

2003 No. 1242 (L.26)

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

The Civil Procedure (Amendment No. 2) Rules 2003

<i>Made</i> - - - - -	<i>30th April 2003</i>
<i>Laid before Parliament</i>	<i>7th May 2003</i>
<i>Coming into force</i> - -	<i>2nd June 2003</i>

The Civil Procedure Rule Committee, having power under section 2 of the Civil Procedure Act 1997(a) to make rules of court under section 1 of that Act, after consulting in accordance with section 2(6)(a) of that Act, make the following Rules—

Citation, commencement and interpretation

1. These Rules may be cited as the Civil Procedure (Amendment No. 2) Rules 2003 and shall come into force on 2nd June 2003.
2. In these Rules—
 - (a) a reference to a Part or rule by number alone means the Part or rule so numbered in the Civil Procedure Rules 1998(b); and
 - (b) a reference to an Order by number and prefixed by “CCR” means the CCR Order so numbered in Schedule 2 to those Rules.

Amendments to the Civil Procedure Rules 1998

3. In rule 2.1, in the table at the end of paragraph (2), insert—
 - (a) at the end of the first column, “7. Election petitions in the High Court”; and
 - (b) at the end of the second column, “Representation of the People Act 1983(c), s.182”.
4. In rule 3.7, for paragraph (7), substitute—

“(7) If—

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

the relief shall be conditional on the claimant either paying the fee or filing evidence of exemption from payment or 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.”.

(a) 1997 c. 12.
(b) S.I. 1998/3132. There is a relevant amendment in S.I. 1999/1008.
(c) 1983 c. 2.

5. In rule 43.2—

- (a) after paragraph (1), omit the cross-reference;
- (b) after paragraph (2), insert—

“(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 litigation, 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(a).”.

Transitional provision

6. Rule 5(b) of these Rules has effect only where the conditional fee agreement which is in issue was entered into on or after 2nd June 2003.

Revocation

7. CCR Order 6, rule 6 is revoked.

Phillips of Worth Matravers, M.R.
Andrew Morritt, V-C.
Anthony May, L.J.
Stephen Oliver-Jones
Carlos Dabezies
Steven Whitaker
Michael Black
Michelle Stevens-Hoare
Philip Rainey
Tim Parker
Juliet Herzog
Nicholas Burkill
Alan Street
Ahmad Butt

I allow these Rules

Dated 30th April 2003

Irvine of Lairg, C.

(a) 1990 c. 41, as substituted by s. 27(1) of the Access to Justice Act 1999 (c. 22).

EXPLANATORY NOTE

(This note is not part of the Rules)

The amendment of section 51(2) of the Supreme Court Act 1981 on the entry into force of section 31 of the Access to Justice Act 1999 allows rules of court to be made “for securing that the amount awarded to a party in respect of the costs to be paid by him to [legal or other] representatives is not limited to what would have been payable by him to them if he had not been awarded costs”—in other words, rules which limit or regulate the so-called indemnity principle.

The Lord Chancellor has made amendments to the Conditional Fee Agreements Regulations 2000 and the Collective Conditional Fee Agreements Regulations 2000 which, when combined with the amendment to rule 43.2 of the Civil Procedure Rules made by rule 5(b) of these Rules, will abrogate the indemnity principle in relation to the type of conditional fee agreement governed by the amended Regulations. Solicitors will to this extent be able to agree lawfully with their clients not to seek to recover by way of costs anything in excess of what the court awards, or what it is agreed will be paid, and will no longer be prevented from openly contracting with their clients on such terms. The new CPR rule 43.2(3) and (4) provides that costs whose recovery is limited in this way are nevertheless recoverable costs for the purposes of CPR Parts 44 to 48.

The opportunity has been taken to make other minor amendments to the Civil Procedure Rules. An amendment is made to CPR rule 2.1 to make it clear that the Civil Procedure Rules do not apply directly to election petitions in the High Court (although they apply indirectly and with modifications by virtue of rule 2(4) of the Election Petition Rules 1960 and rule 2(3) of the European Parliamentary Election Petition Rules 1979).

The amendment of rule 3.7 ensures that where a claim is struck out for non-payment of a fee and the claimant applies to have the claim reinstated, the time allowed for payment of the fee does not expire before he has an opportunity to pay it.

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