

2007 No. 2204 (L. 20)

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

The Civil Procedure (Amendment) Rules 2007

<i>Made</i> - - - -	<i>26th July 2007</i>
<i>Laid before Parliament</i>	<i>27th July 2007</i>
<i>Coming into force</i> - -	<i>1st October 2007</i>

The Civil Procedure Rule Committee, in exercise of the power conferred by 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 3(1)(a)(b) of that Act makes the following Rules:

Citation, commencement and interpretation

1. These Rules may be cited as the Civil Procedure (Amendment) Rules 2007 and come into force on 1st October 2007.

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(c);
- (b) a reference to an Order by number and prefixed “RSC” means the RSC Order so numbered in Schedule 1 to those Rules; and
- (c) a reference to an Order by number and prefixed “CCR” means the CCR Order so numbered in Schedule 2 to those Rules.

Amendments to the Civil Procedure Rules 1998

3. In Part 2—

- (a) for the fourth entry in the table following rule 2.1(2) substitute—
“Proceedings before the Court of Protection Mental Capacity Act 2005(d), s.51”; and
- (b) in rule 2.3(1), for “patient” substitute “protected party”.

4. In Part 6—

- (a) in the table of contents, for “patients” substitute “protected parties”;
- (b) in rule 6.6(1), in the first sentence, for “patient” substitute “protected party”;
- (c) for the table in rule 6.6(1) substitute—

(a) 1997 c. 12.

(b) Relevant amendments are made by the Constitutional Reform Act 2005 (c. 4), Schedule 4, paragraph 265.

(c) S.I. 1998/3132. There are relevant amendments in S.I. 2000/221, 2000/940, 2000/1317, 2001/1388, 2001/4015, 2002/3219, 2003/2113, 2004/1306, 2004/3419, 2005/2292 and 2006/3435.

(d) 2005 c. 9.

“Type of document	Nature of party	Persons to be served
Claim form	Child who is not also a protected party	One of the child’s parents or guardians; or if there is no parent or guardian, an adult with whom the child resides or in whose care the child is.
Claim form	Protected party	One of the following persons with authority in relation to the protected party as: (i) the attorney under a registered enduring power of attorney, (ii) the donee of a lasting power of attorney, (iii) the deputy appointed by the Court of Protection; or if there is no such person, an adult with whom the protected party resides or in whose care the protected party is.
Application for an order appointing a litigation friend, where the child or protected party has no litigation friend	Child or protected party	See rule 21.8.
Any other document	Child or protected party	The litigation friend who is conducting the proceedings on behalf of the child or protected party.”; and

(d) in rule 6.6(2), for “patient” substitute “protected party”.

5. In Part 12—

- (a) in rule 12.10(a)(i), for “patient” substitute “protected party”; and
- (b) in rule 12.11(3), for “patient” substitute “protected party”.

6. In rule 14.1(4) and the parenthesis following rule 14.1(4)(b), in each place where it appears, for “patient” substitute “protected party”.

7. For rule 19.9 substitute the rules set out in Schedule 1 to these Rules.

8. For Part 21 substitute Part 21 (children and protected parties) as set out in Schedule 2 to these Rules.

9. In rule 30.7, for “patient” substitute “protected party”.

10. In rule 32.13(3)(e), for “patient” substitute “protected party”.

11. For the parenthesis following rule 36.9(2) substitute—

“(Rule 21.10 deals with compromise etc. by or on behalf of a child or protected party.)”.

12. In rule 39.2(3)(d), for “patient” substitute “protected party”.

13. In rule 45.10(2)(c), for “patient” substitute “protected party”.

14. In Part 46—

- (a) in the parenthesis following rule 46.1(2)(c), for “patients” substitute “protected parties”;
- (b) in rule 46.2(1), in the table—
 - (i) for “Up to £3,000” substitute “No more than £3,000”;
 - (ii) for “£350” substitute “£485”;
 - (iii) for “£500” substitute “£690”; and
 - (iv) for “£750” substitute “£1,035”;
- (c) in rule 46.3(2), for “£250” substitute “£345”; and
- (d) in rule 46.3(4), for “£350” substitute “£485”.

15. In Part 47—

- (a) in rule 47.3(1)(c), for “patient” substitute “protected party”; and
- (b) in rule 47.22, for “14” substitute “21”.

16. In Part 48—

- (a) in the table of contents, for “patient” substitute “protected party”;
- (b) in the heading to rule 48.5, for “patient” substitute “protected party”;
- (c) in rule 48.5 and the parentheses in that rule, in each place where it appears for “patient” substitute “protected party”; and
- (d) in the parenthesis after rule 48.5(1)(b), for “are defined in rule 2.3” substitute “have the same meaning as in rule 21.1(2)”.

