**

**48.1.**—(1) This paragraph applies where a person applies—

(a) for an order under—

- (i) section 33 of the Supreme Court Act 1981(47); or
- (ii) section 52 of the County Courts Act 1984(48),

(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(49); or
- (ii) section 53 of the County Courts Act 1984(50),

(which give the court power to make an order against a non-party for disclosure of documents, inspection of property etc.).

(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.

#### **Commencement Information**

**I335** Rule 48.1 in force at 26.4.1999, see [Signature](#)

(47) 1981 c. 54. Section 33 was amended by S.I. 1998/2940.

(48) 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.

(49) 1981 c. 54. Section 34 was amended by S.I. 1998/2940.

(50) 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.

### Costs orders in favour of or against non-parties

**48.2.**—(1) Where the court is considering whether to exercise its power under section 51 of the Supreme Court Act 1981(**51**) (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>F664</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).

#### Textual Amendments

**F664** 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)

#### Commencement Information

**I336** [Rule 48.2](#) in force at 26.4.1999, see [Signature](#)

### Amount of costs where costs are payable pursuant to a contract

**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,

and the court will assess them accordingly.

(The [<sup>F665</sup>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.

#### Textual Amendments

**F665** Words in rule 48.3 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **26(a)(ii)**

#### Commencement Information

**I337** [Rule 48.3](#) in force at 26.4.1999, see [Signature](#)

(51) [1981 c. 54](#). Section 51 was substituted by section 4(1) of the Courts and Legal Services Act [1990 \(c. 41\)](#).

*Status: Point in time view as at 31/01/2011.*

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

## Limitations on court's power to award costs in favour of trustee or personal representative

**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>F666</sup>(2) The general rule is that he is entitled to be paid the costs of those proceedings, insofar as they are not recovered from or paid by any other person, out of the relevant trust fund or estate.

(3) Where he is entitled to be paid any of those costs out of the fund or estate, those costs will be assessed on the indemnity basis.]

### Textual Amendments

**F666** Rule 48.4(2)(3) substituted (25.3.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(c), 27

### Commencement Information

**I338** Rule 48.4 in force at 26.4.1999, see [Signature](#)

## Costs where money is payable by or to a child or [<sup>F667</sup>protected party]

**48.5.**—(1) This rule applies to any proceedings where a party is a child or [<sup>F668</sup>protected party] 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 “[<sup>F668</sup>protected party]” [<sup>F669</sup>have the same meaning as in rule 21.1(2)])

(2) The general rule is that—

- (a) the court must order a detailed assessment of the costs payable by [<sup>F670</sup>, or out of money belonging to,] any party who is a child or [<sup>F668</sup>protected party]<sup>F671</sup>...; and

[<sup>F672</sup>(b) on an assessment under paragraph (a), the court must also assess any costs payable to that party in the proceedings, unless—

- (i) the court has issued a default costs certificate in relation to those costs under rule 47.11; or
- (ii) the costs are payable in proceedings to which Section II [<sup>F673</sup>or Section VI] of Part 45 applies.]

(3) The court need not order detailed assessment of costs in the circumstances set out in the [<sup>F674</sup>Costs Practice Direction].

(4) Where—

- (a) a claimant is a child or [<sup>F668</sup>protected party]; and
- (b) a detailed assessment has taken place under paragraph (2)(a),

the only amount payable by the child or [<sup>F668</sup>protected party]<sup>F675</sup>... is the amount which the court certifies as payable.

(This rule applies to a counterclaim by or on behalf of child or [<sup>F668</sup>protected party] by virtue of rule 20.3)

**Textual Amendments**

- F667** Words in rule 48.5 heading substituted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, **16(b)**
- F668** Words in rule 48.5 substituted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, **16(c)**
- F669** Words in rule 48.5(1) substituted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, **16(d)**
- F670** Words in rule 48.5(2)(a) inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **41(a)**
- F671** Words in rule 48.5(2)(a) omitted (1.10.2005) by virtue of [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **41(b)**
- F672** Rule 48.5(2)(b) substituted (1.4.2005) by [The Civil Procedure \(Amendment No. 4\) Rules 2004 \(S.I. 2004/3419\)](#), rules 1, **14**
- F673** Words in rule 48.5(2)(b)(ii) inserted (30.4.2010) by [The Civil Procedure \(Amendment\) Rules 2010 \(S.I. 2010/621\)](#), rules 1(2), **9**
- F674** Words in rule 48.5(3) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **26(a)(i)**
- F675** Words in rule 48.5(4) omitted (1.10.2005) by virtue of [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **41(c)**

**Commencement Information**

- I339** [Rule 48.5](#) in force at 26.4.1999, see [Signature](#)

**Litigants in person**

**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.

[<sup>F676</sup>(3) The litigant in person shall be allowed—

(a) costs for the same categories of—

(i) work; and

(ii) disbursements,

which would have been allowed if the work had been done or the disbursements had been 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 assessing the costs claim.]

(The [<sup>F677</sup>Costs Practice Direction] deals with who may be an expert for the purpose of paragraph (2)(c))

[<sup>F678</sup>(4) The amount of costs to be allowed to the litigant in person for any item of work claimed shall be—

(a) where the litigant can prove financial loss, the amount that he can prove he has lost for time reasonably spent on doing the work; or

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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)*

- (b) where the litigant cannot prove financial loss, an amount for the time reasonably spent on doing the work at the rate set out in the [<sup>F679</sup>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 [<sup>F680</sup>, manager of a body recognised under section 9 of the Administration of Justice Act 1985 or a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act)] who is acting for himself.

#### Textual Amendments

- F676** Rule 48.6(3) substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **19(a)** (with rule 34)
- F677** Words in rule 48.6 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **26(a)(ii)**
- F678** Rule 48.6(4) substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **19(b)** (with rule 34)
- F679** Words in rule 48.6(4)(b) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **26(b)**
- F680** Words in rule 48.6(6)(b) substituted (1.2.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(3), **26(c)**

#### Commencement Information

- I340** Rule 48.6 in force at 26.4.1999, see [Signature](#)

#### [<sup>F681</sup>Costs where the court has made a Group Litigation Order

- 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;
  - (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**

**F681** 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**

**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(**52**) (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>F682</sup>(3) .....

[<sup>F683</sup>(4) When the court makes a wasted costs order, it must—

- (a) specify the amount to be disallowed or paid; or
- (b) direct a costs judge or a district judge to decide the amount of costs to be disallowed or paid.]

(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.

(52) 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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*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

**F682** 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)

**F683** Rule 48.7(4) substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **20**

### Commencement Information

**I341** Rule 48.7 in force at 26.4.1999, see [Signature](#)

## Basis of detailed assessment of solicitor and client costs

**48.8.**—<sup>F684</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>F685</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>F686</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>F687</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.]

### Textual Amendments

**F684** 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)**

**F685** Rule 48.8(1A) inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **24(a)**

**F686** 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)**

**F687** 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**

**I342** [Rule 48.8](#) in force at 26.4.1999, see [Signature](#)

**Conditional fees**

**48.9** <sup>F688</sup> .....

**Textual Amendments**

**F688** [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**

**48.10.**—(1) This [<sup>F689</sup>rule] sets out the procedure to be followed where the court has made an order under Part III of the Solicitors Act 1974(**53**) 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**

**F689** 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**

**I343** [Rule 48.10](#) in force at 26.4.1999, see [Signature](#)

**PART 49**

**SPECIALIST PROCEEDINGS**

[<sup>F690</sup>**49.** These Rules apply to proceedings under—

(a) the Companies Act 1985;

(b) the Companies Act 2006; and

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(c) other legislation relating to companies and limited liability partnerships, subject to the provision of the relevant practice direction which applies to those proceedings.]

#### Textual Amendments

**F690** Rule 49 substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **9**

## PART 50

### APPLICATION OF THE SCHEDULES

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

**C48** Pt. 50 applied (with modifications) (30.12.2005) by [The Family Procedure \(Adoption\) Rules 2005 \(S.I. 2005/2795\)](#), **rule 5(5)**

**50.**—(1) The Schedules to these Rules set out, with modifications, certain provisions previously contained in the Rules of the Supreme Court 1965(**54**) and the County Court Rules 1981(**55**).

(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.

(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.

(54) S.I. 1965/1776.

(55) S.I. 1981/1687.

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

**C49** Rule 50, Sch. 1 savings for effects of S.I. 2001/2792, Sch. 5 (25.3.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(c), **43(2)**

**Commencement Information**

**I344** Rule 50 in force at 26.4.1999, see [Signature](#)

## PART 51

### [<sup>F691</sup>Transitional Arrangements and Pilot Schemes]

**Textual Amendments**

**F691** 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>F692</sup>**51.** . . . . .

**Textual Amendments**

**F692** 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>F693</sup>**51.1**]. [<sup>F694</sup>Practice Direction 51A makes] provision for the extent to which these Rules shall apply to proceedings issued before 26th April 1999.

**Textual Amendments**

**F693** 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)

**F694** Words in rule 51.1 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **27**

**Commencement Information**

**I345** Rule 51 in force at 26.4.1999, see [Signature](#)

[<sup>F695</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**

**F695** 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)

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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)*

## [<sup>F696</sup>PART 52 APPEALS

### Textual Amendments

**F696** 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)

### Modifications etc. (not altering text)

- C50** Pt. 52 applied (24.2.2003) by S.I. 1991/1247, rule 10.27(4) (as inserted by The Family Proceedings (Amendment) Rules 2003 (S.I. 2003/184), rules 1(1), 16)
- C51** Pt. 52 applied (with modifications) (24.2.2003) by S.I. 1987/2024, rule 60(10) (as substituted by The Non-Contentious Probate (Amendment) Rules 2003 (S.I. 2003/185), rules 1, 5 (with rule 3))
- C52** Pt. 52 applied (24.2.2003) by S.I. 1984/265, rule 51(5)(6) (as inserted by The Adoption (Amendment) Rules 2003 (S.I. 2003/183), rules 1(a), 18(b))
- C53** Pt. 52 applied (25.2.2009) by The Bank Insolvency (England and Wales) Rules 2009 (S.I. 2009/356), rules 1, 225 (with rule 3)
- C54** Pt. 52 applied (1.11.2009) by The Water Industry (Special Administration) Rules 2009 (S.I. 2009/2477), rules 2, 99
- C55** Pt. 52 applied (15.11.2010) by The Building Society Insolvency (England and Wales) Rules 2010 (S.I. 2010/2581), rules 1, 218

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***I GENERAL RULES ABOUT APPEALS***

**Scope and interpretation**

**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>F701</sup>(2) This Part does not apply to an appeal in detailed assessment proceedings against a decision of an authorised court officer.]

<sup>F702</sup> ...

(Rules [<sup>F703</sup>47.20] to [<sup>F704</sup>47.23] 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

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- (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

- F701** 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)
- F702** 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)
- F703** Word in rule 52.1 substituted (6.4.2006) by The Civil Procedure (Amendment No.4) Rules 2005 (S.I. 2005/3515), rules 1, **11(a)(i)**
- F704** Word in rule 52.1 substituted (6.4.2006) by The Civil Procedure (Amendment No.4) Rules 2005 (S.I. 2005/3515), rules 1, **11(a)(ii)**

#### Parties to comply with [<sup>F705</sup>Practice Direction 52]

**52.2** All parties to an appeal must comply with [<sup>F706</sup>Practice Direction 52].

#### Textual Amendments

- F705** Words in rule 52.2 heading substituted (6.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), **28(b)(i)**
- F706** Words in rule 52.2 substituted (6.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), **28(c)**

#### Permission

**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(16);
 or
- (b) as provided by [<sup>F707</sup>Practice Direction 52].

(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) [<sup>F708</sup>Subject to paragraph (4A), 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.

[<sup>F709</sup>(4A) Where the Court of Appeal refuses permission to appeal without a hearing, it may, if it considers that the application is totally without merit, make an order that the person seeking permission may not request the decision to be reconsidered at a hearing. <sup>F710</sup> ...

<sup>F711</sup> ...

(4B) °Rule 3.3(5) will not apply to an order that the person seeking permission may not request the decision to be reconsidered at a hearing made under paragraph (4A).]

(5) A request under paragraph (4) must be filed within seven days after service of the notice that permission has been refused.

(6) [<sup>F712</sup>Permission to appeal may be given only 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)

#### Textual Amendments

**F707** Words in rule 52.3(1)(b) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **28(c)**

**F708** Words in rule 52.3(4) substituted (2.10.2006) by [The Civil Procedure \(Amendment\) Rules 2006 \(S.I. 2006/1689\)](#), rules 1, **7(1)(a)**

**F709** Rule 52.3(4A)(4B) inserted (2.10.2006) by [The Civil Procedure \(Amendment\) Rules 2006 \(S.I. 2006/1689\)](#), rules 1, **7(1)(b)**

**F710** Words in rule 52.3(4A) omitted (1.10.2008) by virtue of [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **26(a)** (with rule 44)

**F711** Words in rule 52.3 omitted (1.10.2008) by virtue of [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **26(b)** (with rule 44)

**F712** Words in rule 52.3(6) substituted (6.4.2006) by [The Civil Procedure \(Amendment No.4\) Rules 2005 \(S.I. 2005/3515\)](#), rules 1, **11(b)**

#### Appellant's notice

**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—

- (a) such period as may be directed by the lower court [<sup>F713</sup>(which may be longer or shorter than the period referred to in sub-paragraph (b))]; or

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- (b) where the court makes no such direction, [<sup>F714</sup>21] days after the date of the decision of the lower court that the appellant wishes to appeal.
- (3) [<sup>F715</sup>Subject to paragraph (4) and unless] the appeal court orders otherwise, [<sup>F716</sup>an appellant's 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.

[<sup>F717</sup>(4) Where an appellant seeks permission to appeal against a decision to refuse to grant an interim injunction under section 41 of the Policing and Crime Act 2009 the appellant is not required to serve the appellant's notice on the respondent.]

#### Textual Amendments

- F713** Words in [rule 52.4\(2\)\(a\)](#) inserted (6.4.2006) by [The Civil Procedure \(Amendment No.4\) Rules 2005 \(S.I. 2005/3515\)](#), [rules 1, 11\(e\)\(i\)](#)
- F714** Word in [rule 52.4\(2\)\(b\)](#) substituted (6.4.2006) by [The Civil Procedure \(Amendment No.4\) Rules 2005 \(S.I. 2005/3515\)](#), [rules 1, 11\(e\)\(ii\)](#)
- F715** Words in [rule 52.4\(3\)](#) substituted (31.1.2011) by [The Civil Procedure \(Amendment No.2\) Rules 2010 \(S.I. 2010/1953\)](#), [rules 1\(3\), 6\(a\)](#); [S.I. 2010/2988](#), [art. 2](#)
- F716** Words in [rule 52.4\(3\)](#) substituted (6.4.2006) by [The Civil Procedure \(Amendment No.4\) Rules 2005 \(S.I. 2005/3515\)](#), [rules 1, 11\(e\)\(iii\)](#)
- F717** [Rule 52.4\(4\)](#) inserted (31.1.2011) by [The Civil Procedure \(Amendment No.2\) Rules 2010 \(S.I. 2010/1953\)](#), [rules 1\(3\), 6\(b\)](#); [S.I. 2010/2988](#), [art. 2](#)

#### Respondent's notice

- 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.

[  
F718(7) This rule does not apply where rule 52.4(4) applies.]

**Textual Amendments**

**F718** Rule 52.5(7) inserted (31.1.2011) by [The Civil Procedure \(Amendment No.2\) Rules 2010 \(S.I. 2010/1953\)](#), rules 1(3), **6(c)**; [S.I. 2010/2988](#), **art. 2**

**Variation of time**

**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) [F719Practice Direction 52]; 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)

**Textual Amendments**

**F719** Words in rule 52.6(2)(b) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **28(c)**

**Stay<sup>(g1)</sup>**

**52.7** Unless—

- (a) the appeal court or the lower court orders otherwise; or
  - (b) the appeal is from the [F720Immigration and Asylum Chamber of the Upper Tribunal],
- an appeal shall not operate as a stay of any order or decision of the lower court.

**Textual Amendments**

**F720** Words in rule 52.7(b) substituted (15.2.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(4), **28(d)**

*Status: Point in time view as at 31/01/2011.*

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

### **Amendment of appeal notice**

**52.8** An appeal notice may not be amended without the permission of the appeal court.

### **Striking out <sup>(g1)</sup> appeal notices and setting aside or imposing conditions on permission to appeal**

**52.9.**—(1) The appeal court may—

- (a) strike out the whole or part of an appeal notice;
- (b) set aside<sup>(g1)</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**

**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>(g1)</sup> or
- (b) vary an award of damages made by the jury.

(4) The appeal court may exercise its powers in relation to the whole or part of an order of the lower court.

[  
F721(5) If the appeal court—

- (a) refuses an application for permission to appeal;
- (b) strikes out an appellant's notice; or
- (c) dismisses an appeal,

and it considers that the application, the appellant's notice or the appeal is totally without merit, the provisions of paragraph (6) must be complied with.

(6) Where paragraph (5) applies—

- (a) the court's order must record the fact that it considers the application, the appellant's notice or the appeal to be totally without merit; and
- (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.]

(Part 3 contains general rules about the court's case management powers)

#### Textual Amendments

**F721** Rule 52.10(5)(6) inserted (1.10.2004) by [The Civil Procedure \(Amendment No.2\) Rules 2004 \(S.I. 2004/2072\)](#), rules 1(b), **13**

### Hearing of appeals

- 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

**52.12.**—<sup>F722</sup>(1) The fact that a Part 36 offer <sup>F723</sup>or payment into court] has been made must not be disclosed to any judge of the appeal court who is to hear or determine—

- (a) an application for permission to appeal; or
- (b) an appeal,

until all questions (other than costs) have been determined.]

(2) Paragraph (1) does not apply if the Part 36 offer <sup>F724</sup>or payment into court] 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 <sup>F725</sup>or payment into court] has been made is properly relevant to the matter to be decided.

<sup>F726</sup>(Rule 36.3 has the effect that a Part 36 offer made in proceedings at first instance will not have consequences in any appeal proceedings. Therefore, a fresh Part 36 offer needs to be made in appeal proceedings. However, rule 52.12 applies to a Part 36 offer whether made in the original proceedings or in the appeal.)]

*Status: Point in time view as at 31/01/2011.*

*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**

- F722** Rule 52.12(1) substituted (1.4.2004) by [The Civil Procedure \(Amendment No. 5\) Rules 2003](#) (S.I. 2003/3361), rules 1(c), **10**
- F723** Words in rule 52.12(1) substituted (6.4.2007) by [The Civil Procedure \(Amendment No.3\) Rules 2006](#) (S.I. 2006/3435), rules 1, **13(a)**
- F724** Words in rule 52.12(2) substituted (6.4.2007) by [The Civil Procedure \(Amendment No.3\) Rules 2006](#) (S.I. 2006/3435), rules 1, **13(b)**
- F725** Words in rule 52.12(3) substituted (6.4.2007) by [The Civil Procedure \(Amendment No.3\) Rules 2006](#) (S.I. 2006/3435), rules 1, **13(c)**
- F726** Words in rule 52.12 inserted (6.4.2007) by [The Civil Procedure \(Amendment No.3\) Rules 2006](#) (S.I. 2006/3435), rules 1, **13(d)**

#### **[<sup>F727</sup> Statutory appeals – court’s power to hear any person**

- 52.12A.**—(1) In a statutory appeal, any person may apply for permission—
- (a) to file evidence; or
  - (b) to make representations at the appeal hearing.
- (2) An application under paragraph (1) must be made promptly.]

#### **Textual Amendments**

- F727** Rule 52.12A inserted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007](#) (S.I. 2007/2204), rules 1, **18(c)**

## ***II SPECIAL PROVISIONS APPLYING TO THE COURT OF APPEAL***

### **Second appeals to the court**

**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**

**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—

- (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)(17)

(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

**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

**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.

(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.

*Status: Point in time view as at 31/01/2011.*

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

[<sup>F728</sup>(6A) A request under paragraph (5) or (6) must be filed within 7 days after the party is served with notice of the decision.]

(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<sup>(18)</sup> 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<sup>(19)</sup> provides that there is no appeal to the [<sup>F729</sup>Supreme Court] 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)

#### Textual Amendments

**F728** Rule 52.16(6A) inserted (1.2.2004) by *The Civil Procedure (Amendment No. 5) Rules 2003* (S.I. 2003/3361), rules 1(a), **11**

**F729** Words in rule 52.16 substituted (1.10.2009) by *The Civil Procedure (Amendment) Rules 2009* (S.I. 2009/2092), rules 1(2), **10**

### <sup>F730</sup>Section III—Provisions about reopening appeals

#### Textual Amendments

**F730** Pt. 52 Section 3 inserted (6.10.2003) by *The Civil Procedure (Amendment No. 4) Rules 2003* (S.I. 2003/2113), rules 1(c), **14**

#### Reopening of final appeals

**52.17.**—(1) The Court of Appeal or the High Court will not reopen a final determination of any appeal unless—

- (a) it is necessary to do so in order to avoid real injustice;
- (b) the circumstances are exceptional and make it appropriate to reopen the appeal; and
- (c) there is no alternative effective remedy.

(2) In paragraphs (1), (3), (4) and (6), “appeal” includes an application for permission to appeal.

(3) This rule does not apply to appeals to a county court.

(4) Permission is needed to make an application under this rule to reopen a final determination of an appeal even in cases where under rule 52.3(1) permission was not needed for the original appeal.

(5) There is no right to an oral hearing of an application for permission unless, exceptionally, the judge so directs.

<sup>(18)</sup> 1984 c. 16.

<sup>(19)</sup> 1995 c. 21.



(6) The judge will not grant permission without directing the application to be served on the other party to the original appeal and giving him an opportunity to make representations.

(7) There is no right of appeal or review from the decision of the judge on the application for permission, which is final.

(8) The procedure for making an application for permission is set out in [<sup>F731</sup>Practice Direction 52].]

#### Textual Amendments

**F731** Words in rule 52.17(8) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **28(b)(ii)**

### <sup>F732</sup><sup>F733</sup> IV] STATUTORY RIGHTS OF APPEAL

#### Textual Amendments

**F732** Pt. 52 Section 6 inserted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, **18(d)**

**F733** Pt. 52 Section 6 renumbered as Pt. 52 Section 4 (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(b), **6**

#### Appeals under the Law of Property Act 1922

**52.18.** An appeal lies to the High Court against a decision of the Secretary of State under paragraph 16 of Schedule 15 to the Law of Property Act 1922.

#### Appeals from certain tribunals

**52.19.**—(1) A person who was a party to proceedings before a tribunal referred to 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 tribunal may, of its own initiative or at the request of a party to the proceedings before it, state, in the form of a special case for the decision of the High Court, a question of law arising in the course of the proceedings.

#### Appeals under certain planning legislation

**52.20.**—(1) Where the Secretary of State has given a decision in proceedings on an appeal under Part VII of the Town and Country Planning Act 1990 against an enforcement notice—

- (a) the appellant;
- (b) the local planning authority; or
- (c) another person having an interest in the land to which the notice relates,

may appeal to the High Court against the decision on a point of law.

(2) Where the Secretary of State has given a decision in proceedings on an appeal under Part VIII of that Act against a notice under section 207 of that Act—

- (a) the appellant;
- (b) the local planning authority; or

*Status: Point in time view as at 31/01/2011.*

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

(c) any person (other than the appellant) on whom the notice was served, may appeal to the High Court against the decision on a point of law.

(3) Where the Secretary of State has given a decision in proceedings on an appeal under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a listed building enforcement notice—

- (a) the appellant;
- (b) the local planning authority; or
- (c) any other person having an interest in the land to which the notice relates,

may appeal to the High Court against the decision on a point of law.]]

## [<sup>F734</sup>PART 53

### DEFAMATION CLAIMS

#### Textual Amendments

**F734** 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

**53.1** This Part contains rules about defamation claims.

#### Summary disposal under the Defamation Act 1996

**53.2.**—(1) This rule provides for summary disposal in accordance with the Defamation Act 1996 (“the Act”)(**20**).

(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—

- (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

**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>F735</sup>PART 54

### [<sup>F736</sup>JUDICIAL REVIEW AND STATUTORY REVIEW]

#### Textual Amendments

**F735** 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](#))

**F736** Pt. 54 heading substituted (1.4.2003) by [The Civil Procedure \(Amendment\) Rules 2003 \(S.I. 2003/364\)](#), rules 1, [3](#)

### Contents of this Part

#### [<sup>F737</sup>I JUDICIAL REVIEW

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*Status: Point in time view as at 31/01/2011.*

*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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*[<sup>F742</sup>SECTION I—  
JUDICIAL REVIEW]*

**Textual Amendments**

**F742** Pt. 54 Section 1 heading inserted (1.4.2003) by [The Civil Procedure \(Amendment\) Rules 2003 \(S.I. 2003/364\)](#), rule 1, **Sch. Pt. 1**

**Scope and interpretation**

**54.1.**—(1) [<sup>F743</sup>This Section of this Part] contains rules about judicial review.

(2) [<sup>F744</sup>In this Section]—

(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.

<sup>F745</sup>(b) .....

<sup>F746</sup>(c) .....

<sup>F747</sup>(d) .....

(e) “the judicial review procedure” means the Part 8 procedure as modified by [<sup>F748</sup>this Section];

(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)

**Textual Amendments**

**F743** Words in [rule 54.1\(1\)](#) substituted (1.4.2003) by [The Civil Procedure \(Amendment\) Rules 2003 \(S.I. 2003/364\)](#), rules 1, **5(a)**

**F744** Words in [rule 54.1\(2\)](#) substituted (1.4.2003) by [The Civil Procedure \(Amendment\) Rules 2003 \(S.I. 2003/364\)](#), rules 1, **5(b)(i)**

**F745** [Rule 54.1\(2\)\(b\)](#) omitted (1.5.2004) by virtue of [The Civil Procedure \(Amendment No. 5\) Rules 2003 \(S.I. 2003/3361\)](#), rules 1(d), **12**

**F746** [Rule 54.1\(2\)\(c\)](#) omitted (1.5.2004) by virtue of [The Civil Procedure \(Amendment No. 5\) Rules 2003 \(S.I. 2003/3361\)](#), rules 1(d), **12**

**F747** [Rule 54.1\(2\)\(d\)](#) omitted (1.5.2004) by virtue of [The Civil Procedure \(Amendment No. 5\) Rules 2003 \(S.I. 2003/3361\)](#), rules 1(d), **12**

**F748** Words in [rule 54.1\(2\)\(e\)](#) substituted (1.4.2003) by [The Civil Procedure \(Amendment\) Rules 2003 \(S.I. 2003/364\)](#), rules 1, **5(b)(ii)**

*Status: Point in time view as at 31/01/2011.*

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

### When this [<sup>F749</sup>Section] must be used

**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).

#### Textual Amendments

**F749** Word in rule 54.2 heading substituted (1.4.2003) by [The Civil Procedure \(Amendment\) Rules 2003 \(S.I. 2003/364\)](#), rules 1, **5(c)**

### When this [<sup>F750</sup>Section] may be used

**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 [<sup>F751</sup>, restitution or the recovery of a sum due] but may not seek [<sup>F752</sup>such a remedy] alone.

(Section 31(4) of the Supreme Court Act 1981 sets out the circumstances in which the court may award damages [<sup>F753</sup>, restitution or the recovery of a sum due] on a claim for judicial review)

#### Textual Amendments

**F750** Word in rule 54.3 heading substituted (1.4.2003) by [The Civil Procedure \(Amendment\) Rules 2003 \(S.I. 2003/364\)](#), rules 1, **5(c)**

**F751** Words in rule 54.3(2) inserted (1.5.2004) by [The Civil Procedure \(Amendment No. 5\) Rules 2003 \(S.I. 2003/3361\)](#), rules 1(d), **13(a)(i)**

**F752** Words in rule 54.3(2) substituted (1.5.2004) by [The Civil Procedure \(Amendment No. 5\) Rules 2003 \(S.I. 2003/3361\)](#), rules 1(d), **13(a)(ii)**

**F753** Words in rule 54.3 inserted (1.5.2004) by [The Civil Procedure \(Amendment No. 5\) Rules 2003 \(S.I. 2003/3361\)](#), rules 1(d), **13(b)**

### Permission required

**54.4** The court's permission to proceed is required in a claim for judicial review whether started under this [<sup>F754</sup>Section] or transferred to the Administrative Court.

#### **Textual Amendments**

**F754** Word in rule 54.4 substituted (1.4.2003) by [The Civil Procedure \(Amendment\) Rules 2003 \(S.I. 2003/364\)](#), rules 1, **5(d)**

#### **Time limit for filing claim form**

**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**

**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 [<sup>F755</sup>Practice Direction 54A].

#### **Textual Amendments**

**F755** Words in rule 54.6(2) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **29(b)**

#### **Service of claim form**

**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**

**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
- (b) served on—
  - (i) the claimant; and

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- (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**

**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**

**54.10.**—(1) Where permission to proceed is given the court may also give directions.

[<sup>F756</sup>(2) Directions under paragraph (1) may include—

- (a) a stay<sup>(GL)</sup> of proceedings to which the claim relates;
- (b) directions requiring the proceedings to be heard by a Divisional Court.]

#### **Textual Amendments**

**F756** Rule 54.10(2) substituted (20.10.2010) by [The Civil Procedure \(Amendment No.3\) Rules 2010 \(S.I. 2010/2577\)](#), rules 1(2), 3

#### **Service of order giving or refusing permission**

**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**

**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.

<sup>F757</sup>(6) The court may give directions requiring the proceedings to be heard by a Divisional Court.]

#### **Textual Amendments**

**F757** Rule 54.12(6) inserted (20.10.2010) by [The Civil Procedure \(Amendment No.3\) Rules 2010 \(S.I. 2010/2577\)](#), rules 1(2), 4

### **Defendant etc. may not apply to set aside<sup>(g1)</sup>**

**54.13** Neither the defendant nor any other person served with the claim form may apply to set aside<sup>(g1)</sup> an order giving permission to proceed.

### **Response**

**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).

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**Where claimant seeks to rely on additional grounds**

**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**

- 54.16.**—(1) Rule 8.6 [<sup>F758</sup>(1)] 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 [<sup>F759</sup>Section]; or
    - (ii) direction of the court; or
  - (b) the court gives permission.

**Textual Amendments**

**F758** Word in rule 54.16(1) inserted (2.12.2002) by The Civil Procedure (Amendment) Rules 2002 (S.I. 2002/2058), rules 1(b), 21

**F759** Word in rule 54.16 substituted (1.4.2003) by The Civil Procedure (Amendment) Rules 2003 (S.I. 2003/364), rules 1, 5(d)

**Court’s powers to hear any person**

- 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**

**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**

**54.19.**—(1) This rule applies where the court makes a quashing order in respect of the decision to which the claim relates.

- [<sup>F760</sup>(2) The court may—
  - (a) (i) remit the matter to the decision-maker; and
  - (ii) direct it to reconsider the matter and reach a decision in accordance with the judgment of the court; or
  - (b) in so far as any enactment permits, substitute its own decision for the decision to which the claim relates.

(Section 31 of the Supreme Court Act 1981 enables the High Court, subject to certain conditions, to substitute its own decision for the decision in question.)]

- (3) .....

<sup>F761</sup> .....

**Textual Amendments**

**F760** Rule 54.19(2) substituted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(b), **7(b)**

**F761** Rule 54.19(3) and words omitted (6.4.2008) by virtue of [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(b), **7(c)**

**Transfer**

**54.20** The court may—

- (a) order a claim to continue as if it had not been started under this [<sup>F762</sup>Section]; 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)

**Textual Amendments**

**F762** Word in rule 54.20(a) substituted (1.4.2003) by [The Civil Procedure \(Amendment\) Rules 2003 \(S.I. 2003/364\)](#), rules 1, **5(e)**

F763 ...

**Textual Amendments**

**F763** Pt. 54 Section 2 heading omitted (6.4.2008) by virtue of [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(b), **7(d)(i)**

**Scope and interpretation**

<sup>F764</sup>**54.21** .....

**Textual Amendments**

**F764** Rules 54.21-54.27 omitted (6.4.2008) by virtue of [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(b), **7(d)(ii)**

**Application for review**

<sup>F764</sup>**54.22** .....

**Textual Amendments**

**F764** Rules 54.21-54.27 omitted (6.4.2008) by virtue of [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(b), **7(d)(ii)**

**Time limit for application**

<sup>F764</sup>**54.23** .....

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**Textual Amendments**

**F764** Rules 54.21-54.27 omitted (6.4.2008) by virtue of [The Civil Procedure \(Amendment No.2\) Rules 2007](#) (S.I. 2007/3543), rules 1(b), **7(d)(ii)**

**Service of application**

<sup>F764</sup>**54.24** .....

**Textual Amendments**

**F764** Rules 54.21-54.27 omitted (6.4.2008) by virtue of [The Civil Procedure \(Amendment No.2\) Rules 2007](#) (S.I. 2007/3543), rules 1(b), **7(d)(ii)**

**Determining the application**

<sup>F764</sup>**54.25** .....

**Textual Amendments**

**F764** Rules 54.21-54.27 omitted (6.4.2008) by virtue of [The Civil Procedure \(Amendment No.2\) Rules 2007](#) (S.I. 2007/3543), rules 1(b), **7(d)(ii)**

**Service of order**

<sup>F764</sup>**54.26** .....

**Textual Amendments**

**F764** Rules 54.21-54.27 omitted (6.4.2008) by virtue of [The Civil Procedure \(Amendment No.2\) Rules 2007](#) (S.I. 2007/3543), rules 1(b), **7(d)(ii)**

**Costs**

<sup>F764</sup>**54.27** .....

**Textual Amendments**

**F764** Rules 54.21-54.27 omitted (6.4.2008) by virtue of [The Civil Procedure \(Amendment No.2\) Rules 2007](#) (S.I. 2007/3543), rules 1(b), **7(d)(ii)**

*F765* III – APPLICATIONS FOR STATUTORY REVIEW UNDER SECTION 103A OF THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

**Textual Amendments**

**F765** Pt. 54 Section 3 omitted (15.2.2010) by virtue of [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(4), **29(c)**

**Scope and interpretation**

*F765* **54.28.** . . . . .

**Representation of applicants while filter provision has effect**

*F765* **54.28A.** . . . . .

**Service of documents on appellants within the jurisdiction**

*F765* **54.28B.** . . . . .

**Application for review**

*F765* **54.29.** . . . . .

**Application to extend time limit**

*F765* **54.30.** . . . . .

**Procedure while filter provision has effect**

*F765* **54.31.** . . . . .

**Procedure in fast track cases while filter provision does not have effect**

*F765* **54.32.** . . . . .

**Determination of the application by the Administrative Court**

*F765* **54.33.** . . . . .

**Service of order**

*F765* **54.34.** . . . . .

**Costs**

*F765* **54.35.** . . . . .

**Continuing an application in circumstances in which it would otherwise be treated as abandoned**

*F765* **54.36.** . . . . .]

*Status: Point in time view as at 31/01/2011.*

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

## [<sup>F766</sup>PART 55

### POSSESSION CLAIMS

#### Textual Amendments

**F766** 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](#))

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[ <sup>F767</sup> SECTION III—INTERIM POSSESSION ORDERS	
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## Interpretation

### 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; <sup>F768</sup>...
- [<sup>F769</sup>(d) “the 1985 Act” means the Housing Act 1985;
- (e) “the 1988 Act” means the Housing Act 1988;
- (f) “a demotion claim” means a claim made by a landlord for an order under section 82A of the 1985 Act or section 6A of the 1988 Act (“a demotion order”); <sup>F770</sup>...
- (g) “a demoted tenancy” means a tenancy created by virtue of a demotion order][<sup>F771</sup>; and
- (h) “a suspension claim” means a claim made by a landlord for an order under section 121A of the 1985 Act.]

### Textual Amendments

- F768** Word in rule 55.1(c) omitted (30.6.2004) by virtue of [The Civil Procedure \(Amendment\) Rules 2004 \(S.I. 2004/1306\)](#), rules 1(b), **10(a)**
- F769** Rules 55.1(d)-(g) substituted for rule 55.1(d) (30.6.2004) by [The Civil Procedure \(Amendment\) Rules 2004 \(S.I. 2004/1306\)](#), rules 1(b), **10(b)**
- F770** Word in rule 55.1(f) omitted (1.10.2005) by virtue of [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **42(a)**
- F771** Rule 55.1(h) and word inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **42(b)**

## I-GENERAL RULES

### Scope

**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);

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- (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.

[<sup>F772</sup>(Where a demotion claim or a suspension claim (or both) is made in the same claim form in which a possession claim is started, this Section of this Part applies as modified by rule 65.12. Where the claim is a demotion claim or a suspension claim only, or a suspension claim made in addition to a demotion claim, Section III of Part 65 applies).]

- (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; <sup>F773</sup> ...
  - (b) does not apply where the claimant uses the procedure set out in Section II of this Part [<sup>F774</sup>; and
  - (c) does not apply where the claimant seeks an interim possession order under Section III of this Part except where the court orders otherwise or that Section so provides]

<sup>F775</sup> ...

#### Textual Amendments

**F772** Words in rule 55.2(1) substituted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **43**

**F773** Word in rule 55.2(2)(a) omitted (2.12.2002) by virtue of [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **22(b)(i)**

**F774** Rule 55.2(2)(c) and word inserted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **22(b)(ii)**

**F775** Words in rule 55.2(2) omitted (2.12.2002) by virtue of [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **22(b)(iii)**

#### Starting the claim

**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) [<sup>F776</sup>Practice Direction 55A] 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 [<sup>F777</sup>Practice Direction 55A].



#### Textual Amendments

- F776** Words in rule 55.3(3) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **30(a)**
- F777** Words in rule 55.3(5) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **30(b)**

#### Particulars of claim

**55.4** The particulars of claim must be filed and served with the claim form.

(<sup>F778</sup>Part 16 and Practice Direction 55A) provide details about the contents of the particulars of claim)

#### Textual Amendments

- F778** Words in rule 55.4 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **30(c)**

#### Hearing date

**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

**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”.

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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 response

**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

**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.

(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, [<sup>F779</sup>the claimant] must produce at the hearing a certificate of service of those documents and rule [<sup>F780</sup>6.17(2)(a)] does not apply.

### Textual Amendments

**F779** Words in rule 55.8(6) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **28(a)(i)**

**F780** Word in rule 55.8(6) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **28(a)(ii)**

## Allocation

**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; <sup>F781</sup> ...
  - (d) the importance of vacant possession to the claimant [<sup>F782</sup>; and
  - (e) if applicable, the alleged conduct of the defendant]
- (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.

#### Textual Amendments

**F781** Word in rule 55.9(1)(c) omitted (30.6.2004) by virtue of [The Civil Procedure \(Amendment\) Rules 2004 \(S.I. 2004/1306\)](#), rules 1(b), 12(a)

**F782** Rule 55.9(1)(e) and word inserted (30.6.2004) by [The Civil Procedure \(Amendment\) Rules 2004 \(S.I. 2004/1306\)](#), rules 1(b), 12(b)

#### Possession claims relating to mortgaged residential property

**55.10.**—(1) This rule applies where a mortgagee seeks possession of land which consists of or includes residential property.

[<sup>F783</sup>(2) Within 5 days of receiving notification of the date of the hearing by the court, the claimant must send a notice to—

- (a) the property, addressed to “the tenant or the occupier”; <sup>F784</sup> ...
- (b) the housing department of the local authority within which the property is located [<sup>F785</sup>; and]
- [<sup>F786</sup>(c) any registered proprietor (other than the claimant) of a registered charge over the property.]]

(3) The notice referred to in [<sup>F787</sup>paragraph (2)(a)] 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.

[<sup>F788</sup>(3A) The notice referred to in paragraph 2(b) must contain the information in paragraph (3) and must state the full address of the property.]

(4) The claimant must produce at the hearing—

- (a) a copy of the [<sup>F789</sup>notices]; and
- (b) evidence that [<sup>F790</sup>they have been sent].

[<sup>F791</sup>(4A) An unauthorised tenant of residential property may apply to the court for the order for possession to be suspended.]

*Status: Point in time view as at 31/01/2011.*

*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

- F783** Rule 55.10(2) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009](#) (S.I. 2009/2092), rules 1(2), **11(a)**
- F784** Word in rule 55.10(2)(a) omitted (30.4.2010) by virtue of [The Civil Procedure \(Amendment\) Rules 2010](#) (S.I. 2010/621), rules 1(2), **10(a)(i)**
- F785** Word in rule 55.10(2)(b) substituted (30.4.2010) by [The Civil Procedure \(Amendment\) Rules 2010](#) (S.I. 2010/621), rules 1(2), **10(a)(ii)**
- F786** Rule 55.10(2)(c) inserted (30.4.2010) by [The Civil Procedure \(Amendment\) Rules 2010](#) (S.I. 2010/621), rules 1(2), **10(a)(iii)**
- F787** Words in rule 55.10(3) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009](#) (S.I. 2009/2092), rules 1(2), **11(b)**
- F788** Rule 55.10(3A) inserted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009](#) (S.I. 2009/2092), rules 1(2), **11(c)**
- F789** Words in rule 55.10(4)(a) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009](#) (S.I. 2009/2092), rules 1(2), **11(d)(i)**
- F790** Word in rule 55.10(4)(b) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009](#) (S.I. 2009/2092), rules 1(2), **11(d)(ii)**
- F791** Rule 55.10(4A) inserted (1.10.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2010](#) (S.I. 2010/1953), rules 1(2), **7**

### [<sup>F792</sup>Electronic issue of certain possession claims

**55.10A.**—(1) A practice direction may make provision for a claimant to start certain types of possession claim in certain courts by requesting the issue of a claim form electronically.

(2) The practice direction may, in particular—

- (a) provide that only particular provisions apply in specific courts;
- (b) specify—
  - (i) the type of possession claim which may be issued electronically;
  - (ii) the conditions that a claim must meet before it may be issued electronically;
- (c) specify the court where the claim may be issued;
- (d) enable the parties to make certain applications or take further steps in relation to the claim electronically;
- (e) specify the requirements that must be fulfilled in relation to such applications or steps;
- (f) enable the parties to correspond electronically with the court about the claim;
- (g) specify the requirements that must be fulfilled in relation to electronic correspondence;
- (h) provide how any fee payable on the filing of any document is to be paid where the document is filed electronically.

(3) The Practice Direction may disapply or modify these Rules as appropriate in relation to possession claims started electronically.]

### Textual Amendments

- F792** Rule 55.10A inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005](#) (S.I. 2005/2292), rules 1(c), **44**

## II—ACCELERATED POSSESSION CLAIMS OF PROPERTY LET ON AN ASSURED SHORTHOLD TENANCY

### When this section may be used

- 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>(9)</sup> to recover possession of residential property let under an assured shorthold tenancy; and
  - (b) [<sup>F793</sup>subject to rule 55.12(2),] all the conditions listed in [<sup>F794</sup>rule 55.12(1)] are satisfied.
- (2) The claim must be started in the county court for the district in which the property is situated.

[<sup>F795</sup>(3) In this Section of this Part, a “demoted assured shorthold tenancy” means a demoted tenancy where the landlord is a registered social landlord [<sup>F796</sup>or a private registered provider of social housing].

(By virtue of section 20B of the 1988 Act, a demoted assured shorthold tenancy is an assured shorthold tenancy)]

#### Textual Amendments

**F793** Words in rule 55.11(1)(b) inserted (30.6.2004) by [The Civil Procedure \(Amendment\) Rules 2004 \(S.I. 2004/1306\)](#), rules 1(b), **13(a)(i)**

**F794** Word in rule 55.11(1)(b) substituted (30.6.2004) by [The Civil Procedure \(Amendment\) Rules 2004 \(S.I. 2004/1306\)](#), rules 1(b), **13(a)(ii)**

**F795** Rule 55.11(3) inserted (30.6.2004) by [The Civil Procedure \(Amendment\) Rules 2004 \(S.I. 2004/1306\)](#), rules 1(b), **13(b)**

**F796** Words in rule 55.11(3) inserted (1.4.2010) by [The Civil Procedure \(Amendment\) Rules 2010 \(S.I. 2010/621\)](#), rules 1(3), **10(b)**

### Conditions

- 55.12.**—[<sup>F797</sup>(1)] 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>(10)</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

(9) 1984 c. 28. Section 69 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 46.

(10) 1982 c. 27.

*Status: Point in time view as at 31/01/2011.*

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

- (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>(11)</sup> was given to the tenant in writing.

[<sup>F798</sup>(2) If the tenancy is a demoted assured shorthold tenancy, only the conditions in paragraph (1) (b) and (f) need be satisfied.]

#### Textual Amendments

**F797** Word in rule 55.12 inserted (30.6.2004) by The Civil Procedure (Amendment) Rules 2004 (S.I. 2004/1306), rules 1(b), **14(a)**

**F798** Rule 55.12(2) inserted (30.6.2004) by The Civil Procedure (Amendment) Rules 2004 (S.I. 2004/1306), rules 1(b), **14(b)**

#### Claim form

**55.13.**—(1) The claim form must—

- (a) be in the form set out in [<sup>F799</sup>Practice Direction 55A]; 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 [<sup>F800</sup>(or an alternative service which provides for delivery on the next working day)].

