

2003 No. 2113 (L. 33)

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

The Civil Procedure (Amendment No. 4) Rules 2003

Made - - - - - *31st July 2003*

Laid before Parliament *13th August 2003*

Coming into force in accordance with rule 1

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. 4) Rules 2003 and shall come into force—
 - (a) for the purposes of rules 6 to 9, on 1st January 2004;
 - (b) for the purposes of rules 3 and 4, on 1st April 2004; and
 - (c) for all other purposes, on 6th October 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);
 - (b) a reference to an Order by number and prefixed by “RSC” means the RSC Order so numbered in Schedule 1 to those Rules; and
 - (c) 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 20.7, after paragraph (2) insert the following cross-reference—

“(Rule 7.2(2) provides that a claim form is issued on the date entered on the form by the court)”.
4. In rule 20.8(1)—
 - (a) in sub-paragraph (a), after “counterclaim” insert “against an existing party only”; and
 - (b) in sub-paragraph (b), for “the party making the Part 20 claim files his defence”, substitute “the Part 20 claim is issued by the court”.

^(a) 1997 c. 12.

^(b) S.I. 1998/3132. There are relevant amendments in S.I. 2000/221, S.I. 2000/1317 and S.I. 2001/2792.

5. In rule 30.1—
 - (a) at the beginning, insert “(1)”; and
 - (b) after paragraph (1), but before the cross-reference, insert—

“(2) The practice direction may make provision about the transfer of proceedings between the court and a tribunal.”.

6. In Part 34, at the end of the table of contents, insert the text set out in Part I of Schedule 1 to these Rules.

7. In rule 34.13, for paragraph (1) substitute—

“(1) This rule applies where a party wishes to take a deposition from a person who is—

 - (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.”.

8. For rule 34.16 substitute—

“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 a Regulation State.

 - (2) In this Section—
 - (a) “the 1975 Act” means the Evidence (Proceedings in Other Jurisdictions) Act 1975(a); and
 - (b) “Regulation State” has the same meaning as in Section III of this Part.”.

9. After Section II of Part 34, insert Section III as set out in Part II of Schedule 1 to these Rules.

10. In rule 43.2, in sub-paragraph (1)(j), before “Part 45” insert “Section I of”.

11. In rule 44.12A—
 - (a) in paragraph (1), for sub-paragraph (c) substitute—

“(c) except as referred to in paragraph (1A), no proceedings have been started.”;
 - (b) after paragraph (1) insert—

“(1A) The procedure set out in this rule may be followed if the only proceedings that have been started are proceedings under rule 21.10 or any other proceedings necessitated solely by reason of one or more of the parties being a child or patient. (Rule 21.10 makes provision for compromise etc. by or on behalf of a child or patient)”;
 - (c) in paragraph (4), for “In” substitute “Except as provided in paragraph (4A), in”; and
 - (d) after paragraph (4) insert—

“(4A) In proceedings to which Section II of Part 45 applies, the court shall assess the costs in the manner set out in that Section.”.

12. In Part 45—
 - (a) for the table of contents, substitute the table of contents and the section heading as set out in Part I of Schedule 2 to these Rules;
 - (b) in the heading of rule 45.1, for “Part” substitute “Section”;
 - (c) in rule 45.1—
 - (i) in each place that it occurs, for “Part” substitute “Section”; and
 - (ii) omit the cross-reference following paragraph (1); and
 - (d) after rule 45.6, insert Section II as set out in Part II of Schedule 2 to these Rules.

(a) 1975 c. 34.

13. In Part 52, at the end of the table of contents, insert the following text—

“SECTION III—PROVISIONS ABOUT REOPENING APPEALS

Reopening of final appeals

Rule 52.17”.

14. After Section II of Part 52, insert Section III as follows—

“Section III—Provisions about reopening appeals

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.

(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 the practice direction.”.

15. In rule 57.2, for paragraph (3) substitute—

“(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.”.

16. In rule 70.5—

(a) in paragraph (1)—

- (i) in sub-paragraph (a), after “money” insert “or other decision”;
- (ii) in sub-paragraph (b), at the end insert “, or that the decision may be enforced as if it were a court order”;

(b) in paragraph (2)—

- (i) at the end of sub-paragraph (a), omit “or”;
- (ii) after sub-paragraph (b) insert—

“; or

(c) any order to which RSC Order 115 applies”;

(c) after the cross-reference following paragraph (2), insert a further cross-reference as follows—

“(RSC Order 115 provides for the registration in the High Court for the purposes of enforcement of certain orders made in connection with criminal proceedings and investigations)”;

(d) in paragraph (3), for “the award” substitute “an award of a sum of money”; and

(e) for paragraph (8) substitute—

“(8) If an enactment provides that an award or decision 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 the relevant practice direction.”.