17. For rule 49(2) substitute—

- “(2) The proceedings referred to in paragraph (1) are proceedings under—
- (a) the Companies Act 1985(a);
 - (b) the Companies Act 1989(b);
 - (c) the Companies Act 2006(c); and
 - (d) other legislation relating to companies.”.

18. In Part 52—

- (a) in the table of contents, after the entry “Non-disclosure of Part 36 offers and payments”, insert—

“Statutory appeals – court’s power to hear any person	Rule 52.12A”;
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- (b) at the end of the table of contents, insert—

“IV STATUTORY RIGHTS OF APPEAL	
Appeals under the Law of Property Act 1922(d)	Rule 52.18
Appeals from certain tribunals	Rule 52.19
Appeals under certain planning legislation	Rule 52.20”;
- (c) after rule 52.12, insert—

“Statutory appeals – court’s power to hear any person

52.12A.—(1) In a statutory appeal, any person may apply for permission—

(a) 1985 c. 6.
(b) 1989 c. 40.
(c) 2006 c. 46.
(d) 1922 c. 16.

- (a) to file evidence; or
- (b) to make representations at the appeal hearing.
- (2) An application under paragraph (1) must be made promptly.”; and
- (d) after rule 52.17, insert—

“VI STATUTORY RIGHTS OF APPEAL

Appeals under the Law of Property Act 1922

52.18. An appeal lies to the High Court against a decision of the Secretary of State under paragraph 16 of Schedule 15 to the Law of Property Act 1922(a).

Appeals from certain tribunals

52.19.—(1) A person who was a party to proceedings before a tribunal referred to in section 11(1) of the Tribunals and Inquiries Act 1992(b) and is dissatisfied in point of law with the decision of the tribunal may appeal to the High Court.

(2) The tribunal may, of its own initiative or at the request of a party to the proceedings before it, state, in the form of a special case for the decision of the High Court, a question of law arising in the course of the proceedings.

Appeals under certain planning legislation

52.20.—(1) Where the Secretary of State has given a decision in proceedings on an appeal under Part VII of the Town and Country Planning Act 1990(c) against an enforcement notice—

- (a) the appellant;
- (b) the local planning authority; or
- (c) another person having an interest in the land to which the notice relates,

may appeal to the High Court against the decision on a point of law.

(2) Where the Secretary of State has given a decision in proceedings on an appeal under Part VIII of that Act against a notice under section 207 of that Act—

- (a) the appellant;
- (b) the local planning authority; or
- (c) any person (other than the appellant) on whom the notice was served,

may appeal to the High Court against the decision on a point of law.

(3) Where the Secretary of State has given a decision in proceedings on an appeal under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990(d) against a listed building enforcement notice—

- (a) the appellant;
- (b) the local planning authority; or
- (c) any other person having an interest in the land to which the notice relates,

may appeal to the High Court against the decision on a point of law.”.

19. In Part 65—

- (a) At the end of the table of contents, insert—

(a) 1922 c. 16. Schedule 15, paragraph 16 was amended by the Law of Property (Amendment) Act 1924 (c. 5), section 2 and Schedule 2, paragraph 5(8) and S.I. 2002/794, article 5(1) and Schedule 1, paragraph 1(d).
(b) 1992 c. 53.
(c) 1990 c. 8.
(d) 1990 c. 9.

“VI DRINKING BANNING ORDERS
UNDER THE VIOLENT CRIME
REDUCTION ACT 2006

Scope of this Section and interpretation	Rule 65.31
Application where the relevant authority is a party in principal proceedings	Rule 65.32
Application where the relevant authority is not a party in principal proceedings	Rule 65.33
Application by a relevant authority to join a person to the principal proceedings	Rule 65.34
Evidence	Rule 65.35
Application for an interim order	Rule 65.36

VII PARENTING ORDERS UNDER THE
ANTI-SOCIAL BEHAVIOUR ACT 2003

Scope of this Section and interpretation	Rule 65.37
Applications for parenting orders	Rule 65.38
Applications by the relevant authority to be joined to proceedings	Rule 65.39
Applications by the relevant authority to join a parent to proceedings	Rule 65.40
Evidence	Rule 56.41”;