#### Textual Amendments

**F799** Words in rule 55.13(1)(a) substituted (6.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), **30(b)**

**F800** Words in rule 55.13(3) inserted (6.4.2006) by The Civil Procedure (Amendment No.4) Rules 2005 (S.I. 2005/3515), rules 1, **13**

#### Defence

**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 [<sup>F801</sup>Practice Direction 55A].

(11) 1964 c. 81.

### Textual Amendments

**F801** Words in rule 55.14(2) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009](#) (S.I. 2009/3390), rules 1(2), **30(b)**

### Claim referred to judge

- 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

- 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

**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.

*Status: Point in time view as at 31/01/2011.*

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### Postponement of possession

**55.18.**—(1) Where the defendant seeks postponement of possession on the ground of exceptional hardship under section 89 of the Housing Act 1980(12), the judge may direct a hearing of that issue.

(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

**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>F802</sup>SECTION III—INTERIM POSSESSION ORDERS

### Textual Amendments

**F802** Pt. 55 Section 3 inserted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rule 1(b), [Sch. 3 Pt. 2](#)

### When this section may be used

**55.20.**—(1) This Section of this Part applies where the claimant seeks an Interim Possession Order.

(2) In this Section—

- (a) “IPO” means Interim Possession Order; and
- (b) “premises” has the same meaning as in section 12 of the Criminal Law Act 1977.

(3) Where this Section requires an act to be done within a specified number of hours, rule 2.8(4) does not apply.

### Conditions for IPO application

**55.21.**—(1) An application for an IPO may be made where the following conditions are satisfied—

- (a) the only claim made is a possession claim against trespassers for the recovery of premises;
- (b) the claimant—
  - (i) has an immediate right to possession of the premises; and
  - (ii) has had such a right throughout the period of alleged unlawful occupation; and
- (c) the claim is made within 28 days of the date on which the claimant first knew, or ought reasonably to have known, that the defendant (or any of the defendants), was in occupation.



(2) An application for an IPO may not be made against a defendant who entered or remained on the premises with the consent of a person who, at the time consent was given, had an immediate right to possession of the premises.

### The application

**55.22.**—(1) Rules 55.3(1) and (4) apply to the claim.

(2) The claim form and the defendant's form of witness statement must be in the form set out in [F803Practice Direction 55A].

(3) When he files his claim form, the claimant must also file—

- (a) an application notice in the form set out in [F804Practice Direction 55A]; and
- (b) written evidence.

(4) The written evidence must be given—

- (a) by the claimant personally; or
- (b) where the claimant is a body corporate, by a duly authorised officer.

(Rule 22.1(6)(b) provides that the statement of truth must be signed by the maker of the witness statement)

(5) The court will—

- (a) issue—
  - (i) the claim form; and
  - (ii) the application for the IPO; and
- (b) set a date for the hearing of the application.

(6) The hearing of the application will be as soon as practicable but not less than 3 days after the date of issue.

#### Textual Amendments

**F803** Words in rule 55.22(2) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **30(b)**

**F804** Words in rule 55.22(3)(a) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **30(b)**

### Service

**55.23.**—(1) Within 24 hours of the issue of the application, the claimant must serve on the defendant—

- (a) the claim form;
- (b) the application notice together with the written evidence in support; and
- (c) a blank form for the defendant's witness statement (as set out in [F805Practice Direction 55A]) which must be attached to the application notice.

(2) The claimant must serve the documents listed in paragraph (1) in accordance with rule 55.6(a).

(3) At or before the hearing the claimant must file a certificate of service in relation to the documents listed in paragraph (1) and rule [F8066.17(2)(a)] does not apply.

*Status: Point in time view as at 31/01/2011.*

*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

**F805** Words in rule 55.23(1)(c) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **30(b)**

**F806** Word in rule 55.23(3) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **28(b)**

#### Defendant's response

**55.24.**—(1) At any time before the hearing the defendant may file a witness statement in response to the application.

(2) The witness statement should be in the form set out in [<sup>F807</sup>Practice Direction 55A].

#### Textual Amendments

**F807** Words in rule 55.24(2) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **30(b)**

#### Hearing of the application

**55.25.**—(1) In deciding whether to grant an IPO, the court will have regard to whether the claimant has given, or is prepared to give, the following undertakings in support of his application—

- (a) if, after an IPO is made, the court decides that the claimant was not entitled to the order to—
    - (i) reinstate the defendant if so ordered by the court; and
    - (ii) pay such damages as the court may order; and
  - (b) before the claim for possession is finally decided, not to—
    - (i) damage the premises;
    - (ii) grant a right of occupation to any other person; and
    - (iii) damage or dispose of any of the defendant's property.
- (2) The court will make an IPO if—
- (a) the claimant has—
    - (i) filed a certificate of service of the documents referred to in rule 55.23(1); or
    - (ii) proved service of those documents to the satisfaction of the court; and
  - (b) the court considers that—
    - (i) the conditions set out in rule 55.21(1) are satisfied; and
    - (ii) any undertakings given by the claimant as a condition of making the order are adequate.
- (3) An IPO will be in the form set out in [<sup>F808</sup>Practice Direction 55A] and will require the defendant to vacate the premises specified in the claim form within 24 hours of the service of the order.
- (4) On making an IPO the court will set a date for the hearing of the claim for possession which will be not less than 7 days after the date on which the IPO is made.
- (5) Where the court does not make an IPO—
- (a) the court will set a date for the hearing of the claim;
  - (b) the court may give directions for the future conduct of the claim; and

(c) subject to such directions, the claim shall proceed in accordance with Section I of this Part.

#### Textual Amendments

**F808** Words in rule 55.25(3) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **30(b)**

### Service and enforcement of the IPO

**55.26.**—(1) An IPO must be served within 48 hours after it is sealed.

(2) The claimant must serve the IPO on the defendant together with copies of—

- (a) the claim form; and
- (b) the written evidence in support,

in accordance with rule 55.6(a).

(3) CCR Order 26, rule 17 does not apply to the enforcement of an IPO.

(4) If an IPO is not served within the time limit specified by this rule, the claimant may apply to the court for directions for the claim for possession to continue under Section I of this Part.

### After IPO made

**55.27.**—(1) Before the date for the hearing of the claim, the claimant must file a certificate of service in relation to the documents specified in rule 55.26(2).

(2) The IPO will expire on the date of the hearing of the claim.

(3) At the hearing the court may make any order it considers appropriate and may, in particular—

- (a) make a final order for possession;
- (b) dismiss the claim for possession;
- (c) give directions for the claim for possession to continue under Section I of this Part; or
- (d) enforce any of the claimant's undertakings.

(4) Unless the court directs otherwise, the claimant must serve any order or directions in accordance with rule 55.6(a).

(5) CCR Order 24, rule 6 applies to the enforcement of a final order for possession.

### Application to set aside IPO

**55.28.**—(1) If the defendant has left the premises, he may apply on grounds of urgency for the IPO to be set aside before the date of the hearing of the claim.

(2) An application under paragraph (1) must be supported by a witness statement.

(3) On receipt of the application, the court will give directions as to—

- (a) the date for the hearing; and
- (b) the period of notice, if any, to be given to the claimant and the method of service of any such notice.

(4) No application to set aside an IPO may be made under rule 39.3.

(5) Where no notice is required under paragraph (3)(b), the only matters to be dealt with at the hearing of the application to set aside are whether—

- (a) the IPO should be set aside; and

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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)*

(b) any undertaking to re-instate the defendant should be enforced, and all other matters will be dealt with at the hearing of the claim.

(6) The court will serve on all the parties—

(a) a copy of the order made under paragraph (5); and

(b) where no notice was required under paragraph (3)(b), a copy of the defendant’s application to set aside and the witness statement in support.

(7) Where notice is required under paragraph (3)(b), the court may treat the hearing of the application to set aside as the hearing of the claim.]]

## [<sup>F809</sup> PART 56

### LANDLORD AND TENANT CLAIMS AND MISCELLANEOUS PROVISIONS ABOUT LAND

#### Textual Amendments

**F809** 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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##### II—MISCELLANEOUS PROVISIONS ABOUT LAND

Scope Rule 56.4

#### *I—LANDLORD AND TENANT CLAIMS*

##### Scope and interpretation

**56.1.**—(1) In this Section of this Part “landlord and tenant claim” means a claim under—

- (a) the Landlord and Tenant Act 1927(**13**);
- (b) the Leasehold Property (Repairs) Act 1938(**14**);
- (c) the Landlord and Tenant Act 1954(**15**);
- (d) the Landlord and Tenant Act 1985(**16**); <sup>F810</sup> ...

(13) 1978 c. 33.

(14) 1981 c. 54. Section 35A was inserted by the Administration of Justice Act 1982 (c. 53), section 15(1), Schedule 1, Part I.

(15) 1984 c. 28. Section 69 was amended by the Courts and Legal Services Act 1990 (c. 41), section 125(3), Schedule 18, paragraph 46.

(16) 1997 c. 27.

(e) the Landlord and Tenant Act 1987(17)<sup>F811</sup>; or]

[ section 214 of the Housing Act 2004.]

<sup>F812</sup>(f)

(2) A practice direction may set out special provisions with regard to any particular category of landlord and tenant claim.

**Textual Amendments**

**F810** Word in rule 56.1(1)(d) omitted (1.10.2008) by virtue of The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), 29(a)(i)

**F811** Word in rule 56.1(1)(e) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), 29(a)(ii)

**F812** Rule 56.1(1)(f) inserted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), 29(a)(iii)

**Starting the claim**

**56.2.**—(1) The claim must be started in the county court for the district in which the land is situated unless [<sup>F813</sup>paragraph (2) applies] or an enactment provides otherwise.

(2) [<sup>F814</sup>Unless an enactment provides otherwise, the claim] may be started in the High Court if the claimant files with [<sup>F815</sup>the] 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) [<sup>F816</sup>Practice Direction 55A] refers to circumstances which may justify starting the claim in the High Court.

<sup>F817</sup>(4) .....

**Textual Amendments**

**F813** Words in rule 56.2(1) substituted (1.6.2004) by The Civil Procedure (Amendment) Rules 2004 (S.I. 2004/1306), rules 1(a), 15(a) (with rule 20(1))

**F814** Words in rule 56.2 substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), 29(b)(i)

**F815** Word in rule 56.2 substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), 29(b)(ii)

**F816** Words in rule 56.2(3) substituted (6.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), 31(a)

**F817** Rule 56.2(4) omitted (1.6.2004) by virtue of The Civil Procedure (Amendment) Rules 2004 (S.I. 2004/1306), rules 1(a), 15(b) (with rule 20(1))

**<sup>F818</sup>Claims for a new tenancy under section 24 and for the termination of a tenancy under section 29(2) of the Landlord and Tenant Act 1954**

**56.3.**—(1) This rule applies to a claim for a new tenancy under section 24 and to a claim for the termination of a tenancy under section 29(2) of the 1954 Act.

(2) In this rule—

(a) “the 1954 Act” means the Landlord and Tenant Act 1954;

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- (b) “an unopposed claim” means a claim for a new tenancy under section 24 of the 1954 Act in circumstances where the grant of a new tenancy is not opposed;
- (c) “an opposed claim” means a claim for—
  - (i) a new tenancy under section 24 of the 1954 Act in circumstances where the grant of a new tenancy is opposed; or
  - (ii) the termination of a tenancy under section 29(2) of the 1954 Act.
- (3) Where the claim is an unopposed claim—
  - (a) the claimant must use the Part 8 procedure, but the following rules do not apply—
    - (i) rule 8.5; and
    - (ii) rule 8.6; [<sup>F819</sup>and]
  - <sup>F820</sup>(b) . . . . .
  - (c) the court will give directions about the future management of the claim following receipt of the acknowledgment of service.
- [<sup>F821</sup>(4) Where the claim is an opposed claim the claimant must use the Part 7 procedure.]
- ( [<sup>F822</sup>Practice Direction 56] contains provisions about evidence, including expert evidence in opposed claims)]

**Textual Amendments**

**F818** Rule 56.3 substituted (1.6.2004) by [The Civil Procedure \(Amendment\) Rules 2004 \(S.I. 2004/1306\)](#), rules 1(a), **16** (with rule 20(1))

**F819** Word in rule 56.3(3)(a)(ii) inserted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **29(c)(i)**

**F820** Rule 56.3(3)(b) omitted (1.10.2008) by virtue of [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **29(c)(ii)**

**F821** Rule 56.3(4) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **29(c)(iii)**

**F822** Words in rule 56.3 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **31(b)**

**II–MISCELLANEOUS PROVISIONS ABOUT LAND**

**Scope**

**56.4** A practice direction may set out special provisions with regard to claims under the following enactments—

- (a) the Chancel Repairs Act 1932(**19**);
- (b) the Leasehold Reform Act 1967(**20**);
- (c) the Access to Neighbouring Land Act 1992; <sup>F823</sup>...
- (d) the Leasehold Reform, Housing and Urban Development Act 1993 [<sup>F824</sup>; and
- (e) the Commonhold and Leasehold Reform Act 2002]]

(19) 1995 c. 21.  
 (20) 1980 c. 58.

**Textual Amendments**

**F823** Word in rule 56.4(c) omitted (1.4.2003) by virtue of [The Civil Procedure \(Amendment No. 2\) Rules 2002 \(S.I. 2002/3219\)](#), rules 1, **7(a)**

**F824** Rule 56.4(e) and word inserted (1.4.2003) by [The Civil Procedure \(Amendment No. 2\) Rules 2002 \(S.I. 2002/3219\)](#), rules 1, **7(b)**

**[<sup>F825</sup>PART 57****[<sup>F826</sup>PROBATE AND INHERITANCE]****Textual Amendments**

**F825** 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)

**F826** Pt. 57 heading substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **23(a)**

**Contents of this Part**

Scope of this Part and definitions	Rule 57.1
SECTION I—PROBATE CLAIMS	
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SECTION II—RECTIFICATION OF WILLS	Rule 57.12
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[ <sup>F827</sup> IV CLAIMS UNDER THE INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975	

*Status: Point in time view as at 31/01/2011.*

*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 Section	Rule 57.14
Proceedings in the High Court	Rule 57.15
Procedure for claims under section 1 of the Act	Rule 57.16]

### Scope of this Part and definitions

**57.1.**—(1) This Part contains rules about—

- (a) probate claims;
- (b) claims for the rectification of wills; <sup>F828</sup>...
- (c) claims and applications to—
  - (i) substitute another person for a personal representative; or
  - (ii) remove a personal representative <sup>F829</sup>; and
- (d) claims under the Inheritance (Provision for Family and Dependents) Act 1975]

(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(6) defines non-contentious (or common form) probate business.)

- (b) “relevant office” means—
  - (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.

#### Textual Amendments

**F828** Word in rule 57.1(1)(b) omitted (2.12.2002) by virtue of [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), [rules 1\(b\)](#), [23\(c\)\(i\)](#)

**F829** [Rule 57.1\(1\)\(d\)](#) and word inserted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), [rules 1\(b\)](#), [23\(c\)\(ii\)](#)



## SECTION I—PROBATE CLAIMS

### General

- 57.2.**—(1) This Section contains rules about probate claims.
- (2) Probate claims in the High Court are assigned to the Chancery Division.
- [<sup>F830</sup>(3) Probate claims in the county court must only be brought in—
- (a) a county court where there is also a Chancery district registry; or
  - (b) the Central London County Court.]
- (4) All probate claims are allocated to the multi-track.

#### Textual Amendments

**F830** Rule 57.2(3) substituted (6.10.2003) by The Civil Procedure (Amendment No. 4) Rules 2003 (S.I. 2003/2113), rules 1(c), 15

### How to start a probate claim

- 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

- 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 [<sup>F831</sup>6.32 or 6.33], the period for filing an acknowledgment of service is 14 days longer than the relevant period specified in rule [<sup>F832</sup>6.35] or [<sup>F833</sup>Practice Direction 6B].
- (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).

#### Textual Amendments

**F831** Words in rule 57.4(3) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), 30(a)(i)

**F832** Word in rule 57.4(3) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), 30(a)(ii)

**F833** Words in rule 57.4(3) substituted (6.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), 32(a)

*Status: Point in time view as at 31/01/2011.*

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

### **Lodging of testamentary documents and filing of evidence about testamentary documents**

**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
- (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 [F834 Practice Direction 57].)

(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.

#### **Textual Amendments**

**F834** Words in rule 57.5 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **32(b)(i)**

### **Revocation of existing grant**

**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

**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 [<sup>F835</sup>lacked testamentary capacity]; 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.

#### Textual Amendments

**F835** Words in rule 57.7(4)(b) substituted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(b), 8

### Counterclaim

**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

**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

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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)*

(b) if the county court has jurisdiction, to a county court where there is also a Chancery district registry [<sup>F836</sup>or the Central London County Court].

(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).

#### Textual Amendments

**F836** Words in rule 57.9(4)(b) inserted (1.4.2004) by [The Civil Procedure \(Amendment No. 5\) Rules 2003 \(S.I. 2003/3361\)](#), rules 1(c), 14

#### Failure to acknowledge service or to file a defence

**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.

(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

**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(7) provides for rectification of a will. Additional provisions are contained in rule 55 of the Non-Contentious Probate Rules 1987(8).)

(7) 1974 c. 39.

(8) 1981 c. 54. Section 35A was inserted by the Administration of Justice Act 1982 (c. 53), section 15(1), Schedule 1, Part I.

(2) Every personal representative of the estate shall be joined as a party.

(3) [<sup>F837</sup>Practice Direction 57] makes provision for lodging the grant of probate or letters of administration with the will annexed in a claim under this Section.

**Textual Amendments**

**F837** Words in rule 57.12(3) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **32(c)**

**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>(9)</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) [<sup>F838</sup>Practice Direction 57] 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.

**Textual Amendments**

**F838** Words in rule 57.13(4) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **32(c)**

***[<sup>F839</sup>IV CLAIMS UNDER THE INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975***

**Textual Amendments**

**F839** Pt. 57 Section 4 inserted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rule 1(b), **Sch. 4 Pt. 2**

**Scope of this Section**

**57.14** This Section contains rules about claims under the Inheritance (Provision for Family and Dependents) Act 1975<sup>(6)</sup> (“the Act”).

(9) 1984 c. 28. Section 69 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 46.

(6) 1983 c. 20.

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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)*

## Proceedings in the High Court

**57.15.**—(1) Proceedings in the High Court under the Act shall be issued in either—

- (a) the Chancery Division; or
- (b) the Family Division.

(2) The Civil Procedure Rules apply to proceedings under the Act which are brought in the Family Division, except that the provisions of the Family Proceedings Rules 1991(7) relating to the drawing up and service of orders apply instead of the provisions in Part 40 and [<sup>F840</sup>Practice Direction 40B].

### Textual Amendments

**F840** Words in rule 57.15(2) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **32(d)**

## Procedure for claims under section 1 of the Act

**57.16.**—(1) A claim under section 1 of the Act must be made by issuing a claim form in accordance with Part 8.

(2) Rule 8.3 (acknowledgment of service) and rule 8.5 (filing and serving written evidence) apply as modified by paragraphs (3) to (5) of this rule.

(3) The written evidence filed and served by the claimant with the claim form must have exhibited to it an official copy of—

- (a) the grant of probate or letters of administration in respect of the deceased's estate; and
- (b) every testamentary document in respect of which probate or letters of administration were granted.

(4) [<sup>F841</sup>Subject to paragraph (4A), the time] within which a defendant must file and serve—

- (a) an acknowledgment of service; and
- (b) any written evidence,

is not more than 21 days after service of the claim form on him.

[<sup>F842</sup>(4A) If the claim form is served out of the jurisdiction under rule [<sup>F843</sup>6.32 or 6.33], the period for filing an acknowledgment of service and any written evidence is 7 days longer than the relevant period specified in rule [<sup>F844</sup>6.35] or [<sup>F845</sup>Practice Direction 6B].]

(5) A defendant who is a personal representative of the deceased must file and serve written evidence, which must include the information required by [<sup>F846</sup>Practice Direction 57].]

### Textual Amendments

**F841** Words in rule 57.16(4) substituted (30.6.2004) by [The Civil Procedure \(Amendment\) Rules 2004 \(S.I. 2004/1306\)](#), rules 1(b), **17(a)**

**F842** Rule 57.16(4A) inserted (30.6.2004) by [The Civil Procedure \(Amendment\) Rules 2004 \(S.I. 2004/1306\)](#), rules 1(b), **17(b)**

**F843** Words in rule 57.16(4A) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **30(b)(i)**

- F844** Word in rule 57.16(4A) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **30(b)(ii)**
- F845** Words in rule 57.16(4A) substituted (6.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), **32(e)**
- F846** Words in rule 57.16(5) substituted (6.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), **32(b)(ii)**

## [<sup>F847</sup>PART 58

### COMMERCIAL COURT

#### Textual Amendments

- F847** Pt. 58 inserted (25.3.2002) by The Civil Procedure (Amendment No. 5) Rules 2001 (S.I. 2001/4015), rule 1(c), **Sch. 2**

#### Contents of this Part

Scope of this Part and interpretation	Rule 58.1
Specialist list	Rule 58.2
Application of the Civil Procedure Rules	Rule 58.3
Proceedings in the commercial list	Rule 58.4
Claim form and particulars of claim	Rule 58.5
Acknowledgment of service	Rule 58.6
Disputing the court's jurisdiction	Rule 58.7
Default judgment	Rule 58.8
Admissions	Rule 58.9
Defence and Reply	Rule 58.10
Statements of case	Rule 58.11
Part 8 claims	Rule 58.12
Case management	Rule 58.13
Disclosure—ships papers	Rule 58.14
Judgments and orders	Rule 58.15

#### Scope of this Part and interpretation

**58.1.**—(1) This Part applies to claims in the Commercial Court of the Queen's Bench Division.

(2) In this Part and [<sup>F848</sup>Practice Direction 58], “commercial claim” means any claim arising out of the transaction of trade and commerce and includes any claim relating to—

- (a) a business document or contract;
- (b) the export or import of goods;

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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)*

- (c) the carriage of goods by land, sea, air or pipeline;
- (d) the exploitation of oil and gas reserves or other natural resources;
- (e) insurance and re-insurance;
- (f) banking and financial services;
- (g) the operation of markets and exchanges;
- (h) the purchase and sale of commodities;
- (i) the construction of ships;
- (j) business agency; and
- (k) arbitration.

#### Textual Amendments

**F848** Words in [rule 58.1\(2\)](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\), 33\(a\)](#)

#### Specialist list

- 58.2.**—(1) The commercial list is a specialist list for claims proceeding in the Commercial Court.  
 (2) One of the judges of the Commercial Court shall be in charge of the commercial list.

#### Application of the Civil Procedure Rules

**58.3** These Rules and their practice directions apply to claims in the commercial list unless this Part or a practice direction provides otherwise.

#### Proceedings in the commercial list

- 58.4.**—(1) A commercial claim may be started in the commercial list.  
 (2) [<sup>F849</sup>Rule 30.5 applies] applies to claims in the commercial list, except that a Commercial Court judge may order a claim to be transferred to any other specialist list.  
 (Rule 30.5(3) provides that 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)

#### Textual Amendments

**F849** Words in [rule 58.4\(2\)](#) substituted (6.4.2006) by [The Civil Procedure \(Amendment No.4\) Rules 2005 \(S.I. 2005/3515\)](#), [rules 1, 14](#)

#### Claim form and particulars of claim

- 58.5.**—(1) If, in a Part 7 claim, particulars of claim are not contained in or served with the claim form—
- (a) the claim form must state that, if an acknowledgment of service is filed which indicates an intention to defend the claim, particulars of claim will follow;
  - (b) when the claim form is served, it must be accompanied by the documents specified in [rule 7.8\(1\)](#);



- (c) the claimant must serve particulars of claim within 28 days of the filing of an acknowledgment of service which indicates an intention to defend; and
  - (d) rule 7.4(2) does not apply.
- (2) A statement of value is not required to be included in the claim form.
- (3) If the claimant is claiming interest, he must—
- (a) include a statement to that effect; and
  - (b) give the details set out in rule 16.4(2),
- in both the claim form and the particulars of claim.

### **Acknowledgment of service**

**58.6.**—(1) A defendant must file an acknowledgment of service in every case.

(2) Unless paragraph (3) applies, the period for filing an acknowledgment of service is 14 days after service of the claim form.

(3) Where the claim form is served out of the jurisdiction, or on the agent of a defendant who is overseas, the time periods provided by [<sup>F850</sup>rules 6.12(3), 6.35 and 6.37(5)] apply after service of the claim form.

#### **Textual Amendments**

**F850** Words in rule 58.6(3) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **31(a)**

### **Disputing the court's jurisdiction**

**58.7.**—(1) Part 11 applies to claims in the commercial list with the modifications set out in this rule.

(2) An application under rule 11(1) must be made within 28 days after filing an acknowledgment of service.

(3) If the defendant files an acknowledgment of service indicating an intention to dispute the court's jurisdiction, the claimant need not serve particulars of claim before the hearing of the application.

### **Default judgment**

**58.8.**—(1) If, in a Part 7 claim in the commercial list, a defendant fails to file an acknowledgment of service, the claimant need not serve particulars of claim before he may obtain or apply for default judgment in accordance with Part 12.

(2) Rule 12.6(1) applies with the modification that paragraph (a) shall be read as if it referred to the claim form instead of the particulars of claim.

### **Admissions**

**58.9.**—(1) Rule 14.5 does not apply to claims in the commercial list.

(2) If the defendant admits part of a claim for a specified amount of money, the claimant may apply under rule 14.3 for judgment on the admission.

(3) Rule 14.14(1) applies with the modification that paragraph (a) shall be read as if it referred to the claim form instead of the particulars of claim.

*Status: Point in time view as at 31/01/2011.*

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

## Defence and Reply

**58.10.**—(1) Part 15 (defence and reply) applies to claims in the commercial list with the modification to rule 15.8 that the claimant must—

- (a) file any reply to a defence; and
- (b) serve it on all other parties,

within 21 days after service of the defence.

(2) [<sup>F851</sup>Rule 6.35 (in relation to the period] for filing a defence where the claim form is served out of the jurisdiction) applies to claims in the commercial list, except that if the particulars of claim are served after the defendant has filed an acknowledgment of service the period for filing a defence is 28 days from service of the particulars of claim.

### Textual Amendments

**F851** Words in [rule 58.10\(2\)](#) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), [rules 1\(2\)](#), **31(b)**

## Statements of case

**58.11** The court may at any time before or after the issue of the claim form order a claim in the commercial list to proceed without the filing or service of statements of case.

## Part 8 claims

**58.12** Part 8 applies to claims in the commercial list, with the modification that a defendant to a Part 8 claim who wishes to rely on written evidence must file and serve it within 28 days after filing an acknowledgment of service.

## Case management

**58.13.**—(1) All proceedings in the commercial list are treated as being allocated to the multi-track and Part 26 does not apply.

(2) The following parts only of Part 29 apply—

- (a) [rule 29.3\(2\)](#) (legal representative to attend case management conferences and pre-trial reviews);
- (b) [rule 29.5](#) (variation of case management timetable) with the exception of [rule 29.5\(1\)\(c\)](#).

(3) As soon as practicable the court will hold a case management conference which must be fixed in accordance with [<sup>F852</sup>Practice Direction 58].

(4) At the case management conference or at any hearing at which the parties are represented the court may give such directions for the management of the case as it considers appropriate.

### Textual Amendments

**F852** Words in [rule 58.13\(3\)](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\)](#), **33(b)**

### **Disclosure—ships papers**

**58.14.**—(1) If, in proceedings relating to a marine insurance policy, the underwriters apply for specific disclosure under rule 31.12, the court may—

- (a) order a party to produce all the ships papers; and
- (b) require that party to use his best endeavours to obtain and disclose documents which are not or have not been in his control.

(2) An order under this rule may be made at any stage of the proceedings and on such terms, if any, as to staying the proceedings or otherwise, as the court thinks fit.

### **Judgments and orders**

**58.15.**—(1) Except for orders made by the court on its own initiative and unless the court orders otherwise, every judgment or order will be drawn up by the parties, and rule 40.3 is modified accordingly.

(2) An application for a consent order must include a draft of the proposed order signed on behalf of all the parties to whom it relates.

(3) Rule 40.6 (consent judgments and orders) does not apply.]

## **[<sup>F853</sup>PART 59**

### **MERCANTILE COURTS**

#### **Textual Amendments**

**F853** Pt. 59 inserted (25.3.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rule 1(c), [Sch. 3](#)

#### **Contents of this Part**

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*Status: Point in time view as at 31/01/2011.*

*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 and interpretation

**59.1.**—(1) This Part applies to claims in Mercantile Courts.

(2) A claim may only be started in a Mercantile Court if it—

- (a) relates to a commercial or business matter in a broad sense; and
- (b) is not required to proceed in the Chancery Division or in another specialist list.

(3) In this Part and [<sup>F854</sup>Practice Direction 59]—

[<sup>F855</sup>(a) “Mercantile Court” means a specialist list established within the courts listed in [<sup>F856</sup>Practice Direction 59];]

- (b) “mercantile claim” means a claim proceeding in a Mercantile Court; and
- (c) “Mercantile judge” means a judge authorised to sit in a Mercantile Court.

#### Textual Amendments

**F854** Words in rule 59.1(3) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **34(a)(i)**

**F855** Rule 59(3)(a) substituted (2.10.2006) by [The Civil Procedure \(Amendment\) Rules 2006 \(S.I. 2006/1689\)](#), rules 1, **9**

**F856** Words in rule 59.1(3)(a) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **34(a)(ii)**

### Application of the Civil Procedure Rules

**59.2** These Rules and their practice directions apply to mercantile claims unless this Part or a practice direction provides otherwise.

### Transfer of proceedings

**59.3** [<sup>F857</sup>Rule 30.5 applies] applies with the modifications that—

- (a) a Mercantile judge may transfer a mercantile claim to another Mercantile Court; and
- (b) a Commercial Court judge may transfer a claim from the Commercial Court to a Mercantile Court.

(Rule 30.5(3) provides that 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)

#### Textual Amendments

**F857** Words in rule 59.3 substituted (6.4.2006) by [The Civil Procedure \(Amendment No.4\) Rules 2005 \(S.I. 2005/3515\)](#), rules 1, **15**

### Claim form and particulars of claim

**59.4.**—(1) If particulars of claim are not contained in or served with the claim form—

- (a) the claim form must state that, if an acknowledgment of service is filed which indicates an intention to defend the claim, particulars of claim will follow;
- (b) when the claim form is served, it must be accompanied by the documents specified in rule 7.8(1);

(c) the claimant must serve particulars of claim within 28 days of the filing of an acknowledgment of service which indicates an intention to defend; and

(d) rule 7.4(2) does not apply.

(2) If the claimant is claiming interest, he must—

(a) include a statement to that effect; and

(b) give the details set out in rule 16.4(2),

in both the claim form and the particulars of claim.

(3) Rules 12.6(1)(a) and 14.14(1)(a) apply with the modification that references to the particulars of claim shall be read as if they referred to the claim form.

### Acknowledgment of service

**59.5.**—(1) A defendant must file an acknowledgment of service in every case.

(2) Unless paragraph (3) applies, the period for filing an acknowledgment of service is 14 days after service of the claim form.

(3) Where the claim form is served out of the jurisdiction, or on the agent of a defendant who is overseas, the time periods provided by rules [<sup>F858</sup>6.12(3), 6.35 and 6.37(5)] apply after service of the claim form.

#### Textual Amendments

**F858** Words in rule 59.5(3) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **32(a)**

### Disputing the court's jurisdiction

**59.6.**—(1) Part 11 applies to mercantile claims with the modifications set out in this rule.

(2) An application under rule 11(1) must be made within 28 days after filing an acknowledgment of service.

(3) If the defendant files an acknowledgment of service indicating an intention to dispute the court's jurisdiction, the claimant need not serve particulars of claim before the hearing of the application.

### Default judgment

**59.7.**—(1) Part 12 applies to mercantile claims, except that rules 12.10 and 12.11 apply as modified by paragraphs (2) and (3) of this rule.

(2) If, in a Part 7 claim—

(a) the claim form has been served but no particulars of claim have been served; and

(b) the defendant has failed to file an acknowledgment of service,

the claimant must make an application if he wishes to obtain a default judgment.

(3) The application may be made without notice, but the court may direct it to be served on the defendant.

### Admissions

**59.8.**—(1) Rule 14.5 does not apply to mercantile claims.

*Status: Point in time view as at 31/01/2011.*

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

(2) If the defendant admits part of a claim for a specified amount of money, the claimant may apply under rule 14.3 for judgment on the admission.

### Defence and Reply

**59.9.**—(1) Part 15 (Defence and Reply) applies to mercantile claims with the modification to rule 15.8 that the claimant must—

- (a) file any reply to a defence; and
- (b) serve it on all other parties,

within 21 days after service of the defence.

(2) [<sup>F859</sup>Rule 6.35 (in relation to the period] for filing a defence where the claim form is served out of the jurisdiction) applies to mercantile claims, except that if the particulars of claim are served after the defendant has filed an acknowledgment of service the period for filing a defence is 28 days from service of the particulars of claim.

#### Textual Amendments

**F859** Words in rule 59.9(2) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **32(b)**

### Statements of case

**59.10** The court may at any time before or after issue of the claim form order a mercantile claim to proceed without the filing or service of statements of case.

### Case management

**59.11.**—(1) All mercantile claims are treated as being allocated to the multi-track, and Part 26 does not apply.

(2) The following parts only of Part 29 apply—

- (a) rule 29.3(2) (appropriate legal representative to attend case management conferences and pre-trial reviews); and
- (b) rule 29.5 (variation of case management timetable) with the exception of rule 29.5(1)(c).

(3) As soon as practicable the court will hold a case management conference which must be fixed in accordance with [<sup>F860</sup>Practice Direction 59].

(4) At the case management conference or at any hearing at which the parties are represented the court may give such directions for the management of the case as it considers appropriate.

#### Textual Amendments

**F860** Words in [rule 59.11\(3\)](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **34(b)**

### Judgments and orders

**59.12.**—(1) Except for orders made by the court of its own initiative and unless the court otherwise orders every judgment or order will be drawn up by the parties, and rule 40.3 is modified accordingly.

(2) An application for a consent order must include a draft of the proposed order signed on behalf of all the parties to whom it relates.

(3) Rule 40.6 (consent judgments and orders) does not apply.]

## [<sup>F861</sup>PART 60

### TECHNOLOGY AND CONSTRUCTION COURT CLAIMS

#### Textual Amendments

**F861** Pt. 60 inserted (25.3.2002) by The Civil Procedure (Amendment No. 5) Rules 2001 (S.I. 2001/4015), rule 1(c), Sch. 4

#### Contents of this Part

General	Rule 60.1
Specialist list	Rule 60.2
Application of the Civil Procedure Rules	Rule 60.3
Issuing a TCC claim	Rule 60.4
Reply	Rule 60.5
Case management	Rule 60.6

#### General

**60.1.**—(1) This Part applies to Technology and Construction Court claims (“TCC claims”).

(2) In this Part and [<sup>F862</sup>Practice Direction 60]—

(a) “TCC claim” means a claim which—

- (i) satisfies the requirements of paragraph (3); and
- (ii) has been issued in or transferred into the specialist list for such claims;

(b) “Technology and Construction Court” means any court in which TCC claims are dealt with in accordance with this Part or [<sup>F863</sup>Practice Direction 60]; and

(c) “TCC judge” means any judge authorised to hear TCC claims.

(3) A claim may be brought as a TCC claim if—

- (a) it involves issues or questions which are technically complex; or
- (b) a trial by a TCC judge is desirable.

(<sup>F864</sup>Practice Direction 60] gives examples of types of claims which it may be appropriate to bring as TCC claims.)

(4) TCC claims include all official referees' business referred to in section 68(1)(a) of the Supreme Court Act 1981.

(5) TCC claims will be dealt with—

- (a) in a Technology and Construction Court; and
- (b) by a TCC judge, unless—

*Status: Point in time view as at 31/01/2011.*

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

- (i) this Part or [<sup>F865</sup>Practice Direction 60] permits otherwise; or
- (ii) a TCC judge directs otherwise.

#### Textual Amendments

- F862** Words in rule 60.1(2) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **35(a)**
- F863** Words in rule 60.1(2)(b) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **35(a)**
- F864** Words in rule 60.1 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **35(b)**
- F865** Words in rule 60.1(5)(b)(i) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **35(a)**

#### Specialist list

- 60.2.**—(1) TCC claims form a specialist list.
- (2) A judge will be appointed to be the judge in charge of the TCC specialist list.

#### Application of the Civil Procedure Rules

**60.3** These Rules and their practice directions apply to TCC claims unless this Part or a practice direction provides otherwise.

#### Issuing a TCC claim

- 60.4** A TCC claim must be issued in—
- (a) the High Court in London;
  - (b) a district registry of the High Court; or
  - (c) a county court specified in [<sup>F866</sup>Practice Direction 60].

#### Textual Amendments

- F866** Words in rule 60.4(c) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **35(c)**

#### Reply

**60.5** Part 15 (Defence and Reply) applies to TCC claims with the modification to rule 15.8 that the claimant must—

- (a) file any reply to a defence; and
- (b) serve it on all other parties,

within 21 days after service of the defence.

#### Case management

**60.6.**—(1) All TCC claims are treated as being allocated to the multi-track and Part 26 does not apply.



(2) Part 29 and [<sup>F867</sup>Practice Direction 29] apply to the case management of TCC claims, except where they are varied by or inconsistent with [<sup>F868</sup>Practice Direction 60].]

#### Textual Amendments

**F867** Words in rule 60.6(2) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **35(d)(i)**

**F868** Words in rule 60.6(2) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **35(d)(ii)**

#### [<sup>F869</sup>Judgments and Orders

**60.7.**—(1) Except for orders made by the court of its own initiative and unless the court otherwise orders, every judgment or order made in claims proceeding in the Technology and Construction Court will be drawn up by the parties, and rule 40.3 is modified accordingly.

(2) An application for a consent order must include a draft of the proposed order signed on behalf of all the parties to whom it relates.

(3) Rule 40.6 (consent judgments and orders) does not apply.]

#### Textual Amendments

**F869** Rule 60.7 inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **45**

## [<sup>F870</sup>PART 61

### ADMIRALTY CLAIMS

#### Textual Amendments

**F870** Pt. 61 inserted (25.3.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rule 1(c), **Sch. 5**

#### Contents of this Part

Scope and interpretation	Rule 61.1
Admiralty claims	Rule 61.2
Claims in rem	Rule 61.3
Special provisions relating to collision claims	Rule 61.4
Arrest	Rule 61.5
Security in claim in rem	Rule 61.6
Cautions against arrest	Rule 61.7
Release and cautions against release	Rule 61.8
Judgment in default	Rule 61.9

*Status: Point in time view as at 31/01/2011.*

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

Sale by the court, priorities and payment out	Rule 61.10
Limitation claims	Rule 61.11
Stay of proceedings	Rule 61.12
Assessors	Rule 61.13

### Scope and interpretation

**61.1.**—(1) This Part applies to admiralty claims.

(2) In this Part—

- (a) “admiralty claim” means a claim within the Admiralty jurisdiction of the High Court as set out in section 20 of the Supreme Court Act 1981;
- (b) “the Admiralty Court” means the Admiralty Court of the Queen’s Bench Division of the High Court of Justice;
- (c) “claim in rem” means a claim in an admiralty action in rem;
- (d) “collision claim” means a claim within section 20(3)(b) of the Supreme Court Act 1981;
- (e) “limitation claim” means a claim under the Merchant Shipping Act 1995 for the limitation of liability in connection with a ship or other property;
- (f) “salvage claim” means a claim—
  - (i) for or in the nature of salvage;
  - (ii) for special compensation under Article 14 of Schedule 11 to the Merchant Shipping Act 1995;
  - (iii) for the apportionment of salvage; and
  - (iv) arising out of or connected with any contract for salvage services;
- (g) “caution against arrest” means a caution entered in the Register under rule 61.7;
- (h) “caution against release” means a caution entered in the Register under rule 61.8;
- (i) “the Register” means the Register of cautions against arrest and release which is open to inspection as provided by [<sup>F871</sup>Practice Direction 61];
- (j) “the Marshal” means the Admiralty Marshal;
- (k) “ship” includes any vessel used in navigation; and
- (l) “the Registrar” means the Queen’s Bench Master with responsibility for Admiralty claims.

(3) Part 58 (Commercial Court) applies to claims in the Admiralty Court except where this Part provides otherwise.

(4) The Registrar has all the powers of the Admiralty judge except where a rule or practice direction provides otherwise.

#### Textual Amendments

**F871** Words in rule 61.1(2)(i) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **36(a)**

### Admiralty claims

**61.2.**—(1) The following claims must be started in the Admiralty Court—

- (a) a claim—
    - (i) in rem;
    - (ii) for damage done by a ship;
    - (iii) concerning the ownership of a ship;
    - (iv) under the Merchant Shipping Act 1995;
    - (v) for loss of life or personal injury specified in section 20(2)(f) of the Supreme Court Act 1981;
    - (vi) by a master or member of a crew for wages;
    - (vii) in the nature of towage; or
    - (viii) in the nature of pilotage;
  - (b) a collision claim;
  - (c) a limitation claim; or
  - (d) a salvage claim.
- (2) Any other admiralty claim may be started in the Admiralty Court.
- (3) Rule [<sup>F872</sup>30.5] applies to claims in the Admiralty Court except that the Admiralty Court may order the transfer of a claim to—
- (a) the Commercial list;
  - (b) a Mercantile Court;
  - (c) the Mercantile list at the Central London County Court; or
  - (d) any other appropriate court.

#### Textual Amendments

**F872** Word in [rule 61.2\(3\)](#) substituted (6.4.2006) by [The Civil Procedure \(Amendment No.4\) Rules 2005 \(S.I. 2005/3515\)](#), rules 1, **16**

#### Claims in rem

- 61.3.**—(1) This rule applies to claims in rem.
- (2) A claim in rem is started by the issue of an in rem claim form as set out in [<sup>F873</sup>Practice Direction 61].
- (3) Subject to rule 61.4, the particulars of claim must—
- (a) be contained in or served with the claim form; or
  - (b) be served on the defendant by the claimant within 75 days after service of the claim form.
- (4) An acknowledgment of service must be filed within 14 days after service of the claim form.
- (5) The claim form must be served—
- (a) in accordance with [<sup>F874</sup>Practice Direction 61]; and
  - (b) within 12 months after the date of issue and rules 7.5 and 7.6 are modified accordingly.
- (6) If a claim form has been issued (whether served or not), any person who wishes to defend the claim may file an acknowledgment of service.

*Status: Point in time view as at 31/01/2011.*

*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

**F873** Words in rule 61.3(2) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **36(a)**

**F874** Words in rule 61.3(5)(a) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **36(a)**

### Special provisions relating to collision claims

**61.4.**—(1) This rule applies to collision claims.

(2) A claim form need not contain or be followed by particulars of claim and rule 7.4 does not apply.

(3) An acknowledgment of service must be filed.

(4) A party who wishes to dispute the court’s jurisdiction must make an application under Part 11 within 2 months after filing his acknowledgment of service.

(5) Every party must—

(a) within 2 months after the defendant files the acknowledgment of service; or

(b) where the defendant applies under Part 11, within 2 months after the defendant files the further acknowledgment of service,

file at the court a completed collision statement of case in the form specified in [<sup>F875</sup>Practice Direction 61].

(6) A collision statement of case must be—

(a) in the form set out in [<sup>F876</sup>Practice Direction 61]; and

(b) verified by a statement of truth.

(7) A claim form in a collision claim may not be served out of the jurisdiction unless—

(a) the case falls within section 22(2)(a), (b) or (c) of the Supreme Court Act 1981; or

(b) the defendant has submitted to or agreed to submit to the jurisdiction; and the court gives permission in accordance with [<sup>F877</sup>Section IV] of Part 6.

(8) Where permission to serve a claim form out of the jurisdiction is given, the court will specify the period within which the defendant may file an acknowledgment of service and, where appropriate, a collision statement of case.

(9) Where, in a collision claim in rem (“the original claim”)—

(a) (i) a Part 20 claim; or

(ii) a cross claim in rem

arising out of the same collision or occurrence is made; and

(b) (i) the party bringing the original claim has caused the arrest of a ship or has obtained security in order to prevent such arrest; and

(ii) the party bringing the Part 20 claim or cross claim is unable to arrest a ship or otherwise obtain security,

the party bringing the Part 20 claim or cross claim may apply to the court to stay the original claim until sufficient security is given to satisfy any judgment that may be given in favour of that party.

(10) The consequences set out in paragraph (11) apply where a party to a claim to establish liability for a collision claim (other than a claim for loss of life or personal injury)—

- (a) makes an offer to settle in the form set out in paragraph (12) not less than 21 days before the start of the trial;
  - (b) that offer is not accepted; and
  - (c) the maker of the offer obtains at trial an apportionment equal to or more favourable than his offer.
- (11) Where paragraph (10) applies the parties will, unless the court considers it unjust, be entitled to the following costs—
- (a) the maker of the offer will be entitled to—
    - (i) all his costs from 21 days after the offer was made; and
    - (ii) his costs before then in the percentage to which he would have been entitled had the offer been accepted; and
  - (b) all other parties to whom the offer was made—
    - (i) will be entitled to their costs up to 21 days after the offer was made in the percentage to which they would have been entitled had the offer been accepted; but
    - (ii) will not be entitled to their costs thereafter.
- (12) An offer under paragraph (10) must be in writing and must contain—
- (a) an offer to settle liability at stated percentages;
  - (b) an offer to pay costs in accordance with the same percentages;
  - (c) a term that the offer remain open for 21 days after the date it is made; and
  - (d) a term that, unless the court orders otherwise, on expiry of that period the offer remains open on the same terms except that the offeree should pay all the costs from that date until acceptance.

