
STATUTORY INSTRUMENTS

1998 No. 3132

The Civil Procedure Rules 1998

PART 38 **E+W**

DISCONTINUANCE

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Scope of this Part **E+W**

38.1.—(1) The rules in this Part set out the procedure by which a claimant may discontinue all or part of a claim. ^[F1]A “claim” includes a cause of action or part of one.]

(2) A claimant who—

- (a) claims more than one remedy; and
- (b) subsequently abandons ^[F2]their] claim to one or more of the remedies but continues with ^[F2]their] 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)

Textual Amendments

- F1** Words in [rule 38.1\(1\)](#) inserted (6.4.2023) by [The Civil Procedure \(Amendment\) Rules 2023 \(S.I. 2023/105\)](#), [rules 1\(1\)](#), [21\(1\)\(a\)](#)
- F2** Word in [rule 38.1\(2\)\(b\)](#) substituted (6.4.2023) by [The Civil Procedure \(Amendment\) Rules 2023 \(S.I. 2023/105\)](#), [rules 1\(1\)](#), [21\(1\)\(b\)](#)

*Changes to legislation: There are currently no known outstanding effects for the
The Civil Procedure Rules 1998, PART 38. (See end of Document for details)*

Commencement Information

I1 [Rule 38.1](#) in force at 26.4.1999, see [Signature](#)

Right to discontinue claim **E+W**

38.2.—(1) [^{F3}At any time, a claimant] may discontinue all or part of a claim [^{F4}against one or more defendants].

(2) However—

- (a) a claimant must obtain the permission of the court if [^{F5}they wish to] discontinue all or part of a claim in relation to which—
 - (i) the court has granted an interim injunction^(GL); 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.

^{F6}(3)

Textual Amendments

- F3** Words in rule 38.2(1) substituted (6.4.2023) by [The Civil Procedure \(Amendment\) Rules 2023 \(S.I. 2023/105\)](#), rules 1(1), **21(2)(a)**
- F4** Words in rule 38.2(1) substituted (1.10.2023 immediately after S.I. 2023/572 comes into force) by [The Civil Procedure \(Amendment No. 3\) Rules 2023 \(S.I. 2023/788\)](#), rules 1(1), **20(1)(a)**
- F5** Words in rule 38.2(2)(a) substituted (1.10.2023 immediately after S.I. 2023/572 comes into force) by [The Civil Procedure \(Amendment No. 3\) Rules 2023 \(S.I. 2023/788\)](#), rules 1(1), **20(1)(b)**
- F6** Rule 38.2(3) omitted (6.4.2023) by virtue of [The Civil Procedure \(Amendment\) Rules 2023 \(S.I. 2023/105\)](#), rules 1(1), **21(2)(c)**

Commencement Information

I2 [Rule 38.2](#) in force at 26.4.1999, see [Signature](#)

Procedure for discontinuing **E+W**

38.3.—(1) To discontinue a claim or part of a claim, a claimant must—

- (a) file a notice of discontinuance; and
- (b) serve a copy of it on every other party to the proceedings.

(2) The claimant must state in the notice of discontinuance [^{F7}that they have] 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.

[^{F8}(5) A notice of discontinuance must be in Form N279 unless the court permits otherwise.]

Textual Amendments

F7 Words in rule 38.3(2) substituted (6.4.2023) by [The Civil Procedure \(Amendment\) Rules 2023 \(S.I. 2023/105\)](#), rules 1(1), **21(3)(a)**

F8 Rule 38.3(5) substituted for words in rule 38.3 (1.10.2023 immediately after [S.I. 2023/572](#) comes into force) by [The Civil Procedure \(Amendment No. 3\) Rules 2023 \(S.I. 2023/788\)](#), rules 1(1), **20(2)**

Commencement Information

I3 [Rule 38.3](#) in force at 26.4.1999, see [Signature](#)

Right to apply to have notice of discontinuance set aside **E+W**

38.4.—(1) Where the claimant discontinues under rule 38.2(1) the defendant may apply to have the notice of discontinuance set aside^(GL).

(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 [^{F9}them].

Textual Amendments

F9 Word in [rule 38.4\(2\)](#) substituted (6.4.2023) by [The Civil Procedure \(Amendment\) Rules 2023 \(S.I. 2023/105\)](#), rules 1(1), **21(4)**

Commencement Information

I4 [Rule 38.4](#) in force at 26.4.1999, see [Signature](#)

When discontinuance takes effect where permission of the court is not needed **E+W**

38.5.—(1) Discontinuance against any defendant takes effect on the date when notice of discontinuance is served on [^{F10}them] under rule 38.3(1).

(2) Subject to rule 38.4, the [^{F11}claim is] brought to an end as against [^{F12}that defendant] on that date.

(3) However, this does not affect proceedings to deal with any question of costs.

