
STATUTORY INSTRUMENTS

1998 No. 3132

The Civil Procedure Rules 1998

PART 41

PROVISIONAL DAMAGES

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Application and definitions

41.1.—(1) This Part applies to proceedings to which SCA s.32A or CCA s.51 applies.

(2) In this Part—

- (a) “SCA s.32A” means section 32A of the Supreme Court Act 1981⁽¹⁾;
- (b) “CCA s.51” means section 51 of the County Courts Act 1984⁽²⁾; and
- (c) “award of provisional damages” means an award of damages for personal injuries under which—
 - (i) damages are assessed on the assumption referred to in SCA s.32A or CCA s.51 that the injured person will not develop the disease or suffer the deterioration; and
 - (ii) the injured person is entitled to apply for further damages at a future date if he develops the disease or suffers the deterioration.

Order for an award of provisional damages

41.2.—(1) The court may make an order for an award of provisional damages if—

- (a) the particulars of claim include a claim for provisional damages; and
- (b) the court is satisfied that SCA s.32A or CCA s.51 applies.

(Rule 16.4(1)(d) sets out what must be included in the particulars of claim where the claimant is claiming provisional damages)

(2) An order for an award of provisional damages—

- (a) must specify the disease or type of deterioration in respect of which an application may be made at a future date;
- (b) must specify the period within which such an application may be made; and

(1) 1981 c. 54. Section 32A was inserted by section 6(1) of the Administration of Justice Act 1982 (c. 53)

(2) 1984 c. 28.

(c) may be made in respect of more than one disease or type of deterioration and may, in respect of each disease or type of deterioration, specify a different period within which a subsequent application may be made.

(3) The claimant may make more than one application to extend the period specified under paragraph (2)(b) or (2)(c).

Application for further damages

41.3.—(1) The claimant may not make an application for further damages after the end of the period specified under rule 41.2(2), or such period as extended by the court.

(2) Only one application for further damages may be made in respect of each disease or type of deterioration specified in the award of provisional damages.

(3) The claimant must give at least 28 days written notice to the defendant of his intention to apply for further damages.

(4) If the claimant knows—

(a) that the defendant is insured in respect of the claim; and

(b) the identity of the defendant's insurers,

he must also give at least 28 days written notice to the insurers.

(5) Within 21 days after the end of the 28 day notice period referred to in paragraphs (3) and (4), the claimant must apply for directions.

(6) The rules in Part 25 about the making of an interim payment apply where an application is made under this rule.