#### Textual Amendments

**F875** Words in rule 61.4(5) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **36(a)**

**F876** Words in rule 61.4(6)(a) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **36(a)**

**F877** Words in rule 61.4(7)(b) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **33(a)**

#### Arrest

**61.5.**—(1) In a claim in rem—

- (a) a claimant; and
- (b) a judgment creditor

may apply to have the property proceeded against arrested.

(2) [<sup>F878</sup>Practice Direction 61] sets out the procedure for applying for arrest.

(3) A party making an application for arrest must—

- (a) request a search to be made in the Register before the warrant is issued to determine whether there is a caution against arrest in force with respect to that property; and
- (b) file a declaration in the form set out in [<sup>F879</sup>Practice Direction 61].

*Status: Point in time view as at 31/01/2011.*

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

(4) A warrant of arrest may not be issued as of right in the case of property in respect of which the beneficial ownership, as a result of a sale or disposal by any court in any jurisdiction exercising admiralty jurisdiction in rem, has changed since the claim form was issued.

(5) A warrant of arrest may not be issued against a ship owned by a State where by any convention or treaty, the United Kingdom has undertaken to minimise the possibility of arrest of ships of that State until—

- (a) notice in the form set out in [<sup>F880</sup>Practice Direction 61] has been served on a consular officer at the consular office of that State in London or the port at which it is intended to arrest the ship; and
- (b) a copy of that notice is attached to any declaration under paragraph (3)(b).

(6) Except—

- (a) with the permission of the court; or
- (b) where notice has been given under paragraph (5),

a warrant of arrest may not be issued in a claim in rem against a foreign ship belonging to a port of a State in respect of which an order in council has been made under section 4 of the Consular Relations Act 1968, until the expiration of 2 weeks from appropriate notice to the consul.

(7) A warrant of arrest is valid for 12 months but may only be executed if the claim form—

- (a) has been served; or
- (b) remains valid for service at the date of execution.

(8) Property may only be arrested by the Marshal or his substitute.

(9) Property under arrest—

- (a) may not be moved unless the court orders otherwise; and
- (b) may be immobilised or prevented from sailing in such manner as the Marshal may consider appropriate.

(10) Where an in rem claim form has been issued and security sought, any person who has filed an acknowledgment of service may apply for an order specifying the amount and form of security to be provided.

#### Textual Amendments

**F878** Words in rule 61.5(2) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **36(b)**

**F879** Words in rule 61.5(3)(b) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **36(a)**

**F880** Words in rule 61.5(5)(a) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **36(a)**

#### Security in claim in rem

**61.6.**—(1) This rule applies if, in a claim in rem, security has been given to—

- (a) obtain the release of property under arrest; or
- (b) prevent the arrest of property.

(2) The court may order that the—

- (a) amount of security be reduced and may stay the claim until the order is complied with; or
- (b) claimant may arrest or re-arrest the property proceeded against to obtain further security.

(3) The court may not make an order under paragraph (2)(b) if the total security to be provided would exceed the value of the property at the time—

- (a) of the original arrest; or
- (b) security was first given (if the property was not arrested).

### Cautions against arrest

**61.7.**—(1) Any person may file a request for a caution against arrest.

(2) When a request under paragraph (1) is filed the court will enter the caution in the Register if the request is in the form set out in [F881Practice Direction 61] and—

- (a) the person filing the request undertakes—
  - (i) to file an acknowledgment of service; and
  - (ii) to give sufficient security to satisfy the claim with interest and costs; or
- (b) where the person filing the request has constituted a limitation fund in accordance with Article 11 of the Convention on Limitation of Liability for Maritime Claims 1976 he—
  - (i) states that such a fund has been constituted; and
  - (ii) undertakes that the claimant will acknowledge service of the claim form by which any claim may be begun against the property described in the request.

(3) A caution against arrest—

- (a) is valid for 12 months after the date it is entered in the Register; but
- (b) may be renewed for a further 12 months by filing a further request.

(4) Paragraphs (1) and (2) apply to a further request under paragraph (3)(b).

(5) Property may be arrested if a caution against arrest has been entered in the Register but the court may order that—

- (a) the arrest be discharged; and
- (b) the party procuring the arrest pays compensation to the owner of or other persons interested in the arrested property.

#### Textual Amendments

**F881** Words in rule 61.7(2) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **36(a)**

### Release and cautions against release

**61.8.**—(1) Where property is under arrest—

- (a) an in rem claim form may be served upon it; and
- (b) it may be arrested by any other person claiming to have an in rem claim against it.

(2) Any person who—

- (a) claims to have an in rem right against any property under arrest; and
- (b) wishes to be given notice of any application in respect of that property or its proceeds of sale,

may file a request for a caution against release in the form set out in [F882Practice Direction 61].

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*Status: Point in time view as at 31/01/2011.*

*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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(3) When a request under paragraph (2) is filed, a caution against release will be entered in the Register.

(4) Property will be released from arrest if—

- (a) it is sold by the court;
- (b) the court orders release on an application made by any party;
- (c) (i) the arresting party; and  
(ii) all persons who have entered cautions against release file a request for release in the form set out in [F<sup>883</sup>Practice Direction 61]; or
- (d) any party files—
  - (i) a request for release in the form set out in [F<sup>884</sup>Practice Direction 61] (containing an undertaking); and
  - (ii) consents to the release of the arresting party and all persons who have entered cautions against release.

(5) Where the release of any property is delayed by the entry of a caution against release under this rule any person who has an interest in the property may apply for an order that the person who entered the caution pay damages for losses suffered by the applicant because of the delay.

(6) the court may not make an order under paragraph (5) if satisfied that there was good reason to—

- (a) request the entry of; and
- (b) maintain

the caution.

(7) Any person—

- (a) interested in property under arrest or in the proceeds of sale of such property; or
- (b) whose interests are affected by any order sought or made,

may be made a party to any claim in rem against the property or proceeds of sale.

(8) Where—

- (a) (i) a ship is not under arrest but cargo on board her is; or  
(ii) a ship is under arrest but cargo on board her is not; and
- (b) persons interested in the ship or cargo wish to discharge the cargo,

they may, without being made parties, request the Marshal to authorise steps to discharge the cargo.

(9) If—

- (a) the Marshal considers a request under paragraph (8) reasonable; and
- (b) the applicant gives an undertaking in writing acceptable to the Marshal to pay—
  - (i) his fees; and
  - (ii) all expenses to be incurred by him or on his behalf on demand,

the Marshal will apply to the court for an order to permit the discharge of the cargo.

**10** Where persons interested in the ship or cargo are unable or unwilling to give an undertaking as referred to in paragraph (9)(b), they may—

- (a) be made parties to the claim; and
- (b) apply to the court for an order for—



- (i) discharge of the cargo; and
- (ii) directions as to the fees and expenses of the Marshal with regard to the discharge and storage of the cargo.

#### Textual Amendments

- F882** Words in rule 61.8(2) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **36(a)**
- F883** Words in rule 61.8(4)(c) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **36(a)**
- F884** Words in rule 61.8(4)(d)(i) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **36(a)**

#### Judgment in default

**61.9.—(1)** In a claim in rem (other than a collision claim) the claimant may obtain judgment in default of—

- (a) an acknowledgment of service only if—
  - (i) the defendant has not filed an acknowledgment of service; and
  - (ii) the time for doing so set out in rule 61.3(4) has expired; and
- (b) defence only if—
  - (i) a defence has not been filed; and
  - (ii) the relevant time limit for doing so has expired.

(2) In a collision claim, a party who has filed a collision statement of case within the time specified by rule 61.4(5) may obtain judgment in default of a collision statement of case only if—

- (a) the party against whom judgment is sought has not filed a collision statement of case; and
- (b) the time for doing so set out in rule 61.4(5) has expired.

(3) An application for judgment in default—

- (a) under paragraph (1) or paragraph (2) in an in rem claim must be made by filing—
  - (i) an application notice as set out in [<sup>F885</sup>Practice Direction 61];
  - (ii) a certificate proving service of the claim form; and
  - (iii) evidence proving the claim to the satisfaction of the court; and
- (b) under paragraph (2) in any other claim must be made in accordance with Part 12 with any necessary modifications.

(4) An application notice seeking judgment in default and, unless the court orders otherwise, all evidence in support, must be served on all persons who have entered cautions against release on the Register.

(5) The court may set aside or vary any judgment in default entered under this rule.

(6) The claimant may apply to the court for judgment against a party at whose instance a notice against arrest was entered where—

- (a) the claim form has been served on that party;
- (b) the sum claimed in the claim form does not exceed the amount specified in the undertaking given by that party in accordance with rule 61.7(2)(a)(ii); and
- (c) that party has not fulfilled that undertaking within 14 days after service on him of the claim form.

*Status: Point in time view as at 31/01/2011.*

*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

**F885** Words in rule 61.9(3)(a)(i) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **36(a)**

### Sale by the court, priorities and payment out

**61.10.**—(1) An application for an order for the survey, appraisalment or sale of a ship may be made in a claim in rem at any stage by any party.

(2) If the court makes an order for sale, it may—

- (a) set a time within which notice of claims against the proceeds of sale must be filed; and
- (b) the time and manner in which such notice must be advertised.

(3) Any party with a judgment against the property or proceeds of sale may at any time after the time referred to in paragraph (2) apply to the court for the determination of priorities.

(4) An application notice under paragraph (3) must be served on all persons who have filed a claim against the property.

(5) Payment out of the proceeds of sale will be made only to judgment creditors and—

- (a) in accordance with the determination of priorities; or
- (b) as the court orders.

### Limitation claims

**61.11.**—(1) This rule applies to limitation claims.

(2) A claim is started by the issue of a limitation claim form as set out in [<sup>F886</sup>Practice Direction 61].

(3) The—

- (a) claimant; and
- (b) at least one defendant

must be named in the claim form, but all other defendants may be described.

(4) The claim form—

- (a) must be served on all named defendants and any other defendant who requests service upon him; and
- (b) may be served on any other defendant.

(5) The claim form may not be served out of the jurisdiction unless—

- (a) the claim falls within section 22(2)(a), (b) or (c) of the Supreme Court Act 1981;
- (b) the defendant has submitted to or agreed to submit to the jurisdiction of the court; or
- (c) the Admiralty Court has jurisdiction over the claim under any applicable Convention; and

the court grants permission in accordance with [<sup>F887</sup>Section IV] of Part 6.

(6) An acknowledgment of service is not required.

(7) Every defendant upon whom a claim form is served must—

- (a) within 28 days of service file—
  - (i) a defence; or
  - (ii) a notice that [<sup>F888</sup>the defendant] admits the right of the claimant to limit liability; or

- (b) if [<sup>F889</sup>the defendant] wishes to—
- (i) dispute the jurisdiction of the court; or
  - (ii) argue that the court should not exercise its jurisdiction,
- file within 14 days of service (or where the claim form is served out of the jurisdiction, within the time specified in rule [<sup>F890</sup>6.35]) an acknowledgment of service as set out in [<sup>F891</sup>Practice Direction 61].
- (8) If a defendant files an acknowledgment of service under paragraph (7)(b) he will be treated as having accepted that the court has jurisdiction to hear the claim unless he applies under Part 11 within 14 days after filing the acknowledgment of service.
- (9) Where one or more named defendants admits the right to limit—
- (a) the claimant may apply for a restricted limitation decree in the form set out in [<sup>F892</sup>Practice Direction 61]; and
  - (b) the court will issue a decree in the form set out in [<sup>F893</sup>Practice Direction 61] limiting liability only against those named defendants who have admitted the claimant's right to limit liability.
- (10) A restricted limitation decree—
- (a) may be obtained against any named defendant who fails to file a defence within the time specified for doing so; and
  - (b) need not be advertised, but a copy must be served on the defendants to whom it applies.
- (11) Where all the defendants upon whom the claim form has been served admit the claimant's right to limit liability—
- (a) the claimant may apply to the Admiralty Registrar for a general limitation decree in the form set out in [<sup>F894</sup>Practice Direction 61]; and
  - (b) the court will issue a limitation decree.
- (12) Where one or more of the defendants upon whom the claim form has been served do not admit the claimant's right to limit, the claimant may apply for a general limitation decree in the form set out in [<sup>F895</sup>Practice Direction 61].
- (13) When a limitation decree is granted the court—
- (a) may—
    - (i) order that any proceedings relating to any claim arising out of the occurrence be stayed;
    - (ii) order the claimant to establish a limitation fund if one has not been established or make such other arrangements for payment of claims against which liability is limited; or
    - (iii) if the decree is a restricted limitation decree, distribute the limitation fund; and
  - (b) will, if the decree is a general limitation decree, give directions as to advertisement of the decree and set a time within which notice of claims against the fund must be filed or an application made to set aside the decree.
- (14) When the court grants a general limitation decree the claimant must—
- (a) advertise it in such manner and within such time as the court directs; and
  - (b) file—
    - (i) a declaration that the decree has been advertised in accordance with paragraph (a); and
    - (ii) copies of the advertisements.

*Status: Point in time view as at 31/01/2011.*

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

- (15) No later than the time set in the decree for filing claims, each of the defendants who wishes to assert a claim must file and serve his statement of case on—
- (a) the limiting party; and
  - (b) all other defendants except where the court orders otherwise.
- (16) Any person other than a defendant upon whom the claim form has been served may apply to the court within the time fixed in the decree to have a general limitation decree set aside.
- (17) An application under paragraph (16) must be supported by a declaration—
- (a) stating that the applicant has a claim against the claimant arising out of the occurrence; and
  - (b) setting out grounds for contending that the claimant is not entitled to the decree, either in the amount of limitation or at all.
- (18) The claimant may constitute a limitation fund by making a payment into court.
- (19) A limitation fund may be established before or after a limitation claim has been started.
- (20) If a limitation claim is not commenced within 75 days after the date the fund was established—
- (a) the fund will lapse; and
  - (b) all money in court (including interest) will be repaid to the person who made the payment into court.
- (21) Money paid into court under paragraph (18) will not be paid out except under an order of the court.
- (22) A limitation claim for—
- (a) a restricted decree may be brought by counterclaim; and
  - (b) a general decree may only be brought by counterclaim with the permission of the court.

#### **Textual Amendments**

- F886** Words in rule 61.11(2) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **36(a)**
- F887** Words in rule 61.11(5) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **33(b)(i)**
- F888** Words in rule 61.11(7)(a)(ii) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **33(b)(ii)(aa)**
- F889** Words in rule 61.11(7)(b) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **33(b)(ii)(bb)**
- F890** Word in rule 61.11(7)(b) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **33(b)(ii)(cc)**
- F891** Words in rule 61.11(7) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **36(a)**
- F892** Words in rule 61.11(9)(a) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **36(a)**
- F893** Words in rule 61.11(9)(b) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **36(a)**
- F894** Words in rule 61.11(11)(a) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **36(a)**
- F895** Words in rule 61.11(12) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **36(a)**

**Stay of proceedings**

**61.12** Where the court orders a stay of any claim in rem—

- (a) any property under arrest in the claim remains under arrest; and
- (b) any security representing the property remains in force,

unless the court orders otherwise.

**Assessors**

**61.13** The court may sit with assessors when hearing—

- (a) collision claims; or
- (b) other claims involving issues of navigation or seamanship, and

the parties will not be permitted to call expert witnesses unless the court orders otherwise.]

**[<sup>F896</sup>PART 62****ARBITRATION CLAIMS****Textual Amendments**

**F896** Pt. 62 inserted (25.3.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rule 1(c), [Sch. 6](#)

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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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#### Scope of this Part and interpretation

**62.1.**—(1) This Part contains rules about arbitration claims.

(2) In this Part—

- (a) “the 1950 Act” means the Arbitration Act 1950;
- (b) “the 1975 Act” means the Arbitration Act 1975;
- (c) “the 1979 Act” means the Arbitration Act 1979;
- (d) “the 1996 Act” means the Arbitration Act 1996;
- (e) references to—
  - (i) the 1996 Act; or
  - (ii) any particular section of that Act

include references to that Act or to the particular section of that Act as applied with modifications by the ACAS Arbitration Scheme (England and Wales) Order 2001; and

- (f) “arbitration claim form” means a claim form in the form set out in [<sup>F897</sup>Practice Direction 62].

(3) Part 58 (Commercial Court) applies to arbitration claims in the Commercial Court, Part 59 (Mercantile Court) applies to arbitration claims in the Mercantile Court and Part 60 (Technology and Construction Court claims) applies to arbitration claims in the Technology and Construction Court, except where this Part provides otherwise.

#### Textual Amendments

**F897** Words in rule 62.1(2)(f) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), 37

## I CLAIMS UNDER THE 1996 ACT

### Interpretation

**62.2.**—(1) In this Section of this Part “arbitration claim” means—

- (a) any application to the court under the 1996 Act;
- (b) a claim to determine—
  - (i) whether there is a valid arbitration agreement;
  - (ii) whether an arbitration tribunal is properly constituted; orwhat matters have been submitted to arbitration in accordance with an arbitration agreement;
- (c) a claim to declare that an award by an arbitral tribunal is not binding on a party; and
- (d) any other application affecting—
  - (i) arbitration proceedings (whether started or not); or
  - (ii) an arbitration agreement.

(2) This Section of this Part does not apply to an arbitration claim to which Sections II or III of this Part apply.

### Starting the claim

**62.3.**—(1) Except where paragraph (2) applies an arbitration claim must be started by the issue of an arbitration claim form in accordance with the Part 8 procedure.

(2) An application under section 9 of the 1996 Act to stay legal proceedings must be made by application notice to the court dealing with those proceedings.

(3) The courts in which an arbitration claim may be started are set out in [<sup>F898</sup>Practice Direction 62].

(4) Rule [<sup>F899</sup>30.5] applies with the modification that a judge of the Technology and Construction Court may transfer the claim to any other court or specialist list.

#### Textual Amendments

**F898** Words in rule 62.3(3) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), 37

**F899** Word in rule 62.3(4) substituted (6.4.2006) by [The Civil Procedure \(Amendment No.4\) Rules 2005 \(S.I. 2005/3515\)](#), rules 1, 17

### Arbitration claim form

**62.4.**—(1) An arbitration claim form must—

- (a) include a concise statement of—
  - (i) the remedy claimed; and
  - (ii) any questions on which the claimant seeks the decision of the court;
- (b) give details of any arbitration award challenged by the claimant, identifying which part or parts of the award are challenged and specifying the grounds for the challenge;
- (c) show that any statutory requirements have been met;
- (d) specify under which section of the 1996 Act the claim is made;

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- (e) identify against which (if any) defendants a costs order is sought; and
- (f) specify either—
  - (i) the persons on whom the arbitration claim form is to be served, stating their role in the arbitration and whether they are defendants; or
  - (ii) that the claim is made without notice under section 44(3) of the 1996 Act and the grounds relied on.
- (2) Unless the court orders otherwise an arbitration claim form must be served on the defendant within 1 month from the date of issue and rules 7.5 and 7.6 are modified accordingly.
- (3) Where the claimant applies for an order under section 12 of the 1996 Act (extension of time for beginning arbitral proceedings or other dispute resolution procedures), he may include in his arbitration claim form an alternative application for a declaration that such an order is not needed.

### Service out of the jurisdiction

**62.5.**—(1) The court may give permission to serve an arbitration claim form out of the jurisdiction if—

- (a) the claimant seeks to—
  - (i) challenge; or
  - (ii) appeal on a question of law arising out of, an arbitration award made within the jurisdiction;

(The place where an award is treated as made is determined by section 53 of the 1996 Act.)

- (b) the claim is for an order under section 44 of the 1996 Act; or
- (c) the claimant—
  - (i) seeks some other remedy or requires a question to be decided by the court affecting an arbitration (whether started or not), an arbitration agreement or an arbitration award; and
  - (ii) the seat of the arbitration is or will be within the jurisdiction or the conditions in section 2(4) of the 1996 Act are satisfied.

- (2) An application for permission under paragraph (1) must be supported by written evidence—
  - (a) stating the grounds on which the application is made; and
  - (b) showing in what place or country the person to be served is, or probably may be found.
- (3) Rules [F<sup>900</sup>6.40 to 6.46] apply to the service of an arbitration claim form under paragraph (1).
- (4) An order giving permission to serve an arbitration claim form out of the jurisdiction must specify the period within which the defendant may file an acknowledgment of service.

#### Textual Amendments

**F900** Words in rule 62.5(3) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **34(a)**



## Notice

**62.6.**—(1) Where an arbitration claim is made under section 24, 28 or 56 of the 1996 Act, each arbitrator must be a defendant.

(2) Where notice must be given to an arbitrator or any other person it may be given by sending him a copy of—

- (a) the arbitration claim form; and
- (b) any written evidence in support.

(3) Where the 1996 Act requires an application to the court to be made on notice to any other party to the arbitration, that notice must be given by making that party a defendant.

## Case management

**62.7.**—(1) Part 26 and any other rule that requires a party to file an allocation questionnaire does not apply.

(2) Arbitration claims are allocated to the multi-track.

(3) Part 29 does not apply.

(4) The automatic directions set out in [<sup>F901</sup>Practice Direction 62] apply unless the court orders otherwise.

### Textual Amendments

**F901** Words in rule 62.7(4) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), 37

## Stay of legal proceedings

**62.8.**—(1) An application notice seeking a stay of legal proceedings under section 9 of the 1996 Act must be served on all parties to those proceedings who have given an address for service.

(2) A copy of an application notice under paragraph (1) must be served on any other party to the legal proceedings (whether or not he is within the jurisdiction) who has not given an address for service, at—

- (a) his last known address; or
- (b) a place where it is likely to come to his attention.

(3) Where a question arises as to whether—

- (a) an arbitration agreement has been concluded; or
- (b) the dispute which is the subject-matter of the proceedings falls within the terms of such an agreement,

the court may decide that question or give directions to enable it to be decided and may order the proceedings to be stayed pending its decision.

## Variation of time

**62.9.**—(1) The court may vary the period of 28 days fixed by section 70(3) of the 1996 Act for—

- (a) challenging the award under section 67 or 68 of the Act; and
- (b) appealing against an award under section 69 of the Act.

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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) An application for an order under paragraph (1) may be made without notice being served on any other party before the period of 28 days expires.
- (3) After the period of 28 days has expired—
- (a) an application for an order extending time under paragraph (1) must—
    - (i) be made in the arbitration claim form; and
    - (ii) state the grounds on which the application is made;
  - (b) any defendant may file written evidence opposing the extension of time within 7 days after service of the arbitration claim form; and
  - (c) if the court extends the period of 28 days, each defendant’s time for acknowledging service and serving evidence shall start to run as if the arbitration claim form had been served on the date when the court’s order is served on that defendant.

### **Hearings**

- 62.10.**—(1) The court may order that an arbitration claim be heard either in public or in private.
- (2) Rule 39.2 does not apply.
- (3) Subject to any order made under paragraph (1)—
- (a) the determination of—
    - (i) a preliminary point of law under section 45 of the 1996 Act; or
    - (ii) an appeal under section 69 of the 1996 Act on a question of law arising out of an award,
 will be heard in public; and
  - (b) all other arbitration claims will be heard in private.
- (4) Paragraph (3)(a) does not apply to—
- (a) the preliminary question of whether the court is satisfied of the matters set out in section 45(2)(b); or
  - (b) an application for permission to appeal under section 69(2)(b).

## **II OTHER ARBITRATION CLAIMS**

### **Scope of this Section**

- 62.11.**—(1) This Section of this Part contains rules about arbitration claims to which the old law applies.
- (2) In this Section—
- (a) “the old law” means the enactments specified in Schedules 3 and 4 of the 1996 Act as they were in force before their amendment or repeal by that Act; and
  - (b) “arbitration claim” means any application to the court under the old law and includes an appeal (or application for permission to appeal) to the High Court under section 1(2) of the 1979 Act.
- (3) This Section does not apply to—
- (a) a claim to which Section III of this Part applies; or
  - (b) a claim on the award.

## **Applications to Judge**

### **62.12** A claim—

- (a) seeking permission to appeal under section 1(2) of the 1979 Act;
- (b) under section 1(5) of that Act (including any claim seeking permission); or
- (c) under section 5 of that Act,

must be made in the High Court and will be heard by a judge of the Commercial Court unless any such judge directs otherwise.

## **Starting the claim**

**62.13.**—(1) Except where paragraph (2) applies an arbitration claim must be started by the issue of an arbitration claim form in accordance with the Part 8 procedure.

(2) Where an arbitration claim is to be made in existing proceedings—

- (a) it must be made by way of application notice; and
- (b) any reference in this Section of this Part to an arbitration claim form includes a reference to an application notice.

(3) The arbitration claim form in an arbitration claim under section 1(5) of the 1979 Act (including any claim seeking permission) must be served on—

- (a) the arbitrator or umpire; and
- (b) any other party to the reference.

## **Claims in District Registries**

### **62.14** If—

- (a) a claim is to be made under section 12(4) of the 1950 Act for an order for the issue of a witness summons to compel the attendance of the witness before an arbitrator or umpire; and
- (b) the attendance of the witness is required within the district of a District Registry,

the claim may be started in that Registry.

## **Time limits and other special provisions about arbitration claims**

### **62.15.**—(1) An arbitration claim to—

- (a) remit an award under section 22 of the 1950 Act;
- (b) set aside an award under section 23(2) of that Act or otherwise; or
- (c) direct an arbitrator or umpire to state the reasons for an award under section 1(5) of the 1979 Act,

must be made, and the arbitration claim form served, within 21 days after the award has been made and published to the parties.

(2) An arbitration claim to determine any question of law arising in the course of a reference under section 2(1) of the Arbitration Act 1979 must be made, and the arbitration claim form served, within 14 days after—

- (a) the arbitrator or umpire gave his consent in writing to the claim being made; or
- (b) the other parties so consented.

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*Status: Point in time view as at 31/01/2011.*

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(3) An appeal under section 1(2) of the 1979 Act must be filed, and the arbitration claim form served, within 21 days after the award has been made and published to the parties.

(4) Where reasons material to an appeal under section 1(2) of the 1979 Act are given on a date subsequent to the publication of the award, the period of 21 days referred to in paragraph (3) will run from the date on which reasons are given.

(5) In every arbitration claim to which this rule applies—

- (a) the arbitration claim form must state the grounds of the claim or appeal;
- (b) where the claim or appeal is based on written evidence, a copy of that evidence must be served with the arbitration claim form; and
- (c) where the claim or appeal is made with the consent of the arbitrator, the umpire or the other parties, a copy of every written consent must be served with the arbitration claim form.

(6) In an appeal under section 1(2) of the 1979 Act—

- (a) a statement of the grounds for the appeal specifying the relevant parts of the award and reasons; and
- (b) where permission is required, any written evidence in support of the contention that the question of law concerns—
  - (i) a term of a contract; or
  - (ii) an event,
 which is not a “one-off” term or event,

must be filed and served with the arbitration claim form.

(7) Any written evidence in reply to written evidence under paragraph (6)(b) must be filed and served on the claimant not less than 2 days before the hearing.

(8) A party to a claim seeking permission to appeal under section 1(2) of the 1979 Act who wishes to contend that the award should be upheld for reasons not expressed or fully expressed in the award and reasons must file and serve on the claimant, a notice specifying the grounds of his contention not less than 2 days before the hearing.

### **Service out of the jurisdiction**

**62.16.**—(1) Subject to paragraph (2)—

- (a) any arbitration claim form in an arbitration claim under the 1950 Act or the 1979 Act; or
- (b) any order made in such a claim,

may be served out of the jurisdiction with the permission of the court if the arbitration to which the claim relates—

- (i) is governed by the law of England and Wales; or
- (ii) has been, is being, or will be, held within the jurisdiction.

(2) An arbitration claim form seeking permission to enforce an award may be served out of the jurisdiction with the permission of the court whether or not the arbitration is governed by the law of England and Wales.

(3) An application for permission to serve an arbitration claim form out of the jurisdiction must be supported by written evidence—

- (a) stating the grounds on which the application is made; and
- (b) showing in what place or country the person to be served is, or probably may be found.

(4) Rules [F<sup>902</sup>6.40 to 6.46] apply to the service of an arbitration claim form under paragraph (1).

(5) An order giving permission to serve an arbitration claim form out of the jurisdiction must specify the period within which the defendant may file an acknowledgment of service.

**Textual Amendments**

**F902** Words in rule 62.16(4) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **34(b)**

### **III ENFORCEMENT**

#### **Scope of this Section**

**62.17** This Section of this Part applies to all arbitration enforcement proceedings other than by a claim on the award.

#### **Enforcement of awards**

**62.18.**—(1) An application for permission under—

- (a) section 66 of the 1996 Act;
- (b) section 101 of the 1996 Act;
- (c) section 26 of the 1950 Act; or
- (d) section 3(1)(a) of the 1975 Act,

to enforce an award in the same manner as a judgment or order may be made without notice in an arbitration claim form.

(2) The court may specify parties to the arbitration on whom the arbitration claim form must be served.

(3) The parties on whom the arbitration claim form is served must acknowledge service and the enforcement proceedings will continue as if they were an arbitration claim under Section I of this Part.

(4) With the permission of the court the arbitration claim form may be served out of the jurisdiction irrespective of where the award is, or is treated as, made.

(5) Where the applicant applies to enforce an agreed award within the meaning of section 51(2) of the 1996 Act—

- (a) the arbitration claim form must state that the award is an agreed award; and
- (b) any order made by the court must also contain such a statement.

(6) An application for permission must be supported by written evidence—

- (a) exhibiting—
  - (i) where the application is made under section 66 of the 1996 Act or under section 26 of the 1950 Act, the arbitration agreement and the original award (or copies);
  - (ii) where the application is under section 101 of the 1996 Act, the documents required to be produced by section 102 of that Act; or
  - (iii) where the application is under section 3(1)(a) of the 1975 Act, the documents required to be produced by section 4 of that Act;

(b) stating the name and the usual or last known place of residence or business of the claimant and of the person against whom it is sought to enforce the award; and

(c) stating either—

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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)*

- (i) that the award has not been complied with; or
  - (ii) the extent to which it has not been complied with at the date of the application.
- (7) An order giving permission must—
- (a) be drawn up by the claimant; and
  - (b) be served on the defendant by—
    - (i) delivering a copy to him personally; or
    - (ii) sending a copy to him at his usual or last known place of residence or business.
- (8) An order giving permission may be served out of the jurisdiction—
- (a) without permission; and
  - (b) in accordance with rules [F903 6.40 to 6.46] as if the order were an arbitration claim form.
- (9) Within 14 days after service of the order or, if the order is to be served out of the jurisdiction, within such other period as the court may set—
- (a) the defendant may apply to set aside the order; and
  - (b) the award must not be enforced until after—
    - (i) the end of that period; or
    - (ii) any application made by the defendant within that period has been finally disposed of.
- (10) The order must contain a statement of—
- (a) the right to make an application to set the order aside; and
  - (b) the restrictions on enforcement under rule 62.18(9)(b).
- (11) Where a body corporate is a party any reference in this rule to place of residence or business shall have effect as if the reference were to the registered or principal address of the body corporate.

#### Textual Amendments

**F903** Words in rule 62.18(8)(b) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), 34(c)

#### Interest on awards

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

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

(2) A statement under paragraph (1) must be filed whenever the amount of interest has to be quantified for the purpose of—

- (a) obtaining a judgment or order under section 66 of the 1996 Act (enforcement of the award); or
- (b) enforcing such a judgment or order.

### Registration in High Court of foreign awards

#### 62.20.—(1) Where—

- (a) an award is made in proceedings on an arbitration in any part of a [<sup>F904</sup>British overseas territory] or other territory to which Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933 (“the 1933 Act”) extends;
- (b) Part II of the Administration of Justice Act 1920 extended to that part immediately before Part I of the 1933 Act was extended to that part; and
- (c) an award has, under the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place,

[<sup>F905</sup>rules 74.1 to 74.7 and 74.9 apply in relation to the award as they apply] in relation to a judgment given by the court subject to the modifications in paragraph (2).

#### (2) The modifications referred to in paragraph (1) are as follows—

- (a) for references to the [<sup>F906</sup>State of origin] are substituted references to the place where the award was made; and
- (b) the written evidence required by [<sup>F907</sup>rule 74.4] must state (in addition to the matters required by that rule) that to the best of the information or belief of the maker of the statement the award has, under the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place.

#### Textual Amendments

**F904** Words in rule 62.20(1)(a) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **34(d)**

**F905** Words in rule 62.20(1) substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **24(a)**

**F906** Words in rule 62.20(2)(a) substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **24(b)**

**F907** Words in rule 62.20(2)(b) substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **24(c)**

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

#### 62.21.—(1) In this rule—

- (a) “the 1966 Act” means the Arbitration (International Investment Disputes) Act 1966;
- (b) “award” means an award under the Convention;
- (c) “the Convention” means the Convention on the settlement of investment disputes between States and nationals of other States which was opened for signature in Washington on 18th March 1965;
- (d) “judgment creditor” means the person seeking recognition or enforcement of an award; and
- (e) “judgment debtor” means the other party to the award.

*Status: Point in time view as at 31/01/2011.*

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

[<sup>F908</sup>(2) Subject to the provisions of this rule, the following provisions of Part 74 apply with such modifications as may be necessary in relation to an award as they apply in relation to a judgment to which Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933 applies—

- (a) rule 74.1;
- (b) rule 74.3;
- (c) rule 74.4(1), (2)(a) to (d), and (4);
- (d) rule 74.6 (except paragraph (3)(c) to (e)); and
- (e) rule 74.9(2).]

(3) An application to have an award registered in the High Court under section 1 of the 1966 Act must be made in accordance with the Part 8 procedure.

(4) The written evidence required by [<sup>F909</sup>rule 74.4] in support of an application for registration must—

- (a) exhibit the award certified under the Convention instead of the judgment (or a copy of it); and
- (b) in addition to stating the matters referred to in [<sup>F910</sup>rule 74.4(2)(a) to (d)], state whether—
  - (i) at the date of the application the enforcement of the award has been stayed (provisionally or otherwise) under the Convention; and
  - (ii) any, and if so what, application has been made under the Convention, which, if granted, might result in a stay of the enforcement of the award.

(5) Where, on granting permission to register an award or an application made by the judgment debtor after an award has been registered, the court considers—

- (a) that the enforcement of the award has been stayed (whether provisionally or otherwise) under the Convention; or
- (b) that an application has been made under the Convention which, if granted, might result in a stay of the enforcement of the award,

the court may stay the enforcement of the award for such time as it considers appropriate.]

#### Textual Amendments

**F908** Rule 62.21(2) substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **25(a)**

**F909** Words in rule 62.21(4) substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **25(b)**

**F910** Words in rule 62.21(4)(b) substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **25(c)**

## [<sup>F911</sup>PART 63

### INTELLECTUAL PROPERTY CLAIMS

#### Textual Amendments

**F911** Pt. 63 substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rule 1(2), **Sch. 1**



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**Scope of this Part and interpretation**

- 63.1.**—(1) This Part applies to all intellectual property claims including—
- (a) registered intellectual property rights such as—
    - (i) patents;
    - (ii) registered designs; and
    - (iii) registered trade marks; and
  - (b) unregistered intellectual property rights such as—
    - (i) copyright;
    - (ii) design right;
    - (iii) the right to prevent passing off; and
    - (iv) the other rights set out in [F914Practice Direction 63].
- (2) In this Part—
- (a) “the 1977 Act” means the Patents Act 1977;
  - (b) “the 1988 Act” means the Copyright, Designs and Patents Act 1988;
  - (c) “the 1994 Act” means the Trade Marks Act 1994;
  - (d) “the Comptroller” means the Comptroller General of Patents, Designs and Trade Marks;
  - (e) “patent” means a patent under the 1977 Act or a supplementary protection certificate granted by the Patent Office under Article 10(1) of [Council Regulation \(EEC\) No. 1768/92](#) or of Regulation [\(EC\) No. 1610/96](#) of the European Parliament and the Council and includes any application for a patent or supplementary protection certificate;
  - (f) “Patents Court” means the Patents Court of the High Court constituted as part of the Chancery Division by section 6(1) of the Senior Courts Act 1981;
  - (g) “patents county court” means a county court designated as a patents county court under section 287(1) of the 1988 Act;
  - (h) “patents judge” means a person nominated under section 291(1) of the 1988 Act as the patents judge of a patents county court;
  - <sup>F915</sup>(i) . . . . .
  - (j) “the register” means whichever of the following registers is appropriate—
    - (i) patents maintained by the Comptroller under section 32 of the 1977 Act;
    - (ii) designs maintained by the registrar under section 17 of the Registered Designs Act 1949;
    - (iii) trade marks maintained by the registrar under section 63 of the 1994 Act;
    - (iv) Community trade marks maintained by the Office for Harmonisation in the Internal Market under Article 83 of Council Regulation [\(EC\) No. 40/94](#);

- (v) Community designs maintained by the Office for Harmonisation in the Internal Market under Article 72 of Council Regulation (EC) No. 6/2002; and
- (vi) plant varieties maintained by the Controller under regulation 12 of the Plant Breeders' Rights Regulations 1998; and
- (k) "the registrar" means—
  - (i) the registrar of trade marks; or
  - (ii) the registrar of registered designs,whichever is appropriate.
- (3) Claims to which this Part applies are allocated to the multi-track.

#### **Textual Amendments**

**F914** Words in rule 63.1(1)(b)(iv) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **38(a)**

**F915** Rule 63.1(2)(i) omitted (6.4.2010) by virtue of [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **38(b)**

### *I PATENTS AND REGISTERED DESIGNS*

#### **Scope of Section I and allocation**

- 63.2.**—(1) This Section applies to—
- (a) any claim under—
    - (i) the 1977 Act;
    - (ii) the Registered Designs Act 1949;
    - (iii) the Defence Contracts Act 1958; and
  - (b) any claim relating to—
    - (i) Community registered designs;
    - (ii) semiconductor topography rights; or
    - (iii) plant varieties.
- (2) Claims to which this Section applies must be started in—
- (a) the Patents Court; or
  - (b) a patents county court.

#### **Specialist list**

**63.3.** Claims in the Patents Court and a patents county court form specialist lists for the purpose of rule 30.5.

#### **Patents judge**

<sup>F916</sup>**63.4.** .....

*Status: Point in time view as at 31/01/2011.*

*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

**F916** Rule 63.4 omitted (1.10.2010) by virtue of [The Civil Procedure \(Amendment No.2\) Rules 2010 \(S.I. 2010/1953\)](#), rules 1(2), **8(b)**

#### Starting the claim

**63.5.** Claims to which this Section applies must be started—

- (a) by a Part 7 claim form; or
- (b) in existing proceedings under Part 20.

#### Claim for infringement or challenge to validity of a patent or registered design

**63.6.** A statement of case in a claim for infringement or a claim in which the validity of a patent or registered design is challenged must contain particulars as set out in [<sup>F917</sup>Practice Direction 63].

#### Textual Amendments

**F917** Words in [rule 63.6](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **38(a)**

#### Defence and reply

**63.7.** Part 15 applies with the modification—

- (a) to rule 15.4(1)(b) that in a claim for infringement under rule 63.6, the period for filing a defence where the defendant files an acknowledgment of service under Part 10 is 42 days after service of the particulars of claim;
- (b) that where rule 15.4(2) provides for a longer period to file a defence than in rule 63.7(a), then the period of time in rule 15.4(2) will apply; and
- (c) to rule 15.8 that the claimant must—
  - (i) file any reply to a defence; and
  - (ii) serve it on all other parties,
 within 21 days of service of the defence.

#### Case management

**63.8.—**(1) Parties do not need to file an allocation questionnaire.

(2) The following provisions only of Part 29 apply—

- (a) rule 29.3(2) (legal representatives to attend case management conferences);
- (b) rule 29.4 (the court's approval of agreed proposals for the management of proceedings); and
- (c) rule 29.5 (variation of case management timetable) with the exception of paragraph (1) (b) and (c).

(3) As soon as practicable the court will hold a case management conference which must be fixed in accordance with [<sup>F918</sup>Practice Direction 63].

#### Textual Amendments

**F918** Words in rule 63.8(3) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **38(a)**

### Disclosure and inspection

**63.9.** Part 31 is modified to the extent set out in [<sup>F919</sup>Practice Direction 63].

#### Textual Amendments

**F919** Words in rule 63.9 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **38(a)**

### Application to amend a patent specification in existing proceedings

**63.10.**—(1) An application under section 75 of the 1977 Act for permission to amend the specification of a patent by the proprietor of the patent must be made by application notice.

(2) The application notice must—

(a) give particulars of—

(i) the proposed amendment sought; and

(ii) the grounds upon which the amendment is sought;

(b) state whether the applicant will contend that the claims prior to the amendment are valid; and

(c) be served by the applicant on all parties and the Comptroller within 7 days of it being filed.

(3) The application notice must, if it is reasonably possible, be served on the Comptroller electronically.

(4) Unless the court otherwise orders, the Comptroller will, as soon as practicable, advertise the application to amend in the journal.

(5) The advertisement will state that any person may apply to the Comptroller for a copy of the application notice.

(6) Within 14 days of the first appearance of the advertisement any person who wishes to oppose the application must file and serve on all parties and the Comptroller a notice opposing the application which must include the grounds relied on.

(7) Within 28 days of the first appearance of the advertisement the applicant must apply to the court for directions.

(8) Unless the court otherwise orders, the applicant must within 7 days serve on the Comptroller any order of the court on the application.

(9) In this rule “the journal” means the journal published pursuant to rules under section 123(6) of the 1977 Act.

### Court’s determination of question or application

**63.11.**—(1) This rule applies where the Comptroller—

(a) declines to deal with a question under section 8(7), 12(2), 37(8) or 61(5) of the 1977 Act;

(b) declines to deal with an application under section 40(5) of the 1977 Act; or

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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)*

- (c) certifies under section 72(7)(b) of the 1977 Act that the court should determine the question whether a patent should be revoked.
- (2) Any person seeking the court's determination of that question or application must start a claim for that purpose within 14 days of receiving notification of the Comptroller's decision.
- (3) A person who fails to start a claim within the time prescribed by rule 63.11(2) will be deemed to have abandoned the reference or application.
- (4) A party may apply to the Comptroller or the court to extend the period for starting a claim prescribed by rule 63.11(2) even where the application is made after expiration of that period.

### **Application by employee for compensation**

**63.12.**—(1) An application by an employee for compensation under section 40(1) or (2) of the 1977 Act must be made—

- (a) in a claim form; and
- (b) within the period prescribed by paragraphs (2), (3) and (4).
- (2) The prescribed period begins on the date of the grant of the patent and ends 1 year after the patent has ceased to have effect.
- (3) Where the patent has ceased to have effect as a result of failure to pay renewal fees, the prescribed period continues as if the patent has remained continuously in effect provided that—
- (a) the renewal fee and any additional fee are paid in accordance with section 25(4) of the 1977 Act; or
- (b) restoration is ordered by the Comptroller following an application under section 28 of the 1977 Act.
- (4) Where restoration is refused by the Comptroller following an application under section 28 of the 1977 Act, the prescribed period will end 1 year after the patent has ceased to have effect or 6 months after the date of refusal, whichever is the later.

## *II REGISTERED TRADE MARKS AND OTHER INTELLECTUAL PROPERTY RIGHTS*

### **Allocation**

**63.13.** Claims relating to matters arising out of the 1994 Act and other intellectual property rights set out in [<sup>F920</sup>Practice Direction 63] must be started in—

- (a) the Chancery Division;
- (b) a patents county court; or
- (c) save as set out in [<sup>F921</sup>Practice Direction 63], a county court where there is also a Chancery District Registry.

#### **Textual Amendments**

**F920** Words in rule 63.13 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009](#) (S.I. 2009/3390), rules 1(2), **38(a)**

**F921** Words in rule 63.13(c) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009](#) (S.I. 2009/3390), rules 1(2), **38(a)**

### III SERVICE OF DOCUMENTS AND PARTICIPATION BY THE COMPTROLLER

#### Service of documents

**63.14.**—(1) Subject to paragraph (2), Part 6 applies to service of a claim form and any document in any proceedings under this Part.

(2) A claim form relating to a registered right may be served—

- (a) on a party who has registered the right at the address for service given for that right in the United Kingdom Patent Office register, provided the address is within the United Kingdom; or
- (b) in accordance with rule 6.32(1), 6.33(1) or 6.33(2) on a party who has registered the right at the address for service given for that right in the appropriate register at—
  - (i) the United Kingdom Patent Office; or
  - (ii) the Office for Harmonisation in the Internal Market.

(3) Where a party seeks any remedy (whether by claim form, counterclaim or application notice), which would if granted affect an entry in any United Kingdom Patent Office register, that party must serve on the Comptroller or registrar—

- (a) the claim form, counterclaim or application notice;
- (b) any other statement of case where relevant (including any amended statement of case); and
- (c) any accompanying documents.

#### Participation by the Comptroller

**63.15.** Where the documents set out in rule 63.14(3) are served, the Comptroller or registrar—

- (a) may take part in proceedings; and
- (b) need not serve a defence or other statement of case unless the court orders otherwise.

### IV APPEALS

#### Appeals from decisions of the Comptroller or the registrar

**63.16.**—(1) Part 52 applies to appeals from decisions of the Comptroller and the registrar.

(2) Appeals about patents must be made to the Patents Court, and other appeals to the Chancery Division.