- (b) at the end of rule 65.1(e), for “.” substitute “;”;
- (c) after rule 65.1(e), insert—
- “(f) in Section VI, about applications for drinking banning orders and interim drinking banning orders under sections 4 and 9 of the Violent Crime Reduction Act 2006(a); and
 - (g) in Section VII, about parenting orders under sections 26A and 26B of the Anti-social Behaviour Act 2003(b).”;
- (d) in rule 65.8—
- (i) in paragraph (1), after “Anti-social Behaviour Act 2003” insert “or under section 27(3) of the Police and Justice Act 2006(c)”;
 - (ii) in the parenthesis following paragraph (1), for “applies” substitute “and section 27 of the 2006 Act apply”; and
 - (iii) after paragraph (2) insert—
- “(3) In this Section “the 2006 Act” means the Police and Justice Act 2006.”;
- (e) in rule 65.9—
- (i) in the heading to the rule, after “the 2003 Act” insert “or section 27(3) of the 2006 Act”; and
 - (ii) in paragraph (1), after “2003 Act”, insert “or section 27(3) of the 2006 Act”;
- (f) after rule 65.10(1), insert—
- “(1A) Where a power of arrest is attached to a provision of an injunction on the application of a local authority under section 27(3) of the 2006 Act, the following rules in Section I of this Part apply—
- (a) rule 65.4;
 - (b) paragraphs (1), (2), (4) and (5) of rule 65.6;

(a) 2006 c. 38.

(b) 2003 c. 38. Section 24 of the Police and Justice Act 2006 (c. 48) inserts sections 26A, 26B and 26C into the Anti-social Behaviour Act 2003.

(c) 2006 c. 48.

- (c) paragraph (1) of rule 65.7, as if the reference to paragraph 2(2)(b) of Schedule 15 to the Housing Act 1996^(a) was a reference to paragraph 2(2)(b) of Schedule 10 to the 2006 Act; and
- (d) paragraph (2) of rule 65.7.”; and
- (g) after rule 65.36, insert—
 - “VII – PARENTING ORDERS UNDER THE ANTI-SOCIAL BEHAVIOUR ACT 2003

Scope of this Section and interpretation

65.37.—(1) This Section of this Part applies in relation to applications for parenting orders under sections 26A and 26B of the Anti-social Behaviour Act 2003 by a relevant authority.

(2) In this Section—

- (a) “the 2003 Act” means the Anti-social Behaviour Act 2003; and
- (b) “relevant authority” has the same meaning as in section 26C of the 2003 Act.

Applications for parenting orders

65.38.—(1) Subject to paragraph (2)—

- (a) where the relevant authority is the claimant in the proceedings, an application for an order under section 26A or 26B of the 2003 Act must be made in the claim form; and
- (b) where the relevant authority is a defendant in the proceedings, an application for such an order must be made by application notice which must be filed with the defence.

(2) Where the relevant authority becomes aware of the circumstances that lead it to apply for an order after its claim is issued or its defence filed, the application must be made by application notice as soon as possible thereafter.

(3) Where the application is made by application notice, it must normally be made on notice to the person against whom the order is sought.

Applications by the relevant authority to be joined to proceedings

65.39.—(1) Where the relevant authority is not a party to the proceedings—

- (a) an application under section 26C(2) of the 2003 Act to be made a party must be made in accordance with Section I of Part 19; and
- (b) the application to be made a party and the application for an order under section 26A or 26B of the 2003 Act must be made in the same application notice.

(2) The applications—

- (a) must be made as soon as possible after the relevant authority becomes aware of the proceedings; and
- (b) must normally be made on notice to the person against whom the order is sought.

Applications by the relevant authority to join a parent to proceedings

65.40.—(1) An application under section 26C(3) of the 2003 Act by a relevant authority which is a party to the proceedings to join a parent to those proceedings must be made—

- (a) in the same application notice as the application for an order under section 26A or 26B of the 2003 Act; and

(a) 1996 c. 52.

- (b) as soon as possible after the relevant authority considers that the grounds for the application are met.
- (2) Rule 19.2 does not apply in relation to an application made by a relevant authority under section 26C(3) of the 2003 Act to join a parent to the proceedings.
- (3) The application notice must contain—
 - (a) the relevant authority’s reasons for claiming the anti-social behaviour of the child or young person is material in relation to the proceedings; and
 - (b) details of the behaviour alleged.
- (4) The application must normally be made on notice to the person against whom the order is sought.

Evidence

65.41. An application under section 26A, 26B or 26C of the 2003 Act must be accompanied by written evidence.”.

- 20.** The following are revoked—
- (a) RSC Order 93, rules 4, 5, 9, 10, 16, 17, 18 and 19;
 - (b) RSC Order 94, rules 4, 5, 8, 9, 12 and 13;
 - (c) RSC Order 95, rules 1, 4, 5 and 6; and
 - (d) CCR Order 45.

