

2004 No. 3129 (L. 24)

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

The Civil Procedure (Amendment No. 3) Rules 2004

Made - - - - - *24th November 2004*

Laid before Parliament *30th November 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.3) Rules 2004 and shall come into force on the date of entry into force of section 100 of the Courts Act 2003(b).
2. In these Rules a reference to a Part or rule by number alone means the Part or rule so numbered in the Civil Procedure Rules 1998(c).

Amendment to the Civil Procedure Rules 1998

3. In rule 36.3(1), after “rules”, insert “36.2A(2),”.
4. After rule 36.2, insert—

“Personal injury claims for future pecuniary loss

36.2A(1)—This rule applies to a claim for damages for personal injury which is or includes a claim for future pecuniary loss.

(2) An offer to settle such a claim will not have the consequences set out in this Part unless it is made by way of a Part 36 offer under this rule, and where such an offer is or includes an offer to pay the whole or part of any damages in the form of a lump sum, it will not have the consequences set out in this Part unless a Part 36 payment of the amount of the lump sum offer is also made.

- (3) Where both a Part 36 offer and a Part 36 payment are made under this rule—
 - (a) the offer must include details of the payment, and

(a) 1997 c. 12.

(b) 2000 c.39

(c) S.I. 1998/3132. There are relevant amendments in S.I. 1999/1008, S.I. 2000/2092 and S.I. 2002/3219

(b) rules 36.11(1) and (2) and 36.13(1) and (2) apply as if there were only a Part 36 offer.

(4) A Part 36 offer to which this rule applies may contain an offer to pay, or an offer to accept—

(a) the whole or part of the damages for future pecuniary loss in the form of—

(i) either a lump sum or periodical payments, or

(ii) both a lump sum and periodical payments,

(b) the whole or part of any other damages in the form of a lump sum.

(5) A Part 36 offer to which this rule applies—

(a) must state the amount of any offer to pay the whole or part of any damages in the form of a lump sum;

(b) may state what part of the offer relates to damages for future pecuniary loss to be accepted in the form of a lump sum;

(c) may state, where part of the offer relates to other damages to be accepted in the form of a lump sum, what amounts are attributable to those other damages;

(d) must state what part of the offer relates to damages for future pecuniary loss to be paid or accepted in the form of periodical payments and must specify—

(i) the amount and duration of the periodical payments,

(ii) the amount of any payments for substantial capital purchases and when they are to be made, and

(iii) that each amount is to vary by reference to the retail prices index (or to some other named index, or that it is not to vary by reference to any index); and

(e) must state either that any damages which take the form of periodical payments will be funded in a way which ensures that the continuity of payment is reasonably secure in accordance with section 2(4) of the Damages Act 1996 or how such damages are to be paid and how the continuity of their payment is to be secured.

(6) Where a Part 36 payment includes a lump sum for damages for future pecuniary loss, the Part 36 payment notice may state the amount of that lump sum.

(7) Where the defendant makes a Part 36 offer to which this rule applies and which offers to pay damages in the form of both a lump sum and periodical payments, the claimant may only give notice of acceptance of the offer as a whole.”

5. In rule 36.4—

(a) in paragraphs (2)(a), (3)(b) and (4) after “Part 36 payment” insert “or Part 36 offer made under rule 36.2A”;

(b) in paragraph (3) after “Part 36 payment notice” insert “or Part 36 offer made under rule 36.2A”;

(c) in paragraph (3) after “the Part 36 offer”, in both places, insert “made under this rule.”.

6. In rule 36.10—

(a) in paragraph (3) for “If the offeror” substitute “Subject to paragraph (3A), if the offeror”;

(b) after paragraph (3) insert—

“(3A) In a claim to which rule 36.2A applies, if the offeror is a defendant who wishes to offer to pay the whole or part of any damages in the form of a lump sum—

(a) he must make a Part 36 payment within 14 days of service of the claim form; and

(b) the amount of the payment must be not less than the lump sum offered before proceedings began.”;

(c) in paragraph (4)(b) after “paragraph (3)” insert “or (3A)”.

7. In rule 36.20, in paragraph (1)(a) delete “or” and in paragraph (1)(b) after “offer” insert “or”—

“(c) in a claim to which rule 36.2A applies, fails to obtain a judgment which is more advantageous than the Part 36 offer made under that rule.”

8. In rule 36.21, in paragraph (1), after “Part 36 offer” insert “(including a Part 36 offer made under rule 36.2A)”.

9. In rule 36.23—

- (a) in paragraph (4), for “rule 36.20” substitute “rule 36.20(1)(a)” and
- (b) after paragraph (4), insert—

“(4A) For the purposes of rule 36.20(1)(c), where the court is determining whether the claimant has failed to obtain a judgment which is more advantageous than the Part 36 offer made under rule 36.2A, the amount of any lump sum paid into court which it takes into account is to be the amount of the gross sum specified in the Part 36 payment notice.”

10. For the heading of Part 41, substitute “**DAMAGES**”.

11. In Part 41—

- (a) for the table of contents, substitute the table of contents and section heading as set out in Part I of Schedule 1 to these Rules;
- (b) in rule 41.1—
 - (i) in paragraph (1), for “This Part” substitute “This Section of this Part”;
 - (ii) in paragraph (2), for “Part” substitute “Section”; and
- (c) after rule 41.3, insert Section II as set out in Part II of Schedule 1 to these Rules.

Phillips of Worth Matravers, M.R.
John Dyson, L.J.
Rupert Jackson, J.
Terence Etherton, J.
Stephen Oliver-Jones
Steven Whitaker
Carlos Dabezies
Nicholas Burkill
Richard Walford
David di Mambro
Juliet Herzog
Andrew Parker
Philip Rainey
Peter Candon

I allow these Rules

Dated 24th November 2004

Falconer of Thoroton, C.

