

**2015 No. 670 (L. 9)**

**SENIOR COURTS OF ENGLAND AND WALES**

**COUNTY COURT, ENGLAND AND WALES**

**The Civil Procedure (Amendment No. 2) Rules 2015**

*Made* - - - - - *12th March 2015*

*Laid before Parliament* *13th March 2015*

*Coming into force in accordance with rule 2*

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 and after consulting in accordance with section 2(6)(a) of that Act, makes the following Rules:

**Citation, commencement and interpretation**

1. These Rules may be cited as the Civil Procedure (Amendment No. 2) Rules 2015.
- 2.—(1) These Rules come into force on 5th April 2015, except as provided in paragraphs (2) and (3).
  - (2) Rule 5 of these Rules comes into force on 6th April 2015.
  - (3) Rules 6 and 12(1) of these Rules comes into force on the day on which, and immediately after, section 87 of the Criminal Justice and Courts Act 2015(b) comes into force.
  - (4) Rules 7 to 10 and 12(2) of these Rules come into force on the day on which, and immediately after, section 84 of the Criminal Justice and Courts Act 2015 comes into force.
3. 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).

**Amendments to the Civil Procedure Rules 1998**

4. The Civil Procedure Rules 1998 are amended in accordance rules 5 to 10.
5. In rule 46.4—
  - (a) in paragraph (3), before “Practice Direction 46” insert “paragraph (5) or in”; and
  - (b) after paragraph (4) insert—

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(a) 1997 c.12. Section 2(1) was substituted by the Constitutional Reform Act 2005 (c.4), section 15 and Schedule 4, Part 1. Section 1(3) was substituted by section 82(1) of the Courts Act 2003 (c.39) and further amended by the Constitutional Reform Act 2005, sections 15 and 146 and Schedule 4, Part 1, paragraphs 261 and 262 and Schedule 18. Section 1(1) was amended by the Crime and Courts Act 2013 (c.22), section 17(5) and Schedule 9, Part 3, paragraph 67(a).  
(b) 2015 c. 2.  
(c) S.I. 1998/3132, to which there are relevant amendments in S.I. 2000/2092, S.I. 2013/262, S.I. 2013/1974.

“(5) Where the costs payable comprise only the success fee claimed by the child’s or protected party’s legal representative under a conditional fee agreement or the balance of any payment under a damages based agreement, the court may direct that—

- (a) the assessment procedure referred to in rule 46.10 and paragraph 6 of Practice Direction 46 shall not apply; and
- (b) such costs be assessed summarily.”.

6. After rule 46.14, insert—

**“V COSTS IN CLAIMS FOR JUDICIAL REVIEW**

**Claims for judicial review: costs against interveners**

**46.15.**—(1) In this rule the terms “intervener” and “relevant party” have the same meaning as in section 87 of the Criminal Justice and Courts Act 2015 (“the 2015 Act”).

(2) A relevant party may apply to the court for an order for an intervener to pay costs in accordance with section 87 of the 2015 Act.

(Section 87 of the 2015 Act applies to judicial review proceedings in the High Court and Court of Appeal.)

(Rule 54.17 makes provision for any person to be able to apply for permission to file evidence or make representations at the hearing of a judicial review.)”

7. After rule 54.8(4)(a)(i) insert—

- “(ia) where the person filing it intends to contest the application for permission on the basis that it is highly likely that the outcome for the claimant would not have been substantially different if the conduct complained of had not occurred, set out a summary of the grounds for doing so; and”

8. After rule 54.8(5), insert—

“(Section 31(3C) of the Senior Courts Act 1981(a) requires the court, where it is asked to do so by the defendant, to consider whether the outcome for the claimant would have been substantially different if the conduct complained of had not occurred.)”

9. After rule 54.11(a), insert—

- “(ai) any certificate (if not included in the order) that permission has been granted for reasons of exceptional public interest in accordance with section 31(3F) of the Senior Courts Act 1981; and”

10. After rule 54.11, insert—

**“Permission decision where court requires a hearing**

**54.11A.**—(1) This rule applies where the court wishes to hear submissions on—

- (a) whether it is highly likely that the outcome for the claimant would not have been substantially different if the conduct complained of had not occurred; and if so
- (b) whether there are reasons of exceptional public interest which make it nevertheless appropriate to give permission.