Transitional provisions

- 21.—**(1) The amendments to Part 19 made by rule 7 of these Rules apply as follows—
- (a) rule 19.9 and rule 19.9A apply only to a derivative claim issued on or after 1st October 2007;
 - (b) rule 19.9B applies to the taking over of a derivative claim only where the relevant application for permission to take over the claim is filed on or after 1st October 2007;
 - (c) rule 19.9C—
 - (i) applies to a derivative claim issued on or after 1st October 2007; and
 - (ii) applies to the taking over of a derivative claim only where the relevant application for permission to take over the claim is filed on or after 1st October 2007;
 - (d) rule 19.9D applies to a derivative claim that arises in the course of other proceedings only if—
 - (i) rule 19.9A would apply to the claim if it were brought; or
 - (ii) rule 19.9B or 19.9C would apply to the taking over of the claim; and
 - (e) rules 19.9E and 19.9F apply to a derivative claim only if rule 19.9A, 19.9B or 19.9C also applies to the claim.

(2) The rules of court relating to a derivative claim (within the meaning of those rules) in force immediately before 1st October 2007 apply as if they had not been amended to any derivative claim in respect of which the claim form was issued before 1st October 2007.

22.—(1) The amendments to Part 46 made by rule 14(b), (c) and (d) of these Rules only apply where the hearing of the fast track trial commences on or after 1st October 2007.

(2) Where the hearing of the fast track trial commences before 1st October 2007, the rules of court relating to the amount of fast track trial costs which the court may award that were in force immediately before 1st October 2007 apply as if they had not been amended.

Sir Anthony Clarke, M.R.
Martin Moore-Bick, L.J.

Rupert Jackson, J.
Michael Briggs, J.
HHJ Stephen Oliver-Jones Q.C.
Master Stephen Whitaker
District Judge Carlos Dabezies
District Judge Robert Hill
David di Mambro
Philip Rainey
Richard Walford
Peter Candon
Andrew Parker

I allow these Rules
26th July 2007

Jack Straw
Lord Chancellor

“Derivative claims– how started

19.9.—(1) This rule—

- (a) applies to a derivative claim (where a company, other body corporate or trade union is alleged to be entitled to claim a remedy, and a claim is made by a member of it for it to be given that remedy), whether under Chapter 1 of Part 11 of the Companies Act 2006(a) or otherwise; but
- (b) does not apply to a claim made pursuant to an order under section 944 of that Act.

(2) A derivative claim must be started by a claim form.

(3) The company, body corporate or trade union for the benefit of which a remedy is sought must be made a defendant to the claim.

(4) After the issue of the claim form, the claimant must not take any further step in the proceedings without the permission of the court, other than—

- (a) a step permitted or required by rule 19.9A or 19.9C; or
- (b) making an urgent application for interim relief.

Derivative claims under Chapter 1 of Part 11 of the Companies Act 2006 – application for permission

19.9A.—(1) In this rule—

“the Act” means the Companies Act 2006;

“derivative claim” means a derivative claim under Chapter 1 of Part 11 of the Act;

“permission application” means an application referred to in section 261(2), 262(2) or 264(2) of the Act;

“the company” means the company for the benefit of which the derivative claim is brought.

(2) When the claim form for a derivative claim is issued, the claimant must file—

- (a) an application notice under Part 23 for permission to continue the claim; and
- (b) the written evidence on which the claimant relies in support of the permission application.

(3) The claimant must not make the company a respondent to the permission application.

(4) Subject to paragraph (7), the claimant must notify the company of the claim and permission application by sending to the company as soon as reasonably practicable after the claim form is issued—

- (a) a notice in the form set out in the practice direction supplementing this rule, and to which is attached a copy of the provisions of the Act required by that form;
- (b) copies of the claim form and the particulars of claim;
- (c) the application notice; and
- (d) a copy of the evidence filed by the claimant in support of the permission application.

(a) 2006 c. 46.

(5) The claimant may send the notice and documents required by paragraph (4) to the company by any method permitted by Part 6 as if the notice and documents were being served on the company.

(6) The claimant must file a witness statement confirming that the claimant has notified the company in accordance with paragraph (4).

(7) Where notifying the company of the permission application would be likely to frustrate some party of the remedy sought, the court may, on application by the claimant, order that the company need not be notified for such period after the issue of the claim form as the court directs.

(8) An application under paragraph (7) may be made without notice.

