

2021 No. 196 (L. 4)

SENIOR COURTS OF ENGLAND AND WALES

COUNTY COURT, ENGLAND AND WALES

The Civil Procedure (Amendment No. 2) Rules 2021

Made - - - - - *24th February 2021*

Laid before Parliament *25th February 2021*

Coming into force - - - *31st May 2021*

The Civil Procedure Rule Committee, having power under section 2 of the Civil Procedure Act 1997(a) to make rules under section 1 of and Schedule 1 to that Act and after fulfilling the requirements of section 2(6) of that Act, makes the following Rules.

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Civil Procedure (Amendment No. 2) Rules 2021 and come into force on 31st May 2021.

(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(b).

Amendments to the Civil Procedure Rules 1998

2. The Civil Procedure Rules 1998 are amended in accordance with rules 3 to 9 of these Rules.

Amendment of Part 14

3.—(1) In the list of contents at the beginning of Part 14, for the entry in the first column for rule 14.1B, substitute—

“Admissions made under the RTA Protocol, the EL/PL Protocol or the RTA Small Claims Protocol”.

(2) In rule 14.1B—

(a) for the heading to the rule, substitute—

(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) S.I. 1998/3132. There are relevant amendments in S.I. 2008/3327, S.I. 2010/621, S.I. 2013/262, S.I. 2014/2044 and S.I. 2014/3299.

“Admissions made under the RTA Protocol, the EL/PL Protocol or the RTA Small Claims Protocol”;

- (b) in paragraph (1), after “(‘the RTA Protocol’)”, for “or” substitute “,”; and
- (c) after “(‘the EL/PL Protocol’)”, insert “or the Pre-Action Protocol for Personal Injury Claims below the Small Claims Limit in Road Traffic Accidents (‘the RTA Small Claims Protocol’)”;
- (d) in paragraph (2)(a)(i), before “during the initial consideration”, insert “where the RTA Protocol or the EL/PL Protocol applies,”; and
- (e) after paragraph (2), insert—

“(2A) Where the RTA Small Claims Protocol applies, the defendant’s admissions may be withdrawn pursuant to paragraph 8.9 of that Protocol.”.

Amendment of Part 16

4. In rule 16.3—

- (a) in paragraph (3), for “In a claim”, substitute “Subject to paragraph (3A), in a claim”;
- (b) after paragraph (3), insert—

“(3A) Where—

 - (a) a claim for personal injuries arises from a road traffic accident which occurs on or after 31st May 2021; and
 - (b) rules 26.5A, 26.6A or 26.6B do not apply to that claim,

the claimant must state in the claim form whether the amount which the claimant expects to recover as general damages for pain suffering and loss of amenity is—

 - (i) not more than £5,000; or
 - (ii) more than £5,000.

(3B) ‘Road traffic accident’ has the meaning ascribed to it by rule 26.6(2A).”.

Amendment of Part 26

5.—(1) In the list of contents at the beginning of Part 26, after the entry for rule 26.6, insert—

“Road traffic accident related personal injury claims	Rule 26.6A
Children and protected parties	Rule 26.6B”.

- (2) In rule 26.3(1), for “If a defendant”, substitute “Subject to rule 26.5A, if a defendant”.
- (3) In rule 26.5(1), for “The court”, substitute “Subject to rule 26.5A, the court”.
- (4) After rule 26.5, insert—

“26.5A.—(1) This rule applies where—

 - (a) the parties have followed the Pre-Action Protocol for Personal Injury Claims Below the Small Claims Limit in Road Traffic Accidents; and
 - (b) proceedings have been started under Practice Direction 27B.

(2) Subject to paragraph (3), where this rule applies, the claim shall be treated as allocated to the small claims track when it is issued and rules 26.3, 26.4 and 26.5 will not apply.

(3) Where in any claim started or continued under Practice Direction 27B—

 - (a) the appropriate court form states that—
 - (i) the amount claimed is more than £10,000; or
 - (ii) the claim for personal injury damages is more than £5,000; or
 - (b) rule 26.6A applies,

a court officer must refer the claim to a judge for allocation to a track and to give directions.”.

(5) In rule 26.6—

(a) for paragraph (1)(a)(ii), substitute—

“(ii) the value of any claim for damages for personal injuries is not more than—

(aa) £5,000 in a claim for personal injuries arising from a road traffic accident, except as provided in sub-paragraph (bb);

(bb) £1,000 in a claim for personal injuries arising from a road traffic accident, in any of the circumstances specified in rule 26.6A; or

(cc) £1,000 in any other claim for personal injuries;”.

