

2004 No. 2072 (L. 11)

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

The Civil Procedure (Amendment No.2) Rules 2004

Made - - - - - *29th July 2004*

Laid before Parliament *4th August 2004*

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.2) Rules 2004 and shall come into force—

- (a) for the purposes of rules 2 and 14, and this rule, on 1st September 2004; and
- (b) for all other purposes, on 1st October 2004.

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 2.3, in paragraph (1), after the definition of “child” insert—

“civil restraint order” means an order restraining a party—

- (a) from making any further applications in current proceedings (a limited civil restraint order);
- (b) from issuing certain claims or making certain applications in specified courts (an extended civil restraint order); or
- (c) from issuing any claim or making any application in specified courts (a general civil restraint order).”

(a) 1997 c.12.

(b) S.I. 1998/3132. There are relevant amendments in S.I. 2000/221, S.I. 2000/1317, S.I. 2001/4015, S.I. 2003/2113, S.I. 2003/3361 and S.I. 2004/1306.

4. In rule 3.3, after paragraph (6) insert—

“(7) If the court of its own initiative strikes out a statement of case or dismisses an application, and it considers that the claim or application is totally without merit—

- (a) the court’s order must record that fact; and
- (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.”.

5. In rule 3.4, after paragraph (5) insert—

“(6) If the court strikes out a claimant’s statement of case and it considers that the claim is totally without merit—

- (a) the court’s order must record that fact; and
- (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.”.

6. After rule 3.10, insert—

“Power of the court to make civil restraint orders

3.11. A practice direction may set out—

- (a) the circumstances in which the court has the power to make a civil restraint order against a party to proceedings;
- (b) the procedure where a party applies for a civil restraint order against another party; and
- (c) the consequences of the court making a civil restraint order.”.

7. For rule 5.4 substitute—

“Supply of documents from court records – general

5.4—(1) A court or court office may keep a publicly accessible register of claims which have been issued out of that court or court office.

(2) Any person who pays the prescribed fee may, during office hours, search any available register of claims.

(The practice direction contains details of available registers.)

(3) A party to proceedings may, unless the court orders otherwise, obtain from the records of the court a copy of—

- (a) a statement of case;
- (b) a judgment or order given or made in public (whether made at a hearing or without a hearing);
- (c) an application notice, other than in relation to—
 - (i) an application by a solicitor for an order declaring that he has ceased to be the solicitor acting for a party; or
 - (ii) an application for an order that the identity of a party or witness should not be disclosed;
- (d) any written evidence filed in relation to an application, other than a type of application mentioned in sub-paragraph (c)(i) or (ii);
- (e) a notice of payment into court;
- (f) an appellant’s notice or respondent’s notice.

(4) A party to proceedings may, if the court gives permission, obtain from the records of the court a copy of any other document filed by a party or communication between the court and a party or another person.

- (5) Any other person may—
- (a) unless the court orders otherwise, obtain from the records of the court a copy of—
 - (i) a claim form, subject to paragraph (6) and to any order of the court under paragraph (7);
 - (ii) a judgment or order given or made in public (whether made at a hearing or without a hearing), subject to paragraph (6); and
 - (b) if the court gives permission, obtain from the records of the court a copy of any other document filed by a party, or communication between the court and a party or another person.
- (6) A person may obtain a copy of a claim form or a judgment or order under paragraph (5)(a) only if—
- (a) where there is one defendant, the defendant has filed an acknowledgment of service or a defence;
 - (b) where there is more than one defendant, either—
 - (i) all the defendants have filed an acknowledgment of service or a defence;
 - (ii) at least one defendant has filed an acknowledgment of service or a defence, and the court gives permission;
 - (c) the claim has been listed for a hearing; or
 - (d) judgment has been entered in the claim.
- (7) The court may, on the application of a party or of any person identified in the claim form—
- (a) restrict the persons or classes of persons who may obtain a copy of the claim form;
 - (b) order that persons or classes of persons may only obtain a copy of the claim form if it is edited in accordance with the directions of the court; or
 - (c) make such other order as it thinks fit.
- (8) A person wishing to obtain a copy of a document under paragraph (3), (4) or (5) must pay any prescribed fee and—
- (a) if the court’s permission is required, file an application notice in accordance with Part 23; or
 - (b) if permission is not required, file a written request for the document.
- (9) An application for permission to obtain a copy of a document, or for an order under paragraph (7), may be made without notice, but the court may direct notice to be given to any person who would be affected by its decision.
- (10) Paragraphs (3) to (9) of this rule do not apply in relation to any proceedings in respect of which a rule or practice direction makes different provision.”.