(9) Where the court dismisses the claimant's permission application without a hearing, the court will notify the claimant and (unless the court orders otherwise) the company of that decision.

(10) The claimant may ask for an oral hearing to reconsider the decision to dismiss the permission application, but the claimant—

- (a) must make the request to the court in writing within seven days of being notified of the decision; and
- (b) must notify the company in writing, as soon as reasonably practicable, of that request unless the court orders otherwise.

(11) Where the court dismisses the permission application at a hearing pursuant to paragraph (10), it will notify the claimant and the company of its decision.

(12) Where the court does not dismiss the application under section 261(2) of the Act, the court will—

- (a) order that the company and any other appropriate party must be made respondents to the permission application; and
- (b) give directions for the service on the company and any other appropriate party of the application notice and the claim form.

Derivative claims under Chapter 1 of Part 11 of the Companies Act 2006 – members of companies taking over claims by companies or other members

19.9B.—(1) This rule applies to proceedings under section 262(1) or 264(1) of the Companies Act 2006.

(2) The application for permission must be made by an application notice in accordance with Part 23.

(3) Rule 19.9A (except for paragraphs (1), (2) and (4)(b) of that rule, and paragraph (12)(b) so far as it applies to the claim form) applies to an application under this rule and references to the claimant in rule 19.9A are to be read as references to the person who seeks to take over the claim.

Derivative claims – other bodies corporate and trade unions

19.9C.—(1) This rule sets out the procedure where—

- (a) either—
 - (i) a body corporate to which Chapter 1 of Part 11 of the Companies Act 2006 does not apply; or
 - (ii) a trade union,
is alleged to be entitled to a remedy; and
- (b) either—
 - (i) a claim is made by a member for it to be given that remedy; or

- (ii) a member of the body corporate or trade union seeks to take over a claim already started, by the body corporate or trade union or one or more of its members, for it to be given that remedy.

(2) The member who starts, or seeks to take over, the claim must apply to the court for permission to continue the claim.

(3) The application for permission must be made by an application notice in accordance with Part 23.

(4) The procedure for applications in relation to companies under section 261, 262 or 264 (as the case requires) of the Companies Act 2006 applies to the permission application as if the body corporate or trade union were a company.

(5) Rule 19.9A (except for paragraphs (1), (2) and (4)(b) of that rule, and paragraph (12)(b) so far as it applies to the claim form) also applies to the permission application as if the body corporate or trade union were a company.

Derivative claims arising in the course of other proceedings

19.9D. If a derivative claim (except such a claim in pursuance of an order under section 994 of the Companies Act 2006) arises in the course of other proceedings—

- (a) in the case of a derivative claim under Chapter 1 of Part 11 of that Act, rule 19.9A or 19.9B applies, as the case requires; and
- (b) in any other case, rule 19.9C applies.

Derivative claims – costs

19.9E. The court may order the company, body corporate or trade union for the benefit of which a derivative claim is brought to indemnify the claimant against liability for costs incurred in the permission application or in the derivative claim or both.

Derivative claims – discontinuance and settlement

19.9F. Where the court has given permission to continue a derivative claim, the court may order that the claim may not be discontinued or settled without the permission of the court.”

SCHEDULE 2

Rule 8

“PART 21

CHILDREN AND PROTECTED PARTIES

Contents of this Part

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Requirement for a litigation friend in proceedings by or against children and protected parties	Rule 21.2
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How a person becomes a litigation friend without a court order	Rule 21.5

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Control of money recovered by or on behalf of a child or protected party	Rule 21.11
Expenses incurred by a litigation friend	Rule 21.12
Appointment of a guardian of a child's estate	Rule 21.13

Scope of this Part

21.1.—(1) This Part—

- (a) contains special provisions which apply in proceedings involving children and protected parties;
- (b) sets out how a person becomes a litigation friend; and
- (c) does not apply to proceedings under Part 75 where one of the parties to the proceedings is a child.

(2) In this Part—

- (a) 'the 2005 Act' means the Mental Capacity Act 2005;
- (b) 'child' means a person under 18;
- (c) 'lacks capacity' means lacks capacity within the meaning of the 2005 Act;
- (d) 'protected party' means a party, or an intended party, who lacks capacity to conduct the proceedings;
- (e) 'protected beneficiary' means a protected party who lacks capacity to manage and control any money recovered by him or on his behalf or for his benefit in the proceedings.

(Rule 6.6 contains provisions about the service of documents on children and protected parties.)

(Rule 48.5 deals with costs where money is payable by or to a child or protected party.)