17. In RSC Order 115, after Part III, insert Part IV as follows—

“Part IV—International Criminal Court Act 2001: fines, forfeitures and reparation orders

Interpretation

37. In this Part of this Order—

- (a) “the Act” means the International Criminal Court Act 2001(a);
- (b) “the ICC” means the International Criminal Court;
- (c) “an order of the ICC” means—
 - (i) a fine or forfeiture ordered by the ICC; or
 - (ii) an order by the ICC against a person convicted by the ICC specifying a reparation to, or in respect of, a victim.

Registration of ICC orders for enforcement

38.—(1) An application to the High Court to register an order of the ICC for enforcement, or to vary or set aside the registration of an order, may be made to a judge or a Master of the Queen’s Bench Division.

(2) Rule 13 and rules 15 to 20 in Part I of this Order shall, with such modifications as are necessary and subject to the provisions of any regulations made under section 49 of the Act, apply to the registration for enforcement of an order of the ICC as they apply to the registration of an external confiscation order.”.

Transitional provision

18. Section II of Part 45 shall not apply to any costs-only proceedings arising out of a dispute, where the road traffic accident which gave rise to the dispute occurred before 6th October 2003.

Revocations

19. The following provisions are revoked—

- (a) RSC Order 91;
- (b) CCR Order 4 rule 3;
- (c) CCR Order 48D; and
- (d) CCR Order 49 rules 4A, 5 and 18B.

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I allow these Rules

Dated 31st July 2003

Falconer of Thoroton, C.

(a) 2001 c. 17.

PART I

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

PART II

III TAKING OF EVIDENCE—MEMBER STATES OF THE EUROPEAN UNION

Interpretation

34.22 In this Section—

- (a) “designated court” has the meaning given in the relevant practice direction;
- (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)

Where a person to be examined is in another Regulation State

34.23—(1) This rule applies where a party wishes to take a deposition from a person who is—

- (a) outside the jurisdiction; and
- (b) in a 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.

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.

SCHEDULE 2

Rule 12

PART I

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I FIXED COSTS

PART II

II ROAD TRAFFIC ACCIDENTS—FIXED RECOVERABLE COSTS IN COSTS-ONLY PROCEEDINGS

Scope and interpretation

45.7—(1) This Section sets out the costs which are to be allowed in costs-only proceedings in cases to which this Section applies.

(Costs-only proceedings are issued using the procedure set out in rule 44.12A)

- (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.

- (3) This Section does not apply where the claimant is a litigant in person.

(Rule 2.3 defines “personal injuries” as including any disease and any impairment of a person’s physical or mental condition)

(Rule 26.6 provides for when the small claims track is the normal track)

(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.

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 relevant 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.

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;
- (c) where they are necessarily incurred by reason of one or more of the claimants being a child or patient 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)

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).

(2) Where the parties have not agreed the amount of the success fee it shall be assessed by the court.

(Rule 43.2(k)(i) defines as funding arrangement as including a conditional fee agreement or collective conditional fee agreement which provides for a success fee)

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.

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

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.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules insert the following new rules into the Civil Procedure Rules 1998:

- Section III of Part 34, which makes provision about the procedure for requesting evidence to be taken in a State to which Council Regulation (EC) No. 1206/2001 on co-operation between the courts of the Member States of the European Union in the taking of evidence in civil or commercial matters applies, and for dealing with requests by the courts of Regulation States for evidence to be taken in England and Wales;
- Section II of Part 45, which introduces a scheme providing that only specified fixed costs are to be recoverable, other than in exceptional circumstances, where costs-only proceedings are issued under rule 44.12A in relation to disputes arising out of road traffic accidents occurring on or after 6th October 2003 which are settled for an amount of agreed damages not exceeding £10,000;
- Section III of Part 52, which prescribes the procedure for applications to the Court of Appeal or the High Court to reopen the final determination of an appeal or application for permission to appeal; and
- Section IV of RSC Order 115, in Schedule 1 to the Rules, which prescribes the procedure for the registration in the High Court for enforcement of orders of the International Criminal Court for the payment of fines, forfeitures and reparations.

The opportunity has also been taken to make a number of minor and consequential amendments to the rules currently in force, and to revoke certain provisions of the RSC and CCR rules in Schedules 1 and 2.

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