8. In rule 6.20, in paragraph (3), after “will be served” insert “(otherwise than in reliance on this paragraph)”.

9. After rule 23.11 insert—

“Dismissal of totally without merit applications

23.12 If the court dismisses an application and it considers that the application is totally without merit—

- (a) the court’s order must record that fact; and
- (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.”.

10. In Part 45, at the end of the table of contents, insert the text set out in Part I of the Schedule to these Rules.

11. In rule 45.10, in paragraph (2)—

- (a) in sub-paragraph (b), for “body of a prescribed description within the meaning of section 30(1) of the Access to Justice Act 1999” substitute “membership organisation”; and
- (b) after sub-paragraph (b) insert the following cross-reference—
“ (“membership organisation” is defined in rule 43.2(1)(n))”.

12. After Section III of Part 45, insert Section IV as set out in Part II of the Schedule to these Rules.

13. In rule 52.10, after paragraph (4), insert—

“(5) If the appeal court—

- (a) refuses an application for permission to appeal;
- (b) strikes out an appellant’s notice; or
- (c) dismisses an appeal,

and it considers that the application, the appellant’s notice or the appeal is totally without merit, the provisions of paragraph (6) must be complied with.

(6) Where paragraph (5) applies—

- (a) the court’s order must record the fact that it considers the application, the appellant’s notice or the appeal to be totally without merit; and
- (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.”.

14. In rule 65.3—

- (a) in paragraph (1), for “section 153A, 153B or 153D”, substitute “Chapter III of Part V”;
- (b) in paragraph (2)(c), for “affidavit evidence”, substitute “a witness statement”;
- (c) in paragraph (4)(a), for “affidavit”, substitute “witness statement”;
- (d) in paragraph (5), for “affidavit”, substitute “witness statement”;
- (e) in paragraph (6)(a), for “affidavit”, substitute “witness statement”.

15. In CCR Order 49, rule 17—

- (a) in paragraph (4), for “section 25” substitute “section 17B or 25”;
- (b) in paragraph (6), for “section 66” substitute “section 65”; and
- (c) in paragraph (8), after “section 26 of” insert “or Schedule 3A to”.

Phillips of Worth Matravers, MR

John Dyson, LJ

Rupert Jackson, J

Terence Etherton, J

Stephen Oliver-Jones

Steven Whitaker

Carlos Dabezies

Michael Black

Peter Candon

Andrew Parker

Juliet Herzog

I allow these Rules

Dated 29th July 2004

Falconer of Thoroton C.

SCHEDULE

Rules 10 and 12

PART I

IV - FIXED PERCENTAGE INCREASE IN EMPLOYERS LIABILITY CLAIMS

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| Percentage increase of solicitors' and counsel's fees | Rule 45.21 |
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PART II

IV - FIXED PERCENTAGE INCREASE IN EMPLOYERS LIABILITY CLAIMS

Scope and interpretation

- 45.20**—(1) Subject to paragraph (2), this Section applies where—
- (a) the dispute is between an employee and his employer arising from a bodily injury sustained by the employee in the course of his employment; and
 - (b) the claimant has entered into a funding arrangement of a type specified in rule 43.2(1)(k)(i).
- (2) This Section does not apply—
- (a) where the dispute—
 - (i) relates to a disease;
 - (ii) relates to an injury sustained before 1st October 2004; or
 - (iii) arises from a road traffic accident (as defined in rule 45.7(4)(a)); or
 - (b) to a claim—
 - (i) which has been allocated to the small claims track; or
 - (ii) not allocated to a track, but for which the small claims track is the normal track.
- (3) For the purposes of this Section—
- (a) “employee” has the meaning given to it by section 2(1) of the Employers’ Liability (Compulsory Insurance) Act 1969(a); and
 - (b) a reference to “fees” is a reference to fees for work done under a conditional fee agreement or collective conditional fee agreement.