Requirement for a litigation friend in proceedings by or against children and protected parties

21.2.—(1) A protected party must have a litigation friend to conduct proceedings on his behalf.

(2) A child must have a litigation friend to conduct proceedings on his behalf unless the court makes an order under paragraph (3).

(3) The court may make an order permitting a child to conduct proceedings without a litigation friend.

(4) An application for an order under paragraph (3)—

- (a) may be made by the child;
- (b) if the child already has a litigation friend, must be made on notice to the litigation friend; and

(c) if the child has no litigation friend, may be made without notice.

(5) Where—

(a) the court has made an order under paragraph (3); and

(b) it subsequently appears to the court that it is desirable for a litigation friend to conduct the proceedings on behalf of the child,

the court may appoint a person to be the child's litigation friend.

Stage of proceedings at which a litigation friend becomes necessary

21.3.—(1) This rule does not apply where the court has made an order under rule 21.2(3).

(2) A person may not, without the permission of the court—

(a) make an application against a child or protected party before proceedings have started; or

(b) take any step in proceedings except—

(i) issuing and serving a claim form; or

(ii) applying for the appointment of a litigation friend under rule 21.6,

until the child or protected party has a litigation friend.

(3) If during proceedings a party lacks capacity to continue to conduct proceedings, no party may take any further step in the proceedings without the permission of the court until the protected party has a litigation friend.

(4) Any step taken before a child or protected party has a litigation friend has no effect unless the court orders otherwise.

Who may be a litigation friend without a court order

21.4.—(1) This rule does not apply if the court has appointed a person to be a litigation friend.

(2) A deputy appointed by the Court of Protection under the 2005 Act with power to conduct proceedings on the protected party's behalf is entitled to be the litigation friend of the protected party in any proceedings to which his power extends.

(3) If nobody has been appointed by the court or, in the case of a protected party, has been appointed as a deputy as set out in paragraph (2), a person may act as a litigation friend if he—

(a) can fairly and competently conduct proceedings on behalf of the child or protected party;

(b) has no interest adverse to that of the child or protected party; and

(c) where the child or protected party is a claimant, undertakes to pay any costs which the child or protected party may be ordered to pay in relation to the proceedings, subject to any right he may have to be repaid from the assets of the child or protected party.

How a person becomes a litigation friend without a court order

21.5.—(1) If the court has not appointed a litigation friend, a person who wishes to act as a litigation friend must follow the procedure set out in this rule.

(2) A deputy appointed by the Court of Protection under the 2005 Act with power to conduct proceedings on the protected party's behalf must file an official copy^(GL) of the order of the Court of Protection which confers his power to act either—

(a) where the deputy is to act as a litigation friend for a claimant, at the time the claim is made; or

- (b) where the deputy is to act as a litigation friend for a defendant, at the time when he first takes a step in the proceedings on behalf of the defendant.
 - (3) Any other person must file a certificate of suitability stating that he satisfies the conditions specified in rule 21.4(3) either—
 - (a) where the person is to act as a litigation friend for a claimant, at the time when the claim is made; or
 - (b) where the person is to act as a litigation friend for a defendant, at the time when he first takes a step in the proceedings on behalf of the defendant.
 - (4) The litigation friend must—
 - (a) serve the certificate of suitability on every person on whom, in accordance with rule 6.6 (service on a parent, guardian etc.), the claim form should be served; and
 - (b) file a certificate of service when he files the certificate of suitability.
- (Rule 6.10 sets out the details to be contained in a certificate of service.)

How a person becomes a litigation friend by court order

- 21.6.**—(1) The court may make an order appointing a litigation friend.
- (2) An application for an order appointing a litigation friend may be made by—
- (a) a person who wishes to be the litigation friend; or
 - (b) a party.
- (3) Where—
- (a) a person makes a claim against a child or protected party;
 - (b) the child or protected party has no litigation friend;
 - (c) the court has not made an order under rule 21.2(3) (order that a child can conduct proceedings without a litigation friend); and
 - (d) either—
 - (i) someone who is not entitled to be a litigation friend files a defence; or
 - (ii) the claimant wishes to take some step in the proceedings,
- the claimant must apply to the court for an order appointing a litigation friend for the child or protected party.
- (4) An application for an order appointing a litigation friend must be supported by evidence.
- (5) The court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed satisfies the conditions in rule 21.4(3).

Court's power to change a litigation friend and to prevent person acting as a litigation friend

- 21.7.**—(1) The court may—
- (a) direct that a person may not act as a litigation friend;
 - (b) terminate a litigation friend's appointment; or
 - (c) appoint a new litigation friend in substitution for an existing one.
- (2) An application for an order under paragraph (1) must be supported by evidence.
- (3) The court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed satisfies the conditions in rule 21.4(3).