(3) Where Part 52 requires a document to be served, it must also be served on the Comptroller or registrar, as appropriate.]

### <sup>F922</sup>SECTION V

#### PATENTS COUNTY COURT

#### Textual Amendments

**F922** Pt. 63 Section 5 inserted (1.10.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2010 \(S.I. 2010/1953\)](#), rule 1(2), [Sch. 2](#)

### **Scope of this Section**

**63.17.** This Part, as modified by this Section, applies to claims started in or transferred to a patents county court.

### **Transfer of proceedings**

**63.18.** When considering whether to transfer proceedings to or from a patents county court, the court will have regard to the provisions of Practice Direction 30.

### **Patents judge**

**63.19.**—(1) Subject to paragraph (2), proceedings in a patents county court will be dealt with by the patents judge of that court.

(2) When a matter needs to be dealt with urgently and it is not practicable or appropriate for the patents judge to deal with it, the matter may be dealt with by another judge with appropriate specialist experience nominated by the Chancellor of the High Court.

### **Statements of case**

**63.20.**—(1) Part 16 applies with the modification that a statement of case must set out concisely all the facts and arguments upon which the party serving it relies.

(2) The particulars of claim must state whether the claimant has complied with paragraph 7.1(1) and Annex A (paragraph 2) of the Practice Direction (Pre-Action Conduct).

### **Statement of truth**

**63.21.** Part 22 applies with the modification that the statement of truth verifying a statement of case must be signed by a person with knowledge of the facts alleged, or if no one person has knowledge of all the facts, by persons who between them have knowledge of all the facts alleged.

### **Defence and reply**

**63.22.**—(1) Rule 63.7 does not apply and Part 15 applies with the following modifications.

(2) Where the particulars of claim contain a confirmation in accordance with rule 63.20(2), the period for filing a defence is 42 days after service of the particulars of claim unless rule 15.4(2) provides for a longer period to do so.

(3) Where the particulars of claim do not contain a confirmation in accordance with rule 63.20(2), the period for filing a defence is 70 days after service of the particulars of claim.

(4) Where the claimant files a reply to a defence it must be filed and served on all other parties within 28 days of service of the defence.

(5) Where the defendant files a reply to a defence to a counterclaim it must be filed and served on all other parties within 14 days of service of the defence to the counterclaim.

(6) The periods in this rule may only be extended by order of the court and for good reason.

### **Case management**

**63.23.**—(1) At the first case management conference after those defendants who intend to file and serve a defence have done so, the court will identify the issues and decide whether to make an order in accordance with paragraph 29.1 of Practice Direction 63.

(2) Save in exceptional circumstances the court will not consider an application by a party to submit material in addition to that ordered under paragraph (1).



(3) The court may determine the claim on the papers where all parties consent.

### **Disclosure and inspection**

**63.24.**—(1) Rule 63.9 does not apply.

(2) Part 31 applies save that the provisions on standard disclosure do not apply.

### **Applications**

**63.25.**—(1) Part 23 applies with the modifications set out in this rule.

(2) Except at the case management conference provided for in rule 63.23(1), a respondent to an application must file and serve on all relevant parties a response within 5 days of the service of the application notice.

(3) The court will deal with an application without a hearing unless the court considers it necessary to hold a hearing.

(4) An application to transfer the claim to the High Court or to stay proceedings must be made before or at the case management conference provided for in rule 63.23(1).

(5) The court will consider an application to transfer the claim later in the proceedings only where there are exceptional circumstances.

### **Costs**

**63.26.**—(1) Subject to paragraph (2), the court will reserve the costs of an application to the conclusion of the trial when they will be subject to summary assessment.

(2) Where a party has behaved unreasonably the court will make an order for costs at the conclusion of the hearing.

(3) Where the court makes a summary assessment of costs, it will do so in accordance with Section VII of Part 45.]

## **[<sup>F923</sup>PART 64**

### **ESTATES, TRUSTS AND CHARITIES**

#### **Textual Amendments**

**F923** Pt. 64 inserted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rule 1(b), [Sch. 5](#)

#### **Contents of this Part**

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General	Rule 64.1
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#### **I**

#### **CLAIMS RELATING TO THE ADMINISTRATION OF ESTATES AND TRUSTS**

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Scope of this Section	Rule 64.2
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*Status: Point in time view as at 31/01/2011.*

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

Claim form	Rule 64.3
Parties	Rule 64.4

## II

### CHARITY PROCEEDINGS

Scope of this Section and interpretation	Rule 64.5
Application for permission to take charity proceedings	Rule 64.6

#### General

**64.1.**—(1) This Part contains rules—

- (a) in Section I, about claims relating to—
  - (i) the administration of estates of deceased persons, and
  - (ii) trusts; and
- (b) in Section II, about charity proceedings.

(2) In this Part and [<sup>F924</sup>Practice Directions 64A and 64B], where appropriate, references to trustees include executors and administrators.

(3) All proceedings in the High Court to which this Part applies must be brought in the Chancery Division.

#### Textual Amendments

**F924** Words in rule 64.1(2) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **39(a)**

### ***SECTION I: CLAIMS RELATING TO THE ADMINISTRATION OF ESTATES AND TRUSTS***

#### Scope of this Section

**64.2** This Section of this Part applies to claims—

- (a) for the court to determine any question arising in—
  - (i) the administration of the estate of a deceased person; or
  - (ii) the execution of a trust;
- (b) for an order for the administration of the estate of a deceased person, or the execution of a trust, to be carried out under the direction of the court (“an administration order”);
- (c) under the Variation of Trusts Act 1958<sup>(8)</sup>; or
- (d) under section 48 of the Administration of Justice Act 1985<sup>(9)</sup>.

<sup>(8)</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>(9)</sup> 1984 c. 28. Section 69 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 46.

### **Claim form**

**64.3** A claim to which this Section applies must be made by issuing a Part 8 claim form.

### **Parties**

**64.4.**—(1) In a claim to which this Section applies, other than an application under section 48 of the Administration of Justice Act 1985—

- (a) all the trustees must be parties;
- (b) if the claim is made by trustees, any of them who does not consent to being a claimant must be made a defendant; and
- (c) the claimant may make parties to the claim any persons with an interest in or claim against the estate, or an interest under the trust, who it is appropriate to make parties having regard to the nature of the order sought.

(2) In addition, in a claim under the Variation of Trusts Act 1958, unless the court directs otherwise any person who—

- (a) created the trust; or
- (b) provided property for the purposes of the trust,

must, if still alive, be made a party to the claim.

(The court may, under rule 19.2, order additional persons to be made parties to a claim.)

## ***SECTION II: CHARITY PROCEEDINGS***

### **Scope of this Section and interpretation**

**64.5.**—(1) This Section applies to charity proceedings.

(2) In this Section—

- (a) “the Act” means the Charities Act 1993<sup>(10)</sup>;
- (b) “charity proceedings” has the same meaning as in section 33(8) of the Act; and
- (c) “the Commissioners” means the Charity Commissioners for England and Wales.

### **Application for permission to take charity proceedings**

**64.6.**—(1) An application to the High Court 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.

(2) The application must be made by issuing a Part 8 claim form, which must contain the information specified in [F925Practice Direction 64A].

(3) The Commissioners must be made defendants to the claim, but the claim form need not be served on them or on any other person.

(4) The judge considering the application may direct the Commissioners to file a written statement of their reasons for their decision.

(5) The court will serve on the applicant a copy of any statement filed under paragraph (4).

(6) The judge may either—

- (a) give permission without a hearing; or

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(10) 1982 c. 27.

*Status: Point in time view as at 31/01/2011.*

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

(b) fix a hearing.]

#### Textual Amendments

**F925** Words in rule 64.6(2) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **39(b)**

## [<sup>F926</sup>PART 65

### PROCEEDINGS RELATING TO ANTI-SOCIAL BEHAVIOUR AND HARASSMENT

#### Textual Amendments

**F926** Pt. 65 inserted (30.6.2004) by [The Civil Procedure \(Amendment\) Rules 2004 \(S.I. 2004/1306\)](#), rule 1(b), **Sch. 2** (with rule 20(2)(a))

#### Contents of this Part

Scope of this Part	Rule 65.1
<b>I HOUSING ACT 1996 INJUNCTIONS</b>	
Scope of this Section and interpretation	Rule 65.2
Applications for an injunction	Rule 65.3
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Application for warrant of arrest under section 155(3) of the 1996 Act	Rule 65.5
Proceedings following arrest	Rule 65.6
Recognizance	Rule 65.7
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Scope of this Section and interpretation	Rule 65.8
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### **III DEMOTION CLAIMS AND PROCEEDINGS RELATING TO DEMOTED TENANCIES**

Scope of this Section and interpretation	Rule 65.11
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Starting a demotion claim	Rule 65.14
Particulars of claim	Rule 65.15
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The hearing	Rule 65.18
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### **IV ANTI-SOCIAL BEHAVIOUR ORDERS UNDER THE CRIME AND DISORDER ACT 1998**

Scope of this Section and interpretation	Rule 65.21
Application where the relevant authority is a party to the principal proceedings	Rule 65.22
Application by a relevant authority to join a person to the principal proceedings	Rule 65.23
Application where the relevant authority is not a party to the principal proceedings	Rule 65.24
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### **V CLAIMS UNDER THE PROTECTION FROM HARASSMENT ACT 1997**

Scope of this Section and interpretation	Rule 65.27
Claims under section 3 of the 1997 Act	Rule 65.28
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Proceedings following arrest	Rule 65.30

### **[<sup>F927</sup>VI DRINKING BANNING ORDERS UNDER THE VIOLENT CRIME REDUCTION ACT 2006**

Scope of this Section and interpretation	Rule 65.31
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*Status: Point in time view as at 31/01/2011.*

*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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Application where the relevant authority is a party in principal proceedings	Rule 65.32
Application where the relevant authority is not a party in principal proceedings	Rule 65.33
Application by a relevant authority to join a person to the principal proceedings	Rule 65.34
Evidence	Rule 65.35
Application for an interim order	Rule 65.36]

#### VII PARENTING ORDERS UNDER THE ANTI-SOCIAL BEHAVIOUR ACT 2003

Scope of this Section and interpretation	Rule 65.37
Applications for parenting orders	Rule 65.38
Applications by the relevant authority to be joined to proceedings	Rule 65.39
Applications by the relevant authority to join a parent to proceedings	Rule 65.40
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#### [<sup>F928</sup>VIII INJUNCTIONS UNDER THE POLICING AND CRIME ACT 2009

Scope of this Section and interpretation	Rule 65.42
Applications for an injunction	Rule 65.43
Injunction containing provisions to which a power of arrest is attached	Rule 65.44
Application to vary or discharge an injunction	Rule 65.45
Application for warrant of arrest under section 44(2) of the 2009 Act	Rule 65.46
Proceedings following arrest under the 2009 Act	Rule 65.47
Recognizance	Rule 65.48
Applications for a power of arrest to be attached to any provision of an injunction	Rule 65.49]

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#### Scope of this Part

**65.1.** This Part contains rules—

- (a) in Section I, about injunctions under the Housing Act 1996;
- (b) in Section II, about applications by local authorities under section 91(3) of the Anti-social Behaviour Act 2003 for a power of arrest to be attached to an injunction;

- (c) in Section III, about claims for demotion orders under the Housing Act 1985 and Housing Act 1988 and proceedings relating to demoted tenancies;
- (d) in Section IV, about anti-social behaviour orders under the Crime and Disorder Act 1998;
- (e) in Section V, about claims under section 3 of the Protection from Harassment Act 1997 [F929;]F930 ...
- [ F932 ..... ]
- F931 (f) [ in Section VI, about applications for drinking banning orders and interim drinking banning F933 (f) orders under sections 4 and 9 of the Violent Crime Reduction Act 2006; F934 ...]
- (g) in Section VII, about parenting orders under sections 26A and 26B of the Anti-social Behaviour Act 2003[F935; and
- (h) in Section VIII, about injunctions under the Policing and Crime Act 2009.]

**Textual Amendments**

**F929** Rule 65.1(e): semicolon substituted for full stop (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, **19(b)**

**F930** Word in rule 65.1(e) omitted (31.8.2009) by virtue of [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(3), **13(b)**

**F931** Rule 65.1(f)(g) inserted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, **19(c)**

**F932** Rule 65.1(f) omitted (1.10.2008) by virtue of [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **36(b)(ii)**

**F933** Rule 65.1(f) inserted (31.8.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(3), **13(c)**

**F934** Word in rule 65.1(f) omitted (31.1.2011) by virtue of [The Civil Procedure \(Amendment No.2\) Rules 2010 \(S.I. 2010/1953\)](#), rules 1(3), **9(b)(i)**; S.I. 2010/2988, **art. 2**

**F935** Rule 65.1(h) and word inserted (31.1.2011) by [The Civil Procedure \(Amendment No.2\) Rules 2010 \(S.I. 2010/1953\)](#), rules 1(3), **9(b)(ii)**; S.I. 2010/2988, **art. 2**

SECTION I

Housing Act 1996 injunctions

Scope of this Section and interpretation

65.2.—(1) This Section applies to applications for an injunction and other related proceedings under Chapter III of Part V of the Housing Act 1996 (injunctions against anti-social behaviour).

(2) In this Section “the 1996 Act” means the Housing Act 1996.

Applications for an injunction

65.3.—(1) An application for an injunction under [F936Chapter III of Part V] of the 1996 Act shall be subject to the Part 8 procedure as modified by this rule and [F937Practice Direction 65].

(2) The application must be—

- (a) made by a claim form in accordance with [F938Practice Direction 65];
- (b) commenced in the court for the district in which the defendant resides or the conduct complained of occurred; and

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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)*

- (c) supported by [<sup>F939</sup>a witness statement] which must be filed with the claim form.
- (3) The claim form must state—
- (a) the matters required by rule 8.2; and
  - (b) the terms of the injunction applied for.
- (4) An application under this rule may be made without notice and where such an application without notice is made—
- (a) the [<sup>F940</sup>witness statement] in support of the application must state the reasons why notice has not been given; and
  - (b) the following rules do not apply—
    - (i) 8.3;
    - (ii) 8.4;
    - (iii) 8.5(2) to (6);
    - (iv) 8.6(1);
    - (v) 8.7; and
    - (vi) 8.8.
- (5) In every application made on notice, the application notice must be served, together with a copy of the [<sup>F941</sup>witness statement], by the claimant on the defendant personally.
- (6) An application made on notice may be listed for hearing before the expiry of the time for the defendant to file an acknowledgement of service under rule 8.3, and in such a case—
- (a) the claimant must serve the application notice and [<sup>F942</sup>witness statement] on the defendant not less than two days before the hearing; and
  - (b) the defendant may take part in the hearing whether or not he has filed an acknowledgment of service.

#### Textual Amendments

- F936** Words in rule 65.3(1) substituted (1.9.2004) by [The Civil Procedure \(Amendment No.2\) Rules 2004 \(S.I. 2004/2072\)](#), rules 1(a), **14(a)**
- F937** Words in rule 65.3(1) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **40(a)**
- F938** Words in rule 65.3(2)(a) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **40(a)**
- F939** Words in rule 65.3(2)(c) substituted (1.9.2004) by [The Civil Procedure \(Amendment No.2\) Rules 2004 \(S.I. 2004/2072\)](#), rules 1(a), **14(b)**
- F940** Words in rule 65.3(4)(a) substituted (1.9.2004) by [The Civil Procedure \(Amendment No.2\) Rules 2004 \(S.I. 2004/2072\)](#), rules 1(a), **14(c)**
- F941** Words in rule 65.3(5) substituted (1.9.2004) by [The Civil Procedure \(Amendment No.2\) Rules 2004 \(S.I. 2004/2072\)](#), rules 1(a), **14(d)**
- F942** Words in rule 65.3(6)(a) substituted (1.9.2004) by [The Civil Procedure \(Amendment No.2\) Rules 2004 \(S.I. 2004/2072\)](#), rules 1(a), **14(e)**

#### Injunction containing provisions to which a power of arrest is attached

**65.4.—(1)** In this rule “relevant provision” means a provision of an injunction to which a power of arrest is attached.



(Sections 153C(3) and 153D(4) of the 1996 Act confer powers to attach a power of arrest to an injunction)

- (2) Where an injunction contains one or more relevant provisions—
  - (a) each relevant provision must be set out in a separate paragraph of the injunction; and
  - (b) subject to paragraph (3), the claimant must deliver a copy of the relevant provisions to any police station for the area where the conduct occurred.
- (3) Where the injunction has been granted without notice, the claimant must not deliver a copy of the relevant provisions to any police station for the area where the conduct occurred before the defendant has been served with the injunction containing the relevant provisions.
- (4) Where an order is made varying or discharging any relevant provision, the claimant must—
  - (a) immediately inform the police station to which a copy of the relevant provisions was delivered under paragraph (2)(b); and
  - (b) deliver a copy of the order to any police station so informed.

#### **Application for warrant of arrest under section 155(3) of the 1996 Act**

**65.5.**—(1) An application for a warrant of arrest under section 155(3) of the 1996 Act must be made in accordance with Part 23 and may be made without notice.

- (2) An applicant for a warrant of arrest under section 155(3) of the 1996 Act must—
  - (a) file an affidavit setting out grounds for the application with the application notice; or
  - (b) give oral evidence as to the grounds for the application at the hearing.

#### **Proceedings following arrest**

- 65.6.**—(1) This rule applies where a person is arrested pursuant to—
- (a) a power of arrest attached to a provision of an injunction; or
  - (b) a warrant of arrest.
- (2) The judge before whom a person is brought following his arrest may—
- (a) deal with the matter; or
  - (b) adjourn the proceedings.
- (3) Where the proceedings are adjourned the judge may remand the arrested person in accordance with section 155(2)(b) or (5) of the 1996 Act.
- (4) 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 28 days of the date on which the arrested person appears in court; and
  - (b) the arrested person must be given not less than 2 days' notice of the hearing.
- (5) An application notice seeking the committal for contempt of court of the arrested person may be issued even if the arrested person is not dealt with within the period mentioned in paragraph (4)(a).
- (6) CCR Order 29, rule 1 shall apply where an application is made in a county court to commit a person for breach of an injunction, as if references in that rule to the judge included references to a district judge.

(For applications in the High Court for the discharge of a person committed to prison for contempt of court see RSC Order 52, rule 8. For such applications in the county court see CCR Order 29, rule 3)

*Status: Point in time view as at 31/01/2011.*

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

## Recognizance

**65.7.**—(1) Where, in accordance with paragraph 2(2)(b) of Schedule 15 to the 1996 Act, 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.

(2) The person having custody of an applicant for bail must release him if satisfied that the required recognizances have been taken.

## SECTION II

*Applications by local authorities for power of arrest to be attached to an injunction*

### Scope of this Section and interpretation

**65.8.**—(1) This Section applies to applications by local authorities under section 91(3) of the Anti-social Behaviour Act 2003 [<sup>F943</sup>or under section 27(3) of the Police and Justice Act 2006] for a power of arrest to be attached to an injunction.

(Section 91 of the 2003 Act [<sup>F944</sup>and section 27 of the 2006 Act apply] to proceedings in which a local authority is a party by virtue of section 222 of the Local Government Act 1972 (power of local authority to bring, defend or appear in proceedings for the promotion or protection of the interests of inhabitants in their area)

(2) In this Section “the 2003 Act” means the Anti-social Behaviour Act 2003.

[<sup>F945</sup>(3) In this Section “the 2006 Act” means the Police and Justice Act 2006.]

#### Textual Amendments

**F943** Words in rule 65.8(1) inserted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, **19(d)(i)**

**F944** Words in rule 65.8(1) substituted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, **19(d)(ii)**

**F945** Rule 65.8(3) inserted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, **19(d)(iii)**

### Applications under section 91(3) of the 2003 Act [<sup>F946</sup>or section 27(3) of the 2006 Act] for a power of arrest to be attached to any provision of an injunction

**65.9.**—(1) An application under section 91(3) of the 2003 Act [<sup>F947</sup>or section 27(3) of the 2006 Act] for a power of arrest to be attached to any provision of an injunction must be made in the proceedings seeking the injunction by—

- (a) the claim form;
- (b) the acknowledgment of service;

- (c) the defence or counterclaim in a Part 7 claim; or
- (d) application under Part 23.

(2) Every application must be supported by written evidence.

(3) Every application made on notice must be served personally, together with a copy of the written evidence, by the local authority on the person against whom the injunction is sought not less than 2 days before the hearing.

(Attention is drawn to rule 25.3(3)—applications without notice)

#### **Textual Amendments**

**F946** Words in rule 65.9 heading inserted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, **19(e)(i)**

**F947** Words in rule 65.9(1) inserted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, **19(e)(ii)**

#### **Injunction containing provisions to which a power of arrest is attached**

**65.10.**—(1) Where a power of arrest is attached to a provision of an injunction on the application of a local authority under section 91(3) of the 2003 Act, the following rules in Section I of this Part shall apply—

- (a) rule 65.4; and
- (b) paragraphs (1), (2), (4) and (5) of rule 65.6.

[  
**F948**(1A) Where a power of arrest is attached to a provision of an injunction on the application of a local authority under section 27(3) of the 2006 Act, the following rules in Section I of this Part apply—

- (a) rule 65.4;
- (b) paragraphs (1), (2), (4) and (5) of rule 65.6;
- (c) paragraph (1) of rule 65.7, as if the reference to paragraph 2(2)(b) of Schedule 15 to the Housing Act 1996 was a reference to paragraph 2(2)(b) of Schedule 10 to the 2006 Act; and
- (d) paragraph (2) of rule 65.7.]

(2) CCR Order 29, rule 1 shall apply where an application is made in a county court to commit a person for breach of an injunction.

#### **Textual Amendments**

**F948** [Rule 65.10\(1A\)](#) inserted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, **19(f)**

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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)*

### SECTION III

*[<sup>F949</sup>Demotion claims, proceedings related to demoted tenancies and applications to suspend the right to buy]*

#### Textual Amendments

**F949** Pt. 65 Section 3 heading substituted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **48(a)**

#### Scope of this Section and interpretation

**65.11.**—(1) This Section applies to—

(a) claims by a landlord for an order under section 82A of the Housing Act 1985 or under section 6A of the Housing Act 1988 (“a demotion order”); <sup>F950</sup>...

[ claims by a landlord for an order under section 121A of the Housing Act 1985 (“a <sup>F951</sup>(aa) suspension order”); and]

(b) proceedings relating to a tenancy created by virtue of a demotion order.

(2) In this Section—

(a) “a demotion claim” means a claim made by a landlord for a demotion order; <sup>F952</sup>...

(b) “a demoted tenancy” means a tenancy created by virtue of a demotion order [<sup>F953</sup>;

(c) “suspension claim” means a claim made by a landlord for a suspension order; and

(d) “suspension period” means the period during which the suspension order suspends the right to buy in relation to the dwelling house.]

#### Textual Amendments

**F950** Word in rule 65.11(1)(a) omitted (1.10.2005) by virtue of [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **48(b)(i)**

**F951** Rule 65.11(1)(aa) inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **48(b)(ii)**

**F952** Word in rule 65.11(2)(a) omitted (1.10.2005) by virtue of [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **48(c)(i)**

**F953** Rule 65.11(2)(c)(d) inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **48(c)(ii)**

#### Demotion claims [<sup>F954</sup>or suspension claims] made in the alternative to possession claims

**65.12.** Where a demotion order [<sup>F955</sup>or suspension order (or both)] is claimed in the alternative to a possession order, the claimant must use the Part 55 procedure and Section I of Part 55 applies, except that the claim must be made in the county court for the district in which the property to which the claim relates is situated.

#### Textual Amendments

**F954** Words in rule 65.12 heading inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **48(d)(i)**

**F955** Words in rule 65.12 inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **48(d)(ii)**

### Other demotion [<sup>F956</sup>or suspension] claims

**65.13.** Where a demotion claim [<sup>F957</sup>or suspension claim (or both)] is made other than in a possession claim, rules 65.14 to 65.19 apply.

#### Textual Amendments

**F956** Words in rule 65.13 heading inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **48(e)(i)**

**F957** Words in rule 65.13 inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **48(e)(ii)**

### Starting a demotion [<sup>F958</sup>or suspension] claim

**65.14.**—(1) [<sup>F959</sup>The claim] must be made in the county court for the district in which the property to which the claim relates is situated.

(2) The claim form and form of defence sent with it must be in the forms set out in [<sup>F960</sup>Practice Direction 65].

(<sup>F961</sup>Part 16 and Practice Direction 65] provide details about the contents of the particulars of claim)

#### Textual Amendments

**F958** Words in rule 65.14 heading inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **48(f)(i)**

**F959** Words in rule 65.14(1) substituted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), **48(f)(ii)**

**F960** Words in rule 65.14(2) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **40(a)**

**F961** Words in rule 65.14(2) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **40(b)**

### Particulars of claim

**65.15.** The particulars of claim must be filed and served with the claim form.

### Hearing date

**65.16.**—(1) The court will fix a date for the hearing when it issues the claim form.

(2) The hearing date will be not less than 28 days from the date of issue of the claim form.

(3) The standard period between the issue of the claim form and the hearing will be not more than 8 weeks.

(4) The defendant must be served with the claim form and the particulars of claim not less than 21 days before the hearing date.

*Status: Point in time view as at 31/01/2011.*

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

(Rule 3.1(2)(a) provides that the court may extend or shorten the time for compliance with any rule and rule 3.1(2)(b) provides that the court may adjourn or bring forward a hearing)

### Defendant's response

**65.17.**—(1) An acknowledgement of service is not required and Part 10 does not apply.

(2) Where 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.

(3) Part 12 (default judgment) does not apply <sup>F962</sup>....

#### Textual Amendments

**F962** Words in rule 65.17(3) omitted (1.10.2005) by virtue of [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), [48\(g\)](#)

### The hearing

**65.18.**—(1) At the hearing fixed in accordance with rule 65.16(1) or at any adjournment of that hearing the court may—

- (a) [<sup>F963</sup>decide the claim]; or
- (b) give case management directions.

(2) Where [<sup>F964</sup>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 [<sup>F964</sup>the claim] to a track or directions to enable it to be allocated.

(3) Except where—

- (a) [<sup>F965</sup>the claim] is allocated to the fast track or the multi-track; or
- (b) the court directs 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.

(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) All witness statements must be filed and served at least two days before the hearing.

(5) Where the claimant serves the claim form and particulars of claim, [<sup>F966</sup>the claimant] must produce at the hearing a certificate of service of those documents and rule [<sup>F967</sup>6.17(2)(a)] does not apply.

#### Textual Amendments

**F963** Words in rule 65.18(1)(a) substituted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), [48\(h\)\(i\)](#)

**F964** Words in rule 65.18(2) substituted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), [48\(h\)\(ii\)](#)

**F965** Words in rule 65.18(3)(a) substituted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rules 1(c), [48\(h\)\(iii\)](#)

**F966** Words in rule 65.18(5) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), [36\(e\)\(i\)](#)

**F967** Word in rule 65.18(5) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), 36(c)(ii)

### Allocation

**65.19.** When the court decides the track for [<sup>F968</sup>the claim], the matters to which it shall have regard include—

- (a) the matters set out in rule 26.8; and
- (b) the nature and extent of the conduct alleged.

### Textual Amendments

**F968** Words in rule 65.19 substituted (1.10.2005) by The Civil Procedure (Amendment No.3) Rules 2005 (S.I. 2005/2292), rules 1(c), 48(i)

### Proceedings relating to demoted tenancies

**65.20.** A practice direction may make provision about proceedings relating to demoted tenancies.

## SECTION IV

### *Anti-social behaviour orders under the Crime and Disorder Act 1998*

### Scope of this Section and interpretation

**65.21.—**(1) This Section applies to applications in proceedings in a county court under sub-sections (2), (3) or (3B) of section 1B of the Crime and Disorder Act 1998 by a relevant authority, and to applications for interim orders under section 1D of that Act.

(2) In this Section—

- (a) “the 1998 Act” means the Crime and Disorder Act 1998;
- (b) “relevant authority” has the same meaning as in section 1(1A) of the 1998 Act; and
- (c) “the principal proceedings” means any proceedings in a county court.

### Application where the relevant authority is a party in principal proceedings

**65.22.—**(1) Subject to paragraph (2)—

- (a) where the relevant authority is the claimant in the principal proceedings, an application under section 1B(2) of the 1998 Act for an order under section 1B(4) of the 1998 Act must be made in the claim form; and
- (b) where the relevant authority is a defendant in the principal proceedings, an application for an order must be made by application notice which must be filed with the defence.

(2) Where the relevant authority becomes aware of the circumstances that lead it to apply for an order after its claim is issued or its defence filed, the application must be made by application notice as soon as possible thereafter.

(3) Where the application is made by application notice, it should normally be made on notice to the person against whom the order is sought.

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*Status: Point in time view as at 31/01/2011.*

*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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### **Application by a relevant authority to join a person to the principal proceedings**

**65.23.**—(1) An application under section 1B(3B) of the 1998 Act by a relevant authority which is a party to the principal proceedings to join a person to the principal proceedings must be made—

- (a) in accordance with Section I of Part 19;
- (b) in the same application notice as the application for an order under section 1B(4) of the 1998 Act against the person; and
- (c) as soon as possible after the relevant authority considers that the criteria in section 1B(3A) of the 1998 Act are met.

(2) The application notice must contain—

- (a) the relevant authority's reasons for claiming that the person's anti-social acts are material in relation to the principal proceedings; and
- (b) details of the anti-social acts alleged.

(3) The application should normally be made on notice to the person against whom the order is sought.

### **Application where the relevant authority is not party in principal proceedings**

**65.24.**—(1) Where the relevant authority is not a party to the principal proceedings—

- (a) an application under section 1B(3) of the 1998 Act to be made a party must be made in accordance with Section I of Part 19; and
- (b) the application to be made a party and the application for an order under section 1B(4) of the 1998 Act must be made in the same application notice.

(2) The applications—

- (a) must be made as soon as possible after the authority becomes aware of the principal proceedings; and
- (b) should normally be made on notice to the person against whom the order is sought.

### **Evidence**

**65.25.** An application for an order under section 1B(4) of the 1998 Act must be accompanied by written evidence, which must include evidence that section 1E of the 1998 Act has been complied with.

### **Application for an interim order**

**65.26.**—(1) An application for an interim order under section 1D of the 1998 Act must be made in accordance with Part 25.

(2) The application should normally be made—

- (a) in the claim form or application notice seeking the order; and
- (b) on notice to the person against whom the order is sought.



## SECTION V

### *Proceedings under the Protection from Harassment Act 1997*

#### **Scope of this Section**

**65.27.** This Section applies to proceedings under section 3 of the Protection from Harassment Act 1997 (“the 1997 Act”).

#### **Claims under section 3 of the 1997 Act**

**65.28.** A claim under section 3 of the 1997 Act—

- (a) shall be subject to the Part 8 procedure; and
- (b) must be commenced—
  - (i) if in the High Court, in the Queen’s Bench Division;
  - (ii) if in the county court, in the court for the district in which the defendant resides or carries on business or the court for the district in which the claimant resides or carries on business.

#### **Applications for issue of a warrant of arrest under section 3(3) of the 1997 Act**

**65.29.**—(1) An application for a warrant of arrest under section 3(3) of the 1997 Act—

- (a) must be made in accordance with Part 23; and
  - (b) may be made without notice.
- (2) The application notice must be supported by affidavit evidence which must—
- (a) set out the grounds for the application;
  - (b) state whether the claimant has informed the police of the conduct of the defendant as described in the affidavit; and
  - (c) state whether, to the claimant’s knowledge, criminal proceedings are being pursued.

#### **Proceedings following arrest**

**65.30.**—(1) The judge before whom a person is brought following his arrest may—

- (a) deal with the matter; or
  - (b) adjourn the proceedings.
- (2) 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 28 days of the date on which the arrested person appears in court; and
  - (b) the arrested person must be given not less than 2 days' notice of the hearing.

## *F<sup>969</sup> VI*

### *Drinking Banning Orders under the Violent Crime Reduction Act 2006*

#### **Textual Amendments**

**F969** Pt. 65 Section 6 inserted (31.8.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rule 1(3), [Sch. 2](#)

*Status: Point in time view as at 31/01/2011.*

*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 Section and interpretation**

**65.31.**—(1) This Section applies to applications in proceedings in a county court under subsections (2), (3) or (5) of section 4 of the Violent Crime Reduction Act 2006 by a relevant authority, and to applications for interim orders under section 9 of that Act.

(2) In this Section—

- (a) “the 2006 Act” means the Violent Crime Reduction Act 2006;
- (b) “relevant authority” has the same meaning as in section 14(1) of the 2006 Act; and
- (c) “the principal proceedings” means any proceedings in a county court.

### **Application where the relevant authority is a party in principal proceedings**

**65.32.**—(1) Subject to paragraph (2)—

- (a) where the relevant authority is the claimant in the principal proceedings, an application under section 4(2) of the 2006 Act for an order under section 4(7) of the 2006 Act must be made in the claim form; and
- (b) where the relevant authority is a defendant in the principal proceedings, an application for an order must be made by application notice which must be filed with the defence.

(2) Where the relevant authority becomes aware of the circumstances that lead it to apply for an order after its claim is issued or its defence filed, the application must be made by application notice as soon as possible thereafter.

(3) Where the application is made by application notice, it should normally be made on notice to the person against whom the order is sought.

### **Application where the relevant authority is not a party in principal proceedings**

**65.33.**—(1) Where the relevant authority is not a party to the principal proceedings—

- (a) an application under section 4(3) of the 2006 Act to be made a party must be made in accordance with Section I of Part 19; and
- (b) the application to be made a party and the application for an order under section 4(7) of the 2006 Act must be made in the same application notice.

(2) The applications—

- (a) must be made as soon as possible after the relevant authority becomes aware of the principal proceedings; and
- (b) should normally be made on notice to the person against whom the order is sought.

### **Application by a relevant authority to join a person to the principal proceedings**

**65.34.**—(1) An application under section 4(5) of the 2006 Act by a relevant authority which is a party to the principal proceedings to join a person to the principal proceedings must be made—

- (a) in accordance with Section I of Part 19;
- (b) in the same application notice as the application for an order under section 4(7) of the 2006 Act against the person; and
- (c) as soon as possible after the relevant authority considers that the criteria in section 4(4) of the 2006 Act are met.

(2) The application notice must contain—

- (a) the relevant authority’s reasons for claiming that the person’s conduct is material in relation to the principal proceedings; and

(b) details of the conduct alleged.

(3) The application should normally be made on notice to the person against whom the order is sought.

### **Evidence**

**65.35.** An application for an order under section 4(7) of the 2006 Act must be accompanied by written evidence, which must include evidence that section 4(6) of the 2006 Act has been complied with.

### **Application for an interim order**

**65.36.**—(1) An application for an interim order under section 9 of the 2006 Act must be made in accordance with Part 25.

(2) The application should normally be made—

- (a) in the claim form or application notice seeking the order; and
- (b) on notice to the person against whom the order is sought.

(3) An application for an interim order may be—

- (a) made without a copy of the application notice being served on the person against whom the order is sought;
- (b) heard in the absence of the person against whom the order is sought,

with the permission of the court.]

## *[<sup>F970</sup>VII*

### *Parenting Orders under the Anti-Social Behaviour Act 2003*

#### **Textual Amendments**

**F970** Pt. 65 Section 7 inserted (1.10.2007) by [The Civil Procedure \(Amendment\) Rules 2007 \(S.I. 2007/2204\)](#), rules 1, **19(g)**

### **Scope of this Section and interpretation**

**65.37.**—(1) This Section of this Part applies in relation to applications for parenting orders under sections 26A and 26B of the Anti-social Behaviour Act 2003 by a relevant authority.

(2) In this Section—

- (a) “the 2003 Act” means the Anti-social Behaviour Act 2003; and
- (b) “relevant authority” has the same meaning as in section 26C of the 2003 Act.

### **Applications for parenting orders**

**65.38.**—(1) Subject to paragraph (2)—

- (a) where the relevant authority is the claimant in the proceedings, an application for an order under section 26A or 26B of the 2003 Act must be made in the claim form; and
- (b) where the relevant authority is a defendant in the proceedings, an application for such an order must be made by application notice which must be filed with the defence.

*Status: Point in time view as at 31/01/2011.*

*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 relevant authority becomes aware of the circumstances that lead it to apply for an order after its claim is issued or its defence filed, the application must be made by application notice as soon as possible thereafter.

(3) Where the application is made by application notice, it must normally be made on notice to the person against whom the order is sought.

#### **Applications by the relevant authority to be joined to proceedings**

**65.39.**—(1) Where the relevant authority is not a party to the proceedings—

- (a) an application under section 26C(2) of the 2003 Act to be made a party must be made in accordance with Section I of Part 19; and
- (b) the application to be made a party and the application for an order under section 26A or 26B of the 2003 Act must be made in the same application notice.

(2) The applications—

- (a) must be made as soon as possible after the relevant authority becomes aware of the proceedings; and
- (b) must normally be made on notice to the person against whom the order is sought.

#### **Applications by the relevant authority to join a parent to proceedings**

**65.40.**—(1) An application under section 26C(3) of the 2003 Act by a relevant authority which is a party to the proceedings to join a parent to those proceedings must be made—

- (a) in the same application notice as the application for an order under section 26A or 26B of the 2003 Act; and
- (b) as soon as possible after the relevant authority considers that the grounds for the application are met.

(2) Rule 19.2 does not apply in relation to an application made by a relevant authority under section 26C(3) of the 2003 Act to join a parent to the proceedings.

(3) The application notice must contain—

- (a) the relevant authority's reasons for claiming the anti-social behaviour of the child or young person is material in relation to the proceedings; and
- (b) details of the behaviour alleged.

(4) The application must normally be made on notice to the person against whom the order is sought.

#### **Evidence**

**65.41.** An application under section 26A, 26B or 26C of the 2003 Act must be accompanied by written evidence.]

### *[<sup>F971</sup>SECTION VIII*

#### *Injunctions under the Policing and Crime Act 2009*

#### **Textual Amendments**

**F971** Pt. 65 Section 8 inserted (31.1.2011) by [The Civil Procedure \(Amendment No.2\) Rules 2010](#) (S.I. 2010/1953), rule 1(3), [Sch. 3](#); S.I. 2010/2988, [art. 2](#)

### **Scope of this Section and interpretation**

**65.42.**—(1) This Section applies to applications for an injunction and other related proceedings under Part 4 of the Policing and Crime Act 2009 (Injunctions: gang-related violence).

(2) In this Section “the 2009 Act” means the Policing and Crime Act 2009.

### **Applications for an injunction**

**65.43.**—(1) An application for an injunction under Part 4 of the 2009 Act is subject to the Part 8 procedure as modified by this rule and Practice Direction 65.

(2) The application must be—

- (a) made by a claim form in accordance with Practice Direction 65;
- (b) commenced in the court for the district in which the defendant resides or the conduct complained of occurred; and
- (c) supported by a witness statement which must be filed with the claim form.

(3) The claim form must state—

- (a) the matters required by rule 8.2; and
- (b) the terms of the injunction applied for.

(4) An application under this rule may be made without notice and where such an application without notice is made—

- (a) the witness statement in support of the application must state the reasons why notice has not been given; and
- (b) the following rules do not apply—
  - (i) 8.3;
  - (ii) 8.4;
  - (iii) 8.5(2) to (6);
  - (iv) 8.6(1);
  - (v) 8.7; and
  - (vi) 8.8.

(5) In every application made on notice, the application notice must be served, together with a copy of the witness statement, by the claimant on the defendant personally.

(6) An application made on notice may be listed for hearing before the expiry of the time for the defendant to file an acknowledgement of service under rule 8.3, and in such a case—

- (a) the claimant must serve the application notice and witness statement on the defendant not less than 2 days before the hearing; and
- (b) the defendant may take part in the hearing whether or not the defendant has filed an acknowledgement of service.

### **Injunction containing provisions to which a power of arrest is attached**

**65.44.**—(1) In this rule ‘relevant provision’ means a provision of an injunction to which a power of arrest is attached.

(Section 36(6) and (7) and section 40(3) and 41(4) of the 2009 Act confer powers to attach a power of arrest to an injunction.)

(2) Where an injunction contains one or more relevant provisions—

- (a) each relevant provision must be set out in a separate paragraph of the injunction; and

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- (b) subject to paragraph (3), the claimant must deliver a copy of the relevant provisions to any police station for the area where the conduct occurred.
- (3) Where the injunction has been granted without notice, the claimant must not deliver a copy of the relevant provisions to any police station for the area where the conduct occurred before the defendant has been served with the injunction containing the relevant provisions.
- (4) Where an order is made varying or discharging any relevant provision, the claimant must—
  - (a) immediately inform the police station to which a copy of the relevant provisions was delivered under paragraph (2)(b); and
  - (b) deliver a copy of the order to any police station so informed.

#### **Application to vary or discharge an injunction**

- 65.45.**—(1) An application to vary or discharge an injunction under section 42(1)(b) of the 2009 Act must be made in accordance with Part 23.
- (2) An application by the claimant to vary or discharge the injunction under section 42(1)(b) of the 2009 Act may be made without notice.
- (3) If an application under this rule is made without giving notice, the application notice must state the reasons why notice has not been given.

#### **Application for warrant of arrest under section 44(2) of the 2009 Act**

- 65.46.**—(1) An application for a warrant of arrest under section 44(2) of the 2009 Act must be made in accordance with Part 23 and may be made without notice.
- (2) An applicant for a warrant of arrest under section 44(2) of the 2009 Act must—
  - (a) file an affidavit setting out grounds for the application with the application notice; or
  - (b) give oral evidence of the grounds for the application at the hearing.
- (3) Where in accordance with sub-paragraph (2)(b), oral evidence is given, the applicant must produce a written record of that evidence which must be served on the person arrested at the time of the arrest.

#### **Proceedings following arrest under the 2009 Act**

- 65.47.**—(1) This rule applies where a person is arrested pursuant to—
  - (a) a power of arrest attached to a provision of an injunction; or
  - (b) a warrant of arrest.
- (2) The judge before whom a person is brought following his arrest may—
  - (a) deal with the matter; or
  - (b) adjourn the proceedings.
- (3) If proceedings under section 43 or 44 of the 2009 Act are adjourned and the arrested person is released—
  - (a) the matter must be dealt with (whether by the same or another judge) within 28 days of the date on which the arrested person appears in court; and
  - (b) the arrested person must be given not less than 2 days' notice of the hearing.
- (4) An application notice seeking the committal for contempt of court of the arrested person may be issued even if the arrested person is not dealt with within the period in sub-paragraph (3)(a).

(5) CCR Order 29, rule 1 applies where an application is made in a county court to commit a person for breach of an injunction as if references in that rule to the judge include references to a district judge.

(For applications in the High Court for the discharge of a person committed to prison for contempt of court see RSC Order 52, rule 8. For such applications in the county court see CCR Order 29, rule 3.)

### **Recognizance**

**65.48.**—(1) Where, in accordance with paragraph 2(2)(b) of Schedule 5 to the 2009 Act, 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 custody, the governor or keeper of a prison,

with the same consequences as if it had been entered into before the court.

(2) The person having custody of an applicant for bail must release that person if satisfied that the required recognizances have been taken.

### **Applications for a power of arrest to be attached to any provision of an injunction**

**65.49.**—(1) An application under section 34 or 39 of the 2009 Act which includes an application for a power of arrest to be attached to any provision of an injunction must be made in the proceedings seeking the injunction by—

- (a) the claim form; or
- (b) an application under Part 23.

(2) Every application must be supported by written evidence.

(3) Every application made on notice must be served personally, together with a copy of the written evidence, by the applicant on the person against whom the injunction is sought not less than 2 days before the hearing.

(Attention is drawn to rule 25.3(3) – applications without notice.)]]

## **[<sup>F972</sup>PART 66**

### **CROWN PROCEEDINGS**

#### **Textual Amendments**

**F972** Pt. 66 inserted (1.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005 \(S.I. 2005/2292\)](#), rule 1(c), [Sch. 2](#)

#### **Contents of this Part**

Scope of this Part and interpretation

Rule 66.1

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Application of the Civil Procedure Rules	Rule 66.2
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Applications in revenue matters	Rule 66.5
Enforcement against the Crown	Rule 66.6
Money due from the Crown	Rule 66.7

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### **Scope of this Part and interpretation**

**66.1.**—(1) This Part contains rules for civil proceedings by or against the Crown, and other civil proceedings to which the Crown is a party.

(2) In this Part—

- (a) “the Act” means the Crown Proceedings Act 1947;
- (b) “civil proceedings by the Crown” means the civil proceedings described in section 23(1) of the Act, but excluding the proceedings described in section 23(3);
- (c) “civil proceedings against the Crown” means the civil proceedings described in section 23(2) of the Act, but excluding the proceedings described in section 23(3);
- (d) “civil proceedings to which the Crown is a party” has the same meaning as it has for the purposes of Parts III and IV of the Act by virtue of section 38(4).

### **Application of the Civil Procedure Rules**

**66.2** These Rules and their practice directions apply to civil proceedings by or against the Crown and to other civil proceedings to which the Crown is a party unless this Part, a practice direction or any other enactment provides otherwise.

### **Action on behalf of the Crown**

**66.3.**—(1) Where by reason of a rule, practice direction or court order the Crown is permitted or required—

- (a) to make a witness statement,
- (b) to swear an affidavit,
- (c) to verify a document by a statement of truth;
- (d) to make a disclosure statement; or
- (e) to discharge any other procedural obligation,

that function shall be performed by an appropriate officer acting on behalf of the Crown.