(2) The court may direct a hearing to determine whether to give permission.

(3) The claimant, defendant and any other person who has filed an acknowledgment of service must be given at least 2 days’ notice of the hearing date.

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(a) 1981 c.54.

(4) The court may give directions requiring the proceedings to be heard by a Divisional Court.

(5) The court must give its reasons for giving or refusing permission.”

#### **Amendment to the Civil Procedure (Amendment No. 8) Rules 2014**

**11.** In rule 5(b) of the Civil Procedure (Amendment No. 8) Rules 2014(a), for the new paragraph (1A) to be inserted into rule 21.12 of the Civil Procedure Rules 1998, substitute—

“(1A) Costs recoverable under this rule are limited to—

- (a) costs incurred by or on behalf of a child and which have been assessed by way of detailed assessment pursuant to rule 46.4(2); or
- (b) costs incurred by or on behalf of a child by way of success fee under a conditional fee agreement or sum payable under a damages based agreement in a claim for damages for personal injury where the damages agreed or ordered to be paid do not exceed £25,000, where such costs have been assessed summarily pursuant to rule 46.4(5).”.

#### **Saving provision**

**12.—**(1) The changes made by rule 6 do not apply to an application for judicial review where the claim form was filed before the day on which section 87 of the Criminal Justice and Courts Act 2015 comes into force.

(2) The changes made by rules 7 to 10 do not apply to an application for judicial review where the claim form was filed before the day on which section 84 of the Criminal Justice and Courts Act 2015 comes into force.

*The Right Honourable Lord Dyson, MR  
Stephen Richards, LJ  
Mr Justice Birss  
Mr Justice Coulson  
Master Roberts  
His Honour Judge Martin McKenna  
District Judge Christopher Lethem  
Amanda Stevens  
Kate Wellington*

I allow these Rules  
Signed by authority of the Lord Chancellor

*Edward Faulks*  
Minister of State  
Ministry of Justice

12th March 2015

## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules amend the Civil Procedure Rules 1998 (S.I. 1998/3132) in two areas. First, they amend rule 46.4 to enable a more streamlined approach to assessing certain costs payable by a child or protected party (and amending the Civil Procedure (Amendment No. 8) Rules 2014 (S.I. 2014/3299) in consequence of this amendment).

Second, they make provision for the purpose of implementing sections 84 and 87 of the Criminal Justice and Courts Act 2015 (“the 2015 Act”).

Section 84 of the 2015 Act amends section 31 of the Senior Courts Act 1981 to require the High Court to refuse a remedy or permission on an application for judicial review if it considers it highly likely that the defendant’s conduct in the matter in question would not have affected the outcome for the applicant. In such circumstances permission or remedy can still be granted if the court considers it is appropriate to do so for reasons of exceptional public interest and certifies that is the case. These rules amend the CPR to implement section 84 by—

- amending rule 54.8 to require a defendant who wishes to contest the application for permission on the basis that it is highly likely that the outcome for the claimant would not have been substantially different if the conduct complained of had not occurred to do so in the acknowledgment of service;
- amending rule 54.11 to require the court to serve any certificate that permission is given for reasons of exceptional public interest on the claimant, the defendant and any other person who filed and acknowledgement of service;
- inserting new rule 54.11A which enables the court to hold a hearing before deciding whether to give permission to hear submissions on whether it is highly likely that the outcome for the application would not have been substantially different if the conduct complained of had not occurred and if so, whether there are reasons of exceptional public interest that make it appropriate to give permission.

Section 87 of the 2015 Act makes provision about interveners in judicial review proceedings and costs. New rule 46.2A is inserted by rule 5 which sets out in the rules that a relevant party (within the meaning of section 84 of the 2015 Act) may apply to the court for the intervener to pay the costs that the relevant party has incurred as a result of the intervention.

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