
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 3.7A, which provides sanctions for non-payment of fees in respect of counterclaims.
- A new rule 3.7B, which provides sanction where a cheque tendered in payment of a fee payable on taking a particular step in proceedings is subsequently dishonoured.
- A new rule 6.11 and 6.11A, in substitution for the existing rule 6.11, which require the court to notify a party (who has requested it to serve a document) if that document is subsequently returned to the court or the court bailiff is unable to serve it.
- A new rule 19.7B, which makes provision for an application under section 92 of the Postal Services Act 2000 for permission to bring proceedings in the name of the sender or addressee of a postal packet to be made.
- A new rule 21.11A, which allows a litigation friend to recover reasonable expenses out of a child's or patient's funds. Consequential amendments are made to rule 48.5 to capture, for the purposes of assessment, costs payable to the litigation friend (as well as to the solicitor) and costs payable out of a child's or patient's funds (as well as those payable directly by the child or patient).
- A new rule 27.14(2A), which provides that the rejection of an offer to settle in cases on the small claims track does not itself constitute unreasonable behaviour, but may be taken into account when the court considers the reasonableness of the parties' conduct generally.
- A new rule 32.20, which gives probative force to notarial acts.
- A new rule 44.13(1A), which provides that where certain categories of order are silent with respect to costs, the order will be deemed to include an order for costs in the case.
- A new Section V of Part 45, which makes provision for personal injury claims against an employer relating to a disease. The Section makes provision for fixed percentage increases to apply to legal representative's 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. Consequential amendment is made to rule 45.20, to differentiate Section IV and Section V claims.
- A new rule 55.10A, which enables a practice direction to make provision for a claimant to start certain types of possession claim in certain courts by requesting the issue of a claim form electronically.
- A new rule 60.7 which clarifies the position in the Technology and Construction Court that parties will draw up orders, unless the court orders otherwise. Similar provision is made for the Queen's Bench Division at the Royal Courts of Justice, by an amendment to rule 40.3.
- A new rule 63.4A, which makes provision to secure that as far as practicable and appropriate, proceedings in the patents county court are dealt with by the patents judge. Consequential amendment is made to rule 63.1 to introduce a definition of patents judge.
- A new Part 66, which replaces RSC Order 77 and CCR Order 42. The amendments revoke the Crown's privileges in determining the venue of civil proceedings and in transferring civil proceedings from the county courts to the High Court. They also revoke procedural

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powers concerning the content of claim forms, default judgments, summary judgments and interrogatories in civil proceedings by or against the Crown. Consequential amendments are made to rule 6.1 (Rules about service), rule 6.4 (Personal service), rule 6.5 (Address for service), rule 12.4 (Procedure for obtaining default judgment), rule 12.10 (Default judgment obtained by making an application), rule 16.2 (Contents of the claim form), rule 19.4 (Procedure for adding and substituting parties), rule 24.4 (Procedure for obtaining summary judgment) and rule 30.3 (Criteria for transfer order). RSC Order 77, CCR Order 42 and CCR Order 49, rule 15 are revoked. Amendments to the Crown Proceedings Act 1947 are made by the Civil Procedure (Modification of Crown Proceedings Act 1947) Order 2005.

- A new Section V of Part 74, which makes provision for the certification of judgments of the courts of England and Wales as European Enforcement Orders, and for the recognition and enforcement in England and Wales of judgments of other Contracting States that have been certified as European Enforcement Orders, under Council Regulation (EC) No 805/2004 creating a European Enforcement Order for uncontested claims (Official Journal L 143, 30/04/2004 P. 0015 – 0039). Consequential amendments are made to rule 74.1.

In addition, the following amendments are made:

- Rule 3.1 (the court’s general case management powers) is amended to give the court an explicit power to order a party to file and serve an estimate of costs.
- Rule 3.3(7) and rule 23.12 are amended to clarify that where a court dismisses an application for permission to appeal or for permission to apply for judicial review, and it considers such application is totally without merit, the court order must record the fact, and the court consider whether it is appropriate to make a civil restraint order.
- Rule 5.4 (Supply of documents from court records) is amended to allow a party to proceedings to obtain a copy of a number of additional documents without requiring the permission of the court under rule 5.4(4).
- A number of separate amendments are made requiring parties to proceedings to provide specific information about themselves (or the other party) upon taking a particular step in the proceedings. A signpost has been inserted following Rule 6.5 (Address for service) and rule 6.13 (Defendant’s address for service) drawing attention to amended provisions in the Practice Direction to Part 16 regarding the address for service, and following rule 9.2 (Defence, admission or acknowledgment of service) drawing attention to amended provisions in the Practice Direction to Part 16 requiring a defendant to provide his date of birth when filing a response to a claim. Rule 12.4 (Procedure for obtaining default judgment) is amended to require the claimant to provide the defendant’s date of birth where the defendant does not file a response and the claimant makes an application for default judgment.
- Rule 6.20 (Service out of the jurisdiction where permission of the court is required - Claims by the Inland Revenue) and RSC Order 77 are amended to make changes to the Civil Procedure Rules consequential upon the Commissioners for Revenue and Customs Act 2005.
- Rule 11(7) is amended to make provision that where the defendant files a further acknowledgment of service, following an unsuccessful application for an order declaring that the court does not have jurisdiction, the court must give directions concerning the time for filing the defence in a Part 7 claim, or evidence in a Part 8 claim.
- Rules 12.10 and 12.11 (Default judgment obtained by making an application) are amended to make changes to the Civil Procedure Rules consequential upon the Civil Partnership Act 2004.
- Rule 26.4 (Stay to allow for settlement of case) is amended to allow the court greater flexibility when making an order staying the proceedings to allow the parties the opportunity to consider alternative dispute resolution.
- Rule 27.2 is amended to allow the court, in cases proceeding on the small claims track, to order a party to provide further information, notwithstanding the general dis-application of Part 18.

- Rule 27.9 (Non-attendance of parties at final hearing) is amended to require a party who will not be attending a hearing to notify the other party and serve on such party any documents filed at court.
- Rule 27.14 (Costs on the small claims track) is amended to provide that when a claim is allocated to the small claims track by consent, the small claims costs provisions will apply unless the parties agree otherwise.
- Rule 28.5 (Pre-trial checklist) and rule 29.6 (Pre-trial checklist) are amended to provide that in claims on the fast track and multi-track, respectively, if no party files a pre-trial checklist the claim/defence will be struck out and if one party files, the file will be submitted to the judge to give directions.
- Rule 30.8 (Transfer of competition law claims) is amended to allow commercial claims (within rule 58.1), which raise an issue of competition law to be heard in the Commercial Court.
- Rule 65.11, rule 65.12, rule 65.13, rule 65.14, rule 65.17, rule 65.18 and rule 65.19 are amended to make provision for suspension claims under section 121A of the Housing Act 1985 to be made. Consequential amendments are made to Part 55.
- Minor amendments are made to rule 3.7 (Sanction for non-payment of fees), rule 5.4(5) (supply of documents from court records), rule 6.7 (removal of the statutory signpost), rule 10.3 (The period for filing an acknowledgment of service), rule 27.14(3) (compensation for attendance at a hearing) and CCR Order 49, rule 17 (Disability Discrimination Act 1995).

The amendments, except those to rules 6.5(2), 6.13, 9.2, 12.4 and Part 74 come into force on 1st October 2005. The amendments to rules 6.5(2), 6.13, 9.2 and 12.4 come into force on 6th April 2006. The amendments to Part 74 come into force on 21st October 2005.