(2) The court may if necessary nominate an appropriate officer.

### **Counterclaims, other Part 20 claims, and set-off**

**66.4.**—(1) In a claim by the Crown for taxes, duties or penalties, the defendant cannot make a counterclaim or other Part 20 claim or raise a defence of set-off.

(2) In any other claim by the Crown, the defendant cannot make a counterclaim or other Part 20 claim or raise a defence of set-off which is based on a claim for repayment of taxes, duties or penalties.



(3) In proceedings by or against the Crown in the name of the Attorney-General, no counterclaim or other Part 20 claim can be made or defence of set-off raised without the permission of the court.

(4) In proceedings by or against the Crown in the name of a government department, no counterclaim or other Part 20 claim can be made or defence of set-off raised without the permission of the court unless the subject-matter relates to that government department.

### Applications in revenue matters

**66.5.**—(1) This rule sets out the procedure under section 14 of the Act, which allows the Crown to make summary applications in the High Court in certain revenue matters.

(2) The application must be made in the High Court using the Part 8 procedure.

(3) The title of the claim form must clearly identify the matters which give rise to the application.

### Enforcement against the Crown

**66.6.**—(1) The following rules do not apply to any order against the Crown—

- (a) Parts 69 to 73;
- (b) RSC Orders 45 to 47 and 52; and
- (c) CCR Orders 25 to 29.

(2) In paragraph (1), “order against the Crown” means any judgment or order against the Crown, a government department, or an officer of the Crown as such, made—

- (a) in civil proceedings by or against the Crown;
- (b) in proceedings in the Administrative Court;
- (c) in connection with an arbitration to which the Crown is a party; or
- (d) in other civil proceedings to which the Crown is a party.

(3) An application under section 25(1) of the Act for a separate certificate of costs payable to the applicant may be made without notice.

### Money due from the Crown

**66.7.**—(1) None of the following orders—

- (a) a third party debt order under Part 72;
- (b) an order for the appointment of a receiver under Part 69; or
- (c) an order for the appointment of a sequestrator under RSC Order 45,

may be made or have effect in respect of any money due from the Crown.

(2) In paragraph (1), “money due from the Crown” includes money accruing due, and money alleged to be due or accruing due.

(3) An application for an order under section 27 of the Act—

- (a) restraining a person from receiving money payable to him by the Crown; and
- (b) directing payment of the money to the applicant or another person,

may be made under Part 23.

(4) The application must be supported by written evidence setting out the facts on which it is based, and in particular identifying the debt from the Crown.

(5) Where the debt from the Crown is money in a National Savings Bank account, the witness must if possible identify the number of the account and the name and address of the branch where it is held.

*Status: Point in time view as at 31/01/2011.*

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

(6) Notice of the application, with a copy of the written evidence, must be served—

- (a) on the Crown, and
- (b) on the person to be restrained,

at least 7 days before the hearing.

(7) Rule 72.8 applies to an application under this rule as it applies to an application under rule 72.2 for a third party debt order, except that the court will not have the power to order enforcement to issue against the Crown.]

## [<sup>F973</sup>PART 67

### PROCEEDINGS RELATING TO SOLICITORS

#### Textual Amendments

**F973** Pt. 67 inserted (1.4.2005) by [The Civil Procedure \(Amendment No. 4\) Rules 2004 \(S.I. 2004/3419\)](#), rule 1, [Sch. 2](#)

#### Scope and interpretation

**67.1.—**(1) This Part contains rules about the following types of proceedings relating to solicitors—

- (a) proceedings to obtain an order for a solicitor to deliver a bill or cash account and proceedings in relation to money or papers received by a solicitor (rule 67.2);
- (b) proceedings under Part III of the Solicitors Act 1974(**2**) relating to the remuneration of solicitors (rule 67.3); and
- (c) proceedings under Schedule 1 to the Solicitors Act 1974(**3**) arising out of the Law Society’s intervention in a solicitor’s practice (rule 67.4).

(2) In this Part—

“the Act” means the Solicitors Act 1974; and

“LLP” means limited liability partnership.

(Part 48 and Section 56 of the Costs Practice Direction contain provisions about the procedure and basis for the detailed assessment of solicitor and client costs under Part III of the Act)

([<sup>F974</sup>Practice Direction 52] contains provisions about appeals to the High Court from the Solicitors Disciplinary Tribunal under section 49 of the Act)

#### Textual Amendments

**F974** Words in [rule 67.1](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\)](#), [41\(a\)](#)

(2) 1981 c. 54.

(3) 1894 c. 39.

### **Power to order solicitor to deliver cash account etc.**

**67.2.**—(1) Where the relationship of solicitor and client exists or has existed, the orders which the court may make against the solicitor, on the application of the client or his personal representatives, include any of the following—

- (a) to deliver a bill or cash account;
  - (b) to pay or deliver up any money or securities;
  - (c) to deliver a list of the moneys or securities which the solicitor has in his possession or control on behalf of the applicant;
  - (d) to pay into or lodge in court any such money or securities.
- (2) An application for an order under this rule must be made—
- (a) by Part 8 claim form; or
  - (b) if the application is made in existing proceedings, by application notice in accordance with Part 23.
- (3) If the solicitor alleges that he has a claim for costs against the applicant, the court may make an order for—
- (a) the detailed assessment and payment of those costs; and
  - (b) securing the payment of the costs, or protecting any solicitor's lien.

### **Proceedings under Part III of the Act**

**67.3.**—(1) A claim for an order under Part III of the Act for the assessment of costs payable to a solicitor by his client—

- (a) which—
  - (i) relates to contentious business done in a county court; and
  - (ii) is within the financial limit of the county court's jurisdiction specified in section 69(3) of the Act<sup>(4)</sup>,may be made in that county court;
- (b) in every other case, must be made in the High Court.

(Rule 30.2 makes provision for any county court to transfer the proceedings to another county court for detailed assessment of costs)

(Provisions about the venue for detailed assessment proceedings are contained in rule 47.4 [<sup>F975</sup>and] Section 31 of the Costs Practice Direction <sup>F976</sup>...)

- (2) A claim for an order under Part III of the Act must be made—
- (a) by Part 8 claim form; or
  - (b) if the claim is made in existing proceedings, by application notice in accordance with Part 23.

(A model form of claim form is annexed to the Costs Practice Direction)

- (3) A claim in the High Court under Part III of the Act may be determined by—
- (a) a High Court judge;
  - (b) a Master, a costs judge or a district judge of the Principal Registry of the Family Division; or
  - (c) a district judge, if the costs are for—

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(4) 1983 c. 20.

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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)*

- (i) contentious business done in proceedings in the district registry of which he is the district judge;
- (ii) contentious business done in proceedings in a county court within the district of that district registry; or
- (iii) non-contentious business.

#### Textual Amendments

**F975** Word in rule 67.3 substituted (6.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), **41(b)(i)**

**F976** Words in rule 67.3 omitted (6.4.2010) by virtue of The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), **41(b)(ii)**

#### Proceedings under Schedule 1 to the Act

**67.4.**—(1) Proceedings in the High Court under Schedule 1 to the Act must be brought—

- (a) in the Chancery Division; and
- (b) by Part 8 claim form, unless paragraph (4) below applies.

(2) The heading of the claim form must state that the claim relates to a solicitor and is made under Schedule 1 to the Act.

(3) Where proceedings are brought under paragraph 6(4) or 9(8) of Schedule 1 to the Act, the court will give directions and fix a date for the hearing immediately upon issuing the claim form.

(4) If the court has made an order under Schedule 1 to the Act, any subsequent application for an order under that Schedule which has the same parties may be made by a Part 23 application in the same proceedings.

(5) The table below sets out who must be made a defendant to each type of application under Schedule 1.

#### Defendants to applications under Schedule 1 to the Act

<i>Paragraph of Schedule 1 under which the application is made</i>	<i>Defendant to application</i>
Paragraph 5	if the application relates to money held on behalf of an individual solicitor, the solicitor  if the application relates to money held on behalf of a firm, every partner in the firm  if the application relates to money held on behalf of a LLP or other corporation, the LLP or other corporation
Paragraph 6(4) or 9(8)	the Law Society
Paragraph 8, 9(4), 9(5) or 9(6)	the person against whom the Law Society is seeking an order
Paragraph 9(10)	the person from whom the Law Society took possession of the documents which it wishes to dispose of or destroy

<i>Paragraph of Schedule 1 under which the application is made</i>	<i>Defendant to application</i>
Paragraph 10	<p>if the application relates to postal packets addressed to an individual solicitor, the solicitor</p> <p>if the application relates to postal packets addressed to a firm, every partner in the firm</p> <p>if the application relates to postal packets addressed to a LLP or other corporation, the LLP or other corporation</p>
Paragraph 11	the trustee whom the Law Society is seeking to replace and, if he is a co-trustee, the other trustees of the trust

(6) At any time after the Law Society has issued an application for an order under paragraph 5 of Schedule 1 to the Act, the court may, on an application by the Society—

- (a) make an interim order under that paragraph to have effect until the hearing of the application; and
- (b) order the defendant, if he objects to the order being continued at the hearing, to file and serve written evidence showing cause why the order should not be continued.]

## [<sup>F977</sup>PART 68

### REFERENCES TO THE EUROPEAN COURT

#### Textual Amendments

**F977** Pt. 68 inserted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rule 1(b), [Sch. 6](#)

#### Contents of this Part

Interpretation	Rule 68.1
[ <sup>F978</sup> Making of order]	Rule 68.2
[ <sup>F979</sup> Request to apply the urgent preliminary ruling procedure	Rule 68.2A]
Transmission to the European Court	Rule 68.3
Stay of proceedings	Rule 68.4

#### Interpretation

**68.1** In this Part—

- (a) “the court” means the court making the order;
- (b) “the European Court” means the Court of Justice of the European Communities;

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- (c) “order” means an order referring a question to the European Court for a preliminary ruling under—
- (i) article 234 of the Treaty establishing the European Community;
  - (ii) article 150 of the Euratom Treaty;
  - (iii) article 41 of the ECSC Treaty;
  - (iv) the Protocol of 3 June 1971 on the interpretation by the European Court of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters<sup>(11)</sup>; or
  - (v) the Protocol of 19 December 1988 on the interpretation by the European Court of the Convention of 19 June 1980 on the Law applicable to Contractual Obligations<sup>(12)</sup><sup>F980</sup>; and]
- [ “reference” means a request to the European Court for a preliminary ruling]
- <sup>F981</sup>(d)

#### Textual Amendments

**F980** Word in rule 68.1(c)(v) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **14(b)(i)**

**F981** Rule 68.1(d) inserted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **14(b)(ii)**

#### Making of order <sup>F982</sup> ...

**68.2.**—(1) An order may be made at any stage of the proceedings—

- (a) by the court of its own initiative; or
- (b) on an application by a party in accordance with Part 23.

(2) An order may not be made—

- (a) in the High Court, by a Master or district judge;
- (b) in a county court, by a district judge.

(3) [<sup>F983</sup>The reference, which must contain the information required by [<sup>F984</sup>Practice Direction 68],] must be set out in a schedule to the order, and the court may give directions on the preparation of the schedule.

#### Textual Amendments

**F982** Words in rule 68.2 heading omitted (1.10.2009) by virtue of [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **14(c)**

**F983** Words in rule 68.2(3) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **14(d)**

**F984** Words in rule 68.2(3) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **42**

(11) 1964 c. 81.

(12) 1968 c. 48; 1981 c. 9.

### [<sup>F985</sup> Request to apply the urgent preliminary ruling procedure

**68.2A.** Any request by the court to the European Court that the preliminary ruling be dealt with under its urgent preliminary ruling procedure must be made in a document separate from the order or in a covering letter.]

#### Textual Amendments

**F985** Rule 68.2A inserted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **14(e)**

### Transmission to the European Court

**68.3.**—[<sup>F986</sup>(1) The Senior Master will send a copy of—

- (a) the order; and
- (b) where relevant, any request to apply the urgent preliminary ruling procedure

to the Registrar of the European Court.]

(2) Where an order is made by a county court, [<sup>F987</sup>a court officer] will send a copy of it to the Senior Master for onward transmission to the European Court.

(3) Unless the court orders otherwise, the Senior Master will not send a copy of the order to the European Court until—

- (a) the time for appealing against the order has expired; or
- (b) any application for permission to appeal has been refused, or any appeal has been determined.

#### Textual Amendments

**F986** Rule 68.3(1) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **14(f)(i)**

**F987** Words in rule 68.3(2) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **14(f)(ii)**

### Stay of proceedings

**68.4** Where an order is made, unless the court orders otherwise the proceedings will be stayed until the European Court has given a preliminary ruling on the question referred to it.]

## [<sup>F988</sup> PART 69

### COURT'S POWER TO APPOINT A RECEIVER

#### Textual Amendments

**F988** Pt. 69 inserted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rule 1(b), **Sch. 7**

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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)*

## Contents of this Part

Scope of this Part	Rule 69.1
Court's power to appoint receiver	Rule 69.2
How to apply for the appointment of a receiver	Rule 69.3
Service of order appointing receiver	Rule 69.4
Security	Rule 69.5
Receiver's application for directions	Rule 69.6
Receiver's remuneration	Rule 69.7
Accounts	Rule 69.8
Non-compliance by receiver	Rule 69.9
Application for discharge of receiver	Rule 69.10
Order discharging or terminating appointment of receiver	Rule 69.11

### Scope of this Part

- 69.1.**—(1) This Part contains provisions about the court's power to appoint a receiver.  
 (2) In this Part "receiver" includes a manager.

### Court's power to appoint receiver

- 69.2.**—(1) The court may appoint a receiver—
- (a) before proceedings have started;
  - (b) in existing proceedings; or
  - (c) on or after judgment.
- (2) A receiver must be an individual.
- (3) The court may at any time—
- (a) terminate the appointment of a receiver; and
  - (b) appoint another receiver in his place.
- (<sup>F989</sup>Practice Direction 69] describes the powers for the court to appoint a receiver.)

#### Textual Amendments

**F989** Words in rule 69.2 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), 43(a)

### How to apply for the appointment of a receiver

- 69.3** An application for the appointment of a receiver—
- (a) may be made without notice; and
  - (b) must be supported by written evidence.



### **Service of order appointing receiver**

**69.4** An order appointing a receiver must be served by the party who applied for it on—

- (a) the person appointed as receiver;
- (b) unless the court orders otherwise, every other party to the proceedings; and
- (c) such other persons as the court may direct.

### **Security**

**69.5.**—(1) The court may direct that before a receiver begins to act or within a specified time he must either—

- (a) give such security as the court may determine; or
- (b) file and serve on all parties to the proceedings evidence that he already has in force sufficient security,

to cover his liability for his acts and omissions as a receiver.

(2) The court may terminate the appointment of the receiver if he fails to—

- (a) give the security; or
- (b) satisfy the court as to the security he has in force,

by the date specified.

### **Receiver's application for directions**

**69.6.**—(1) The receiver may apply to the court at any time for directions to assist him in carrying out his function as a receiver.

(2) The court, when it gives directions, may also direct the receiver to serve on any person—

- (a) the directions; and
- (b) the application for directions.

(<sup>F990</sup>[Practice Direction 69] makes provision for the form of applications by, and directions to, a receiver.)

#### **Textual Amendments**

**F990** Words in [rule 69.6](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\)](#), [43\(a\)](#)

### **Receiver's remuneration**

**69.7.**—(1) A receiver may only charge for his services if the court—

- (a) so directs; and
- (b) specifies the basis on which the receiver is to be remunerated.

(2) The court may specify—

- (a) who is to be responsible for paying the receiver; and
- (b) the fund or property from which the receiver is to recover his remuneration.

(3) If the court directs that the amount of a receiver's remuneration is to be determined by the court—

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- (a) the receiver may not recover any remuneration for his services without a determination by the court; and
  - (b) the receiver or any party may apply at any time for such a determination to take place.
- (4) Unless the court orders otherwise, in determining the remuneration of a receiver the court shall award such sum as is reasonable and proportionate in all the circumstances and which takes into account—
- (a) the time properly given by him and his staff to the receivership;
  - (b) the complexity of the receivership;
  - (c) any responsibility of an exceptional kind or degree which falls on the receiver in consequence of the receivership;
  - (d) the effectiveness with which the receiver appears to be carrying out, or to have carried out, his duties; and
  - (e) the value and nature of the subject matter of the receivership.
- (5) The court may refer the determination of a receiver’s remuneration to a costs judge.

## Accounts

**69.8.**—(1) The court may order a receiver to prepare and serve accounts.

(<sup>F991</sup>Practice Direction 69] contains provisions about directions for the preparation and service of accounts.)

(2) A party served with such accounts may apply for an order permitting him to inspect any document in the possession of the receiver relevant to those accounts.

(3) Any party may, within 14 days of being served with the accounts, serve notice on the receiver—

- (a) specifying any item in the accounts to which he objects;
- (b) giving the reason for such objection; and
- (c) requiring the receiver, within 14 days of receipt of the notice, either—
  - (i) to notify all the parties who were served with the accounts that he accepts the objection; or
  - (ii) if he does not accept the objection, to apply for an examination of the accounts in relation to the contested item.

(4) When the receiver applies for the examination of the accounts he must at the same time file—

- (a) the accounts; and
- (b) a copy of the notice served on him under this rule.

(5) If the receiver fails to comply with paragraph (3)(c) of this rule, any party may apply to the court for an examination of the accounts in relation to the contested item.

(6) At the conclusion of its examination of the accounts the court will certify the result.

(<sup>F992</sup>Practice Direction 40A] provides for inquiries into accounts.)

### Textual Amendments

**F991** Words in [rule 69.8](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009](#) (S.I. 2009/3390), [rules 1\(2\)](#), [43\(a\)](#)

**F992** Words in [rule 69.8](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009](#) (S.I. 2009/3390), [rules 1\(2\)](#), [43\(b\)](#)

### Non-compliance by receiver

**69.9.**—(1) If a receiver fails to comply with any rule, practice direction or direction of the court the court may order him to attend a hearing to explain his non-compliance.

(2) At the hearing the court may make any order it considers appropriate, including—

- (a) terminating the appointment of the receiver;
- (b) reducing the receiver’s remuneration or disallowing it altogether; and
- (c) ordering the receiver to pay the costs of any party.

(3) Where—

- (a) the court has ordered a receiver to pay a sum of money into court; and
- (b) the receiver has failed to do so,

the court may order him to pay interest on that sum for the time he is in default at such rate as it considers appropriate.

### Application for discharge of receiver

**69.10.**—[

<sup>F993</sup>(1)] A receiver or any party may apply for the receiver to be discharged on completion of his duties.

[

<sup>F994</sup>(2) The application notice must be served on the persons who were required under rule 69.4 to be served with the order appointing the receiver.]

#### Textual Amendments

**F993** Word in [rule 69.10](#) inserted (30.6.2004) by [The Civil Procedure \(Amendment\) Rules 2004 \(S.I. 2004/1306\)](#), [rules 1\(b\)](#), [19\(a\)](#)

**F994** [Rule 69.10\(2\)](#) inserted (30.6.2004) by [The Civil Procedure \(Amendment\) Rules 2004 \(S.I. 2004/1306\)](#), [rules 1\(b\)](#), [19\(b\)](#)

### Order discharging or terminating appointment of receiver

**69.11.**—(1) An order discharging or terminating the appointment of a receiver may—

- (a) require him to pay into court any money held by him; or
- (b) specify the person to whom he must pay any money or transfer any assets still in his possession; and
- (c) make provision for the discharge or cancellation of any guarantee given by the receiver as security.

(2) The order must be served on the persons who were required under rule 69.4 to be served with the order appointing the receiver.]

*Status: Point in time view as at 31/01/2011.*

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

## [<sup>F995</sup>PART 70

### GENERAL RULES ABOUT ENFORCEMENT OF JUDGMENTS AND ORDERS

#### Textual Amendments

**F995** Pt. 70 inserted (25.3.2002) by [The Civil Procedure \(Amendment No. 4\) Rules 2001](#) (S.I. 2001/2792), rule 1(c), [Sch. 1](#) (with savings in [rule 24](#) and S.I. 2001/4015, [rule 43\(2\)](#))

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

**C56** Pts. 70-74 applied (with modifications) (30.12.2005) by [The Family Procedure \(Adoption\) Rules 2005](#) (S.I. 2005/2795), [rule 5\(5\)](#)

**C57** Pt. 70 applied (with modifications) (1.10.2007) by [The Court of Protection Rules 2007](#) (S.I. 2007/1744), rules 1, [184\(a\)](#)

#### Contents of this Part

Scope of this Part and interpretation	Rule 70.1
Methods of enforcing judgments or orders	Rule 70.2
Transfer of proceedings for enforcement	Rule 70.3
Enforcement of judgment or order by or against non-party	Rule 70.4
[ <sup>F996</sup> Enforcement of decisions of bodies other than the High Court and county courts and compromises enforceable by enactment	Rule 70.5]
Effect of setting aside judgment or order	Rule 70.6

#### Scope of this Part and interpretation

**70.1.**—(1) This Part contains general rules about enforcement of judgments and orders.

(Rules about specific methods of enforcement are contained in Parts 71 to 73, Schedule 1 RSC Orders 45 to 47 <sup>F997</sup>... and 52 and Schedule 2 CCR Orders 25 to 29)

(2) In this Part and in Parts 71 to 73—

- (a) “judgment creditor” means a person who has obtained or is entitled to enforce a judgment or order;
- (b) “judgment debtor” means a person against whom a judgment or order was given or made;
- (c) “judgment or order” includes an award which the court has—
  - (i) registered for enforcement;
  - (ii) ordered to be enforced; or
  - (iii) given permission to enforce

as if it were a judgment or order of the court, and in relation to such an award, “the court which made the judgment or order” means the court which registered the award or made such an order; and

- (d) “judgment or order for the payment of money” includes a judgment or order for the payment of costs, but does not include a judgment or order for the payment of money into court.

#### Textual Amendments

**F997** Word in [rule 70.1](#) omitted (2.12.2002) by virtue of [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), [rules 1\(b\)](#), [27](#)

### Methods of enforcing judgments or orders

**70.2.**—(1) [<sup>F998</sup>Practice Direction 70] sets out methods of enforcing judgments or orders for the payment of money.

(2) A judgment creditor may, except where an enactment, rule or practice direction provides otherwise—

- (a) use any method of enforcement which is available; and
- (b) use more than one method of enforcement, either at the same time or one after another.

#### Textual Amendments

**F998** Words in [rule 70.2\(1\)](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), [rules 1\(2\)](#), [44\(a\)](#)

### Transfer of proceedings for enforcement

**70.3.**—(1) A judgment creditor wishing to enforce a High Court judgment or order in a county court must apply to the High Court for an order transferring the proceedings to that county court.

(2) A practice direction may make provisions about the transfer of proceedings for enforcement. (CCR Order 25 rule 13 contains provisions about the transfer of county court proceedings to the High Court for enforcement.)

### Enforcement of judgment or order by or against non-party

**70.4.** If a judgment or order is given or made in favour of or against a person who is not a party to proceedings, it may be enforced by or against that person by the same methods as if he were a party.

### [<sup>F999</sup>Enforcement of decisions of bodies other than the High Court and county courts and compromises enforceable by enactment

**70.5.**—(1) This rule applies, subject to paragraph (2), where an enactment provides that—

- (a) a decision of a court, tribunal, body or person other than the High Court or a county court; or
- (b) a compromise,

may be enforced as if it were a court order or that any sum of money payable under that decision or compromise may be recoverable as if payable under a court order.

(2) This rule does not apply to—

- (a) any judgment to which Part 74 applies;
- (b) arbitration awards;

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- (c) any order to which RSC Order 115 applies; or
- (d) proceedings to which Part 75 (traffic enforcement) applies.

(2A) Unless paragraph (3) applies, a party may enforce the decision or compromise by applying for a specific method of enforcement under Parts 71 to 73, Schedule 1 RSC Orders 45 to 47 and 52 and Schedule 2 CCR Orders 25 to 29 and must—

- (a) file with the court a copy of the decision or compromise being enforced; and
- (b) provide the court with the information required by [F1000Practice Direction 70].

(3) If an enactment provides that a decision or compromise is enforceable or a sum of money is recoverable if a court so orders, an application for such an order must be made in accordance with paragraphs (4) to (7A) of this rule.

(4) The application—

- (a) may, unless paragraph (4A) applies, be made without notice; and
- (b) must be made to the court for the district where the person against whom the order is sought, resides or carries on business, unless the court otherwise orders.

(4A) Where a compromise requires a person to whom a sum of money is payable under the compromise to do anything in addition to discontinuing or not starting proceedings (“a conditional compromise”), an application under paragraph (4) must be made on notice.

(5) The application notice must—

- (a) be in the form; and
- (b) contain the information

required by [F1001Practice Direction 70].

(6) A copy of the decision or compromise must be filed with the application notice.

(7) An application other than in relation to a conditional compromise may be dealt with by a court officer without a hearing.

(7A) Where an application relates to a conditional compromise, the respondent may oppose it by filing a response within 14 days of service of the application notice and if the respondent—

- (a) does not file a response within the time allowed, the court will make the order; or
- (b) files a response within the time allowed, the court will make such order as appears appropriate.

(8) If an enactment provides that a decision or compromise may be enforced in the same manner as an order of the High Court if it is registered, any application to the High Court for registration must be made in accordance with [F1002Practice Direction 70].]

#### Textual Amendments

**F999** Rule 70.5 substituted (6.4.2009) by [The Civil Procedure \(Amendment No.3\) Rules 2008 \(S.I. 2008/3327\)](#), rules 1, **12(b)**

**F1000** Words in rule 70.5(2A)(b) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **44(b)**

**F1001** Words in rule 70.5(5) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **44(b)**

**F1002** Words in rule 70.5(8) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **44(b)**

## Effect of setting aside judgment or order

**70.6** If a judgment or order is set aside, any enforcement of the judgment or order shall cease to have effect unless the court otherwise orders.]

# [<sup>F1003</sup>PART 71

## ORDERS TO OBTAIN INFORMATION FROM JUDGMENT DEBTORS

### Textual Amendments

**F1003** Pt. 71 inserted (25.3.2002) by The Civil Procedure (Amendment No. 4) Rules 2001 (S.I. 2001/2792), rule 1(c), Sch. 2 (with savings in rule 24 and S.I. 2001/4015, rule 43(2))

### Modifications etc. (not altering text)

**C58** Pt. 71 applied (with modifications) (1.10.2007) by The Court of Protection Rules 2007 (S.I. 2007/1744), rules 1, 184(a)

### Contents of this Part

Scope of this Part	Rule 71.1
Order to attend court	Rule 71.2
Service of order	Rule 71.3
Travelling expenses	Rule 71.4
Judgment creditor's affidavit	Rule 71.5
Conduct of the hearing	Rule 71.6
Adjournment of the hearing	Rule 71.7
Failure to comply with order	Rule 71.8

### Scope of this Part

**71.1** This Part contains rules which provide for a judgment debtor to be required to attend court to provide information, for the purpose of enabling a judgment creditor to enforce a judgment or order against him.

### Order to attend court

- 71.2.**—(1) A judgment creditor may apply for an order requiring—
- (a) a judgment debtor; or
  - (b) if a judgment debtor is a company or other corporation, an officer of that body,
- to attend court to provide information about—
- (i) the judgment debtor's means; or
  - (ii) any other matter about which information is needed to enforce a judgment or order.
- (2) An application under paragraph (1)—
- (a) may be made without notice; and

*Status: Point in time view as at 31/01/2011.*

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

- (b) (i) must be issued in the court which made the judgment or order which it is sought to enforce, except that
  - (ii) if the proceedings have since been transferred to a different court, it must be issued in that court.
- (3) The application notice must—
  - (a) be in the form; and
  - (b) contain the information
 required by [<sup>F1004</sup>Practice Direction 71].
- (4) An application under paragraph (1) may be dealt with by a court officer without a hearing.
- (5) If the application notice complies with paragraph (3), an order to attend court will be issued in the terms of paragraph (6).
- (6) A person served with an order issued under this rule must—
  - (a) attend court at the time and place specified in the order;
  - (b) when he does so, produce at court documents in his control which are described in the order; and
  - (c) answer on oath such questions as the court may require.
- (7) An order under this rule will contain a notice in the following terms—
 

“You must obey this order. If you do not, you may be sent to prison for contempt of court.”.

#### Textual Amendments

**F1004** Words in [rule 71.2\(3\)](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009](#) (S.I. 2009/3390), [rules 1\(2\)](#), [45](#)

#### Service of order

**71.3.**—(1) An order to attend court must, unless the court otherwise orders, be served personally on the person ordered to attend court not less than 14 days before the hearing.

(2) If the order is to be served by the judgment creditor, he must inform the court not less than 7 days before the date of the hearing if he has been unable to serve it.

#### Travelling expenses

**71.4.**—(1) A person ordered to attend court may, within 7 days of being served with the order, ask the judgment creditor to pay him a sum reasonably sufficient to cover his travelling expenses to and from court.

(2) The judgment creditor must pay such a sum if requested.

#### Judgment creditor’s affidavit

**71.5.**—(1) The judgment creditor must file an affidavit<sup>(GL)</sup> or affidavits—

- (a) by the person who served the order (unless it was served by the court) giving details of how and when it was served;
- (b) stating either that—
  - (i) the person ordered to attend court has not requested payment of his travelling expenses; or



- (ii) the judgment creditor has paid a sum in accordance with such a request; and
  - (c) stating how much of the judgment debt remains unpaid.
- (2) The judgment creditor must either—
- (a) file the affidavit<sup>(GL)</sup> or affidavits not less than 2 days before the hearing; or
  - (b) produce it or them at the hearing.

### **Conduct of the hearing**

- 71.6.**—(1) The person ordered to attend court will be questioned on oath.
- (2) The questioning will be carried out by a court officer unless the court has ordered that the hearing shall be before a judge.
- (3) The judgment creditor or his representative—
- (a) may attend and ask questions where the questioning takes place before a court officer; and
  - (b) must attend and conduct the questioning if the hearing is before a judge.

### **Adjournment of the hearing**

**71.7** If the hearing is adjourned, the court will give directions as to the manner in which notice of the new hearing is to be served on the judgment debtor.

### **Failure to comply with order**

- 71.8.**—(1) If a person against whom an order has been made under rule 71.2—
- (a) fails to attend court;
  - (b) refuses at the hearing to take the oath or to answer any question; or
  - (c) otherwise fails to comply with the order,
- the court will refer the matter to a High Court judge or circuit judge.
- (2) That judge may, subject to paragraphs (3) and (4), make a committal order against the person.
- (3) A committal order for failing to attend court may not be made unless the judgment creditor has complied with rules 71.4 and 71.5.
- (4) If a committal order is made, the judge will direct that—
- (a) the order shall be suspended provided that the person—
    - (i) attends court at a time and place specified in the order; and
    - (ii) complies with all the terms of that order and the original order; and
  - (b) if the person fails to [<sup>F1005</sup>comply with any term on which the committal order is suspended], he shall be brought before a judge to consider whether the committal order should be discharged.]

#### **Textual Amendments**

**F1005** Words in rule 71.8 substituted (25.3.20020) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(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)*

## [<sup>F1006</sup>PART 72

### THIRD PARTY DEBT ORDERS

#### Textual Amendments

**F1006** Pt. 72 inserted (25.3.2002) by [The Civil Procedure \(Amendment No. 4\) Rules 2001 \(S.I. 2001/2792\)](#), rule 1(c), [Sch. 3](#) (with savings in [rule 24](#) and [S.I. 2001/4015](#), [rule 43\(2\)](#))

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

**C59** Pt. 72 applied (with modifications) (1.10.2007) by [The Court of Protection Rules 2007 \(S.I. 2007/1744\)](#), [rules 1](#), [184\(a\)](#)

#### Contents of this Part

Scope of this Part and interpretation	Rule 72.1
Third party debt order	Rule 72.2
Application for third party debt order	Rule 72.3
Interim third party debt order	Rule 72.4
Service of interim order	Rule 72.5
Obligations of third parties served with interim order	Rule 72.6
Arrangements for debtors in hardship	Rule 72.7
Further consideration of the application	Rule 72.8
Effect of final third party debt order	Rule 72.9
Money in court	Rule 72.10
Costs	Rule 72.11

#### Scope of this Part and interpretation

**72.1.**—(1) This Part contains rules which provide for a judgment creditor to obtain an order for the payment to him of money which a third party who is within the jurisdiction owes to the judgment debtor.

(2) In this Part, “bank or building society” includes any person carrying on a business [<sup>F1007</sup>in the course of which he lawfully accepts deposits in the United Kingdom].

#### Textual Amendments

**F1007** Words in [rule 72.1](#) substituted (25.3.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), [rules 1\(c\)](#), [32](#)

#### Third party debt order

**72.2.**—(1) Upon the application of a judgment creditor, the court may make an order (a “final third party debt order”) requiring a third party to pay to the judgment creditor—

- (a) the amount of any debt due or accruing due to the judgment debtor from the third party; or
- (b) so much of that debt as is sufficient to satisfy the judgment debt and the judgment creditor's costs of the application.

(2) The court will not make an order under paragraph 1 without first making an order (an "interim third party debt order") as provided by rule 72.4(2).

(3) In deciding whether money standing to the credit of the judgment debtor in an account to which section 40 of the Supreme Court Act 1981 or section 108 of the County Courts Act 1984 relates may be made the subject of a third party debt order, any condition applying to the account that a receipt for money deposited in the account must be produced before any money is withdrawn will be disregarded.

(Section 40(3) of the Supreme Court Act 1981 and section 108(3) of the County Courts Act 1984 contain a list of other conditions applying to accounts that will also be disregarded.)

### Application for third party debt order

**72.3.**—(1) An application for a third party debt order—

- (a) may be made without notice; and
- (b)
  - (i) must be issued in the court which made the judgment or order which it is sought to enforce; except that
  - (ii) if the proceedings have since been transferred to a different court, it must be issued in that court.

(2) The application notice must—

- (a)
  - (i) be in the form; and
  - (ii) contain the information required by [<sup>F1008</sup>Practice Direction 72]; and
- (b) be verified by a statement of truth.

#### Textual Amendments

**F1008** Words in rule 72.3(2)(a) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), 46

### Interim third party debt order

**72.4.**—(1) An application for a third party debt order will initially be dealt with by a judge without a hearing.

(2) The judge may make an interim third party debt order—

- (a) fixing a hearing to consider whether to make a final third party debt order; and
- (b) directing that until that hearing the third party must not make any payment which reduces the amount he owes the judgment debtor to less than the amount specified in the order.

(3) An interim third party debt order will specify the amount of money which the third party must retain, which will be the total of—

- (a) the amount of money remaining due to the judgment creditor under the judgment or order; and
- (b) an amount for the judgment creditor's fixed costs of the application, as specified in [<sup>F1009</sup>Practice Direction 72].

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- (4) An interim third party debt order becomes binding on a third party when it is served on him.
- (5) The date of the hearing to consider the application shall be not less than 28 days after the interim third party debt order is made.

#### Textual Amendments

**F1009** Words in rule 72.4(3)(b) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009](#) (S.I. 2009/3390), rules 1(2), 46

#### Service of interim order

**72.5.**—(1) Copies of an interim third party debt order, the application notice and any documents filed in support of it must be served—

- (a) on the third party, not less than 21 days before the date fixed for the hearing; and
  - (b) on the judgment debtor not less than—
    - (i) 7 days after a copy has been served on the third party; and
    - (ii) 7 days before the date fixed for the hearing.
- (2) If the judgment creditor serves the order, he must either—
- (a) file a certificate of service not less than 2 days before the hearing; or
  - (b) produce a certificate of service at the hearing.

#### Obligations of third parties served with interim order

**72.6.**—(1) A bank or building society served with an interim third party debt order must carry out a search to identify all accounts held with it by the judgment debtor.

(2) The bank or building society must disclose to the court and the creditor within 7 days of being served with the order, in respect of each account held by the judgment debtor—

- (a) the number of the account;
  - (b) whether the account is in credit; and
  - (c) if the account is in credit—
    - (i) whether the balance of the account is sufficient to cover the amount specified in the order; <sup>F1010</sup> ...
    - (ii) the amount of the balance at the date it was served with the order, if it is less than the amount specified in the order [<sup>F1011</sup>; and
    - (iii) whether the bank or building society asserts any right to the money in the account, whether pursuant to a right of set-off or otherwise, and if so giving details of the grounds for that assertion.]
- (3) If—
- (a) the judgment debtor does not hold an account with the bank or building society; or
  - (b) the bank or building society is unable to comply with the order for any other reason (for example, because it has more than one account holder whose details match the information contained in the order, and cannot identify which account the order applies to),

the bank or building society must inform the court and the judgment creditor of that fact within 7 days of being served with the order.

(4) Any third party other than a bank or building society served with an interim third party debt order must notify the court and the judgment creditor in writing within 7 days of being served with the order, if he claims—

- (a) not to owe any money to the judgment debtor; or
- (b) to owe less than the amount specified in the order.

#### Textual Amendments

**F1010** Word in rule 72.6(2)(c)(i) omitted (25.3.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(c), **33(a)**

**F1011** Rule 72.6(2)(c)(iii) and word inserted (25.3.2002) by [The Civil Procedure \(Amendment No. 5\) Rules 2001 \(S.I. 2001/4015\)](#), rules 1(c), **33(b)**

#### Arrangements for debtors in hardship

**72.7.**—(1) If—

- (a) a judgment debtor is an individual;
- (b) he is prevented from withdrawing money from his account with a bank or building society as a result of an interim third party debt order; and
- (c) he or his family is suffering hardship in meeting ordinary living expenses as a result,

the court may, on an application by the judgment debtor, make an order permitting the bank or building society to make a payment or payments out of the account (“a hardship payment order”).

(2) An application for a hardship payment order may be made—

- (a) in High Court proceedings, at the Royal Courts of Justice or to any district registry; and
- (b) in county court proceedings, to any county court.

(3) A judgment debtor may only apply to one court for a hardship payment order.

(4) An application notice seeking a hardship payment order must—

- (a) include detailed evidence explaining why the judgment debtor needs a payment of the amount requested; and
- (b) be verified by a statement of truth.

(5) Unless the court orders otherwise, the application notice—

- (a) must be served on the judgment creditor at least 2 days before the hearing; but
- (b) does not need to be served on the third party.

(6) A hardship payment order may—

- (a) permit the third party to make one or more payments out of the account; and
- (b) specify to whom the payments may be made.

#### Further consideration of the application

**72.8.**—(1) If the judgment debtor or the third party objects to the court making a final third party debt order, he must file and serve written evidence stating the grounds for his objections.

(2) If the judgment debtor or the third party knows or believes that a person other than the judgment debtor has any claim to the money specified in the interim order, he must file and serve written evidence stating his knowledge of that matter.

(3) If—

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- (a) the third party has given notice under rule 72.6 that he does not owe any money to the judgment debtor, or that the amount which he owes is less than the amount specified in the interim order; and
- (b) the judgment creditor wishes to dispute this,

the judgment creditor must file and serve written evidence setting out the grounds on which he disputes the third party's case.

(4) Written evidence under paragraphs (1), (2) or (3) must be filed and served on each other party as soon as possible, and in any event not less than 3 days before the hearing.

(5) If the court is notified that some person other than the judgment debtor may have a claim to the money specified in the interim order, it will serve on that person notice of the application and the hearing.

- (6) At the hearing the court may—
  - (a) make a final third party debt order;
  - (b) discharge the interim third party debt order and dismiss the application;
  - (c) decide any issues in dispute between the parties, or between any of the parties and any other person who has a claim to the money specified in the interim order; or
  - (d) direct a trial of any such issues, and if necessary give directions.

### **Effect of final third party order**

**72.9.**—(1) A final third party debt order shall be enforceable as an order to pay money.

(2) If—

- (a) the third party pays money to the judgment creditor in compliance with a third party debt order; or
- (b) the order is enforced against him,

the third party shall, to the extent of the amount paid by him or realised by enforcement against him, be discharged from his debt to the judgment debtor.

(3) Paragraph (2) applies even if the third party debt order, or the original judgment or order against the judgment debtor, is later set aside.

### **Money in court**

**72.10.**—(1) If money is standing to the credit of the judgment debtor in court—

- (a) the judgment creditor may not apply for a third party debt order in respect of that money; but
- (b) he may apply for an order that the money in court, or so much of it as is sufficient to satisfy the judgment or order and the costs of the application, be paid to him.

(2) An application notice seeking an order under this rule must be served on—

- (a) the judgment debtor; and
- (b) the Accountant General at the Court Funds Office.

(3) If an application notice has been issued under this rule, the money in court must not be paid out until the application has been disposed of.

### **Costs**

**72.11** If the judgment creditor is awarded costs on an application for an order under rule 72.2 or 72.10—

- (a) he shall, unless the court otherwise directs, retain those costs out of the money recovered by him under the order; and
- (b) the costs shall be deemed to be paid first out of the money he recovers, in priority to the judgment debt.]

## [<sup>F1012</sup>PART 73

### CHARGING ORDERS, STOP ORDERS AND STOP NOTICES

#### Textual Amendments

**F1012**Pt. 73 inserted (25.3.2002) by *The Civil Procedure (Amendment No. 4) Rules 2001* (S.I. 2001/2792), rule 1(c), **Sch. 4** (with savings in rule 24 and S.I. 2001/4015, rule 43(2))

#### Contents of this Part

Scope of this Part and interpretation	Rule 73.1
SECTION I—CHARGING ORDERS	
Scope of this Section	Rule 73.2
Application for charging order	Rule 73.3
Interim charging order	Rule 73.4
Service of interim order	Rule 73.5
Effect of interim order in relation to securities	Rule 73.6
Effect of interim order in relation to funds in court	Rule 73.7
Further consideration of the application	Rule 73.8
Discharge or variation of order	Rule 73.9
Enforcement of charging order by sale	Rule 73.10
SECTION II—STOP ORDERS	
Interpretation	Rule 73.11
Application for stop order	Rule 73.12
Stop order relating to funds in court	Rule 73.13
Stop order relating to securities	Rule 73.14
Discharge or variation of order	Rule 73.15
SECTION III—STOP NOTICES	
General	Rule 73.16
Request for stop notice	Rule 73.17
Effect of stop notice	Rule 73.18
Amendment of stop notice	Rule 73.19

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Withdrawal of stop notice	Rule 73.20
Discharge or variation of stop notice	Rule 73.21

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### **Scope of this Part and interpretation**

**73.1.**—(1) This Part contains rules which provide for a judgment creditor to enforce a judgment by obtaining—

- (a) a charging order (Section I);
- (b) a stop order (Section II); or
- (c) a stop notice (Section III),

over or against the judgment debtor’s interest in an asset.

(2) In this Part—

- (a) “the 1979 Act” means the Charging Orders Act 1979;
- (b) “the 1992 Regulations” means the Council Tax (Administration & Enforcement) Regulations 1992;
- (c) “funds in court” includes securities held in court;
- (d) “securities” means securities of any of the kinds specified in section 2(2)(b) of the 1979 Act.

## ***SECTION 1—CHARGING ORDERS***

### **Scope of this Section**

**73.2** This Section applies to an application by a judgment creditor for a charging order under—

- (a) section 1 of the 1979 Act; or
- (b) regulation 50 of the 1992 Regulations.

### **Application for charging order**

**73.3.**—(1) An application for a charging order may be made without notice.

(2) An application for a charging order must be issued in the court which made the judgment or order which it is sought to enforce, unless—

- (a) the proceedings have since been transferred to a different court, in which case the application must be issued in that court;
- (b) the application is made under the 1992 Regulations, in which case it must be issued in the county court for the district in which the relevant dwelling (as defined in regulation 50(3)(b) of those Regulations) is situated;
- (c) the application is for a charging order over an interest in a fund in court, in which case it must be issued in the court in which the claim relating to that fund is or was proceeding; or
- (d) the application is to enforce a judgment or order of the High Court and it is required by section 1(2) of the 1979 Act to be made to a county court.

(3) Subject to paragraph (2), a judgment creditor may apply for a single charging order in respect of more than one judgment or order against the same debtor.

(4) The application notice must—

- (a) (i) be in the form; and



- (ii) contain the information,  
required by [<sup>F1013</sup>Practice Direction 73]; and
- (b) be verified by a statement of truth.

#### **Textual Amendments**

**F1013** Words in rule 73.3(4)(a) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), [47\(a\)\(i\)](#)

#### **Interim charging order**

**73.4.**—(1) An application for a charging order will initially be dealt with by a judge without a hearing.

- (2) The judge may make an order (an “interim charging order”)—
  - (a) imposing a charge over the judgment debtor’s interest in the asset to which the application relates; and
  - (b) fixing a hearing to consider whether to make a final charging order as provided by rule 73.8(2)(a).

#### **Service of interim order**

**73.5.**—(1) Copies of the interim charging order, the application notice and any documents filed in support of it must, not less than 21 days before the hearing, be served on the following persons—

- (a) the judgment debtor;
  - (b) such other creditors as the court directs;
  - (c) if the order relates to an interest under a trust, on such of the trustees as the court directs;
  - (d) if the interest charged is in securities other than securities held in court, then—
    - (i) in the case of stock for which the Bank of England keeps the register, the Bank of England;
    - (ii) in the case of government stock to which (i) does not apply, the keeper of the register;
    - (iii) in the case of stock of any body incorporated within England and Wales, that body;
    - (iv) in the case of stock of any body incorporated outside England and Wales or of any state or territory outside the United Kingdom, which is registered in a register kept in England and Wales, the keeper of that 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, the keeper of that register; and
  - (e) if the interest charged is in funds in court, the Accountant General at the Court Funds Office.
- (2) If the judgment creditor serves the order, he must either—
- (a) file a certificate of service not less than 2 days before the hearing; or
  - (b) produce a certificate of service at the hearing.