(b) after paragraph (2), insert—

“(2A) ‘Road traffic accident’ means an accident resulting in a bodily injury to any person caused by, or arising out of, the use of a motor vehicle on a road or other public place in England and Wales unless the injury was caused wholly or in part by a breach by the defendant of one or more of the relevant statutory provisions as defined by section 53 of the Health and Safety at Work etc. Act 1974(a).”;

(c) after rule 26.6, insert—

“Road traffic accident related personal injury claims

26.6A. The circumstances referred to in rule 26(1)(a)(ii)(bb) are—

(a) the accident occurred before 31st May 2021;

(b) unless rule 26.6B applies, on the date that proceedings are started, the claimant is—

(i) a child; or

(ii) a protected party;

(c) when the accident occurred, the claimant was—

(i) using a motor cycle;

(ii) a pillion passenger on, or a passenger in a sidecar attached to, a motor cycle;

(iii) using a wheelchair, a powered wheelchair or a mobility scooter(b);

(iv) using a bicycle or other pedal cycle;

(v) riding a horse; or

(vi) a pedestrian;

(d) unless rule 26.6B applies, on the date that proceedings are started—

(i) the claimant is an undischarged bankrupt; or

(ii) the claimant or defendant acts as a personal representative of a deceased person; or

(e) unless rule 26.6B applies, on the date of the accident, the defendant’s vehicle was registered outside the United Kingdom.

(a) 1974 c. 37. Which has been amended by the Employment Protection Act 1975 (c. 71), sections 116 and 125(3), Schedule 15, paragraph 18, the Consumer Protection Act 1987 (c. 43), section 36, Schedule 3, S.I. 2008/960, articles 3 and 17(a) and (b), the Police (Health And Safety) Act 1997 (c. 42), section 6(1), the Local Government (Wales) Act 1994 (c. 19), sections 22(3) and 66(8), Schedule 9, paragraph 9 and Schedule 18, the Local Government Act 1985 (c. 51), section 102, Schedule 17, the Local Government etc (Scotland) Act 1994 (c. 39), section 180(1), Schedule 13 paragraph 93(3), the Energy Act 2013 (c. 32) section 116, Schedule 12, Part 1, paragraphs 1 and 12(a), (b) and (c), and the Railways Act 2005 (c. 14), section 2, Schedule 3, paragraph 15(3).

(b) As to the meaning of which, see references to “Class 1, 2 and 3 invalid carriages”, in regulation 3 of the Use of Invalid Carriages on Highways Regulations 1988 (S.I. 1988/2268).

Children and protected parties

26.6B.—(1) The fast track is the normal track where a claim—

- (a) is for personal injuries arising from a road traffic accident which occurs on or after 31st May 2021;
- (b) is made by—
 - (i) a child or a protected party; or
 - (ii) a person who, on the date the claim was first presented via the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents, was a child; and
- (c) consists of, or includes, a claim for a whiplash injury.

(2) Where this rule applies, the claim must not be allocated to the small claims track.

(3) ‘Whiplash injury’ has the meaning ascribed to it by paragraph 1.2(38) of the Pre-Action Protocol for Personal Injury Claims Below the Small Claims Limit in Road Traffic Accidents.’.

(6) In rule 26.7, for “under rule 26.6”, substitute “under rules 26.6, 26.6A or 26.6B”.

Amendment of Part 27

6. In rule 27.2, for paragraph (2B) substitute—

- (a) in paragraph (2), after “to the extent that a rule”, insert “or a practice direction under this Part”; and
- (b) after paragraph (2), insert—

“(2A) A rule or practice direction may, in relation to a specified type of small claims—

 - (a) require or permit the use of the procedure set out in this Part; and
 - (b) disapply or modify any of the rules set out in this Part as they may apply to those small claims.”.

Amendment of Part 35

7. In rule 35.4—

(a) For paragraph (3C), substitute—

“(3C) In a claim for a whiplash injury, whether or not it is part of a claim for other injuries—

- (a) permission—
 - (i) may normally only be given for one expert medical report in respect of the claim for the whiplash injury; and
 - (ii) may not be given initially unless the medical report is a fixed cost medical report; and
- (b) where the claimant seeks permission to obtain a further medical report in respect of the claim for the whiplash injury only, the report must be a fixed cost medical report if the report is from a medical expert in any of the following disciplines—
 - (i) Consultant Orthopaedic Surgeon;
 - (ii) Consultant in Accident and Emergency Medicine;
 - (iii) General Practitioner registered with the General Medical Council; or
 - (iv) Physiotherapist registered with the Health and Care Professions Council.

(3D) Where, in respect of a claim for a whiplash injury, the claimant lives outside England and Wales, but chooses to be examined in England or Wales, paragraph (3C) applies.

