

## STATUTORY INSTRUMENTS

# 1998 No. 3132

## The Civil Procedure Rules 1998

### PART 41 **E+W**

#### [<sup>F1</sup>DAMAGES]

#### *[<sup>F1</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

- F1** 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 **E+W**

**41.1.**—(1) [<sup>F2</sup>This Section of this Part] applies to proceedings to which SCA s.32A or CCA s.51 applies.

(2) In this [<sup>F3</sup>Section]—

- (a) “SCA s.32A” means section 32A of the Supreme Court Act 1981(1);
- (b) “CCA s.51” means section 51 of the County Courts Act 1984(2); 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

- F2** 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)**
- F3** 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)**

#### Commencement Information

- 11** [Rule 41.1](#) in force at 26.4.1999, see [Signature](#)

(1) 1981 c. 54. Section 32A was inserted by section 6(1) of the Administration of Justice Act 1982 (c. 53)

(2) 1984 c. 28.

Status: Point in time view as at 01/10/2007.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998, Cross Heading: 1 – PROCEEDINGS TO WHICH SECTION 32A OF THE SUPREME COURT ACT 1981 OR SECTION 51 OF THE COUNTY COURTS ACT 1984 APPLIES. (See end of Document for details)

**Order for an award of provisional damages** **E+W**

41.2.—(1) The court may make an order for an award of provisional damages if—

- (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**

**I2** Rule 41.2 in force at 26.4.1999, see [Signature](#)

**Application for further damages** **E+W**

41.3.—(1) The claimant may not make an application for further damages after the end of the period specified under rule 41.2(2), or such period as extended by the court.

(2) Only one application for further damages may be made in respect of each disease or type of deterioration specified in the award of provisional damages.

(3) The claimant must give at least 28 days written notice to the defendant of his intention to apply for further damages.

(4) If the claimant knows—

- (a) that the defendant is insured in respect of the claim; and
- (b) the identity of the defendant’s insurers,

he must also give at least 28 days written notice to the insurers.

(5) Within 21 days after the end of the 28 day notice period referred to in paragraphs (3) and (4), the claimant must apply for directions.

<sup>F4</sup>(6) .....

**Textual Amendments**

**F4** 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

**Commencement Information**

**I3** Rule 41.3 in force at 26.4.1999, see [Signature](#)

<sup>F5</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**

**F5** Rule 41.3A inserted (6.4.2007) by The Civil Procedure (Amendment No.3) Rules 2006 (S.I. 2006/3435), rules 1, 9

**Status:**

Point in time view as at 01/10/2007.

**Changes to legislation:**

There are currently no known outstanding effects for the The Civil Procedure Rules 1998, Cross Heading: I – PROCEEDINGS TO WHICH SECTION 32A OF THE SUPREME COURT ACT 1981 OR SECTION 51 OF THE COUNTY COURTS ACT 1984 APPLIES.