*Status: Point in time view as at 31/01/2011.*

*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 interim order in relation to securities**

**73.6.**—(1) If a judgment debtor disposes of his interest in any securities, while they are subject to an interim charging order which has been served on him, that disposition shall not, so long as that order remains in force, be valid as against the judgment creditor.

(2) A person served under rule 73.5(1)(d) with an interim charging order relating to securities must not, unless the court gives permission—

- (a) permit any transfer of any of the securities; or
- (b) pay any dividend, interest or redemption payment relating to them.

(3) If a person acts in breach of paragraph (2), he will be liable to pay to the judgment creditor—

- (a) the value of the securities transferred or the amount of the payment made (as the case may be); or
- (b) if less, the amount necessary to satisfy the debt in relation to which the interim charging order was made.

### **Effect of interim order in relation to funds in court**

**73.7** If a judgment debtor disposes of his interest in funds in court while they are subject to an interim charging order which has been served on him and on the Accountant General in accordance with rule 73.5(1), that disposition shall not, so long as that order remains in force, be valid as against the judgment creditor.

### **Further consideration of the application**

**73.8.**—(1) If any person objects to the court making a final charging order, he must—

- (a) file; and
- (b) serve on the applicant;

written evidence stating the grounds of his objections, not less than 7 days before the hearing.

(2) At the hearing the court may—

- (a) make a final charging order confirming that the charge imposed by the interim charging order shall continue, with or without modification;
- (b) discharge the interim charging order and dismiss the application;
- (c) decide any issues in dispute between the parties, or between any of the parties and any other person who objects to the court making a final charging order; or
- (d) direct a trial of any such issues, and if necessary give directions.

(3) If the court makes a final charging order which charges securities other than securities held in court, the order will include a stop notice unless the court otherwise orders.

(Section III of this Part contains provisions about stop notices.)

(4) Any order made at the hearing must be served on all the persons on whom the interim charging order was required to be served.

### **Discharge or variation of order**

**73.9.**—(1) Any application to discharge or vary a charging order must be made to the court which made the charging order.

(Section 3(5) of the 1979 Act and regulation 51(4) of the 1992 Regulations provide that the court may at any time, on the application of the debtor, or of any person interested in any property to

which the order relates, or (where the 1992 Regulations apply) of the authority, make an order discharging or varying the charging order.)

(2) The court may direct that—

- (a) any interested person should be joined as a party to such an application; or
- (b) the application should be served on any such person.

(3) An order discharging or varying a charging order must be served on all the persons on whom the charging order was required to be served.

### **Enforcement of charging order by sale**

**73.10.**—(1) Subject to the provisions of any enactment, the court may, upon a claim by a person who has obtained a charging order over an interest in property, order the sale of the property to enforce the charging order.

(2) A claim for an order for sale under this rule should be made to the court which made the charging order, unless that court does not have jurisdiction to make an order for sale.

(A claim under this rule is a proceeding for the enforcement of a charge, and section 23(c) of the County Courts Act 1984 provides the extent of the county court’s jurisdiction to hear and determine such proceedings.)

(3) The claimant must use the Part 8 procedure.

(4) A copy of the charging order must be filed with the claim form.

(5) The claimant’s written evidence must include the information required by [F<sup>1014</sup>Practice Direction 73].

#### **Textual Amendments**

**F1014** Words in rule 73.10(5) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), 47(a)(i)

## **SECTION II—STOP ORDERS**

### **Interpretation**

**73.11** In this Section, “stop order” means an order of the High Court not to take, in relation to funds in court or securities specified in the order, any of the steps listed in section 5(5) of the 1979 Act.

### **Application for stop order**

**73.12.**—(1) The High Court may make—

- (a) a stop order relating to funds in court, on the application of any person—
  - (i) who has a mortgage or charge on the interest of any person in the funds; or
  - (ii) to whom that interest has been assigned; or
  - (iii) who is a judgment creditor of the person entitled to that interest; or
- (b) a stop order relating to securities other than securities held in court, on the application of any person claiming to be beneficially entitled to an interest in the securities.

(2) An application for a stop order must be made—

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*Status: Point in time view as at 31/01/2011.*

*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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- (a) by application notice in existing proceedings; or
  - (b) by Part 8 claim form if there are no existing proceedings in the High Court.
- (3) The application notice or claim form must be served on—
- (a) every person whose interest may be affected by the order applied for; and
  - (b) either—
    - (i) the Accountant General at the Court Funds Office, if the application relates to funds in court; or
    - (ii) the person specified in rule 73.5(1)(d), if the application relates to securities other than securities held in court.

### **Stop order relating to funds in court**

**73.13** A stop order relating to funds in court shall prohibit the transfer, sale, delivery out, payment or other dealing with—

- (a) the funds or any part of them; or
- (b) any income on the funds.

### **Stop order relating to securities**

**73.14.**—(1) A stop order relating to securities other than securities held in court may prohibit all or any of the following steps—

- (a) the registration of any transfer of the securities;
  - (b) the making of any payment by way of dividend, interest or otherwise in respect of the securities; and
  - (c) in the case of units of a unit trust, any acquisition of or other dealing with the units by any person or body exercising functions under the trust.
- (2) The order shall specify—
- (a) the securities to which it relates;
  - (b) the name in which the securities stand;
  - (c) the steps which may not be taken; and
  - (d) whether the prohibition applies to the securities only or to the dividends or interest as well.

### **Variation or discharge of order**

**73.15.**—(1) The court may, on the application of any person claiming to have a beneficial interest in the funds or securities to which a stop order relates, make an order discharging or varying the order.

(2) An application notice seeking the variation or discharge of a stop order must be served on the person who obtained the order.

## ***SECTION III—STOP NOTICES***

### **General**

**73.16** In this Section—

- (a) “stop notice” means a notice issued by the court which requires a person or body not to take, in relation to securities specified in the notice, any of the steps listed in section 5(5) of the 1979 Act, without first giving notice to the person who obtained the notice; and

- (b) “securities” does not include securities held in court.

### Request for stop notice

**73.17.**—(1) The High Court may, on the request of any person claiming to be beneficially entitled to an interest in securities, issue a stop notice.

(A stop notice may also be included in a final charging order, by either the High Court or a county court, under rule 73.8(3).)

- (2) A request for a stop notice must be made by filing—
- (a) a draft stop notice; and
  - (b) written evidence which—
    - (i) identifies the securities in question;
    - (ii) describes the applicant’s interest in the securities; and
    - (iii) gives an address for service for the applicant.

(A sample form of stop notice is annexed to [F1015Practice Direction 73].)

(3) If a court officer considers that the request complies with paragraph (2), he will issue a stop notice.

(4) The applicant must serve copies of the stop notice and his written evidence on the person to whom the stop notice is addressed.

#### Textual Amendments

**F1015**Words in rule 73.17 substituted (6.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), 47(a)(ii)

### Effect of stop notice

- 73.18.**—(1) A stop notice—
- (a) takes effect when it is served in accordance with rule 73.17(4); and
  - (b) remains in force unless it is withdrawn or discharged in accordance with rule 73.20 or 73.21.
- (2) While a stop notice is in force, the person on whom it is served—
- (a) must not—
    - (i) register a transfer of the securities described in the notice; or
    - (ii) take any other step restrained by the notice,without first giving 14 days’ notice to the person who obtained the stop notice; but
  - (b) must not, by reason only of the notice, refuse to register a transfer or to take any other step, after he has given 14 days’ notice under paragraph (2)(a) and that period has expired.

### Amendment of stop notice

**73.19.**—(1) If any securities are incorrectly described in a stop notice which has been obtained and served in accordance with rule 73.17, the applicant may request an amended stop notice in accordance with that rule.

- (2) The amended stop notice takes effect when it is served.

*Status: Point in time view as at 31/01/2011.*

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

### Withdrawal of stop notice

**73.20.**—(1) A person who has obtained a stop notice may withdraw it by serving a request for its withdrawal on—

- (a) the person or body on whom the stop notice was served; and
- (b) the court which issued the stop notice.

(2) The request must be signed by the person who obtained the stop notice, and his signature must be witnessed by a practising solicitor.

### Discharge or variation of stop notice

**73.21.**—(1) The court may, on the application of any person claiming to be beneficially entitled to an interest in the securities to which a stop notice relates, make an order discharging or varying the notice.

(2) An application to discharge or vary a stop notice must be made to the court which issued the notice.

(3) The application notice must be served on the person who obtained the stop notice.

[<sup>F1016</sup>**73.22** [<sup>F1017</sup>Practice Direction 73] makes provision for the procedure to be followed when applying for an order under section 23 of the Partnership Act 1890.]]

#### Textual Amendments

**F1016**Rule 73.22 inserted (2.10.2006) by [The Civil Procedure \(Amendment\) Rules 2006 \(S.I. 2006/1689\)](#), rules 1, **10**

**F1017**Words in rule 73.22 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **47(b)**

## [<sup>F1018</sup>PART 74

### ENFORCEMENT OF JUDGMENTS IN DIFFERENT JURISDICTIONS

#### Textual Amendments

**F1018**Pt. 74 inserted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rule 1(b), **Sch. 8**

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## II

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*Status: Point in time view as at 31/01/2011.*

*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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### Scope of this Part and interpretation

**74.1.**—(1) Section I of this Part applies to the enforcement in England and Wales of judgments of foreign courts.

(2) Section II applies to the enforcement in foreign countries of judgments of the High Court and of county courts.

(3) Section III applies to the enforcement of United Kingdom judgments in other parts of the United Kingdom.

(4) Section IV applies to the enforcement in England and Wales of European Community judgments and Euratom inspection orders.

[<sup>F1019</sup>(4A) Section V applies to—

- (a) the certification of judgments and court settlements in England and Wales as European Enforcement Orders; and
- (b) the enforcement in England and Wales of judgments, court settlements and authentic instruments certified as European Enforcement Orders by other Member States.]

(5) In this Part—

- (a) “the 1920 Act” means the Administration of Justice Act 1920<sup>(13)</sup>;
- (b) “the 1933 Act” means the Foreign Judgments (Reciprocal Enforcement) Act 1933<sup>(14)</sup>;
- (c) “the 1982 Act” means the Civil Jurisdiction and Judgments Act 1982<sup>(15)</sup>;
- (d) “the Judgments Regulation” means Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [<sup>F1020</sup>, as amended from time to time and as applied by the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters].

[ “the EEO Regulation” means Council Regulation (EC) No 805/2004 creating a European Enforcement Order for uncontested claims.]<sup>F1021</sup>

[ “the Lugano Convention” means the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, between the European Community and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Kingdom of Denmark and signed by the European Community on 30<sup>th</sup> October 2007.]<sup>F1022</sup>

[<sup>F1023</sup>(A copy of the EEO Regulation is annexed to Practice Direction 74B<sup>F1024</sup> ... and can be found at [http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l\\_143/l\\_14320040430en00150039.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_143/l_14320040430en00150039.pdf))]

(13) 1978 c. 33.

(14) 1981 c. 54. Section 35A was inserted by the Administration of Justice Act 1982 (c. 53), section 15(1), Schedule 1, Part I.

(15) 1984 c. 28. Section 69 was amended by the Courts and Legal Services Act 1990 (c. 41), section 125(3), Schedule 18, paragraph 46.



#### Textual Amendments

- F1019** Rule 74.1(4A) inserted (21.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005](#) (S.I. 2005/2292), rules 1(b), **50(a)**
- F1020** Words in rule 74.1(5)(d) inserted (1.7.2007) by [The Civil Jurisdiction and Judgments Regulations 2007](#) (S.I. 2007/1655), reg. 1, **Sch. para. 31(a)**
- F1021** Rule 74.1(5)(e) inserted (21.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005](#) (S.I. 2005/2292), rules 1(b), **50(b)**
- F1022** Rule 74.1(5)(f) inserted (1.1.2010) by [The Civil Jurisdiction and Judgments Regulations 2009](#) (S.I. 2009/3131), regs. 1(1), **35** (with reg. 48)
- F1023** Words after rule 74.1 inserted (21.10.2005) by [The Civil Procedure \(Amendment No.3\) Rules 2005](#) (S.I. 2005/2292), rules 1(b), **51**
- F1024** Words in rule 74.1 omitted (6.4.2010) by virtue of [The Civil Procedure \(Amendment No.2\) Rules 2009](#) (S.I. 2009/3390), rules 1(2), **48**

### ***I: ENFORCEMENT IN ENGLAND AND WALES OF JUDGMENTS OF FOREIGN COURTS***

#### Interpretation

**74.2.**—(1) In this Section—

- (a) “Contracting State” has the meaning given in section 1(3) of the 1982 Act;
- [<sup>F1025</sup>(b) “Regulation State” means a Member State;]
- (c) “judgment” means, subject to any other enactment, any judgment given by a foreign court or tribunal, whatever the judgment may be called, and includes—
- (i) a decree;
  - (ii) an order;
  - (iii) a decision;
  - (iv) a writ of execution; and
  - (v) the determination of costs by an officer of the court;
- (d) “State of origin”, in relation to any judgment, means the State in which that judgment was given.
- (2) For the purposes of this Section, “domicile” is to be determined—
- (a) in an application under the 1982 Act [<sup>F1026</sup>or the Lugano Convention], in accordance with sections 41 to 46 that Act;
  - (b) in an application under the Judgments Regulation, in accordance with paragraphs 9 to 12 of Schedule 1 to the Civil Jurisdiction and Judgments Order 2001(**16**).

#### Textual Amendments

- F1025** Words in rule 74.2(1)(b) substituted (1.7.2007) by [The Civil Jurisdiction and Judgments Regulations 2007](#) (S.I. 2007/1655), reg. 1, **Sch. para. 31(b)**
- F1026** Words in rule 74.2(2)(a) inserted (1.1.2010) by [The Civil Jurisdiction and Judgments Regulations 2009](#) (S.I. 2009/3131), regs. 1(1), **36** (with reg. 48)

*Status: Point in time view as at 31/01/2011.*

*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 registration

**74.3.**—(1) This Section provides rules about applications under—

- (a) section 9 of the 1920 Act, in respect of judgments to which Part II of that Act applies;
- (b) section 2 of the 1933 Act, in respect of judgments to which Part I of that Act applies;
- (c) section 4 of the 1982 Act; and
- (d) the Judgments Regulation<sup>[F1027]</sup>; and
- (e) the Lugano Convention,]

for the registration of foreign judgments for enforcement in England and Wales.

(2) Applications—

- (a) must be made to the High Court; and
- (b) may be made without notice.

### Textual Amendments

**F1027**Rule 74.3(1)(e) and word inserted (1.1.2010) by [The Civil Jurisdiction and Judgments Regulations 2009 \(S.I. 2009/3131\)](#), regs. 1(1), 37 (with reg. 48)

## Evidence in support

**74.4.**—(1) An application for registration of a judgment under the 1920, 1933 or 1982 Act must be supported by written evidence exhibiting—

- (a) the judgment or a verified or certified or otherwise authenticated copy of it; and
- (b) where the judgment is not in English, a translation of it into English—
  - (i) certified by a notary public or other qualified person; or
  - (ii) accompanied by written evidence confirming that the translation is accurate.

(2) The written evidence in support of the application must state—

- (a) the name of the judgment creditor and his address for service within the jurisdiction;
- (b) the name of the judgment debtor and his address or place of business, if known;
- (c) the grounds on which the judgment creditor is entitled to enforce the judgment;
- (d) in the case of a money judgment, the amount in respect of which it remains unsatisfied; and
- (e) where interest is recoverable on the judgment under the law of the State of origin—
  - (i) the amount of interest which has accrued up to the date of the application, or
  - (ii) the rate of interest, the date from which it is recoverable, and the date on which it ceases to accrue.

(3) Written evidence in support of an application under the 1920 Act must also state that the judgment is not a judgment—

- (a) which under section 9 of that Act may not be ordered to be registered; or
- (b) to which section 5 of the Protection of Trading Interests Act 1980<sup>(17)</sup> applies.

(4) Written evidence in support of an application under the 1933 Act must also—

- (a) state that the judgment is a money judgment;
- (b) confirm that it can be enforced by execution in the State of origin;

(17) 1980 c. 58.

- (c) confirm that the registration could not be set aside under section 4 of that Act;
  - (d) confirm that the judgment is not a judgment to which section 5 of the Protection of Trading Interests Act 1980 applies;
  - (e) where the judgment contains different provisions, some but not all of which can be registered for enforcement, set out those provisions in respect of which it is sought to register the judgment; and
  - (f) be accompanied by any further evidence as to—
    - (i) the enforceability of the judgment in the State of origin, and
    - (ii) the law of that State under which any interest has become due under the judgment, which may be required under the relevant Order in Council extending Part I of the 1933 Act to that State.
- (5) Written evidence in support of an application under the 1982 Act must also exhibit—
- (a) documents which show that, under the law of the State of origin, the judgment is enforceable on the judgment debtor and has been served;
  - (b) in the case of a judgment in default, a document which establishes that the party in default was served with the document instituting the proceedings or with an equivalent document; and
  - (c) where appropriate, a document showing that the judgment creditor is in receipt of legal aid in the State of origin.

[<sup>F1028</sup>(6) An application for registration under the Judgments Regulation or the Lugano Convention must, in addition to the evidence required by that Regulation or that Convention, be supported by the evidence required by paragraphs (1)(b) and (2)(e) of this rule.]

#### Textual Amendments

**F1028**Rule 74.4(6) substituted (1.1.2010) by [The Civil Jurisdiction and Judgments Regulations 2009 \(S.I. 2009/3131\)](#), regs. 1(1), 38 (with reg. 48)

#### Security for costs

**74.5.**—(1) Subject to paragraphs (2) and (3), section II of Part 25 applies to an application for security for the costs of—

- (a) the application for registration;
- (b) any proceedings brought to set aside the registration; and
- (c) any appeal against the granting of the registration,

as if the judgment creditor were a claimant.

(2) A judgment creditor making an application under the 1982 Act or [<sup>F1029</sup>, the Lugano Convention,] the Judgments Regulation may not be required to give security solely on the ground that he is resident out of the jurisdiction.

(3) Paragraph (1) does not apply to an application under the 1933 Act where the relevant Order in Council otherwise provides.

*Status: Point in time view as at 31/01/2011.*

*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

**F1029** Words in rule 74.5(2) inserted (1.1.2010) by [The Civil Jurisdiction and Judgments Regulations 2009](#) (S.I. 2009/3131), regs. 1(1), **39** (with reg. 48)

### Registration orders

**74.6.**—(1) An order granting permission to register a judgment (“registration order”) must be drawn up by the judgment creditor and served on the judgment debtor—

- (a) by delivering it to <sup>F1030</sup>the judgment debtor] personally;
  - <sup>F1031</sup>(b) by any of the methods of service permitted under the Companies Act 2006; or]
  - (c) in such other manner as the court may direct.
- (2) Permission is not required to serve a registration order out of the jurisdiction, and rules <sup>F1032</sup>6.40, 6.42, 6.43 and 6.46] apply to such an order as they apply to a claim form.
- (3) A registration order must state—
- (a) full particulars of the judgment registered;
  - (b) the name of the judgment creditor and his address for service within the jurisdiction;
  - (c) the right of the judgment debtor—
    - (i) in the case of registration following an application under the 1920 or the 1933 Act, to apply to have the registration set aside;
    - (ii) in the case of registration following an application under the 1982 Act<sup>F1033</sup>, the Lugano Convention, or] the Judgments Regulation, to appeal against the registration order;
  - (d) the period within which such an application or appeal may be made; and
  - (e) that no measures of enforcement will be taken before the end of that period, other than measures ordered by the court to preserve the property of the judgment debtor.

### Textual Amendments

**F1030** Words in rule 74.6(1)(a) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008](#) (S.I. 2008/2178), rules 1(2), **37(a)(i)**

**F1031** Rule 74.6(1)(b) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009](#) (S.I. 2009/2092), rules 1(2), **15(a)**

**F1032** Words in rule 74.6(2) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008](#) (S.I. 2008/2178), rules 1(2), **37(a)(iii)**

**F1033** Words in rule 74.6(3)(c)(ii) substituted (1.1.2010) by [The Civil Jurisdiction and Judgments Regulations 2009](#) (S.I. 2009/3131), regs. 1(1), **40** (with reg. 48)

### Applications to set aside registration

**74.7.**—(1) An application to set aside registration under the 1920 or the 1933 Act must be made within the period set out in the registration order.

(2) The court may extend that period; but an application for such an extension must be made before the end of the period as originally fixed or as subsequently extended.

(3) The court hearing the application may order any issue between the judgment creditor and the judgment debtor to be tried.

## Appeals

**74.8.**—(1) An appeal against the granting or the refusal of registration under the 1982 Act or the <sup>F1034</sup>Lugano Convention or the Judgments Regulation must be made in accordance with Part 52, subject to the following provisions of this rule.

(2) Permission is not required—

- (a) to appeal; or
- (b) to put in evidence.

(3) If—

- (a) the judgment debtor is not domiciled within a Contracting State or a Regulation State, as the case may be, and
- (b) an application to extend the time for appealing is made within two months of service of the registration order,

the court may extend the period for filing an appellant's notice against the order granting registration, but not on grounds of distance.

(4) The appellant's notice must be served—

- (a) where the appeal is against the granting of registration, within—
  - (i) one month; or
  - (ii) where service is to be effected on a party not domiciled within the jurisdiction, two months, of service of the registration order;
- (b) where the appeal is against the refusal of registration, within one month of the decision on the application for registration.

### Textual Amendments

**F1034** Words in [rule 74.8\(1\)](#) inserted (1.1.2010) by [The Civil Jurisdiction and Judgments Regulations 2009 \(S.I. 2009/3131\)](#), [regs. 1\(1\), 41](#) (with [reg. 48](#))

## Enforcement

**74.9.**—(1) No steps may be taken to enforce a judgment—

- (a) before the end of the period specified in accordance with [rule 74.6\(3\)\(d\)](#), or that period as extended by the court; or
- (b) where there is an application under [rule 74.7](#) or an appeal under [rule 74.8](#), until the application or appeal has been determined.

(2) Any party wishing to enforce a judgment must file evidence of the service on the judgment debtor of—

- (a) the registration order; and
- (b) any other relevant order of the court.

(3) Nothing in this rule prevents the court from making orders to preserve the property of the judgment debtor pending final determination of any issue relating to the enforcement of the judgment.

## Recognition

<sup>F1035</sup>**74.10.**—(1) Registration of a judgment serves as a decision that the judgment is recognised for the purposes of the 1982 Act, the Lugano Convention and the Judgments Regulation.

*Status: Point in time view as at 31/01/2011.*

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

(2) An application for recognition of a judgment is governed by the same rules as an application for registration of a judgment under the 1982 Act, the Lugano Convention or the Judgments Regulation, except that rule 74.4(5)(a) and (c) does not apply.]

#### Textual Amendments

**F1035**Rule 74.10(1)(2) substituted (1.1.2010) by [The Civil Jurisdiction and Judgments Regulations 2009](#) (S.I. 2009/3131), regs. 1(1), **42** (with reg. 48)

#### Authentic instruments and court settlements

[<sup>F1036</sup>**74.11** The rules governing the registration of judgments under the 1982 Act, the Lugano Convention or the Judgments Regulation apply as appropriate and with any necessary modifications for the enforcement of—

- (a) authentic instruments which are subject to—
  - (i) article 50 of Schedule 3C to the 1982 Act;
  - (ii) article 57 of the Lugano Convention; and
  - (iii) article 57 of the Judgments Regulation; and
- (b) court settlements which are subject to—
  - (i) article 51 of Schedule 1 to the 1982 Act;
  - (ii) article 58 of the Lugano Convention; and
  - (iii) article 58 of the Judgments Regulation.]

#### Textual Amendments

**F1036**Rule 74.11 substituted (1.1.2010) by [The Civil Jurisdiction and Judgments Regulations 2009](#) (S.I. 2009/3131), regs. 1(1), **43** (with reg. 48)

## **II: ENFORCEMENT IN FOREIGN COUNTRIES OF JUDGMENTS OF THE HIGH COURT AND COUNTY COURTS**

#### Application for a certified copy of a judgment

**74.12.**—(1) This Section applies to applications—

- (a) to the High Court under section 10 of the 1920 Act;
- (b) to the High Court or to a county court under section 10 of the 1933 Act;
- (c) to the High Court or to a county court under section 12 of the 1982 Act; or
- (d) to the High Court or to a county court under article 54 of the Judgments Regulation<sup>F1037</sup> or under article 54 of the Lugano Convention].

(2) A judgment creditor who wishes to enforce in a foreign country a judgment obtained in the High Court or in a county court must apply for a certified copy of the judgment.

(3) The application may be made without notice.

### Textual Amendments

**F1037** Words in rule 74.12(1)(d) inserted (1.1.2010) by [The Civil Jurisdiction and Judgments Regulations 2009 \(S.I. 2009/3131\)](#), regs. 1(1), 44 (with reg. 48)

### Evidence in support

- 74.13.**—(1) The application must be supported by written evidence exhibiting copies of—
- (a) the claim form in the proceedings in which judgment was given;
  - (b) evidence that it was served on the defendant;
  - (c) the statements of case; and
  - (d) where relevant, a document showing that for those proceedings the applicant was an assisted person or an LSC funded client, as defined in rule 43.2(1)(h) and (i).
- (2) The written evidence must—
- (a) identify the grounds on which the judgment was obtained;
  - (b) state whether the defendant objected to the jurisdiction and, if he did, the grounds of his objection;
  - (c) show that the judgment—
    - (i) has been served in accordance with Part 6 and rule 40.4, and
    - (ii) is not subject to a stay of execution;
  - (d) state—
    - (i) the date on which the time for appealing expired or will expire;
    - (ii) whether an appeal notice has been filed;
    - (iii) the status of any application for permission to appeal; and
    - (iv) whether an appeal is pending;
  - (e) state whether the judgment provides for the payment of a sum of money, and if so, the amount in respect of which it remains unsatisfied;
  - (f) state whether interest is recoverable on the judgment, and if so, either—
    - (i) the amount of interest which has accrued up to the date of the application, or
    - (ii) the rate of interest, the date from which it is recoverable, and the date on which it ceases to accrue.

### **III: ENFORCEMENT OF UNITED KINGDOM JUDGMENTS IN OTHER PARTS OF THE UNITED KINGDOM**

### Interpretation

- 74.14** In this Section—
- (a) “money provision” means a provision for the payment of one or more sums of money in a judgment whose enforcement is governed by section 18 of, and Schedule 6 to, the 1982 Act; and
  - (b) “non-money provision” means a provision for any relief or remedy not requiring payment of a sum of money in a judgment whose enforcement is governed by section 18 of, and Schedule 7 to, the 1982 Act.

*Status: Point in time view as at 31/01/2011.*

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

### Registration of money judgments in the High Court

**74.15.**—(1) This rule applies to applications to the High Court under paragraph 5 of Schedule 6 to the 1982 Act for the registration of a certificate for the enforcement of the money provisions of a judgment—

- (a) which has been given by a court in another part of the United Kingdom, and
- (b) to which section 18 of that Act applies.

(2) The certificate must within six months of the date of its issue be filed in the Central Office of the [<sup>F1038</sup>Senior Courts], together with a copy certified by written evidence to be a true copy.

#### Textual Amendments

**F1038** Words in rule 74.15(2) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **15(b)**

### Registration of non-money judgments in the High Court

**74.16.**—(1) This rule applies to applications to the High Court under paragraph 5 of Schedule 7 to the 1982 Act for the registration for enforcement of the non-money provisions of a judgment—

- (a) which has been given by a court in another part of the United Kingdom, and
- (b) to which section 18 of that Act applies.

(2) An application under paragraph (1) may be made without notice.

(3) An application under paragraph (1) must be accompanied—

- (a) by a certified copy of the judgment issued under Schedule 7 to the 1982 Act; and
- (b) by a certificate, issued not more than six months before the date of the application, stating that the conditions set out in paragraph 3 of Schedule 7 are satisfied in relation to the judgment.

(4) Rule 74.6 applies to judgments registered under Schedule 7 to the 1982 Act as it applies to judgments registered under section 4 of that Act.

(5) Rule 74.7 applies to applications to set aside the registration of a judgment under paragraph 9 of Schedule 7 to the 1982 Act as it applies to applications to set aside registrations under the 1920 and 1933 Acts.

### Certificates of High Court and county court money judgments

**74.17.**—(1) This rule applies to applications under paragraph 2 of Schedule 6 to the 1982 Act for a certificate to enable the money provisions of a judgment of the High Court or of a county court to be enforced in another part of the United Kingdom.

(2) The judgment creditor may apply for a certificate by filing at the court where the judgment was given or has been entered written evidence stating—

- (a) the name and address of the judgment creditor and, if known, of the judgment debtor;
- (b) the sums payable and unsatisfied under the money provisions of the judgment;
- (c) where interest is recoverable on the judgment, either—
  - (i) the amount of interest which has accrued up to the date of the application, or
  - (ii) the rate of interest, the date from which it is recoverable, and the date on which it ceases to accrue;
- (d) that the judgment is not stayed;



- (e) the date on which the time for appealing expired or will expire;
- (f) whether an appeal notice has been filed;
- (g) the status of any application for permission to appeal; and
- (h) whether an appeal is pending.

### **Certified copies of High Court and county court non-money judgments**

**74.18.**—(1) This rule applies to applications under paragraph 2 of Schedule 7 to the 1982 Act for a certified copy of a judgment of the High Court or of a county court to which section 18 of the Act applies and which contains non-money provisions for enforcement in another part of the United Kingdom.

(2) An application under paragraph (1) may be made without notice.

(3) The applicant may apply for a certified copy of a judgment by filing at the court where the judgment was given or has been entered written evidence stating—

- (a) full particulars of the judgment;
- (b) the name and address of the judgment creditor and, if known, of the judgment debtor;
- (c) that the judgment is not stayed;
- (d) the date on which the time for appealing expired or will expire;
- (e) whether an appeal notice has been filed;
- (f) the status of any application for permission to appeal; and
- (g) whether an appeal is pending.

## ***IV: ENFORCEMENT IN ENGLAND AND WALES OF EUROPEAN COMMUNITY JUDGMENTS***

### **Interpretation**

**74.19** In this Section—

- (a) “Community judgment” means any judgment, decision or order which is enforceable under—
  - (i) article 244 or 256 of the Treaty establishing the European Community;
  - (ii) article 18, 159 or 164 of the Euratom Treaty;
  - (iii) article 44 or 92 of the ECSC Treaty; <sup>F1039</sup>...
  - (iv) article 82 of Council Regulation (EC) 40/94 of 20 December 1993 on the Community trade mark; [<sup>F1040</sup>or
  - (v) article 71 of Council Regulation (EC) 6/2002 of 12 December 2001 on Community designs;]
- (b) “Euratom inspection order” means an order made by the President of the European Court, or a decision of the Commission of the European Communities, under article 81 of the Euratom Treaty;
- (c) “European Court” means the Court of Justice of the European Communities;
- (d) “order for enforcement” means an order under the authority of the Secretary of State that the Community judgment to which it is appended is to be registered for enforcement in the United Kingdom.

*Status: Point in time view as at 31/01/2011.*

*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

**F1039** Word in rule 74.19(a)(iii) omitted (1.4.2004) by virtue of [The Civil Procedure \(Amendment No. 5\) Rules 2003 \(S.I. 2003/3361\)](#), rules 1(c), **18(a)**

**F1040** Rule 74.19(a)(v) and word inserted (1.4.2004) by [The Civil Procedure \(Amendment No. 5\) Rules 2003 \(S.I. 2003/3361\)](#), rules 1(c), **18(b)**

## Application for registration of a Community judgment

**74.20** An application to the High Court for the registration of a Community judgment may be made without notice.

### Evidence in support

**74.21.**—(1) An application for registration must be supported by written evidence exhibiting—

- (a) the Community judgment and the order for its enforcement, or an authenticated copy; and
- (b) where the judgment is not in English, a translation of it into English—
  - (i) certified by a notary public or other qualified person; or
  - (ii) accompanied by written evidence confirming that the translation is accurate.

(2) Where the application is for registration of a Community judgment which is a money judgment, the evidence must state—

- (a) the name of the judgment creditor and his address for service within the jurisdiction;
- (b) the name of the judgment debtor and his address or place of business, if known;
- (c) the amount in respect of which the judgment is unsatisfied; and
- (d) that the European Court has not suspended enforcement of the judgment.

### Registration orders

**74.22.**—(1) A copy of the order granting permission to register a Community judgment (“the registration order”) must be served on every person against whom the judgment was given.

(2) The registration order must state the name and address for service of the person who applied for registration, and must exhibit—

- (a) a copy of the registered Community judgment; and
- (b) a copy of the order for its enforcement.

(3) In the case of a Community judgment which is a money judgment, the registration order must also state the right of the judgment debtor to apply within 28 days for the variation or cancellation of the registration under rule 74.23.

### Application to vary or cancel registration

**74.23.**—(1) An application to vary or cancel the registration of a Community judgment which is a money judgment on the ground that at the date of registration the judgment had been partly or wholly satisfied must be made within 28 days of the date on which the registration order was served on the judgment debtor.

(2) The application must be supported by written evidence.

## Enforcement

**74.24** No steps may be taken to enforce a Community judgment which is a money judgment—

- (a) before the end of the period specified in accordance with rule 74.23(1); or
- (b) where an application is made under that rule, until it has been determined.

## Application for registration of suspension order

**74.25.**—(1) Where the European Court has made an order that the enforcement of a registered Community judgment should be suspended, an application for the registration of that order in the High Court is made by filing a copy of the order in the Central Office of the [<sup>F1041</sup>Senior Courts].

(2) The application may be made without notice.

### Textual Amendments

**F1041** Words in rule 74.25(1) substituted (1.10.2009) by The Civil Procedure (Amendment) Rules 2009 (S.I. 2009/2092), rules 1(2), 15(c)

## Registration and enforcement of a Euratom inspection order

**74.26.**—(1) Rules 74.20, 74.21(1), and 74.22(1) and (2), which apply to the registration of a Community judgment, also apply to the registration of a Euratom inspection order but with the necessary modifications.

(2) An application under article 6 of the European Communities (Enforcement of Community Judgments) Order 1972(19) to give effect to a Euratom inspection order may be made on written evidence, and—

- (a) where the matter is urgent, without notice;
- (b) otherwise, by claim form.]

### <sup>F1042</sup>V EUROPEAN ENFORCEMENT ORDERS

### Textual Amendments

**F1042**Pt. 74 Section 5 inserted (21.10.2005) by The Civil Procedure (Amendment No.3) Rules 2005 (S.I. 2005/2292), rule 1(b), Sch. 3

## Interpretation

**74.27** In this Section—

- (a) “European Enforcement Order” has the meaning given in the EEO Regulation;
- (b) “EEO” means European Enforcement Order;
- (c) “judgment”, “authentic instrument”, “member state of origin”, “member state of enforcement”, and “court of origin” have the meanings given by Article 4 of the EEO Regulation; and
- (d) “Regulation State” has the same meaning as “Member State” in the EEO Regulation, that is all Member States except Denmark.

*Status: Point in time view as at 31/01/2011.*

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

## Certification of Judgments of the Courts of England and Wales

**74.28** An application for an EEO certificate must be made by filing the relevant practice form in accordance with Article 6 of the EEO Regulation.

### Applications for a certificate of lack or limitation of enforceability

**74.29** An application under Article 6(2) of the EEO Regulation for a certificate indicating the lack or limitation of enforceability of an EEO certificate must be made to the court of origin by application in accordance with Part 23.

### Applications for rectification or withdrawal

**74.30** An application under Article 10 of the EEO Regulation for rectification or withdrawal of an EEO certificate must be made to the court of origin and may be made by application in accordance with Part 23.

## Enforcement of European Enforcement Orders in England and Wales

**74.31.**—(1) A person seeking to enforce an EEO in England and Wales must lodge at the court in which enforcement proceedings are to be brought the documents required by Article 20 of the EEO Regulation.

[<sup>F1043</sup>(2) Where a person applies to enforce an EEO expressed in a foreign currency, the application must contain a certificate of the sterling equivalent of the judgment sum at the close of business on the date nearest preceding the date of the application

(Part 70 contains further rules about enforcement.)]

### Textual Amendments

**F1043** Rule 74.31(2) and words substituted (12.12.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(4), **37(b)**

## Refusal of Enforcement

**74.32.**—(1) An application under Article 21 of the EEO Regulation that the court should refuse to enforce an EEO must be made by application in accordance with Part 23 to the court in which the EEO is being enforced.

(2) The judgment debtor must, as soon as practicable, serve copies of any order made under Article 21(1) on—

- (a) all other parties to the proceedings and any other person affected by the order [<sup>F1044</sup>(“the affected persons”)]; and
- (b) any court in which enforcement proceedings are pending in England and Wales [<sup>F1045</sup>(“the relevant courts”)].

[<sup>F1046</sup>(3) Upon service of the order on the affected persons, all enforcement proceedings under the EEO in the relevant courts will cease.]

### Textual Amendments

**F1044** Words in rule 74.32(2)(a) inserted (12.12.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(4), **37(c)(i)**

**F1045** Words in rule 74.32(2)(b) inserted (12.12.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(4), **37(c)(ii)**

**F1046** Rule 74.32(3) substituted (12.12.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(4), **37(c)(iii)**

**[<sup>F1047</sup>Stay of or limitation on enforcement]**

**74.33.**—(1) Where an EEO certificate has been lodged and the judgment debtor applies to stay or limit the enforcement proceedings under Article 23 of the EEO Regulation, such application must be made <sup>F1048</sup> ... in accordance with Part 23 to the court in which the EEO is being enforced.

(2) The judgment debtor shall, as soon as practicable, serve a copy of any order made under the Article on—

- (a) all other parties to the proceedings and any other person affected by the order; and
- (b) any court in which enforcement proceedings are pending in England and Wales;

and the order will not have effect on any person until it has been served in accordance with this rule and they have received it.]

**Textual Amendments**

**F1047** Rule 74.33 heading substituted (12.12.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(4), **37(d)(i)**

**F1048** Words in rule 74.33(1) omitted (12.12.2008) by virtue of The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(4), **37(d)(ii)**

**[<sup>F1049</sup>PART 75**

**TRAFFIC ENFORCEMENT**

**Textual Amendments**

**F1049** Pt. 75 inserted (1.10.2002) by The Civil Procedure (Amendment) Rules 2002 (S.I. 2002/2058), rule 1(a), **Sch. 9**

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Scope and interpretation	Rule 75.1
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[ <sup>F1050</sup> Review of decision of court officer	Rule 75.5A]
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*Status: Point in time view as at 31/01/2011.*

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

Revocation of order	Rule 75.8
Transfer for enforcement	Rule 75.9
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Combining requests	Rule 75.11

### Scope and interpretation

**75.1.**—(1) [<sup>F1051</sup>Practice Direction 75]—

- (a) sets out the proceedings to which this Part applies; and
- (b) may apply this Part with modifications in relation to any particular category of those proceedings.

[<sup>F1052</sup>(Rule 21.1(1)(c) provides that Part 21 (children and protected parties) does not apply to proceedings under this Part where one of the parties is a child.)]

(2) In this Part—

- (a) “the Centre” means the Traffic Enforcement Centre established under the direction of the Lord Chancellor;
- (b) “no relevant return to the warrant” means that—
  - (i) the bailiff has been unable to seize goods because [<sup>F1053</sup>the bailiff] has been denied access to premises occupied by the defendant or because the goods have been removed from those premises;
  - (ii) any goods seized under a warrant of execution are insufficient to satisfy the debt and the cost of execution; or
  - (iii) the goods are insufficient to cover the cost of their removal and sale[<sup>F1054</sup>];
- (c) “the 1993 Order” means the Enforcement of Road Traffic Debts Order 1993;
- (d) “relevant period”, in relation to any particular case, means—
  - (i) the period allowed for serving a statutory declaration [<sup>F1055</sup>or witness statement] under any enactment which applies to that case; or
  - (ii) where an enactment permits the court to extend that period, the period as extended;
- (e) “specified debts” means the debts specified in article 2 of the 1993 Order or treated as so specified by any other enactment; and
- (f) “the authority”, “notice of the amount due”, “order” and “the respondent” have the meaning given by [<sup>F1056</sup>Practice Direction 75].

#### Textual Amendments

**F1051** Words in rule 75.1(1) substituted (6.4.2010) by *The Civil Procedure (Amendment No.2) Rules 2009* (S.I. 2009/3390), rules 1(2), **49(a)**

**F1052** Words in rule 75.1(1) inserted (31.3.2008) by *The Civil Procedure (Amendment No.2) Rules 2007* (S.I. 2007/3543), rules 1(a), **9(a)(ii)**

**F1053** Word in rule 75.1(2)(b)(i) substituted (31.3.2008) by *The Civil Procedure (Amendment No.2) Rules 2007* (S.I. 2007/3543), rules 1(a), **9(a)(iii)**

**F1054** Rule 75.1(2)(b)(iii): semicolon substituted for full stop (31.3.2008) by *The Civil Procedure (Amendment No.2) Rules 2007* (S.I. 2007/3543), rules 1(a), **9(a)(iv)**

**F1055** Words in rule 75.1(2)(d)(i) inserted (31.3.2008) by *The Civil Procedure (Amendment No.2) Rules 2007* (S.I. 2007/3543), rules 1(a), **9(a)(v)**

**F1056** Words in rule 75.1(2)(f) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **9(b)**

## The Centre

- 75.2.**—(1) Proceedings to which this Part applies must be started in the Centre.
- (2) For any purpose connected with the exercise of the Centre’s functions—
- (a) the Centre<sup>[F1057]</sup> is 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; and
  - (b) any officer of the Centre, in exercising its functions, is deemed to act as an officer of that court.

### Textual Amendments

**F1057** Word in rule 75.2(2)(a) substituted (31.3.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(a), **9(b)**

## Request

- 75.3.**—(1) The authority must file a request in the appropriate form scheduling the amount claimed to be due.
- (2) The authority must, in that request or in another manner approved by the court officer—
- (a) certify—
    - (i) that 14 days have elapsed since service of the notice of the amount due;
    - (ii) the date of such service;
    - (iii) the number of the notice of the amount due; and
    - (iv) that the amount due remains unpaid;
  - (b) specify the grounds (whether by reference to the appropriate code or otherwise), as stated in the notice, on which the authority claims to be entitled to claim that amount; and
  - (c) state—
    - (i) the name, title and address of the respondent;
    - (ii) the registration number of the vehicle concerned;
    - (iii) the authority’s address for service;
    - (iv) the court fee; and
    - (v) such other matters as required by <sup>[F1058]</sup>Practice Direction 75].
- (3) On receipt of a request that meets the requirements of paragraphs (1) and (2), the court officer will order that the amount due may be recovered as if it were payable under a county court order by <sup>[F1059]</sup>registering] the request and returning it to the authority.
- <sup>[F1060]</sup>(4) On receipt of a registered request the authority may draw up the order and must—
- (a) insert in the order the date by which the respondent must either—
    - (i) comply with the order; or
    - (ii) file a statutory declaration or witness statement; and
  - (b) attach to the order a form of statutory declaration or witness statement for the respondent’s use.]

*Status: Point in time view as at 31/01/2011.*

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

[<sup>F1061</sup>(5) The authority must serve in accordance with Part 6 the order (and the form of statutory declaration or witness statement) on the respondent within 15 days of the date on which the request is registered by the court.]

<sup>F1062</sup>(6) .....

**Textual Amendments**

- F1058** Words in rule 75.3(2)(c)(v) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **49(b)**
- F1059** Word in rule 75.3(3) substituted (31.3.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(a), **9(c)(ii)**
- F1060** Rule 75.3(4) substituted (31.3.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(a), **9(c)(iii)** (with rule 13)
- F1061** Rule 75.3(5) substituted (31.3.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(a), **9(c)(iv)** (with rule 13)
- F1062** Rule 75.3(6) revoked (31.3.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(a), **9(c)(v)** (with rule 13)

**Electronic delivery of documents**

**75.4.**—(1) Where the authority is required to file any document other than the request, that requirement is satisfied if the information which would be contained in the document is delivered in computer-readable form.

(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 a document is required to be produced, that requirement will be satisfied if a copy of the document is produced from computer records.

[<sup>F1063</sup>**Functions of court officer**

**75.5** [<sup>F1064</sup>Practice Direction 75] sets out the circumstances in which a court officer may exercise the functions of the court.]

**Textual Amendments**

- F1063** Rule 75.5 substituted (6.4.2009) by [The Civil Procedure \(Amendment No.3\) Rules 2008 \(S.I. 2008/3327\)](#), rules 1, **13(b)**
- F1064** Words in rule 75.5 substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **49(a)**

[<sup>F1065</sup>**Review of decision of court officer**

**75.5A.**—(1) Any party may request any decision of a court officer to be reviewed by a district judge.

(2) Such a request must be made within 14 days of service of the decision.

(3) Unless—

- (a) the party requesting the review requests an oral hearing; or
- (b) the court orders an oral hearing,



a request for a review under paragraph (2) will be dealt with without an oral hearing.]