Appointment of a litigation friend by court order – supplementary

21.8.—(1) An application for an order under rule 21.6 or 21.7 must be served on every person on whom, in accordance with rule 6.6 (service on parent, guardian etc.), the claim form must be served.

(2) Where an application for an order under rule 21.6 is in respect of a protected party, the application must also be served on the protected party unless the court orders otherwise.

(3) An application for an order under rule 21.7 must also be served on—

- (a) the person who is the litigation friend, or who is purporting to act as the litigation friend, when the application is made; and
- (b) the person who it is proposed should be the litigation friend, if he is not the applicant.

(4) On an application for an order under rule 21.6 or 21.7, the court may appoint the person proposed or any other person who satisfies the conditions specified in rule 21.4(3).

Procedure where appointment of a litigation friend ceases

21.9.—(1) When a child who is not a protected party reaches the age of 18, the litigation friend's appointment ceases.

(2) Where a protected party regains or acquires capacity to conduct the proceedings, the litigation friend's appointment continues until it is ended by court order.

(3) An application for an order under paragraph (2) may be made by—

- (a) the former protected party;
- (b) the litigation friend; or
- (c) a party.

(4) The child or protected party in respect of whom the appointment to act has ceased must serve notice on the other parties—

- (a) stating that the appointment of his litigation friend to act has ceased;
- (b) giving his address for service; and
- (c) stating whether or not he intends to carry on the proceedings.

(5) If the child or protected party does not serve the notice required by paragraph (4) within 28 days after the day on which the appointment of the litigation friend ceases the court may, on application, strike out^(GL) any claim brought by or defence raised by the child or protected party.

(6) The liability of a litigation friend for costs continues until—

- (a) the person in respect of whom his appointment to act has ceased serves the notice referred to in paragraph (4); or
- (b) the litigation friend serves notice on the parties that his appointment to act has ceased.

Compromise etc. by or on behalf of a child or protected party

21.10.—(1) Where a claim is made—

- (a) by or on behalf of a child or protected party; or
- (b) against a child or protected party,

no settlement, compromise or payment (including any voluntary interim payment) and no acceptance of money paid into court shall be valid, so far as it relates to the claim by, on behalf of or against the child or protected party, without the approval of the court.

(2) Where—

- (a) before proceedings in which a claim is made by or on behalf of, or against, a child or protected party (whether alone or with any other person) are begun, an agreement is reached for the settlement of the claim; and
- (b) the sole purpose of proceedings is to obtain the approval of the court to a settlement or compromise of the claim,

the claim must—

- (i) be made using the procedure set out in Part 8 (alternative procedure for claims); and
- (ii) include a request to the court for approval of the settlement or compromise.

(3) In proceedings to which Section II of Part 45 applies, the court will not make an order for detailed assessment of the costs payable to the child or protected party but will assess the costs in the manner set out in that Section.

(Rule 48.5 contains provisions about costs where money is payable to a child or protected party.)

Control of money recovered by or on behalf of a child or protected party

21.11.—(1) Where in any proceedings—

- (a) money is recovered by or on behalf of or for the benefit of a child or protected party; or
- (b) money paid into court is accepted by or on behalf of a child or protected party,

the money will be dealt with in accordance with directions given by the court under this rule and not otherwise.

(2) Directions given under this rule may provide that the money shall be wholly or partly paid into court and invested or otherwise dealt with.

(3) Where money is recovered by or on behalf of a protected party or money paid into court is accepted by or on behalf of a protected party, before giving directions in accordance with this rule, the court will first consider whether the protected party is a protected beneficiary.

Expenses incurred by a litigation friend

21.12.—(1) In proceedings to which rule 21.11 applies, a litigation friend who incurs expenses on behalf of a child or protected party in any proceedings is entitled on application to recover the amount paid or payable out of any money recovered or paid into court to the extent that it—

- (a) has been reasonably incurred; and
- (b) is reasonable in amount.

(2) Expenses may include all or part of—

- (a) an insurance premium, as defined by rule 43.2(1)(m); or
- (b) interest on a loan taken out to pay an insurance premium or other recoverable disbursement.

(3) No application may be made under the rule for expenses that —

- (a) are of a type that may be recoverable on an assessment of costs payable by or out of money belonging to a child or protected party; but
- (b) are disallowed in whole or in part on such an assessment.