(a) 1969 c.57.

Percentage increase of solicitors' and counsel's fees

45.21 In the cases to which this Section applies, subject to rule 45.22 the percentage increase which is to be allowed in relation to solicitors' and counsel's fees is to be determined in accordance with rules 45.16 and 45.17, subject to the modifications that—

- (a) the percentage increase which is to be allowed in relation to solicitors' fees under rule 45.16(b) is—
 - (i) 27.5% if a membership organisation has undertaken to meet the claimant's liabilities for legal costs in accordance with section 30 of the Access to Justice Act 1999; and
 - (ii) 25% in any other case; and
- (b) the percentage increase which is to be allowed in relation to counsel's fees under rule 45.17(1)(b)(ii), (1)(c)(ii) or (1)(d) is 25%.

("membership organisation" is defined in rule 43.2(1)(n))

Alternative percentage increase

45.22—(1) In the cases to which this Section applies, rule 45.18(2)-(4) applies where—

- (a) the percentage increase of solicitors' fees to be allowed in accordance with rule 45.21 is 25% or 27.5%; or
- (b) the percentage increase of counsel's fees to be allowed is 25%.

(2) Where the percentage increase of fees is assessed by the court under rule 45.18(4) as applied by paragraph (1) above—

- (a) if the percentage increase is assessed as greater than 40% or less than 15%, the percentage increase to be allowed shall be that assessed by the court; and
- (b) if the percentage increase is assessed as no greater than 40% and no less than 15%—
 - (i) the percentage increase to be allowed shall be 25% or 27.5% (as the case may be); and
 - (ii) the costs of the application and assessment shall be paid by the applicant.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules add the following new provisions to the Civil Procedure Rules 1998—

— A new rule 3.11, which enables a practice direction to make provision about the power of the court to make a civil restraint order against a litigant in the exercise of the jurisdiction explained by the Court of Appeal in *Bhamjee v. Forsdick* [2003] EWCA Civ 1113, and other provisions relating to civil restraint orders.

— A new rule 5.4, in substitution for the existing rule 5.4, which makes new provision about the supply of documents from court records. It is provided that a court or court office may keep a register of claims issued out of that court or office which is available for any person to search. A practice direction supplementing the rule will specify the courts or court offices which maintain such registers. The rule also specifies the documents of which copies may be obtained from court records by a party to proceedings, and by any other person, and the cases in which permission of the court is required to obtain a copy of a document. It also permits a party to proceedings, or other person identified in a claim form, to apply for an order restricting persons from obtaining a copy of the claim form.

— A new Section IV of Part 45, which makes provision in personal injury claims against an employer (other than claims relating to a disease or arising from a road traffic accident) for fixed percentage increases to apply to legal representatives' fees in respect of success fees, where the claimant has entered into a conditional fee agreement or collective conditional fee agreement which provides for a success fee.

In addition—

—Rule 65.3 (anti-social behaviour – applications for Housing Act 1996 injunctions) is amended to require an application for an injunction under Chapter III of Part V of the Housing Act 1996 to be supported by a witness statement rather than an affidavit.

— CCR Order 49, rule 17, which contains provisions about proceedings under enactments relating to discrimination, is amended in consequence of amendments made to the Disability Discrimination Act 1995 by the Disability Discrimination Act 1995 (Amendment) Regulations 2003 (SI 2003/1673), and to correct a minor error.

— Other minor amendments have also been made to existing rules.

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