#### Textual Amendments

**F1065** Rule 75.5A inserted (6.4.2009) by The Civil Procedure (Amendment No.3) Rules 2008 (S.I. 2008/3327), rules 1, 13(c)

#### Enforcement of orders

**75.6** Subject to the 1993 Order and this rule the following rules apply to the enforcement of specified debts—

- (a) Parts 70 to 73;
- (b) CCR Order 25, [<sup>F1066</sup>rule 1];
- (c) CCR Order 26, rule 5; and
- (d) CCR Order 27, rules 1 to 7, 7A, 7B, 9 to 16 and 18 to 22.

(Rule 30.2 provides for the transfer between courts in order to enforce a judgment.)

#### Textual Amendments

**F1066** Words in rule 75.6(b) substituted (31.3.2008) by The Civil Procedure (Amendment No.2) Rules 2007 (S.I. 2007/3543), rules 1(a), 9(e)

#### Warrant of execution

**75.7.—**(1) An authority seeking the issue of a warrant of execution must file a request—

- (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.

(2) The court will seal the request and return it to the authority.

(3) Within 7 days of the sealing of the request the authority must prepare the warrant in the appropriate form.

(4) No payment under a warrant will be made to the court.

(5) For the purposes of execution a warrant will be valid for 12 months beginning with the date of its issue.

[<sup>F1067</sup>(6) An authority may not renew a warrant issued in accordance with this Part beyond the 12 month validity period but, subject to paragraph (7), an authority may request the reissue of a warrant during the 12 month validity period.]

[<sup>F1068</sup>(7) Where the address of the respondent has changed since the issue of the warrant, the authority may request the reissue of the warrant by filing a request—

- (a) specifying the new address of the respondent;
- (b) providing evidence that the new address for the respondent does relate to the respondent named in the order and against whom enforcement is sought; and
- (c) certifying that the amount due under the order remains unpaid.

*Status: Point in time view as at 31/01/2011.*

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

(8) Where the court is satisfied that the new address of the respondent given in the request for the reissue of the warrant relates to the respondent named in the order, it will seal the request and return it to the authority.

(9) The authority must prepare the reissued warrant in the appropriate form within 7 days of the sealing of the request to reissue.

(10) A reissued warrant will only be valid for the remainder of the 12 month period beginning with the date it was originally issued.]

#### Textual Amendments

**F1067**Rule 75.7(6) substituted (6.4.2009) by [The Civil Procedure \(Amendment No.3\) Rules 2008 \(S.I. 2008/3327\)](#), rules 1, **13(d)(i)**

**F1068**Rules 75.7(7)-(10) inserted (6.4.2009) by [The Civil Procedure \(Amendment No.3\) Rules 2008 \(S.I. 2008/3327\)](#), rules 1, **13(d)(ii)**

#### Revocation of order

**75.8** Where, in accordance with any enactment, an order is deemed to have been revoked following the filing of a statutory declaration [<sup>F1069</sup>or a witness statement]—

- (a) the court will serve a copy of the statutory declaration [<sup>F1070</sup>or witness statement] on the authority;
- (b) any execution issued on the order will cease to have effect; and
- (c) if appropriate, the authority must inform any bailiff instructed to levy execution of the withdrawal of the warrant as soon as possible.

#### Textual Amendments

**F1069**Words in [rule 75.8](#) inserted (31.3.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(a), **9(f)(i)**

**F1070**Words in [rule 75.8\(a\)](#) inserted (31.3.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(a), **9(f)(ii)**

#### Transfer for enforcement

**75.9** [<sup>F1071</sup>Where the] authority requests the transfer of proceedings to another county court for enforcement, the request must—

- (a) where the authority has not attempted to enforce by execution, give the reason 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.

#### Textual Amendments

**F1071**Words in [rule 75.9](#) substituted (31.3.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(a), **9(g)**

## Further information required

75.10 An application for—

- (a) an attachment of earnings order;
- (b) an order to obtain information from a debtor;
- (c) a third party debt order; or
- (d) a charging order,

must, in addition to the requirements of Parts 71, 72 or 73 or CCR Order 27—

- (i) where the authority has not attempted to enforce by execution, give the <sup>F1072</sup>reason why] no such attempt was made;
- (ii) certify that there has been no relevant return to the warrant of execution;
- (iii) specify the date of service of the order on the respondent; and
- (iv) certify that the relevant period has elapsed.

### Textual Amendments

**F1072** Words in rule 75.10(i) substituted (31.3.2008) by The Civil Procedure (Amendment No.2) Rules 2007 (S.I. 2007/3543), rules 1(a), **9(h)**

## Combining requests

75.11 <sup>F1073</sup>Where] the court officer allows, <sup>F1074</sup>the] authority may combine information relating to different orders against the same <sup>F1075</sup>respondent] in any request or application made under rules 75.9 or 75.10.]

### Textual Amendments

**F1073** Word in rule 75.11 substituted (31.3.2008) by The Civil Procedure (Amendment No.2) Rules 2007 (S.I. 2007/3543), rules 1(a), **9(i)(i)**

**F1074** Word in rule 75.11 substituted (31.3.2008) by The Civil Procedure (Amendment No.2) Rules 2007 (S.I. 2007/3543), rules 1(a), **9(i)(ii)**

**F1075** Word in rule 75.11 substituted (31.3.2008) by The Civil Procedure (Amendment No.2) Rules 2007 (S.I. 2007/3543), rules 1(a), **9(i)(iii)**

# <sup>F1076</sup>PART 76

## PROCEEDINGS UNDER THE PREVENTION OF TERRORISM ACT 2005

### Textual Amendments

**F1076** Pt. 76 inserted (14.3.2005) by The Civil Procedure (Amendment No. 2) Rules 2005 (S.I. 2005/656), rule 1, Sch.

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*SECTION 1*

*Application of this Part*

**Scope and interpretation**

**76.1.**—(1) This Part contains rules about—

- (a) control order proceedings in the High Court; and
- (b) appeals to the Court of Appeal against an order of the High Court in such proceedings.

(2) In the case of proceedings brought by virtue of section 11(2) of the Act, the rules in this Part shall apply with any modification which the court considers necessary.

(3) In this Part—

- (a) “the Act” means the Prevention of Terrorism Act 2005;
- (b) “closed material” means any relevant material that the Secretary of State objects to disclosing to a relevant party;
- (c) “control order proceedings” has the same meaning as in section 11(6) of the Act;
- (d) “controlled person”, has the same meaning as in section 15(1) of the Act;
- (e) “legal representative” is to be construed in accordance with paragraph 11 of the Schedule to the Act;
- (f) “open material” means any relevant material that the Secretary of State does not object to disclosing to a relevant party;

<sup>F1077</sup>(g) .....

- (h) “relevant material” has the same meaning as in paragraph 4(5) of the Schedule to the Act;
- (i) “relevant party” has the same meaning as in paragraph 11 of the Schedule to the Act;
- (j) “special advocate” means a person appointed under paragraph 7 of the Schedule to the Act.

(4) For the purposes of this Part, disclosure is contrary to the public interest if it is made contrary to the interests of national security, the international relations of the United Kingdom, the detection

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and prevention of crime, or in any other circumstances where disclosure is likely to harm the public interest.

#### **Textual Amendments**

**F1077** Rule 76.1(3)(g) omitted (6.4.2008) by virtue of [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(b), **10(a)**

#### **Modification to the overriding objective**

**76.2.**—(1) Where this Part applies, the overriding objective in Part 1, and so far as relevant any other rule, must be read and given effect in a way which is compatible with the duty set out in paragraph (2).

(2) The court must ensure that information is not disclosed contrary to the public interest.

(3) Subject to paragraph (2), the court must satisfy itself that the material available to it enables it properly to determine proceedings.

### *SECTION 2*

#### *Applications to the High Court relating to derogating control orders*

#### **Scope of this section**

**76.3.**—(1) This section of this Part contains rules about applications relating to derogating control orders.

(2) Part 23 does not apply to an application made under this section of this Part.

#### **Applications for the making of a derogating control order**

**76.4.** An application for the making of a derogating control order under section 4(1) of the Act must be made by the Secretary of State by filing with the court—

- (a) a statement of reasons to support the application for—
  - (i) making such an order, and
  - (ii) imposing each of the obligations to be imposed by that order;
- (b) all relevant material;
- (c) any written submissions; and
- (d) a draft of the order sought.

#### **Directions for a full hearing on notice**

**76.5.**—(1) When the court makes a derogating control order under section 4(3) of the Act it must—

- (a) immediately fix a date, time and place for a further hearing at which the controlled person, his legal representative and a special advocate (if one has been appointed) can be present; and
- (b) unless the court otherwise directs, that date must be no later than 7 days from the date that the order is made.

(2) At the hearing referred to in paragraph (1)(a) the court must give directions—

- (a) for the holding of a full hearing under section 4(1)(b) of the Act to determine whether to confirm the control order (with or without modifications) or to revoke it; and
  - (b) specifying the date and time by which the parties and special advocate must file and serve any written evidence or written submissions in accordance with rule 76.30.
- (3) When giving directions under paragraph (2), the court must have regard to the need to expedite the full hearing.

### **Applications on notice**

**76.6.**—(1) An application under section 4(9) for the renewal, or under section 7(4) of the Act, for the revocation of a control order or for the modification of obligations imposed by such an order, must be made in accordance with this rule.

(2) An application by the Secretary of State must be made by—

- (a) filing with the court—
  - (i) a statement of reasons to support the application,
  - (ii) all relevant material,
  - (iii) any written submissions, and
  - (iv) a draft of the order sought; and
- (b) serving on the controlled person or his legal representative any open material.

(3) An application by the controlled person must be made by filing with the court and serving on the Secretary of State—

- (a) a statement of reasons to support the application;
- (b) any written evidence upon which he relies;
- (c) any written submissions; and
- (d) where appropriate, a draft of the order sought.

(4) If the controlled person wishes to oppose an application made under this rule, he must as soon as practicable file with the court, and serve on the Secretary of State, any written evidence and any written submissions upon which he relies.

(5) If the Secretary of State wishes to oppose an application made under this rule, he must as soon as practicable—

- (a) file with the court—
  - (i) all relevant material, and
  - (ii) any written submissions; and
- (b) serve on the controlled person any open material.

(Attention is drawn to rule 76.18 relating to the address for issuing proceedings in the High Court. Rules 76.28 and 76.29 will apply where any closed material is filed by the Secretary of State).

## *SECTION 3*

### *Permission applications, references and appeals to the High Court relating to non-derogating control orders*

#### **Scope of this section**

**76.7.** This section of this Part contains rules about—

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- (a) applications under section 3(1)(a) of the Act (application for permission to make a non-derogating control order);
- (b) references under section 3(3) of the Act (reference of a non-derogating control order made without permission); and
- (c) appeals to the High Court under section 10 of the Act (appeals relating to non-derogating control orders).

#### **Application for permission to make non-derogating control order**

**76.8.** An application under section 3(1)(a) for permission to make a non-derogating control order must be made by the Secretary of State by filing with the court—

- (a) a statement of reasons to support the application;
- (b) all relevant material;
- (c) any written submissions; and
- (d) the proposed control order.

#### **References under section 3(3) of the Act**

**76.9.**—(1) This rule applies where the Secretary of State makes a reference under section 3(3) of the Act (reference of a non-derogating control order).

- (2) The Secretary of State must promptly file with the court—
  - (a) a statement of the reasons for—
    - (i) making the control order,
    - (ii) imposing the obligations imposed by that order;
  - (b) all relevant material; and
  - (c) any written submissions.

#### **Directions for hearing on application for permission or on a reference**

**76.10.**—(1) This rule applies where the court gives directions under section 3(2)(c) or (6)(b) or (c) of the Act.

- (2) The court must immediately—
  - (a) fix a date, time and place for a further hearing at which the controlled person, his legal representative and a special advocate (if one has been appointed) can be present; and
  - [<sup>F1078</sup>(b) unless the court otherwise directs—
    - (i) in the case of directions given under section 3(2)(c), that date must be no later than 7 days from the date on which the notice of the terms of the control order is delivered to the controlled person in accordance with section 7(8) of the Act; or
    - (ii) in the case of directions given under section 3(6)(b) or (c), that date must be 7 days from the date on which the court's determination on the reference is made.]
- (3) At the hearing referred to in paragraph (2), the court must give directions—
  - (a) for a hearing under section 3(10); and
  - (b) specifying the date and time by which the parties and special advocate must file and serve any written evidence or written submissions in accordance with rule 76.30.
- (4) When giving directions under paragraph (3), the court must have regard to the need to expedite that hearing.



(Rules 76.28 and 76.29 will apply where any closed material is filed by the Secretary of State).

#### Textual Amendments

**F1078** Rule 76.10(2)(b) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **16(a)**

#### Appeals under section 10 of the Act

**76.11.** This rule and rules 76.12 to 76.15 apply to an appeal under section 10 of the Act (appeals relating to a non-derogating control order).

#### Modification of Part 52 (appeals)

**76.12.**—(1) Part 52 (appeals) applies to an appeal under section 10 of the Act, subject to—

- (a) rule 76.2;
- (b) the rules in section 5 of this Part; and
- (c) the modifications set out in paragraphs (2) and (3) of this rule.

(2) The following rules do not apply to appeals under section 10 of the Act—

- (a) rule 52.3 (permission);
- (b) rule 52.4 (appellant's notice);
- (c) rule 52.5 (respondent's notice); and
- (d) rule 52.11 (hearing of appeals).

(3) Rule 52.2 (all parties to comply with [<sup>F1079</sup>Practice Direction 52]) applies, but the parties shall not be required to comply with paragraphs 5.6, 5.6A, 5.7, 5.9 and 5.10 of that practice direction.

#### Textual Amendments

**F1079** Words in [rule 76.12\(3\)](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **50**

#### Notice of appeal

**76.13.**—(1) The controlled person must give notice of appeal by—

- (a) filing it with the court; and
- (b) serving a copy of the notice and any accompanying documents on the Secretary of State.

(2) The notice of appeal must—

- (a) set out the grounds of the appeal; and
- (b) state the name and address of—
  - (i) the controlled person, and
  - (ii) any legal representative of that person.

(3) A notice of appeal may include an application for an order under rule 76.19 requiring anonymity.

(4) The notice of appeal must be filed with—

- (a) a copy of the order that is the subject of the appeal;

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- (b) a copy of the Secretary of State's decision on an application for the revocation of the control order, or for the modification of an obligation imposed by such an order.

(Attention is drawn to rule 76.18 relating to the address for issuing proceedings in the High Court).

### **Time limit for appealing**

**76.14.**—(1) Subject to paragraph (2), the controlled person must give notice of appeal no later than 28 days after receiving <sup>F1080</sup> ...—

- (a) the [<sup>F1081</sup>notice setting out the terms of the order, renewal or modification that is the subject of the appeal]; or
- (b) [<sup>F1082</sup>notice of] the decision by the Secretary of State on an application for the revocation of the control order, or for the modification of an obligation imposed by such an order.

(2) In a case where the Secretary of State has failed to determine an application for the revocation of the control order, or for the modification of an obligation imposed by such an order, the controlled person must file the notice of appeal—

- (a) no earlier than 28 days; and
- (b) no later than 42 days;

after the date the application was made.

#### **Textual Amendments**

**F1080** Words in rule 76.14(1) omitted (6.4.2008) by virtue of [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(b), **10(b)(i)**

**F1081** Words in rule 76.14(1)(a) substituted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(b), **10(b)(ii)**

**F1082** Words in rule 76.14(1)(b) inserted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(b), **10(b)(iii)**

### **Secretary of State's reply**

**76.15.** If the Secretary of State wishes to oppose an appeal made under section 10 of the Act, he must no later than 14 days after he is served with the notice of appeal—

- (a) file with the court—
- (i) all relevant material, and
- (ii) any written submissions; and
- (b) serve on the controlled person any open material.

## *SECTION 4*

### *Appeals to the Court of Appeal*

#### **Modification of Part 52 (appeals)**

**76.16.**—(1) Part 52 (appeals) applies to an appeal to the Court of Appeal against an order of the High Court in control order proceedings, subject to—

- (a) rule 76.2;
- (b) the rules in section 5 of this Part; and

(c) paragraphs (2) and (3) of this rule.

(2) The following rules do not apply to appeals to the Court of Appeal—

(a) rule 52.4(1) (appellant’s notice); and

(b) rule 52.5 (respondent’s notice); but

the provisions of rules 76.13 and 76.15 shall apply with appropriate modifications.

(3) Rule 52.2 (all parties to comply with [<sup>F1083</sup>Practice Direction 52]) applies, but the parties shall not be required to comply with paragraphs 5.6, 5.6A, 5.7, 6.3A, 15.2, 15.3, 15.4 and 15.6 of that practice direction.

**Textual Amendments**

**F1083** Words in rule 76.16(3) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **50**

*SECTION 5*

*General provisions*

**Scope of this section**

**76.17.** This section of this Part applies to—

(a) control order proceedings in the High Court; and

(b) appeals to the Court of Appeal against an order of the High Court in such proceedings.

**Address for issuing proceedings in the High Court**

**76.18.** Any control order proceedings must be issued at the Administrative Court Office, Room C315, Royal Courts of Justice, Strand, London, WC2A 2LL.

**Applications for anonymity**

**76.19.—**(1) The controlled person or the Secretary of State may apply for an order requiring the anonymity of the controlled person.

(2) An application under paragraph (1) may be made at any time, irrespective of whether any control order proceedings have been commenced.

(3) An application may be made without notice to the other party.

[<sup>F1084</sup>(4) References in this rule—

(a) to an order requiring anonymity for the controlled person are to be construed in accordance with paragraph 5(3) of the Schedule to the Act; and

(b) to the controlled person, in relation to a time before the control order has been made, are to be construed in accordance with paragraph 5(4) of the Schedule to the Act.]

**Textual Amendments**

**F1084** Rule 76.19(4) substituted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **16(b)**

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### Notification of hearing

**76.20.** Unless the court orders otherwise, it must serve notice of the date, time and place fixed for any hearing on—

- (a) every party, whether or not entitled to attend that hearing; and
- (b) if one has been appointed for the purposes of the hearing, the special advocate or those instructing him.

### Hearings

**76.21.**—(1) The following proceedings must be determined at a hearing—

- (a) a hearing pursuant to directions given under section 4(1)(b) of the Act (derogating control orders);
  - (b) a hearing pursuant to directions given under sections 3(2)(c) or (6)(b) or (c) of the Act (non-derogating control orders);
  - (c) an appeal under section 10 of the Act (appeal relating to a non-derogating control order);
  - (d) an appeal to the Court of Appeal from an order of the High Court made in any of the above proceedings; and
  - (e) a hearing under rule 76.29(2) (consideration of Secretary of State’s objection).
- (2) Paragraph (1)(c) and (d) do not apply where—
- (a) the appeal is withdrawn by the controlled person;
  - (b) the Secretary of State consents to the appeal being allowed; or
  - (c) the controlled person is outside the United Kingdom or it is impracticable to give him notice of a hearing and, in either case, he is unrepresented.

### Hearings in private

**76.22.**—(1) If the court considers it necessary for any relevant party and his legal representative to be excluded from a hearing or part of a hearing in order to secure that information is not disclosed contrary to the public interest, it must—

- (a) direct accordingly; and
  - (b) conduct the hearing, or that part of it from which the relevant party and his legal representative are excluded, in private.
- (2) The court may conduct a hearing or part of a hearing in private for any other good reason.

### Appointment of a special advocate

**76.23.**—(1) Subject to paragraph (2), the Secretary of State must immediately give notice of the proceedings to the [<sup>F1085</sup>Attorney General] upon—

- (a) making an application under section 4(1) of the Act (relating to a derogating control order);
- (b) making an application under section 3(1)(a) of the Act (application for permission to make a non-derogating control order);
- (c) making a reference under section 3(3) of the Act (reference of a non-derogating control order made without permission); or
- (d) being served with a copy of any application, claim, or notice of appeal in proceedings to which this Part applies.

(2) Paragraph (1) applies unless—

- (a) the Secretary of State does not intend to—
    - (i) oppose the appeal or application; or
    - (ii) withhold closed material from a relevant party; or
  - (b) a special advocate has already been appointed to represent the interests of the relevant party in the proceedings and that special advocate is not prevented from communicating with that party by virtue of rule 76.25.
- (3) Where notice is given to the [<sup>F1086</sup>Attorney General] under paragraph (1), the [<sup>F1086</sup>Attorney General] may appoint a special advocate to represent the interests of the relevant party in the proceedings.
- (4) Where any proceedings to which this Part apply are pending but no special advocate has been appointed, a relevant party or the Secretary of State may request the [<sup>F1087</sup>Attorney General] to appoint a special advocate.

#### Textual Amendments

- F1085** Words in rule 76.23(1) substituted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(b), **10(c)(i)**
- F1086** Words in rule 76.23(3) substituted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(b), **10(c)(ii)**
- F1087** Words in rule 76.23(4) substituted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(b), **10(c)(iii)**

#### Functions of special advocate

- 76.24.** The functions of a special advocate are to represent the interests of a relevant party by—
- (a) making submissions to the court at any hearings from which the relevant party and his legal representatives are excluded;
  - (b) [<sup>F1088</sup>adducing evidence and] cross-examining witnesses at any such hearings; and
  - (c) making written submissions to the court.

#### Textual Amendments

- F1088** Words in rule 76.24(b) inserted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **16(c)**

#### Special advocate: communicating about proceedings

**76.25.**—(1) The special advocate may communicate with the relevant party or his legal representative at any time before the Secretary of State serves closed material on him.

(2) After the Secretary of State serves closed material on the special advocate, the special advocate must not communicate with any person about any matter connected with the proceedings, except in accordance with paragraph (3) or a direction of the court pursuant to a request under paragraph (4).

(3) The special advocate may, without directions from the court, communicate about the proceedings with—

- (a) the court;
- (b) the Secretary of State, or any person acting for him;

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- (c) the [<sup>F1089</sup>Attorney General], or any person acting for him; or
  - (d) any other person, except for the relevant party or his legal representative, with whom it is necessary for administrative purposes for him to communicate about matters not connected with the substance of the proceedings.
- (4) The special advocate may request directions from the court authorising him to communicate with the relevant party or his legal representative or with any other person.
- (5) Where the special advocate makes a request for directions under paragraph (4)—
- (a) the court must notify the Secretary of State of the request; and
  - (b) the Secretary of State must, within a period specified by the court, file with the court and serve on the special advocate notice of any objection which he has to the proposed communication, or to the form in which it is proposed to be made.
- (6) Paragraph (2) does not prohibit the relevant party from communicating with the special advocate after the Secretary of State has served material on him as mentioned in paragraph (1), but—
- (a) the relevant party may only communicate with the special advocate through a legal representative in writing; and
  - (b) the special advocate must not reply to the communication other than in accordance with directions of the court, except that he may without such directions send a written acknowledgment of receipt to the legal representative of the relevant party.

#### Textual Amendments

**F1089** Words in rule 76.25(3)(c) substituted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(b), **10(d)**

#### Modification of the general rules of evidence and disclosure

**76.26.**—(1) Part 31 (disclosure and inspection of documents), Part 32 (evidence) and Part 33 (miscellaneous rules about evidence) do not apply to any proceedings to which this Part applies.

- (2) Subject to the other rules in this Part, the evidence of a witness may be given either—
  - (a) orally, before the court; or
  - (b) in writing, in which case it shall be given in such manner and at such time as the court directs.
- (3) The court may also receive evidence in documentary or any other form.
- (4) The court may receive evidence that would not, but for this rule, be admissible in a court of law.

(5) Every party shall be entitled to adduce evidence and to cross-examine witnesses during any part of a hearing from which he and his legal representative are not excluded.

[<sup>F1090</sup>(5A) A special advocate shall be entitled to adduce evidence and to cross-examine witnesses.]

- (6) The court may require a witness to give evidence on oath.

#### Textual Amendments

**F1090** Rule 76.26(5A) inserted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **16(d)**

### **Filing and service of relevant material**

**76.27.** The Secretary of State is required to make a reasonable search for relevant material and to file and serve that material in accordance with the rules in this Part.

### **Closed material**

**76.28.—**(1) The Secretary of State—

- (a) must apply to the court for permission to withhold closed material from a relevant party or his legal representative in accordance with this rule; and
- (b) may not rely on closed material at a hearing on notice unless a special advocate has been appointed to represent the interests of the relevant party.

(2) The Secretary of State must file with the court and serve, at such time as the court directs, on the special advocate—

- (a) the closed material;
- (b) a statement of his reasons for withholding that material from the relevant party; and
- (c) if he considers it possible to summarise that material without disclosing information contrary to the public interest, a summary of that material in a form which can be served on the relevant party.

(3) The Secretary of State may at any time amend or supplement material filed under this rule, but only with—

- (a) the agreement of the special advocate; or
- (b) the permission of the court.

### **Consideration of Secretary of State's objection**

**76.29.—**(1) This rule applies where the Secretary of State has—

- (a) objected under rule 76.25(5)(b) to a proposed communication by the special advocate; or
- (b) applied under rule 76.28 for permission to withhold closed material.

(2) The court must fix a hearing for the Secretary of State and the special advocate to make oral representations, unless—

- (a) the special advocate gives notice to the court that he does not challenge the objection or application;
- (b) the court has previously considered—
  - (i) an objection under rule 76.25(5)(b) [<sup>F1091</sup>to the same or substantially the same communication], or
  - (ii) an application under rule 76.28(1) for permission to withhold the same or substantially the same material, and

is satisfied that it would be just to uphold that objection or to give permission without a hearing; or

- (c) the Secretary of State and the special advocate consent to the court deciding the issue without a hearing.

(3) If the special advocate does not challenge the objection or the application, he must give notice of that fact to the court and the Secretary of State within 14 days, or such other period as the court may direct, after the Secretary of State serves on him a notice under rule 76.25(5)(b) or material under rule 76.28(2).

*Status: Point in time view as at 31/01/2011.*

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

(4) Where the court fixes a hearing under this rule, the Secretary of State and the special advocate must before the hearing file with the court a schedule identifying the issues which cannot be agreed between them, which must—

- (a) list the items or issues in dispute;
- (b) give brief reasons for their contentions on each; and
- (c) set out any proposals for the court to resolve the issues in contention.

(5) A hearing under this rule shall take place in the absence of the relevant party and his legal representative.

(6) Where the court gives permission to the Secretary of State to withhold closed material, the court must—

- (a) consider whether to direct the Secretary of State to serve a summary of that material on the relevant party or his legal representative; but
- (b) ensure that no such summary contains information or other material the disclosure of which would be contrary to the public interest.

(7) Where the court has not given permission to the Secretary of State to withhold closed material from, or has directed the Secretary of State to serve a summary of that material on, a relevant party or his legal representative—

- (a) the Secretary of State shall not be required to serve that material or summary; but
- (b) if he does not do so, at a hearing on notice the court may—
  - (i) if it considers that the material or anything that is required to be summarised might be of assistance to the relevant party in relation to a matter under consideration by the court, direct that the matter be withdrawn from its consideration, and
  - (ii) in any other case, direct that the Secretary of State shall not rely in the proceedings on that material or (as the case may be) on what is required to be summarised.

(8) The court must give permission to the Secretary of State to withhold closed material where it considers that the disclosure of that material would be contrary to the public interest.

#### **Textual Amendments**

**F1091** Words in [rule 76.29\(2\)\(b\)\(i\)](#) inserted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), [rules 1\(b\)](#), [10\(e\)](#)

#### **Order of filing and serving material and written submissions**

**76.30.** Subject to any directions given by the court, the parties must file and serve any material and written submissions, and the special advocate must file and serve any written submissions, in the following order—

- (a) the Secretary of State must file with the court all relevant material;
- (b) the Secretary of State must serve on—
  - (i) the relevant party or his legal representative; and
  - (ii) the special advocate (as soon as one is appointed) or those instructing him, any open material;
- (c) the relevant party must file with the court and serve on the Secretary of State and special advocate (if one is appointed) or those instructing him any written evidence which he wishes the court to take into account at the hearing;



- (d) the Secretary of State must file with the court any further relevant material;
- (e) the Secretary of State must serve on—
  - (i) the relevant party or his legal representative, and
  - (ii) the special advocate (as soon as one is appointed) or those instructing him, any open material filed with the court under paragraph (d);
- (f) the Secretary of State must serve on the special advocate (if one has been appointed) any closed material;
- (g) the parties and the special advocate (if one has been appointed) must file and serve any written submissions as directed by the court.

(Rules 76.28 and 76.29 will apply where any closed material is filed by the Secretary of State).

### **Failure to comply with directions**

**76.31.**—(1) Where a party or the special advocate fails to comply with a direction of the court, the court may serve on him a notice which states—

- (a) the respect in which he has failed to comply with the direction;
- (b) a time limit for complying with the direction; and
- (c) that the court may proceed to determine the proceedings before it, on the material available to it, if the party or the special advocate fails to comply with the relevant direction within the time specified.

(2) Where a party or special advocate fails to comply with such a notice, the court may proceed in accordance with paragraph (1)(c).

### **Judgments**

**76.32.**—(1) When the court gives judgment in any proceedings to which this Part applies, it may withhold any or part of its reasons if and to the extent that it is not possible to give reasons without disclosing information contrary to the public interest.

(2) Where the judgment of the court does not include the full reasons for its decision, the court must serve on the Secretary of State and the special advocate a separate written judgment including those reasons.

### **Application by Secretary of State for reconsideration of decision**

**76.33.**—(1) This rule applies where the court proposes, in any proceedings to which this Part applies, to serve notice on a relevant party of any—

- (a) order or direction made or given in the absence of the Secretary of State; or
- (b) any judgment.

(2) Before the court serves any such notice on the relevant party, it must first serve notice on the Secretary of State of its intention to do so.

(3) The Secretary of State may, within 5 days of being served with notice under paragraph (2), apply to the court to reconsider the terms of the order or direction or to review the terms of the proposed judgment if he considers that—

- (a) his compliance with the order or direction; or
- (b) the notification to the relevant party of any matter contained in the judgment, order or direction;

would cause information to be disclosed contrary to the public interest.

*Status: Point in time view as at 31/01/2011.*

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

[<sup>F1092</sup>(4) Where the Secretary of State makes an application under paragraph (3), he must at the same time serve on the special advocate, if one has been appointed—

(a) a copy of the application; and

(b) a copy of the notice served on the Secretary of State pursuant to paragraph (2).]

(5) Rule 76.29 (except for paragraphs (6) and (7)) shall, if a special advocate has been appointed, apply with any necessary modifications to the consideration of an application under paragraph (3) of this rule.

(6) The court must not serve notice on the relevant party as mentioned in paragraph (1) before the time for the Secretary of State to make an application under paragraph (3) has expired.

#### Textual Amendments

**F1092**Rule 76.33(4) substituted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(b), **10(f)**

#### Supply of court documents

**76.34.** Unless the court otherwise directs, [<sup>F1093</sup>rule 5.4 (Register of Claims), rule 5.4B (Supply of documents from court records – a party) and rule 5.4C (Supply of documents from court records – a non-party) do] not apply to any proceedings to which this Part applies.]

#### Textual Amendments

**F1093**Words in rule 76.34 substituted (2.10.2006) by [The Civil Procedure \(Amendment\) Rules 2006 \(S.I. 2006/1689\)](#), rules 1, **11**

## [<sup>F1094</sup>PART 77

### PROVISIONS IN SUPPORT OF CRIMINAL JUSTICE

#### Textual Amendments

**F1094**Pt. 77 inserted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rule 1(b), **Sch.**

#### Contents of this Part

[<sup>F1095</sup>Scope of this Part Rule 77.1

#### SECTION 1 – SERIOUS CRIME PREVENTION ORDERS

Interpretation Rule 77.1A]

Application for a SCPO Rule 77.2

Applications by third parties to make representations and applications to vary or discharge a SCPO made by the High Court	Rule 77.3
Application to vary or discharge a SCPO made by the Crown Court	Rule 77.4
Where to make an application	Rule 77.5

[<sup>F1096</sup>SECTION 2 – APPLICATION TO QUASH AN ACQUITTAL

Scope and interpretation	Rule 77.6
Time limit for making the application	Rule 77.7
Where to make the application	Rule 77.8
How to make the application	Rule 77.9
Notice to defendant (acquitted person)	Rule 77.10
Response to the application	Rule 77.11
Further evidence	Rule 77.12
Determination of the application to quash an acquittal (general provisions)	Rule 77.13
Application for a hearing to determine the application to quash an acquittal	Rule 77.14
Hearing to determine the application to quash an acquittal	Rule 77.15]

[<sup>F1097</sup>Scope of this Part

77.1. This Part contains rules about—

- (a) in Section 1, applications for a serious crime prevention order under section 8 of the Serious Crime Act 2007 and related applications under sections 9, 17 and 18 of that Act; and
- (b) in Section 2, applications under section 54(3) of the Criminal Procedure and Investigations Act 1996 for an order quashing an acquittal.]

**Textual Amendments**

**F1097**Rule 77.1 substituted (1.10.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2010 \(S.I. 2010/1953\)](#), rules 1(2), **10(b)**

*Status: Point in time view as at 31/01/2011.*

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

## [<sup>F1098</sup>SECTION 1 – SERIOUS CRIME PREVENTION ORDERS]

### Textual Amendments

**F1098**Pt. 77 Section 1 heading inserted (1.10.2010) by virtue of [The Civil Procedure \(Amendment No.2\) Rules 2010 \(S.I. 2010/1953\)](#), rules 1(2), **10(b)**

### [<sup>F1099</sup>Interpretation

**77.1A.** In this Section—

- (a) “the 2007 Act” means the Serious Crime Act 2007; and
- (b) “SCPO” means a serious crime prevention order under section 1 or section 9 of the 2007 Act.]

### Textual Amendments

**F1099**Rule 77.1A inserted (1.10.2010) by virtue of [The Civil Procedure \(Amendment No.2\) Rules 2010 \(S.I. 2010/1953\)](#), rules 1(2), **10(b)**

### Application for a SCPO

**77.2.** An application under section 8 of the 2007 Act for a SCPO must be started in accordance with Part 8 as modified by [<sup>F1100</sup>Practice Direction 77].

### Textual Amendments

**F1100** Words in [rule 77.2](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **51(a)**

### Applications by third parties to make representations and applications to vary or discharge a SCPO made by the High Court

**77.3.** An application under—

- (a) section 9 of the 2007 Act; or
- (b) section 17 or 18 of the 2007 Act to vary or discharge a SCPO made by the High Court,

must be made in accordance with Part 23 as modified by [<sup>F1101</sup>Practice Direction 77.]

### Textual Amendments

**F1101** Words in [rule 77.3](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **51(a)**

### Application to vary or discharge a SCPO made by the Crown Court

**77.4.** An application under section 17 or 18 of the 2007 Act to vary or discharge a SCPO made by the Crown Court must be started in accordance with Part 8.

## Where to make an application

**77.5.** Applications under this Part must be made to the Queen’s Bench Division of the High Court in one of the courts set out in [F1102Practice Direction 77].

### Textual Amendments

**F1102** Words in rule 77.5 substituted (6.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), **51(b)**

## [F1103]SECTION 2 APPLICATION TO QUASH AN ACQUITTAL

### Textual Amendments

**F1103** Pt. 77 Section 2 inserted (1.10.2010) by The Civil Procedure (Amendment No.2) Rules 2010 (S.I. 2010/1953), rule 1(2), **Sch. 4**

## Scope and interpretation

**77.6.—(1)** This Section contains rules about applications to quash an acquittal under section 54(3) of the Criminal Procedure and Investigations Act 1996 and applies in relation to acquittals in respect of offences alleged to have been committed on or after 15th April 1997.

(2) An application made under this Section may be made only by the individual or body which acted as prosecutor in the proceedings which led to the acquittal.

(3) In this Section—

- (a) “the 1996 Act” means the Criminal Procedure and Investigations Act 1996;
- (b) “acquitted person” means a person whose acquittal of an offence is the subject of a certification under section 54(2) of the 1996 Act, and “acquittal” means the acquittal of that person of that offence;
- (c) “magistrates’ court” has the same meaning as in section 148 of the Magistrates’ Courts Act 1980; and
- (d) “record of court proceedings” means—
  - (i) where the proceedings took place in the Crown Court, a transcript of the evidence; or
  - (ii) where the proceedings took place in a magistrates’ court, a transcript of the evidence if there is one and if not 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 1996 Act or, as the case may be, the proceedings which led to the acquittal.

## Time limit for making the application

**77.7.—(1)** An application for an order quashing an acquittal under section 54(3) of the 1996 Act shall not be made later than 28 days after—

- (a) the expiry of the period allowed for—
    - (i) appealing (whether by case stated or otherwise); or
    - (ii) making an application for permission to appeal,
- against the conviction referred to in section 54(1)(b) of the 1996 Act; or

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*Status: Point in time view as at 31/01/2011.*

*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) where an appeal notice is filed or an application for permission to appeal against that conviction is made, the determination of the appeal or application for permission to appeal.

(2) For the purpose of sub-paragraph (1)(b), “determination” includes abandonment within the meaning of rules 63.8 and 65.13 of the Criminal Procedure Rules 2010 or, as the case may be, rule 11 of the Crown Court Rules 1982.

### **Where to make the application**

**77.8.**—(1) The jurisdiction of the High Court under section 54(3) of the 1996 Act may be exercised by a Divisional Court or a single judge of the High Court.

(2) The application must be made to the Administrative Court which will direct whether the application should be dealt with by a Divisional Court or a single judge of the High Court.

### **How to make the application**

**77.9.**—(1) The application must be made by filing a claim form pursuant to Part 8.

(2) The claimant must file with the claim form—

(a) a witness statement which deals with the conditions in section 55(1), (2) and (4) of the 1996 Act and which exhibits any relevant documents (which may include a copy of any record of court proceedings); and

(b) a copy of the certification under section 54(2) of the 1996 Act.

### **Notice to defendant (acquitted person)**

**77.10.**—(1) Within 7 days of the claim form being issued by the court, the claimant must serve on the defendant (the acquitted person) a copy of the claim form and the documents which accompanied it.

(2) The documents referred to in paragraph (1) must be accompanied by a notice informing the defendant that—

(a) the result of the application may be the making of an order by the High Court quashing the acquittal; and

(b) the defendant must, if wishing to respond to the application, file—

(i) within 14 days of service of the claim form an acknowledgment of service; and

(ii) within 28 days of service of the claim form any witness statement on which the defendant wishes to rely.

(3) The claimant must file as soon as practicable after service of the notice on the defendant a certificate of service together with a copy of the notice.

### **Response to the application**

**77.11.**—(1) The defendant must, if wishing to respond to the application, file—

(a) an acknowledgment of service within 14 days of service of the claim form under rule 77.10; and

(b) a witness statement which—

(i) deals with the conditions in section 55(1), (2) and (4) of the 1996 Act; and

(ii) exhibits any relevant documents (which may include a copy of any record of court proceedings),

within 28 days of service of the claim form under rule 77.10.

(2) The defendant must serve the documents in paragraph (1) on the claimant within 7 days of filing them with the court.

(3) Rule 8.5(3) does not apply.

#### **Further evidence**

**77.12.**—(1) The claimant may, not later than 10 days after the expiry of the period allowed in rule 77.11(1), apply without notice for permission to file further evidence.

(2) Any order granting permission to file further evidence will specify the period within which that further evidence is to be filed.

(3) The claimant must serve a copy of the further evidence on the defendant within 4 days of filing that further evidence.

(4) Rule 8.5(5) and 8.5(6) do not apply.

#### **Determination of the application to quash an acquittal (general provisions)**

**77.13.**—(1) The application to quash an acquittal will be determined without a hearing unless the court, of its own initiative or on the application by a party, orders otherwise.

(2) The determination of the application to quash an acquittal will not be made, and any hearing of the application (if ordered) will not take place, before the expiry of—

(a) 10 days after the expiry of the period allowed under rule 77.11(1); or

(b) 10 days after the expiry of the period allowed by any order made under rule 77.12(2).

(3) The court will serve notice of any order made on the application to quash an acquittal on the parties and where the court before which the acquittal or conviction occurred was—

(a) a magistrates' court, on the designated officer; or

(b) the Crown Court, on the appropriate officer of the Crown Court sitting at the place where the acquittal or conviction occurred.

#### **Application for a hearing to determine the application to quash an acquittal**

**77.14.**—(1) An application for a hearing under rule 77.13(1) must—

(a) be made no later than 7 days after the expiry of the period allowed—

(i) under rule 77.11(1); or

(ii) by any order made under rule 77.12(2); and

(b) state whether a hearing is requested in order for a witness for the other party to attend to be cross-examined<sup>(GL)</sup> and, if so, the reasons for wishing the witness to attend.

(2) The party applying for a hearing must—

(a) serve a copy of the application notice on the other party within 4 days of filing it with the court; and

(b) file a certificate of service.

(3) The party served with an application for a hearing must file any representations within 5 days of service of the application notice.

(4) Subject to paragraph (5), the court will not determine an application for a hearing unless a certificate of service has been filed pursuant to sub-paragraph (2)(b) and—

(a) representations have been filed under paragraph (3); or

(b) the period for filing representations under paragraph (3) has expired.

*Status: Point in time view as at 31/01/2011.*

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

(5) Where—

- (a) no certificate of service has been filed; and
- (b) no representations under paragraph (3) have been received after the expiry of 7 days from the date of filing the application,

the court may dismiss the application for a hearing.

### Hearing to determine the application to quash an acquittal

**77.15.** Where a hearing is ordered, the court—

- (a) may order a witness to attend to be cross-examined<sup>(GL)</sup>—
  - (i) of its own initiative; or
  - (ii) on a without notice application by a party; and
- (b) will serve a notice on all parties setting out—
  - (i) the date, time and place of the hearing; and
  - (ii) the details of any witness ordered to attend for cross-examination<sup>(GL)</sup>.]]

## [<sup>F1104</sup>PART 78

### EUROPEAN ORDER FOR PAYMENT AND EUROPEAN SMALL CLAIMS PROCEDURES

#### Textual Amendments

**F1104Pt. 78** inserted (12.12.2008 for specified purposes, 1.1.2009 in so far as not already in force) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rule 1(3), [Sch. 2](#)

#### Contents of this Part

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Review of judgment	Rule 78.19
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Refusal of enforcement	Rule 78.21
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### Scope of this Part and interpretation

**78.1.**—(1) Section I contains rules about European orders for payment made under Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.

(2) Section II contains rules about the European small claims procedure under Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure.

(3) In this Part—

- (a) unless otherwise stated, a reference to an Annex is to an Annex to [F1105]Practice Direction 78]; and
- (b) “Service Regulation” means Regulation (EC) 1393/2007 on service, within the same meaning as rule 6.31(e).

(4) Except where—

- (a) the EOP Regulation (which has the same meaning as in rule 78.2(2)(a));
- (b) the ESCP Regulation (which has the same meaning as in rule 78.12(2)(a)); or
- (c) the Service Regulation

makes different provisions about the certification or verification of translations, every translation required by this Part or such Regulation must be accompanied by a statement by the person making it that it is a correct translation. The statement must include that person’s name, address and qualifications for making the translation.

*Status: Point in time view as at 31/01/2011.*

*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

**F1105** Words in [rule 78.1\(3\)\(a\)](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009](#) (S.I. 2009/3390), [rules 1\(2\)](#), [52](#)

## SECTION I - EUROPEAN ORDER FOR PAYMENT PROCEDURE

### Scope of this Section and interpretation

**78.2.**—(1) This Section applies to applications for European orders for payment and other related proceedings under Regulation [\(EC\) No 1896/2006](#) of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.

(2) In this Section—

- (a) “EOP Regulation” means Regulation [\(EC\) No 1896/2006](#) of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure. A copy of the EOP Regulation can be found at Annex 1;
- (b) “court of origin” has the meaning given by article 5(4) of the EOP Regulation;
- (c) “EOP” means a European order for payment;
- (d) “EOP application” means an application for an EOP;
- (e) “EOP application form A” means the Application for a European order for payment form A, annexed to the EOP Regulation at Annex I to that Regulation;
- (f) “European order for payment” means an order for payment made by a court under article 12(1) of the EOP Regulation;
- (g) “Member State” has the meaning given by article 2(3) of the EOP Regulation;
- (h) “Member State of origin” has the meaning given by article 5(1) of the EOP Regulation;
- (i) “statement of opposition” means a statement of opposition filed in accordance with article 16 of the EOP Regulation.

EOP applications made to a court in England and Wales

### Application for a European Order for Payment

**78.3.** Where a declaration provided by the claimant under article 7(3) of the EOP Regulation contains any deliberate false statement, rule 32.14 applies as if the EOP application form A were verified by a statement of truth.

(An EOP application is made in accordance with the EOP Regulation and in particular article 7 of that Regulation.)

### Withdrawal of EOP application

**78.4.**—(1) At any stage before a statement of opposition is filed, the claimant may notify the court that the claimant no longer wishes to proceed with the claim.

(2) Where the claimant notifies the court in accordance with paragraph (1)—

- (a) the court will notify the defendant that the application has been withdrawn; and
- (b) no order as to costs will be made.

### **Transfer of proceedings where an EOP application has been opposed**

**78.5.**—(1) Where a statement of opposition is filed in accordance with article 16 of the EOP Regulation and the claimant has not opposed the transfer of the matter—

- (a) the EOP application will be treated as if it had been started as a claim under Part 7 and the EOP application form A will be treated as a Part 7 claim form including particulars of claim; and
- (b) thereafter, these Rules apply with necessary modifications and subject to this rule and rules 78.6 and 78.7.