(Expenses which are also ‘costs’ as defined in rule 43.2(1)(a) are dealt with under rule 48.5(2).)

(4) In deciding whether the expenses were reasonably incurred and reasonable in amount, the court will have regard to all the circumstances of the case including the factors set out in rule 44.5(3).

(5) When the court is considering the factors to be taken into account in assessing the reasonableness of the expenses, it will have regard to the facts and circumstances as they reasonably appeared to the litigation friend or to the child's or protected party's legal representative when the expense was incurred.

(6) Where the claim is settled or compromised, or judgment is given, on terms that an amount not exceeding £5,000 is paid to the child or protected party, the total amount the litigation friend may recover under paragraph (1) must not exceed 25% of the sum so agreed or awarded, unless the court directs otherwise. Such total amount must not exceed 50% of the sum so agreed or awarded.

Appointment of a guardian of a child's estate

21.13.—(1) The court may appoint the Official Solicitor to be a guardian of a child's estate where—

- (a) money is paid into court on behalf of the child in accordance with directions given under rule 21.11 (control of money received by a child or protected party);
 - (b) the Criminal Injuries Compensation Authority notifies the court that it has made or intends to make an award to the child;
 - (c) a court or tribunal outside England and Wales notifies the court that it has ordered or intends to order that money be paid to the child;
 - (d) the child is absolutely entitled to the proceeds of a pension fund; or
 - (e) in any other case, such an appointment seems desirable to the court.
- (2) The court may not appoint the Official Solicitor under this rule unless—
- (a) the persons with parental responsibility (within the meaning of section 3 of the Children Act 1989^(a)) agree; or
 - (b) the court considers that their agreement can be dispensed with.
- (3) The Official Solicitor's appointment may continue only until the child reaches 18."

(a) 1989 c. 41.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make the following amendments to the Civil Procedure Rules 1998—

- rule 19.9 is amended and new rules 19.9A to 19.9F are inserted as a result of new procedures for derivative claims under the Companies Act 2006;
- Part 21 is amended as a consequence of the Mental Capacity Act 2005 to include provisions about ‘protected parties’ and ‘protected beneficiaries’, the appointment of a litigation friend for a protected party and the settlement or compromise of proceedings on behalf of a protected party;
- rules 2.1(2), 2.3(1), 6.6(1) and (2), 12.10(a)(i), 12.11(3), 14.1(4), 30.7, 32.13(3)(e), 36.9(2), 39.2(3)(d), 45.10(2)(c), 46.2(1)(c), 47.3(1)(c) and 48.5 are amended to reflect the amendments to Part 21;
- rules 46.2 and 46.3 are amended to make provision for the increase to the amount of fast track trial costs which the court may award where the fast track trial commences on or after 1st October 2007;
- rule 47.22 is amended to increase the time from 14 days to 21 days within which an appeal of a decision of an authorised court officer relating to detailed assessment of costs may be filed;
- a new rule 52.12A is inserted to make provision for third parties to apply for permission to file evidence or make representations at an appeal hearing in relation to statutory appeals;
- a new rule 52.18 is inserted to provide that an appeal from a decision of the Secretary of State under paragraph 16 of Schedule 15 to the Law of Property Act 1922 lies to the High Court;
- a new rule 52.19 is inserted to provide that an appeal from a decision of a tribunal referred to in section 11(1) of the Tribunals and Inquiries Act 1992 lies to the High Court and that the tribunal may of its own initiative or at the request of a party to the proceedings state a case for the decision of the High Court;
- a new rule 52.20 is inserted to provide that an appeal from certain decisions of the Secretary of State under the Town and Country Planning Act 1990 or under the Planning (Listed Buildings and Conservation Areas) Act 1990 lies to the High Court;
- rules 65.1, 65.8, 65.9 and 65.10 have been amended and new rules 65.37 to 65.41 inserted as a consequence of sections 24 and 27 of the Police and Justice Act 2006;
- RSC Order 93, rules 4, 5, 9, 10, 16, 17, 18 and 19, Order 94, rules 4, 5, 8, 9, 12 and 13 and Order 95 rules 1, 4, 5 and 6 are revoked either because they have been incorporated into either the main body of the Civil Procedure Rules 1998 or a practice direction supplementing the Civil Procedure Rules 1998 or because they are no longer relevant, as the case may be; and
- CCR Order 45 is revoked.

These amendments come into force on 1st October 2007.

2007 No. 2204 (L. 20)

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

The Civil Procedure (Amendment) Rules 2007

£3.50

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Stationery Office and Queen's Printer of Acts of Parliament.

E1173 7/2007 171173T 19585