(3E) Where the claimant obtains a medical report in respect of a more serious injury suffered on the same occasion as the whiplash injury, the claimant may be given permission to use that report instead of a fixed cost medical report under paragraph (3C) provided that—

- (a) the report is from a doctor who is listed on the General Medical Council’s Specialist Register; and
- (b) the report provides evidence of the whiplash injury.

(3F) Unless paragraph (3D) applies, where, in respect of a claim for a whiplash injury—

- (a) the claimant lives outside England and Wales;
- (b) permission is given for a medical report,

the medical report (or, if there is more than one report, the first report) must be obtained from a person who is recognised by the country in which they practise as—

- (i) being a medical expert; and
- (ii) having the required medical qualifications for the purposes of diagnosis and prognosis of a whiplash injury.

(3G) In this rule—

- (a) in respect of a soft tissue injury claim, ‘fixed cost medical report’ and ‘soft tissue injury claim’ have the meanings ascribed to them by paragraph 1.1(10A) and (16A), respectively, of the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents; and
- (b) in respect of a claim for a whiplash injury, ‘fixed cost medical report’ and ‘whiplash injury’ have the meanings ascribed to them by paragraph 1.2(17) and (38), respectively, of the Pre-Action Protocol for Personal Injury Claims Below the Small Claims Limit in Road Traffic Accidents.”.

Amendment of Part 45

8.—(1) In the list of contents to this Part, after the entry for rule 45.29L, insert—

“IIIB THE PRE-ACTION PROTOCOL FOR PERSONAL INJURY CLAIMS BELOW THE SMALL CLAIMS LIMIT IN ROAD TRAFFIC ACCIDENTS	
Failure to comply with, or electing not to continue under, the RTA Small Claims Protocol	Rule 45.29M
Claims which do not continue under the RTA Small Claims Protocol	Rule 45.29N”.

(2) In rule 45.19—

- (a) in paragraph (2A), after “soft tissue injury claim”, insert “, or a claim which consists of, or includes, a claim for a whiplash injury,”;
- (b) in paragraph (2E)—
 - (i) for “and ‘soft tissue injury claim’”, substitute “, ‘soft tissue injury claim’ and ‘whiplash injury’”; and
 - (ii) for “and (16A)”, substitute “(16A) and (20)”.

(3) In rule 45.29I—

- (a) in paragraph (2A), after “soft tissue injury claim”, insert “, or a claim which consists of, or includes, a claim for a whiplash injury,”; and
- (b) in paragraph (2E)—
 - (i) for “and ‘soft tissue injury claim’”, substitute “, ‘soft tissue injury claim’ and ‘whiplash injury’”; and
 - (ii) for “and (16A)”, substitute “(16A) and (20)”.

(4) After rule 45.29L, insert—

“IIIB PRE-ACTION PROTOCOL FOR PERSONAL INJURY CLAIMS BELOW THE SMALL CLAIMS LIMIT IN ROAD TRAFFIC ACCIDENTS

Failure to comply with, or continue under, the RTA Small Claims Protocol

45.29M.—(1) This rule applies where the claimant—

- (a) does not comply with the process set out in the Pre-Action Protocol for Personal Injury Claims Below the Small Claims Limit in Road Traffic Accidents (“the RTA Small Claims Protocol”); or
- (b) either—
 - (i) elects not to continue with that process;
 - (ii) elects not to proceed with that process having been notified by the defendant pursuant to paragraph 6.15(4)(b) of the RTA Protocol that if proceedings were issued, the small claims track would be the normal track for that claim, and starts proceedings under Part 7 which are not allocated to the small claims track.

(2) Where a judgment is given in favour of the claimant, but—

- (a) the court considers that the claimant acted unreasonably—
 - (i) by valuing the overall claim at more than £10,000 or the claim for damages for injury at more than £5,000, so that the claimant did not need to comply with the RTA Small Claims Protocol;
 - (ii) by electing not to proceed under the RTA Small Claims Protocol, following notification pursuant to paragraph 6.15(4)(b) of the RTA Protocol; or
 - (iii) in any other way that caused the process in the RTA Small Claims Protocol to be discontinued; or
- (b) the claimant did not comply with the RTA Small Claims Protocol at all despite the claim falling within the scope of the Protocol,

the court may order the defendant to pay no more than the fixed costs together with disbursements allowed in accordance with paragraphs 1.13 and 1.14 of Practice Direction 27B.

Claims which do not continue under the RTA Small Claims Protocol

45.29N.—(1) This rule applies where—

- (a) a claim has been started under the RTA Small Claims Protocol, but no longer continues under that Protocol; and
- (b) the claim has not subsequently proceeded under the RTA Protocol.

(2) Where this rule applies, Section IIIA will apply as though the claim had started under the RTA Protocol, except where—

- (a) the court makes an order under rule 45.29M;
- (b) the claim no longer continues under the RTA Small Claims Protocol because either the claimant or defendant becomes a protected party as defined in rule 21.2(2).”.

