

SCHEDULE 1

Rules 6 and 9

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—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (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

CONTENTS OF THIS PART

I FIXED COSTS

Scope of this Section	Rule 45.1
Amount of fixed commencement costs	Rule 45.2
When defendant only liable for fixed commencement costs	Rule 45.3
Costs on entry of judgment	Rule 45.4

Miscellaneous fixed costs	Rule 45.5
Fixed enforcement costs	Rule 45.6

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

Scope and interpretation	Rule 45.7
Application of fixed recoverable costs	Rule 45.8
Amount of fixed recoverable costs	Rule 45.9
Disbursements	Rule 45.10
Success fee	Rule 45.11
Claims for an amount of costs exceeding fixed recoverable costs	Rule 45.12
Failure to achieve costs greater than fixed recoverable costs	Rule 45.13
Costs of the costs-only proceedings	Rule 45.14

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—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (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.