(2) When the court notifies the claimant in accordance with article 17(3) of the EOP Regulation the court will also—

- (a) notify the claimant—
  - (i) that the EOP application form A is now treated as a Part 7 claim form including particulars of claim; and
  - (ii) of the time within which the defendant must respond under rule 78.6; and
- (b) notify the defendant—
  - (i) that a statement of opposition has been received;
  - (ii) that the application will not continue under Part 78;
  - (iii) that the application has been transferred under article 17 of the EOP Regulation;
  - (iv) that the EOP application form A is now treated as a Part 7 claim form including particulars of claim; and
  - (v) of the time within which the defendant must respond under rule 78.6.

### **Filing of acknowledgment of service and defence where an EOP application is transferred under article 17 of the EOP Regulation**

**78.6.**—(1) The defendant must file a defence within 30 days of the date of the notice issued by the court under rule 78.5(2)(b).

(2) If the defendant wishes to dispute the court's jurisdiction, the defendant must instead—

- (a) file an acknowledgment of service within the period specified in paragraph (1); and
- (b) make an application under Part 11 within the period specified in that Part.

(3) Where this rule applies, the following rules do not apply—

- (a) rule 10.1(3);
- (b) rule 10.3; and
- (c) rule 15.4(1).

### **Default judgment**

**78.7.**—(1) If—

- (a) the defendant fails to file an acknowledgment of service within the period specified in rule 78.6(2)(a); and
- (b) does not within that period—
  - (i) file a defence in accordance with Part 15 (except rule 15.4(1)) and rule 78.6(1); or
  - (ii) file an admission in accordance with Part 14,

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

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*Status: Point in time view as at 31/01/2011.*

*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) Where this rule applies, rule 10.2 does not apply.

### **Review in exceptional cases**

**78.8.** An application for a review under article 20 of the EOP Regulation must be made in accordance with Part 23.

Enforcement of EOPS in England and Wales

### **Enforcement of European orders for payment**

**78.9.**—(1) A person seeking to enforce an EOP in England and Wales must file at the court in which enforcement proceedings are to be brought the documents required by article 21 of the EOP Regulation.

(2) Where a person applies to enforce an EOP expressed in a foreign currency, the application must contain a certificate of the sterling equivalent of the judgment sum at the close of business on the date nearest preceding the date of the application.

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

### **Refusal of enforcement**

**78.10.**—(1) An application under article 22 of the EOP Regulation that the court should refuse to enforce an EOP must be made in accordance with Part 23 to the court in which the EOP is being enforced.

(2) The judgment debtor must, as soon as practicable, serve copies of any order made under article 22 on—

- (a) all other parties to the proceedings and any other person affected by the order (“the affected persons”); and
- (b) any court in which enforcement proceedings of the EOP are pending in England and Wales (“the relevant courts”).

(3) Upon service of the order on the affected persons, all enforcement proceedings of the EOP in the relevant courts will cease.

### **Stay of or limitation on enforcement**

**78.11.**—(1) Where the defendant has sought a review and also applies for a stay of or limitation on enforcement in accordance with article 23 of the EOP Regulation, such application must be made in accordance with Part 23 to the court in which the EOP is being enforced.

(2) The defendant must, as soon as practicable, serve a copy of any order made under article 23 on—

- (a) all other parties to the proceedings and any other person affected by the order; and
- (b) any court in which enforcement proceedings are pending in England and Wales,

and the order will not have effect on any person until it has been served in accordance with this rule and they have received it.

## SECTION II - EUROPEAN SMALL CLAIMS PROCEDURE

### Scope of this Section and interpretation

**78.12.**—(1) This Section applies to the European small claims procedure under Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure.

(2) In this Section—

- (a) “ESCP Regulation” means Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure. A copy of the ESCP Regulation can be found at Annex 2;
  - (b) “defendant’s response” means the response to the ESCP claim form;
  - (c) “ESCP” means the European small claims procedure established by the ESCP Regulation;
  - (d) “ESCP claim form” means the claim form completed and filed in the ESCP;
  - (e) “ESCP counterclaim” has the meaning given to counterclaim by recital 16 of the ESCP Regulation;
  - (f) “ESCP judgment” means a judgment given in the ESCP;
  - (g) “Member State” has the meaning given by article 2(3) of the ESCP Regulation;
  - (h) “Member State of enforcement” is the Member State in which the ESCP judgment is to be enforced;
  - (i) “Member State of judgment” is the Member State in which the ESCP judgment is given.
- ESCP claims made in a court in England and Wales

### Filing an ESCP claim form

**78.13.** Where a declaration provided by the claimant in the ESCP claim form contains any deliberate false statement, rule 32.14 applies as if the ESCP claim form were verified by a statement of truth.

(An ESCP claim form is completed and filed in accordance with the ESCP Regulation, in particular article 4(1), and in accordance with this paragraph.)

### Allocation of ESCP claims

**78.14.**—(1) ESCP claims are treated as if they were allocated to the small claims track.

(2) Part 27 applies, except rule 27.14.

### Transfer of proceedings where the claim is outside the scope of the ESCP Regulation – article 4(3) of the ESCP Regulation

**78.15.**—(1) Where the court identifies that the claim is outside the scope of the ESCP Regulation, the court will notify the claimant of this in a transfer of proceedings notice.

(2) If the claimant wishes to withdraw the claim, the claimant must notify the court of this within 21 days of the date of the transfer of proceedings notice.

(3) Where the claimant has notified the court in accordance with paragraph (2), the claim is automatically withdrawn.

(4) Where the claimant has not notified the court in accordance with paragraph (2) and the claim is instead to be transferred under article 4(3) of the ESCP Regulation—

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*Status: Point in time view as at 31/01/2011.*

*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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- (a) the claim will be treated as if it had been started as a claim under Part 7 and the ESCP claim form will be treated as a Part 7 claim form including particulars of claim; and
  - (b) thereafter, these Rules apply with necessary modifications and subject to this rule,
- and the court will notify the claimant of the transfer and its effect.

### **Defendant's response**

**78.16.** Where a declaration provided by the defendant in the defendant's response contains any deliberate false statement, rule 32.14 applies as if the defendant's response were verified by a statement of truth.

(The defendant's response is made in accordance with the ESCP Regulation and in particular article 5(3) of the ESCP Regulation.)

### **Transfer of proceedings where the defendant claims that the non-monetary claim exceeds the limit set in article 2(1) of the ESCP Regulation – article 5(5) of the ESCP Regulation**

**78.17.**—(1) This rule applies where, under article 5(5) of the ESCP Regulation, the defendant claims that the value of a non-monetary claim exceeds the limit in article 2(1) of the ESCP Regulation.

(2) When the court dispatches the defendant's response to the claimant, it will—

- (a) notify the claimant that the court is considering whether the claim is outside the scope of the ESCP Regulation in a consideration of transfer notice; and
- (b) send a copy of the notice to the defendant.

(3) If the claimant wishes to withdraw the claim in the event that the court decides that the claim is outside the scope of the ESCP Regulation the claimant must notify the court and the defendant of this within 21 days of the date of the consideration of transfer notice.

(4) The court will notify the defendant as well as the claimant of its decision whether the claim is outside the scope of the ESCP Regulation.

(Article 5(5) of the ESCP Regulation provides that the court shall decide within 30 days of dispatching the defendant's response to the claimant, whether the claim is within the scope of the ESCP Regulation.)

(5) If the court decides that the claim is outside the scope of the ESCP Regulation and the claimant has notified the court and defendant in accordance with paragraph (3), the claim is automatically withdrawn.

(6) If the court decides that the claim is outside the scope of the ESCP Regulation and the claimant has not notified the court and defendant in accordance with paragraph (3)—

- (a) the claim will be treated as if it had been started as a claim under Part 7 and the ESCP claim form will be treated as a Part 7 claim form including particulars of claim;
- (b) the defendant's response will be treated as a defence; and
- (c) thereafter, these Rules apply with necessary modifications and subject to this rule,

and the court will notify the parties.

(7) This rule applies to an ESCP counterclaim as if the counterclaim were an ESCP claim.

### **Transfer of proceedings where the ESCP counterclaim exceeds the limit set in article 2(1) of the ESCP Regulation – article 5(7) of the ESCP Regulation**

**78.18.**—(1) Where the ESCP counterclaim exceeds the limit set in article 2(1) of the ESCP Regulation, the court will—

- (a) notify the defendant of this in a transfer of proceedings notice; and
- (b) send a copy of the notice to the claimant,

when the court dispatches the defendant's response to the claimant.

(2) If the defendant wishes to withdraw the ESCP counterclaim, the defendant must notify the court and the claimant of this within 21 days of the date of the transfer of proceedings notice.

(3) If the defendant notifies the court and claimant under paragraph (2), the ESCP counterclaim is automatically withdrawn.

(4) If the defendant does not notify the court and claimant in accordance with paragraph (2)—

- (a) the claim will be treated as if it had been started as a claim under Part 7 and the ESCP claim form will be treated as a Part 7 claim form including particulars of claim;
- (b) the defendant's response and ESCP counterclaim are to be treated as the defence and counterclaim; and
- (c) thereafter, these Rules apply with necessary modifications and subject to this rule,

and the court will notify the parties.

### **Review of judgment**

**78.19.** An application for a review under article 18 of the ESCP Regulation must be made in accordance with Part 23.

Enforcement of ESCP judgments in England and Wales

### **Enforcement of an ESCP judgment**

**78.20.**—(1) A person seeking to enforce an ESCP judgment in England and Wales must file at the court in which enforcement proceedings are to be brought the documents required by article 21 of the ESCP Regulation.

(2) Where a person applies to enforce an ESCP judgment expressed in a foreign currency, the application must contain a certificate of the sterling equivalent of the judgment sum at the close of business on the date nearest preceding the date of the application.

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

### **Refusal of enforcement**

**78.21.**—(1) An application under article 22 of the ESCP Regulation that the court should refuse to enforce an ESCP judgment must be made in accordance with Part 23 to the court in which the ESCP judgment is being enforced.

(2) The judgment debtor must, as soon as practicable, serve copies of any order made under article 22 on—

- (a) all other parties to the proceedings and any other person affected by the order (“the affected persons”); and
- (b) any court in which enforcement proceedings are pending in England and Wales (“the relevant courts”).

(3) Upon service of the order on the affected persons, all enforcement proceedings of the ESCP judgment in the relevant courts will cease.

*Status: Point in time view as at 31/01/2011.*

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

## Stay of or limitation on enforcement

**78.22.**—(1) An application by the defendant under article 23 of the ESCP Regulation must be made in accordance with Part 23 to the court in which the ESCP judgment is being enforced.

(2) The defendant must, as soon as practicable, serve a copy of any order made under article 23 on—

(a) all other parties to the proceedings and any other person affected by the order; and

(b) any court in which enforcement proceedings are pending in England and Wales,

and the order will not have effect on any person until it has been served in accordance with this rule and they have received it.]

## [<sup>F1106</sup>PART 79

<sup>F1107</sup> ... PROCEEDINGS UNDER THE COUNTER-TERRORISM ACT 2008

[<sup>F1108</sup> AND PART 1 OF THE TERRORIST ASSET-FREEZING ETC. ACT 2010]

### Textual Amendments

**F1106** Pt. 79 inserted (4.12.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2008 \(S.I. 2008/3085\)](#), rule 1, [Sch.](#)

**F1107** Words in Pt. 79 heading omitted (1.10.2009) by virtue of [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), [17](#)

**F1108** Words in Pt. 79 heading inserted (17.12.2010) by [Terrorist Asset-Freezing etc. Act 2010 \(c. 38\)](#), s. 55(1), [Sch. 1 para. 5\(a\)](#)

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*Status: Point in time view as at 31/01/2011.*

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

Application by Treasury for reconsideration of order, direction or judgment	Rule 79.29
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## SECTION 1

### [<sup>F1118</sup>GENERAL PROVISIONS]

#### Textual Amendments

**F1118** Pt. 79 Section 1 heading substituted (24.12.2010) by [The Civil Procedure \(Amendment No.4\) Rules 2010 \(S.I. 2010/3038\)](#), rules 1(2), 3(b)

#### [<sup>F1119</sup>Scope and interpretation of this Part

**79.1.**—(1) This Part contains rules about—

- (a) in Section 1, interpretation and modification of the overriding objective;
- (b) in Section 2, financial restrictions proceedings under the Counter-Terrorism Act 2008 and the Terrorist Asset-Freezing etc Act 2010;
- (c) in Section 3, appeals relating to designations under the Terrorist Asset-Freezing etc Act 2010;
- (d) in Section 4, general provisions applicable to proceedings within Sections 2 and 3; and
- (e) in Section 5, applications for a notification order under Schedule 4 to the Counter-Terrorism Act 2008.]

(2) In this Part—

- (a) “the [<sup>F1120</sup>2008] Act” means the Counter-Terrorism Act 2008;  
[ the 2010 Act” means the Terrorist Asset-Freezing etc. Act 2010;]
- <sup>F1121</sup>(aa)
- (b) “financial restrictions decision” means a decision to which section 63(1) of the [<sup>F1122</sup>2008 Act or section 27 of the 2010] Act applies;
- (c) “financial restrictions proceedings” [<sup>F1123</sup>means—
  - (i) financial restrictions proceedings within the meaning of section 65 of the 2008 Act; and
  - (ii) proceedings in the High Court on an application under section 27 of the 2010 Act, or on a claim arising from any matter to which such an application relates];
 [ “designation” means a designation in accordance with Chapter 1 of Part 1 of the 2010 Act.]
- <sup>F1124</sup>(ca)
- (d) “closed material” means—
  - (i) material, evidence or submissions to the court upon which the Treasury wish to rely in proceedings;
  - (ii) material which adversely affects the Treasury’s case or supports another party’s case; or

- (iii) information which the Treasury are required to file pursuant to an order under rule 79.11(7),  
but which the Treasury object to disclosing to another party and that party's legal representative;
- (e) "legal representative" in relation to a party to proceedings other than the Treasury does not include a special advocate;
- (f) "material" means anything in which information of any description is recorded;
- (g) "party" includes the Treasury unless otherwise stated or unless the context otherwise requires;
- (h) "special advocate" means a person appointed under section 68 of the [F11252008 Act (including that section as applied by section 28(4) of the 2010 Act)]; and
- (i) "specially represented party" means a party, other than the Treasury, whose interests a special advocate represents.

#### Textual Amendments

- F1119** Rule 79.1(1) and heading substituted (24.12.2010) by [The Civil Procedure \(Amendment No.4\) Rules 2010 \(S.I. 2010/3038\)](#), rules 1(2), **3(c)**
- F1120** Word in rule 79.1(2)(a) inserted (17.12.2010) by [Terrorist Asset-Freezing etc. Act 2010 \(c. 38\)](#), s. 55(1), **Sch. 1 para. 5(b)**
- F1121** Rule 79.1(2)(aa) inserted (17.12.2010) by [Terrorist Asset-Freezing etc. Act 2010 \(c. 38\)](#), s. 55(1), **Sch. 1 para. 5(c)**
- F1122** Words in rule 79.1(2)(b) inserted (17.12.2010) by [Terrorist Asset-Freezing etc. Act 2010 \(c. 38\)](#), s. 55(1), **Sch. 1 para. 5(d)**
- F1123** Words in rule 79.1(2)(c) substituted (17.12.2010) by [Terrorist Asset-Freezing etc. Act 2010 \(c. 38\)](#), s. 55(1), **Sch. 1 para. 5(e)**
- F1124** Rule 79.1(2)(ca) inserted (24.12.2010) by [The Civil Procedure \(Amendment No.4\) Rules 2010 \(S.I. 2010/3038\)](#), rules 1(2), **3(d)**
- F1125** Words in rule 79.1(2)(h) substituted (17.12.2010) by [Terrorist Asset-Freezing etc. Act 2010 \(c. 38\)](#), s. 55(1), **Sch. 1 para. 5(f)**

#### Modification to the overriding objective

**79.2.**—(1) Where this Part applies, the overriding objective in Part 1, and so far as relevant any other rule, must be read and given effect in a way which is compatible with the duty set out in paragraph (2).

(2) The court will ensure that information is not disclosed contrary to the public interest.

(3) Without prejudice to paragraph (2), the court will satisfy itself that the material available to it enables it properly to determine the proceedings.

*Status: Point in time view as at 31/01/2011.*

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

**SECTION 2**

**[<sup>F1126</sup>APPLICATION TO SET ASIDE FINANCIAL RESTRICTIONS DECISIONS UNDER THE 2008 ACT OR THE 2010 ACT]**

**Textual Amendments**

**F1126** Pt. 79 Section 2 heading substituted (24.12.2010) by [The Civil Procedure \(Amendment No.4\) Rules 2010 \(S.I. 2010/3038\)](#), rules 1(2), **3(e)**

**Scope of this Section**

**79.3.** This Section applies to an application to set aside a financial restrictions decision [<sup>F1127</sup>under section 63(2) of the 2008 Act or section 27(2) of the 2010 Act].

**Textual Amendments**

**F1127** Words in [rule 79.3](#) inserted (24.12.2010) by [The Civil Procedure \(Amendment No.4\) Rules 2010 \(S.I. 2010/3038\)](#), rules 1(2), **3(f)**

**F1128**

**79.4.** . . . . .

**Textual Amendments**

**F1128** [Rule 79.4 and heading](#) omitted (24.12.2010) by virtue of [The Civil Procedure \(Amendment No.4\) Rules 2010 \(S.I. 2010/3038\)](#), rules 1(2), **3(g)**

**Applications (general) and modification of Part 8**

**79.5.—**(1) An application to set aside a financial restrictions decision must be made pursuant to Part 8, as modified by this Part, and subject to paragraph (2).

(2) The following rules do not apply to an application under this Section—

- (a) rule 8.1(3);
- (b) rule 8.2A (issue of claim form without naming defendants);
- (c) rule 8.4 (consequence of not filing an acknowledgment of service);
- (d) rule 8.5 (filing and serving written evidence);
- (e) rule 8.6 (evidence – general); and
- (f) rule 8.8 (defendant objects to use of Part 8).

**Application to set aside**

**79.6.—**(1) An application to set aside a financial restrictions decision must be started by a claim form.

(2) The claim form must set out—

- (a) the details of the financial restrictions decision;
- (b) details of how the claimant is affected by the financial restrictions decision; and

- (c) the grounds on which the claimant seeks to set aside the decision.
- (3) The claimant must file with the claim form—
- (a) a copy of—
- (i) the written notice of the relevant financial restrictions decision made by the Treasury; or
- (ii) where relevant, any direction, order or licence made under Schedule 7 to the [F11292008] Act or any freezing order made under Part 2 of the Anti-terrorism, Crime and Security Act 2001; and
- (b) any evidence, including witness statements, on which the claimant relies at that stage.

#### Textual Amendments

F1129 Word in rule 79.6(3)(a)(ii) inserted (17.12.2010) by Terrorist Asset-Freezing etc. Act 2010 (c. 38), s. 55(1), Sch. 1 para. 5(g)

#### Fixing of directions hearing date

- 79.7.—(1) When the court issues the claim form it will fix a date for a directions hearing.
- (2) Unless the court directs otherwise, the directions hearing will be not less than 14 days but not more than 28 days after the date of issue of the claim form.

#### Service of the claim form and accompanying documents

- 79.8. The court will—
- (a) serve on the Treasury and any special advocate (if one has been appointed)—
- (i) the claim form; and
- (ii) the documents specified in rule 79.6(3); and
- (b) send to all parties and any special advocate a notice of the directions hearing date (where such date is not endorsed on the claim form).

#### Acknowledgment of service

79.9. Where a special advocate has been appointed, the Treasury must serve on that special advocate a copy of the acknowledgment of service filed under rule 8.3.

#### Directions hearing

- 79.10. At the directions hearing the court may give case management directions, in particular—
- (a) for the holding of a further hearing to determine the application;
- (b) fixing a date, time and place for the further hearing at which the parties, their legal representatives (if any) and any special advocate can be present; and
- (c) as to the order in which, and the time within which, the following are to be filed and served—
- (i) any response to the application to be filed and served by the Treasury under rule 79.11(1), (2) and (4);
- (ii) any application to be made under rule 79.11(5);

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*Status: Point in time view as at 31/01/2011.*

*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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- (iii) any information to be filed and served by the Treasury pursuant to an order under rule 79.11(7);
- (iv) any evidence to be filed and served by the claimant under rule 79.12(1);
- (v) any evidence to be filed and served by the Treasury under rule 79.12(2);
- (vi) any application by the Treasury under rule 79.11(3), 79.11(8) or 79.12(3); and
- (vii) any further evidence, including witness statements, written submissions or skeleton arguments, to be filed and served by the parties and any special advocate.

### **Response by the Treasury**

**79.11.**—(1) Where the Treasury intend to oppose the application to set aside the financial restrictions decision, they must file with the court—

- (a) the grounds for contesting the application; and
- (b) any relevant evidence of which they are aware at that stage.

(2) Unless the Treasury object to the grounds and evidence in paragraph (1) being disclosed to the claimant and the claimant’s legal representative, the Treasury must serve a copy of the grounds and evidence on the claimant at the same time as filing the grounds.

(3) Where the Treasury object to the grounds and evidence in paragraph (1) being disclosed to the claimant and the claimant’s legal representative, the Treasury must make an application in accordance with rule 79.25.

(4) Where a special advocate has been appointed, the Treasury must serve on that special advocate a copy of the grounds and evidence filed under paragraph (1).

(5) The claimant and any special advocate may apply to the court for an order directing the Treasury to file and serve further information about the Treasury’s grounds filed under paragraph (1) (a).

(6) The application under paragraph (5) must set out—

- (a) what information is sought; and
- (b) why the information sought is necessary for the determination of the application to set aside the financial restrictions decision.

(7) The court may make an order on an application under paragraph (5) where it considers that the information sought is—

- (a) necessary for the determination of the application to set aside the financial restrictions decision; and
- (b) may be provided without disproportionate cost, time or effort.

(8) Where the Treasury object to serving on the claimant and the claimant’s legal representative the information sought under paragraph (5), the Treasury must make an application in accordance with rule 79.25.

### **Filing and service of evidence**

**79.12.**—(1) Where the claimant wishes to rely on evidence in support of the application to set aside the financial restrictions decision and—

- (a) such evidence was not filed with the court with the claim form; or
- (b) such evidence was filed with the court with the claim form but the claimant wishes to rely on further evidence,

the claimant must file and serve that evidence, including any witness statement, on the Treasury and any special advocate.

(2) Where the claimant serves evidence in support of the application, the Treasury must file and serve, subject to paragraph (3), any further evidence, including any witness statement, on the claimant and any special advocate.

(3) Where the Treasury seek to withhold disclosure of any closed material from the claimant and the claimant's legal representative, the Treasury must make an application in accordance with rule 79.25.

(4) The Treasury must serve any closed material upon the special advocate.

(5) The parties and, where relevant, any special advocate must file and serve any further evidence, including witness statements, written submissions or skeleton arguments as directed by the court.

### **Modification of Part 52 (appeals)**

**79.13.** Part 52 (appeals) applies to an appeal to the Court of Appeal against an order of the High Court in financial restrictions proceedings, subject to—

- (a) rule 79.2; and
- (b) Section 4 of this Part.

### **Service of appellant's notice on special advocate**

**79.14.** The appellant must serve a copy of the appellant's notice on any special advocate.

## *F1130 F1131 SECTION 3*

### *APPEALS IN RELATION TO DESIGNATIONS UNDER THE 2010 ACT*

#### **Textual Amendments**

**F1130** Original Pt. 79 Section 3 heading omitted (24.12.2010) by [The Civil Procedure \(Amendment No.4\) Rules 2010 \(S.I. 2010/3038\)](#), rules 1(2), **3(h)**

**F1131** Pt. 79 Section 3 inserted (24.12.2010) by [The Civil Procedure \(Amendment No.4\) Rules 2010 \(S.I. 2010/3038\)](#), rules 1(2), **3(i)**

### **Scope of this Section**

**79.14A.** This section applies to an appeal under section 26 of the 2010 Act (appeals to the court in relation to designations) in relation to designations and variations, revocation and renewal, of those designations.

### **Modification of Part 52 (appeals)**

**79.14B.—**(1) Part 52 (appeals) applies to an appeal under section 26 of the 2010 Act subject to—

- (a) rule 79.2;
- (b) Section 4 of this Part; and
- (c) the modifications set out in paragraph (2).

(2) Rule 52.2 (parties to comply with Practice Direction 52) applies, but the parties are not required to comply with paragraphs 5.6, 5.6A, 5.7, 5.9 and 5.10 of that practice direction.

*Status: Point in time view as at 31/01/2011.*

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

### Appellant's notice

**79.14C.**—(1) The appellant's notice must set out the details of—

- (a) the interim or final designation;
- (b) how the appellant is affected by the interim or final designation; and
- (c) the grounds of the appeal.

(2) The appellant must file and serve the following documents with the appellant's notice—

- (a) a copy of the written notice of the interim or final designation; and
- (b) any evidence, including witness statements in support of the application.

(Practice Direction 52 contains details about the filing and service of the appellant's notice for statutory appeals.)

### Appeals to the Court of Appeal

**79.14D.**—(1) Part 52 (appeals) applies to an appeal to the Court of Appeal against an order of the High Court under this Section subject to—

- (a) rule 79.2;
- (b) Section 4 of this Part; and
- (c) paragraph (2) of this rule.

(2) The appellant must serve a copy of the appellant's notice on any special advocate.]

## SECTION 4

*GENERAL PROVISIONS [F1132] APPLICABLE TO SECTIONS 2 AND 3 OF THIS PART]*

#### Textual Amendments

**F1132** Words in Pt. 79 Section 4 heading inserted (24.12.2010) by [The Civil Procedure \(Amendment No.4\) Rules 2010 \(S.I. 2010/3038\)](#), rules 1(2), **3(j)**

### Scope of this Section

**79.15.** This Section applies to all proceedings specified [F1133; in Sections 2 and 3 of this Part].

#### Textual Amendments

**F1133** Words in [rule 79.15](#) substituted (24.12.2010) by [The Civil Procedure \(Amendment No.4\) Rules 2010 \(S.I. 2010/3038\)](#), rules 1(2), **3(k)**

### [F1134] Where to make an application

**79.15A.** An application under Section 2 and an appeal under Section 3 of this Part must be started and heard in the Administrative Court.]



### Textual Amendments

**F1134** Rule 79.15A inserted (24.12.2010) by [The Civil Procedure \(Amendment No.4\) Rules 2010 \(S.I. 2010/3038\)](#), rules 1(2), **3(i)**

### Notification of hearing

**79.16.** Unless the court orders otherwise, the court will serve any notice of the date, time and place fixed for a hearing on—

- (a) every party, whether or not a party is entitled to attend that hearing; and
- (b) if one has been appointed for the purposes of the proceedings, the special advocate or those instructing the special advocate.

### Hearings

**79.17.**—(1) All proceedings to which [<sup>F1135</sup>Section 2 or 3 of] this Part applies must be determined at a hearing except where—

- (a) the claimant withdraws the claim or application;
- (b) the Treasury consent to the claim or application being allowed;
- (c) the appellant withdraws the appeal against a decision of [<sup>F1136</sup>the Treasury or] the High Court;
- (d) the respondent to the appeal consents to the appeal being allowed; or
- (e) the parties agree to a determination without a hearing.

(2) Where the court considers it necessary for a party other than the Treasury and that party's legal representative to be excluded from a hearing or part of a hearing in order to secure that information is not disclosed contrary to the public interest, the court will—

- (a) direct accordingly; and
- (b) conduct the hearing, or that part of it from which the party and that party's legal representative are excluded, in private but attended by a special advocate to represent the interests of the excluded party.

### Textual Amendments

**F1135** Words in [rule 79.17\(1\)](#) inserted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **18(d)**

**F1136** Words in [rule 79.17\(1\)\(c\)](#) inserted (24.12.2010) by [The Civil Procedure \(Amendment No.4\) Rules 2010 \(S.I. 2010/3038\)](#), rules 1(2), **3(m)**

### Appointment of a special advocate

**79.18.**—(1) Subject to paragraph (2), the Treasury must immediately give notice of the proceedings to the Attorney General—

- (a) upon being served with any claim form, application notice or appeal notice; or
- (b) where the Treasury intend to file an appeal notice,

in proceedings to which [<sup>F1137</sup>Section 2 or 3 of] this Part applies.

(2) Paragraph (1) applies unless—

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- (a) the Treasury do not intend to—
    - (i) oppose the claim, application or appeal; or
    - (ii) apply for permission to withhold closed material from a party and that party’s legal representative; or
  - (b) a special advocate has already been appointed to represent the interests of a party other than the Treasury and that special advocate is not prevented from communicating with that party by virtue of rule 79.20.
- (3) Where any proceedings to which [<sup>F1138</sup>Section 2 or 3 of] this Part applies are pending but no special advocate has been appointed, any party may request the Attorney General to appoint a special advocate.

#### **Textual Amendments**

**F1137** Words in rule 79.18(1) inserted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **18(e)(i)**

**F1138** Words in rule 79.18(3) inserted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), rules 1(2), **18(e)(ii)**

#### **Function of a special advocate**

**79.19.** The function of a special advocate is to represent the interests of a party other than the Treasury by, for example—

- (a) making submissions to the court at any hearing from which the party and that party’s legal representative are excluded;
- (b) adducing evidence and cross-examining witnesses at such a hearing;
- (c) making applications to the court or seeking directions from the court where necessary; and
- (d) making written submissions to the court.

#### **Special advocate: communicating about proceedings**

**79.20.**—(1) The special advocate may communicate with the specially represented party or that party’s legal representative at any time before the Treasury serve closed material on the special advocate.

(2) After the Treasury serve closed material on the special advocate, the special advocate must not communicate with any person about any matter connected with the proceedings, except in accordance with paragraph (3) or a direction of the court pursuant to a request under paragraph (4).

(3) The special advocate may, without directions from the court, communicate about the proceedings with—

- (a) the court;
- (b) the Treasury and any persons acting for them;
- (c) the Attorney General and any persons acting for the Attorney General; and
- (d) any other person, except for—
  - (i) the specially represented party and that party’s legal representative; and
  - (ii) any other party to the proceedings (other than the Treasury) and that party’s legal representative,

with whom it is necessary for administrative purposes for the special advocate to communicate about matters not connected with the substance of the proceedings.

(4) The special advocate may request directions from the court authorising the special advocate to communicate with the specially represented party or that party's legal representative or with any other person.

(5) Where the special advocate makes a request for directions under paragraph (4)—

- (a) the court will notify the Treasury of the request; and
- (b) the Treasury must, within a period specified by the court, file and serve on the special advocate notice of any objection which they have to the proposed communication, or to the form in which it is proposed to be made.

(6) Paragraph (2) does not prohibit the specially represented party from communicating with the special advocate after the Treasury have served closed material on the special advocate as mentioned in paragraph (1), but—

- (a) that party may only communicate with the special advocate through a legal representative in writing; and
- (b) the special advocate must not reply to the communication other than in accordance with directions given by the court, except that the special advocate may without such directions send a written acknowledgment of receipt to the specially represented party's legal representative.

### **Consideration of the Treasury's objection**

**79.21.**—(1) Where the Treasury object under rule 79.20(5)(b) to a proposed communication by the special advocate the court will fix a hearing for the Treasury and the special advocate to make oral representations, unless—

- (a) the special advocate gives notice to the court that the special advocate does not challenge the objection;
- (b) the court —
  - (i) has previously considered an objection under rule 79.20(5)(b) to the same or substantially the same communication; and
  - (ii) is satisfied that it would be just to uphold or dismiss that objection without a hearing;or
- (c) the Treasury and the special advocate consent to the court deciding the issue without a hearing.

(2) If the special advocate does not challenge the objection, the special advocate must give notice of that fact to the court and to the Treasury—

- (a) within 14 days after the Treasury serve on the special advocate a notice under rule 79.20(5)(b); or
- (b) within such other period as the court may direct.

(3) Where the court fixes a hearing under paragraph (1)—

- (a) the special advocate may file with the court and serve on the Treasury a reply to the Treasury's objection;
- (b) the Treasury may file with the court and serve on the special advocate a response to the special advocate's reply; and

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- (c) the Treasury and the special advocate must file with the court at least 7 days before the hearing a schedule identifying the issues which cannot be agreed between them and which must—
- (i) give brief reasons for their contentions on each issue in dispute; and
  - (ii) set out any proposals for the court to resolve the issues in dispute.
- (4) A hearing under this rule must take place in the absence of the specially represented party and that party's legal representative.

### Modification of the general rules of evidence and disclosure

**79.22.**—(1) Part 31 (disclosure and inspection of documents), Part 32 (evidence) and Part 33 (miscellaneous rules about evidence) do not apply to any proceedings to which [F1139Section 2 or 3 of] this Part applies.

(2) Subject to the other rules in [F1140Section 2, 3 and this Section of] this Part and to any directions of the court, the evidence of a witness may be given either—

- (a) orally before the court; or
- (b) in a witness statement.

(3) The court may also receive evidence in documentary or any other form.

(4) A party is entitled to adduce evidence and to cross-examine witnesses during any part of a hearing from which a party and that party's legal representative are not excluded.

[  
F1141(4A) A special advocate is entitled to adduce evidence and to cross-examine witnesses.]

(5) The court may require a witness to give evidence on oath or by affirmation.

#### Textual Amendments

**F1139** Words in rule 79.22(1) inserted (1.10.2009) by The Civil Procedure (Amendment) Rules 2009 (S.I. 2009/2092), rules 1(2), **18(f)(i)**

**F1140** Words in rule 79.22(2) inserted (1.10.2009) by The Civil Procedure (Amendment) Rules 2009 (S.I. 2009/2092), rules 1(2), **18(f)(ii)**

**F1141** Rule 79.22(4A) inserted (1.10.2009) by The Civil Procedure (Amendment) Rules 2009 (S.I. 2009/2092), rules 1(2), **18(f)(iii)**

### Search for, filing of and service of material

**79.23.**—(1) A party (the disclosing party) must—

- (a) make a reasonable search for material relevant to the matters under consideration in the proceedings to which [F1142Section 2 or 3 of] this Part applies; and
- (b) file and serve on the other party and any special advocate material other than closed material—
  - (i) on which the disclosing party relies;
  - (ii) which adversely affects the disclosing party's case;
  - (iii) which adversely affects the other party's case; or
  - (iv) which supports the other party's case.

[  
F1143(1A) Paragraph (1)(b)(iii) does not apply to proceedings to which Section 3 of this Part applies.]

(2) The factors relevant in deciding the reasonableness of a search under paragraph (1)(a) include—

- (a) the amount of material involved;
- (b) the nature and complexity of the proceedings;
- (c) whether the material is in the control of the party making the search;
- (d) the ease and expense of retrieval of any material; and
- (e) the significance of any material which is likely to be located during the search.

(3) The duty to search for, file and serve material under paragraph (1) continues until the proceedings to which [F1144Section 2 or 3 of] this Part applies have been determined.

(4) Where material, other than closed material, to which the duty under paragraph (1) extends comes to a party's attention before the proceedings to which [F1145Section 2 or 3 of] this Part applies have been determined, that party must immediately—

- (a) file it with the court;
- (b) serve it on the other party; and
- (c) serve it on any special advocate.

#### Textual Amendments

**F1142** Words in rule 79.23(1)(a) inserted (1.10.2009) by The Civil Procedure (Amendment) Rules 2009 (S.I. 2009/2092), rules 1(2), **18(g)(i)**

**F1143** Rule 79.23(1A) inserted (24.12.2010) by The Civil Procedure (Amendment No.4) Rules 2010 (S.I. 2010/3038), rules 1(2), **3(n)**

**F1144** Words in rule 79.23(3) inserted (1.10.2009) by The Civil Procedure (Amendment) Rules 2009 (S.I. 2009/2092), rules 1(2), **18(g)(ii)**

**F1145** Words in rule 79.23(4) inserted (1.10.2009) by The Civil Procedure (Amendment) Rules 2009 (S.I. 2009/2092), rules 1(2), **18(g)(iii)**

#### Redacted material

**79.24.** Where the Treasury serve on another party any evidence (including a witness statement) or material which has been redacted on grounds other than those of legal professional privilege, the Treasury must—

- (a) notify the party that the evidence or material has been redacted and on what grounds it has been redacted;
- (b) file the evidence or material with the court in an unredacted form together with an explanation of the redaction.

#### Application to withhold closed material

**79.25.**—(1) The Treasury—

- (a) must apply to the court for permission to withhold closed material from another party and that party's legal representative in accordance with this rule; and
- (b) may not rely on closed material at a hearing unless a special advocate has been appointed and attends the hearing to represent the interests of that party.

(2) The Treasury must file with the court and serve, at such time as the court directs, on the special advocate—

- (a) the closed material;

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- (b) a statement of the reasons for withholding that material from the specially represented party; and
  - (c) if the Treasury consider it possible to summarise that material without disclosing information contrary to the public interest, a summary of that material in a form which can be served on the specially represented party or that party's legal representative.
- (3) Where the Treasury serve on the special advocate any closed material which has been redacted on grounds other than those of legal professional privilege—
- (a) the Treasury must file with the court the material in an unredacted form together with an explanation of the redactions; and
  - (b) the court will give a direction to the Treasury as to what may be redacted and what, if any, must be served on the special advocate in an [<sup>F1146</sup>unredacted] form.
- (4) The Treasury may at any time amend or supplement material filed under this rule, but only with—
- (a) the agreement of the special advocate; or
  - (b) the permission of the court.

#### Textual Amendments

**F1146** Word in [rule 79.25\(3\)\(b\)](#) substituted (24.12.2010) by [The Civil Procedure \(Amendment No.4\) Rules 2010 \(S.I. 2010/3038\)](#), [rules 1\(2\)](#), [3\(o\)](#)

#### Consideration of the Treasury's application

**79.26.**—(1) Where the Treasury apply in accordance with rule 79.25 for permission to withhold closed material the court will fix a hearing for the Treasury and the special advocate to make oral representations, unless—

- (a) the special advocate gives notice to the court that the special advocate does not challenge the application;
  - (b) the court—
    - (i) has previously considered an application for permission to withhold the same or substantially the same material; and
    - (ii) is satisfied that it would be just to give permission without a hearing; or
  - (c) the Treasury and the special advocate consent to the court deciding the issue without a hearing.
- (2) If the special advocate does not challenge the application, the special advocate must give notice of that fact to the court and to the Treasury—
- (a) within 14 days after the Treasury serve on the special advocate the material under rule 79.25(2); or
  - (b) within such other period as the court may direct.
- (3) Where the court fixes a hearing under paragraph (1)—
- (a) the special advocate may file with the court and serve on the Treasury a reply to the Treasury's application;
  - (b) the Treasury may file with the court and serve on the special advocate a response to the special advocate's reply; and

- (c) the Treasury and the special advocate must file with the court at least 7 days before the hearing a schedule identifying the issues which cannot be agreed between them and which must—
  - (i) give brief reasons for their contentions on each issue in dispute; and
  - (ii) set out any proposals for the court to resolve the issues in dispute.
- (4) A hearing under this rule must take place in the absence of the specially represented party and that party's legal representative.
- (5) The court will give permission to the Treasury to withhold closed material where it considers that disclosure of that material would be contrary to the public interest.
- (6) Where the court gives permission to the Treasury to withhold closed material, the court will—
  - (a) consider whether to direct the Treasury to serve a summary of that material on the specially represented party or that party's legal representative; but
  - (b) ensure that such a summary does not contain material, the disclosure of which would be contrary to the public interest.
- (7) Where the court does not give permission to the Treasury to withhold closed material from, or directs the Treasury to serve a summary of that material on, the specially represented party or that party's legal representative—
  - (a) the Treasury are not required to serve that material or summary; but
  - (b) if they do not do so, at a hearing on notice, the court may—
    - (i) where it considers that the material or anything that is required to be summarised might adversely affect the Treasury's case or supports the case of the specially represented party, direct that the Treasury must not rely on such material in their case, or must make such concessions or take such other steps, as the court may specify; or
    - (ii) in any other case, direct that the Treasury do not rely on the material or (as the case may be) on that which is required to be summarised.

### **Failure to comply with directions**

- 79.27.**—(1) Where a party or special advocate fails to comply with a direction of the court, the court may serve on that party or the special advocate a notice which states—
- (a) the respect in which that party or special advocate has failed to comply with the direction;
  - (b) a time limit for complying with the direction; and
  - (c) that the court may proceed to determine the proceedings before it, on the material available to it, if the party or special advocate fails to comply with the relevant direction within the time specified.
- (2) Where a party or special advocate fails to comply with such a notice, the court may proceed in accordance with paragraph (1)(c).

### **Judgments**

- 79.28.**—(1) When the court gives judgment in any proceedings to which [<sup>F1147</sup>Section 2 or 3 of] this Part applies, it may withhold all or some of its reasons if and to the extent that it is not possible to give reasons without disclosing information contrary to the public interest.
- (2) Where the judgment of the court does not include the full reasons for its decision, the court will serve on the Treasury and the special advocate a separate written judgment including those reasons.
- (3) Where the court serves a separate written judgment under paragraph (2), the special advocate may apply to the court to amend that judgment and the judgment under paragraph (1) on the grounds

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that the separate written judgment under paragraph (2) contains material not in the judgment under paragraph (1) the disclosure of which would not be contrary to the public interest.

(4) The special advocate must serve a copy of the application under paragraph (3) on the Treasury.

(5) The court will give the special advocate and the Treasury an opportunity to file written submissions and may determine the application with or without a hearing.

#### Textual Amendments

**F1147** Words in [rule 79.28\(1\)](#) inserted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), [rules 1\(2\)](#), [18\(h\)](#)

### Application by Treasury for reconsideration of order, direction or judgment

**79.29.**—(1) This rule applies where the court proposes, in any proceedings to which [<sup>F1148</sup>Section 2 or 3 of] this Part applies, to serve on a party other than the Treasury—

- (a) notice of any order or direction made or given in the absence of the Treasury; or
- (b) any written judgment.

(2) Before the court serves any such notice or judgment on a party other than the Treasury, it will first serve notice on the Treasury of its intention to do so.

(3) The Treasury may, within 5 days of being served with notice under paragraph (2), apply to the court to reconsider the terms of the order or direction or to review the terms of the proposed judgment if they consider—

- (a) their compliance with the order or direction; or
- (b) the notification to another party of any matter contained in the judgment, order or direction, would cause information to be disclosed contrary to the public interest.

(4) Where the Treasury make an application under paragraph (3), they must at the same time serve on a special advocate, if one has been appointed—

- (a) a copy of the application;
- (b) a copy of the relevant document referred to in paragraph (1)(a) or (b); and
- (c) a copy of the notice served on the Treasury pursuant to paragraph (2).

(5) If a special advocate has been appointed, rule 79.26 (except for paragraphs (6) and (7)) will apply with any necessary modifications to the consideration of an application under paragraph (3) of this rule.

(6) The court will not serve notice on a party other than the Treasury as mentioned in paragraph (1) before the time for the Treasury to make an application under paragraph (3) has expired.

#### Textual Amendments

**F1148** Words in [rule 79.29\(1\)](#) inserted (1.10.2009) by [The Civil Procedure \(Amendment\) Rules 2009 \(S.I. 2009/2092\)](#), [rules 1\(2\)](#), [18\(i\)](#)

### Supply of court documents

**79.30.** Unless the court directs otherwise, rule 5.4 (Register of Claims), rule 5.4B (Supply of documents from court records – a party) and rule 5.4C (Supply of documents from court records –



a non-party) do not apply to any proceedings to which [<sup>F1149</sup>Section 2 or 3 of] this Part applies or to any document relating to such proceedings.]

**Textual Amendments**

**F1149** Words in rule 79.30 inserted (1.10.2009) by The Civil Procedure (Amendment) Rules 2009 (S.I. 2009/2092), rules 1(2), **18(j)**

<sup>F1150</sup>SECTION 5

NOTIFICATION ORDERS

**Textual Amendments**

**F1150** Pt. 79 Section 5 inserted (1.10.2009) by The Civil Procedure (Amendment) Rules 2009 (S.I. 2009/2092), rules 1(2), **18(k)**

**Applications for a notification order**

**79.31.**—(1) An application for a notification order under Schedule 4 to the [<sup>F1151</sup>2008] Act must be made in accordance with Part 8.

(2) Where the defendant wishes to serve a notice under paragraph 2(4) of Schedule 4 to the [<sup>F1152</sup>2008] Act, the defendant must file and serve the notice with an acknowledgment of service not more than 14 days after service of the claim form.]

**Textual Amendments**

**F1151** Word in rule 79.31(1) inserted (17.12.2010) by Terrorist Asset-Freezing etc. Act 2010 (c. 38), s. 55(1), **Sch. 1 para. 5(h)**

**F1152** Word in rule 79.31(2) inserted (17.12.2010) by Terrorist Asset-Freezing etc. Act 2010 (c. 38), s. 55(1), **Sch. 1 para. 5(i)**

**GLOSSARY**

**Commencement Information**

**I346** Glossary in force at 26.4.1999, see Signature

**Scope**

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.

<b>Expression</b>	<b>Meaning</b>
Affidavit	A written, sworn statement of evidence.

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<b>Expression</b>	<b>Meaning</b>
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.
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

<b>Expression</b>	<b>Meaning</b>
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.
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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