Amendment of Part 46

9. In rule 46.14, after paragraph (1), insert—

“(1A) This rule does not apply to a dispute to which the procedure under section 10 of Practice Direction 27B applies.”.

*The Right Honourable Sir Geoffrey Vos, MR
Lord Justice Birss
Mr Justice Kerr
Mr Justice Trower
His Honour Judge Bird
His Honour Judge Jarman QC
Master Cook
Isabel Hitching QC
Tom Montagu-Smith QC
Dr Anja Lansbergen-Mills
Masood Ahmed
Brett Dixon
David Marshall
Lizzie Iron
John McQuater*

I allow these Rules
Signed by authority of the Lord Chancellor

David Wolfson
Parliamentary Under-Secretary of State for Justice
Ministry of Justice

24th February 2021

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Civil Procedure Rules 1998 (S.I. 1998/3132). The amendments give effect to, or are consequential upon—

- (a) changes to Part 26 of the Civil Procedure Rules regarding the allocation of personal injury claims arising from road traffic accidents which occur on or after 31st May 2021 to the small claims track and fast track;
- (b) new Practice Direction 27B: Claims Under the Pre-Action Protocol for Personal Injury Claims Below the Small Claims Limit in Road Traffic Accidents – Court Procedure; and
- (c) the Pre-Action Protocol for Personal Injury Claims Below the Small Claims Limit in Road Traffic Accidents (“the RTA Small Claims Protocol”).

These rules amend the Civil Procedure Rules by—

- (a) amending rule 14.1B, to extend that rule to cover admissions made under the RTA Small Claims Protocol;
- (b) amending rule 16.6, to require a claimant to specify on their claim form whether they expect to recover, as general damages for pain, suffering and loss of amenity, not more or more than £5,000, where the claim is for personal injuries arising from a road traffic accident which occurs on or after 31st May 2021;
- (c) amending Part 26 by—
 - (i) inserting new rule 26.5A to provide that claims started under new Practice Direction 27B shall be treated as being allocated to the small claims track;
 - (ii) amending rule 26.6 to provide that the normal track for personal injury claims arising from an RTA will be the small claims track where the claim for personal injuries is valued at—

- (aa) not more than £5,000; or
- (bb) not more than £1,000 in any of the circumstances specified in rule 26.6A;
- (iii) inserting new rule 26.6A, which preserves the current £1,000 small claims track limit for personal injury claims arising from an RTA in any of the circumstances specified in that rule (those circumstances include a claim for personal injuries arising from a road traffic accident which occurs before 31st May 2021) except where new rule 26.6B applies; and
- (iv) inserting new rule 26.6B, which provides that the normal track for a personal injury claim arising from an RTA which occurs on or after 31st May 2021 will be the fast track where, on the date that the claim is started—
 - (aa) the claimant is a child or protected party; or
 - (bb) at the time the claim was first presented via the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents, the claimant was a child; and
 - (cc) the claim consists of, or includes, a claim for a whiplash injury.
- (d) amending rule 27.2 to enable a rule or practice direction to require or permit a particular procedure to be used under Part 27 and to disapply or modify rules made under Part 27;
- (e) amending rule 35.4 to specify the medical evidence that may be obtained in respect of a claim for a road traffic accident related personal injury claim which consists of, or includes, a claim for a whiplash injury where the court gives its permission;
- (f) amending Part 45—
 - (i) to specify the amount that might be recovered, as a disbursement, for a fixed cost medical report obtained in respect of a claim for a whiplash injury where either Section III or IIIA of Part 45 applies; and
 - (ii) by inserting new Section IIIB, which concerns claims which are or should have been started under the RTA Small Claims Protocol—
 - (aa) new rule 45.29M specifies the circumstances in which a court may order a defendant to pay a successful claimant no more than the costs which they may recover under new Practice Direction 27B, where the claimant has not proceeded under, or has not complied with, the RTA Small Claims Protocol and has started proceedings; and
 - (bb) new rule 45.29N provides that, where a claim exits the RTA Small Claims Protocol, and unless an order is made under rule 45.29M, the costs provisions in Section IIIA of Part 45 will apply as though the claim had been started under the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents; and
- (g) amending rule 46.14, to ensure, by inserting paragraph (1A), that the procedure specified in rule 46.14, which concerns pre-issue entitlement to costs, is not used for disputes arising under the RTA Small Claims Protocol and that the procedure in Practice Direction 27B for dealing with costs is used wherever appropriate.

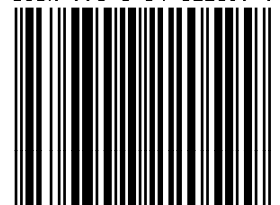
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