Textual Amendments

F10 Word in [rule 38.5\(1\)](#) substituted (6.4.2023) by [The Civil Procedure \(Amendment\) Rules 2023 \(S.I. 2023/105\)](#), rules 1(1), **21(5)(a)**

F11 Words in [rule 38.5\(2\)](#) substituted (6.4.2023) by [The Civil Procedure \(Amendment\) Rules 2023 \(S.I. 2023/105\)](#), rules 1(1), **21(5)(b)(i)**

F12 Words in [rule 38.5\(2\)](#) substituted (6.4.2023) by [The Civil Procedure \(Amendment\) Rules 2023 \(S.I. 2023/105\)](#), rules 1(1), **21(5)(b)(ii)**

Commencement Information

I5 [Rule 38.5](#) in force at 26.4.1999, see [Signature](#)

Liability for costs **E+W**

38.6.—(1) Unless the court orders otherwise, a claimant who discontinues is liable for the costs which a defendant against whom [^{F13}the claimant] discontinues incurred on or before the date on which notice of discontinuance was served on [^{F14}the defendant].

(2) If proceedings are only partly discontinued—

- (a) the claimant is liable under paragraph (1) for costs relating only to the [^{F15}discontinued] part of the proceedings ^{F16} ...; 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 [^{F17}44.9] provides for the basis of assessment where [^{F18}the] right to costs arises on discontinuance [^{F19}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

- F13** 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)**
- F14** 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)**
- F15** Word in rule 38.6(2)(a) inserted (6.4.2023) by [The Civil Procedure \(Amendment\) Rules 2023 \(S.I. 2023/105\)](#), rules 1(1), **21(6)(a)**
- F16** Words in rule 38.6(2)(a) omitted (6.4.2023) by virtue of [The Civil Procedure \(Amendment\) Rules 2023 \(S.I. 2023/105\)](#), rules 1(1), **21(6)(b)**
- F17** Word in rule 38.6 substituted (1.10.2013) by [The Civil Procedure \(Amendment No.7\) Rules 2013 \(S.I. 2013/1974\)](#), rules 2, **15(a)**
- F18** 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)**
- F19** 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

- I6** [Rule 38.6](#) in force at 26.4.1999, see [Signature](#)

^{F20}Discontinuance and subsequent proceedings **E+W**

38.7.—(1) A claimant who discontinues a claim needs the permission of the court to make another claim against the same defendant if—

- (a) they discontinued the claim after the defendant filed a defence or, in a Part 8 claim, filed an acknowledgment of service or written evidence; and
- (b) the other claim arises out of facts which are the same or substantially the same as those relating to the discontinued claim.

(2) If the claimant considers that permission is needed, the application for permission shall be included in the claim form and claim will proceed only if permission is granted.

(3) The defendant shall inform the court in writing as soon as practicable whether the defendant asserts that permission is needed and, if so, whether the defendant consents to permission being granted.

(4) If the parties agree that permission should be granted, the court shall issue an order granting permission on the papers or make such other order as it thinks fit.

(5) If the parties disagree about whether permission should be granted, the court shall determine the issue either at a hearing or, in its discretion, on the papers after receiving written representations.

(6) The defendant is not required to file an acknowledgment of service unless and until permission is granted.]

Textual Amendments

F20 Rule 38.7 substituted (6.4.2023) by [The Civil Procedure \(Amendment\) Rules 2023 \(S.I. 2023/105\)](#), rules 1(1), **21(7)**

Stay of remainder of partly discontinued proceedings where costs not paid **E+W**

38.8.—(1) This rule applies where—

(a) proceedings are partly discontinued;

[^{F21}(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 [^{F22}or make the payment] within [^{F23}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 [^{F24}or the payment to be made].

(2) Where this rule applies, the court may stay^(GL) the remainder of the proceedings until the claimant pays the whole of the costs which [^{F25}the claimant] is liable to pay under rule 38.6 [^{F26}or makes the payment pursuant to an order under section 194(3) of the Legal Services Act 2007]

[^{F27}(Rules [^{F28}44.9 and 46.7] contain provisions about applying for an order under section 194(3) of the Legal Services Act 2007.)]

Textual Amendments

F21 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)**

F22 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)**

F23 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)

F24 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)**

F25 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)**

F26 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)**

F27 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)**

Changes to legislation: There are currently no known outstanding effects for the
The Civil Procedure Rules 1998, PART 38. (See end of Document for details)

F28 Words in rule 38.8 substituted (1.10.2013) by [The Civil Procedure \(Amendment No.7\) Rules 2013](#) (S.I. 2013/1974), rules 2, **15(b)**

Commencement Information

I7 [Rule 38.8](#) in force at 26.4.1999, see [Signature](#)

Changes to legislation:

There are currently no known outstanding effects for the The Civil Procedure Rules 1998, PART 38.