PART I

“CONTENTS OF THIS PART

I – PROCEEDINGS TO WHICH SECTION 32A OF THE SUPREME COURT ACT 1981 OR SECTION 51 OF THE COUNTY COURTS ACT 1984 APPLIES

Application and definitions	Rule 41.1
Order for an award of provisional damages	Rule 41.2
Application for further damages	Rule 41.3

II – PERIODICAL PAYMENTS UNDER THE DAMAGES ACT 1996

Scope and interpretation	Rule 41.4
Statement of case	Rule 41.5
Court’s indication to parties	Rule 41.6
Factors to be taken into account	Rule 41.7
The award	Rule 41.8
Continuity of payment	Rule 41.9
Assignment or charge	Rule 41.10

I – PROCEEDINGS TO WHICH SECTION 32A OF THE SUPREME COURT ACT 1981 OR SECTION 51 OF THE COUNTY COURTS ACT 1984 APPLIES”

PART II

“II – PERIODICAL PAYMENTS UNDER THE DAMAGES ACT 1996

Scope and interpretation

41.4.—(1) This Section of this Part contains rules about the exercise of the court’s powers under section 2(1) of the 1996 Act to order that all or part of an award of damages in respect of personal injury is to take the form of periodical payments.

(2) In this Section—

- (a) “the 1996 Act” means the Damages Act 1996(a);
- (b) “damages” means damages for future pecuniary loss; and
- (c) “periodical payments” means periodical payments under section 2(1) of the 1996 Act(b).

Statement of case

41.5.—(1) In a claim for damages for personal injury, each party in its statement of case may state whether it considers periodical payments or a lump sum is the more appropriate form for all or part of an award of damages and where such statement is given must provide relevant particulars of the circumstances which are relied on.

(a) 1996 c. 48
 (b) Section 2 is substituted by section 100 of the Courts Act 2003 (c. 39).

(2) Where a statement under paragraph (1) is not given, the court may order a party to make such a statement.

(3) Where the court considers that a statement of case contains insufficient particulars under paragraph (1), the court may order a party to provide such further particulars as it considers appropriate.

Court's indication to parties

41.6. The court shall consider and indicate to the parties as soon as practicable whether periodical payments or a lump sum is likely to be the more appropriate form for all or part of an award of damages.

Factors to be taken into account

41.7. When considering—

- (a) its indication as to whether periodical payments or a lump sum is likely to be the more appropriate form for all or part of an award of damages under rule 41.6; or
- (b) whether to make an order under section 2(1)(a) of the 1996 Act,

the court shall have regard to all the circumstances of the case and in particular the form of award which best meets the claimant's needs, having regard to the factors set out in the practice direction.

The award

41.8.—(1) Where the court awards damages in the form of periodical payments, the order must specify—

- (a) the annual amount awarded, how each payment is to be made during the year and at what intervals;
- (b) the amount awarded for future—
 - (i) loss of earnings and other income; and
 - (ii) care and medical costs and other recurring or capital costs;
- (c) that the claimant's annual future pecuniary losses, as assessed by the court, are to be paid for the duration of the claimant's life, or such other period as the court orders; and
- (d) that the amount of the payments shall vary annually by reference to the retail prices index, unless the court orders otherwise under section 2(9) of the 1996 Act.

(2) Where the court orders that any part of the award shall continue after the claimant's death, for the benefit of the claimant's dependants, the order must also specify the relevant amount and duration of the payments and how each payment is to be made during the year and at what intervals.

(3) Where an amount awarded under paragraph (1)(b) is to increase or decrease on a certain date, the order must also specify—

- (a) the date on which the increase or decrease will take effect; and
- (b) the amount of the increase or decrease at current value.

(4) Where damages for substantial capital purchases are awarded under paragraph (1)(b)(ii), the order must also specify—

- (a) the amount of the payments at current value;
- (b) when the payments are to be made; and
- (c) that the amount of the payments shall be adjusted by reference to the retail prices index, unless the court orders otherwise under section 2(9) of the 1996 Act.

Continuity of payment

41.9.—(1) An order for periodical payments shall specify that the payments must be funded in accordance with section 2(4) of the 1996 Act, unless the court orders an alternative method of funding.

(2) Before ordering an alternative method of funding, the court must be satisfied that—

- (a) the continuity of payment under the order is reasonably secure; and
- (b) the criteria set out in the practice direction are met.

(3) An order under paragraph (2) must specify the alternative method of funding.

Assignment or charge

41.10. Where the court under section 2(6)(a) of the 1996 Act is satisfied that special circumstances make an assignment or charge of periodical payments necessary, it shall, in deciding whether or not to approve the assignment or charge, also have regard to the factors set out in the practice direction.”

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules insert into the Civil Procedure Rules 1998 a new Section II of Part 41, which makes provision about the exercise of the court's powers under section 2(1) of the Damages Act 1996 (as substituted by section 100 of the Courts Act 2003) to order that all or part of an award of damages in respect of personal injury is to take the form of periodical payments. Section II of Part 41 will come into force at the same time as section 100 of the Courts Act 2003.

Amendments are also made to Part 36 to ensure that the scheme for offers to settle and payments into court can work in cases in which periodical payments may be awarded.

STATUTORY INSTRUMENTS

2004 No. 3129 (L. 24)

SUPREME COURT OF ENGLAND AND WALES

COUNTY COURTS, ENGLAND AND WALES

The Civil Procedure (Amendment No. 3) Rules 2004

£3.00

© Crown copyright 2004

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E1591 12/2004 141591T 19585

ISBN 0-11-050591-3



9 780110 505916