
STATUTORY INSTRUMENTS

2003 No. 3361 (L. 38)

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

The Civil Procedure (Amendment No. 5) Rules 2003

Made - - - - 21st December 2003

Laid before Parliament 7th January 2004

Coming into force in accordance with rule 1

The Civil Procedure Rule Committee, having power under section 2 of the Civil Procedure Act 1997⁽¹⁾ to make rules of court under section 1 of that Act, after consulting in accordance with section 2(6)(a) of that Act, make the following Rules:

Citation, commencement and interpretation

1. These Rules may be cited as the Civil Procedure (Amendment No. 5) Rules 2003 and shall come into force—

- (a) for the purposes of rules 2, 3, 6, 7, 8, 11 and 34, and this rule, on 1st February 2004;
- (b) for the purposes of rule 9, on 1st March 2004;
- (c) for the purposes of rules 4, 10, 14-21, 23-29, 32 and 33, on 1st April 2004; and
- (d) for all other purposes, on 1st May 2004.

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

Amendments to the Civil Procedure Rules 1998

3. After rule 7.11 insert—

⁽¹⁾ 1997 c. 12.

⁽²⁾ S.I.1998/3132. There are relevant amendments in S.I. 2000/221, S.I. 2000/1317, S.I. 2000/2092, S.I. 2002/2058, S.I. 2002/3219 and S.I. 2003/2113.

“Electronic issue of claims

7.12.—(1) A practice direction may make provision for a claimant to start a claim by requesting the issue of a claim form electronically.

(2) The practice direction may, in particular—

(a) specify—

(i) the types of claim which may be issued electronically; and

(ii) the conditions which a claim must meet before it may be issued electronically;

(b) specify—

(i) the court where the claim will be issued; and

(ii) the circumstances in which the claim will be transferred to another court;

(c) provide for the filing of other documents electronically where a claim has been started electronically;

(d) specify the requirements that must be fulfilled for any document filed electronically; and

(e) provide how a fee payable on the filing of any document is to be paid where that document is filed electronically.

(3) The practice direction may disapply or modify these Rules as appropriate in relation to claims started electronically.”.

4. In rule 21.1, in sub-paragraph (2)(b), for “his own affairs” substitute “his property and affairs”.

5. After rule 30.7 insert—

“Transfer of EC Competition Law claims

30.8. If in any proceedings in the Queen’s Bench Division, a district registry of the High Court or a county court, a party’s statement of case raises an issue relating to the application of Article 81 or Article 82 of the Treaty establishing the European Communities—

(a) rules 30.2 and 30.3 do not apply; and

(b) the court must transfer the proceedings to the Chancery Division of the High Court at the Royal Courts of Justice.”.

6. After rule 34.13, insert—

“Letter of request – Proceeds of Crime Act 2002

34.13A.—(1) This rule applies where a party to existing or contemplated proceedings in—

(a) the High Court; or

(b) a magistrates' court,

under Part 5 of the Proceeds of Crime Act 2002(3) (civil recovery of the proceeds etc. of unlawful conduct) wishes to take a deposition from a person who is out of the jurisdiction.

(2) The High Court may, on the application of such a party, order the issue of a letter of request to the judicial authorities of the country in which the proposed deponent is.

(3) Paragraphs (4) to (7) of rule 34.13 shall apply irrespective of where the proposed deponent is, and rule 34.23 shall not apply in cases where the proposed deponent is in a Regulation State within the meaning of Section III of this Part.”.

7. In rule 34.23, at the beginning of paragraph (1), for “This” substitute “Subject to rule 34.13A, this”.

8. In rule 45.10(2), in sub-paragraph (b), at the end insert—

“or, where a body of a prescribed description within the meaning of section 30(1) of the Access to Justice Act 1999(4) undertakes to meet liabilities incurred to pay the costs of other parties to proceedings, a sum not exceeding such additional amount of costs as would be allowed under section 30 in respect of provision made against the risk of having to meet such liabilities;”.

9. In rule 45.11, for paragraph (2) substitute—

“(2) The amount of the success fee shall be 12.5% of the fixed recoverable costs calculated in accordance with rule 45.9(1), disregarding any additional amount which may be included in the fixed recoverable costs by virtue of rule 45.9(2).”.

10. In rule 52.12, for paragraph (1) substitute—

“(1) The fact that a Part 36 offer or Part 36 payment has been made must not be disclosed to any judge of the appeal court who is to hear or determine—

- (a) an application for permission to appeal; or
- (b) an appeal,

until all questions (other than costs) have been determined.”.

11. In rule 52.16, after paragraph (6) insert—

“(6A) A request under paragraph (5) or (6) must be filed within 7 days after the party is served with notice of the decision.”.

12. In rule 54.1, in paragraph (2), omit sub-paragraphs (b), (c) and (d).

13. In rule 54.3—

(a) in paragraph (2)—

(i) after “damages”, where it first occurs, insert “, restitution or the recovery of a sum due”; and

(ii) for “damages”, where it next occurs, substitute “such a remedy”; and

(b) in the cross-reference after paragraph (2), after “damages”, insert “, restitution or the recovery of a sum due”.

14. In rule 57.9, in sub-paragraph (4)(b), at the end insert “or the Central London County Court”.

15. In rule 63.7, in paragraph (3)—

(a) in sub-paragraph (a), omit “and pre-trial reviews”; and

(b) in sub-paragraph (c), for “rule 29.5(1)(c)” substitute “paragraph (1)(b) and (c)”.

16. In rule 63.9, in the heading, for “of” substitute “to”.

17. For rule 63.16 substitute—

“**63.16.**—(1) Subject to paragraph (2), Part 6 applies to service of a claim form and any document under this Part.

(2) A claim form relating to a registered right may be served—

- (a) on a party who has registered the right at the address for service given for that right in the United Kingdom Patent Office register, provided the address is within the jurisdiction; or
- (b) in accordance with rule 6.19(1) or (1A) on a party who has registered the right at the address for service given for that right in the appropriate register at—
 - (i) the United Kingdom Patent Office; or
 - (ii) the Office for Harmonisation in the Internal Market.”.

18. In rule 74.19, in sub-paragraph (a)—

- (a) at the end of sub-paragraph (iii), omit “or”; and
- (b) after sub-paragraph (iv) insert—
“or

- (v) article 71 of Council Regulation (EC) 6/2002 of 12 December 2001 on Community designs;”.

19. In RSC Order 17, rule 1, in paragraph (2), for the words from “including” to the end of the paragraph, substitute—

“including references to—

- (a) an individual authorised to act as an enforcement officer under the Courts Act 2003(5); and
- (b) any other officer charged with the execution of process by or under the authority of the High Court.”.

20. In RSC Order 45, at the beginning insert—

“Interpretation

Rule 1A. In this Order, and in RSC Orders 46 and 47—

- (a) “enforcement officer” means an individual who is authorised to act as an enforcement officer under the Courts Act 2003; and
- (b) “relevant enforcement officer” means—
 - (i) in relation to a writ of execution which is directed to an single enforcement officer, that officer;
 - (ii) in relation to a writ of execution which is directed to two or more enforcement officers, the officer to whom the writ is allocated.”.

21. In RSC Order 45, rule 2, after “the Sheriff or his officer” insert “or the relevant enforcement officer”.

22. In RSC Order 45, rule 8, delete “an order of mandamus.”.

23. In RSC Order 46, rule 8—

- (a) in paragraph (3), after “directed” insert “or the relevant enforcement officer”; and
- (b) in paragraph (4), after “sheriff” insert “or relevant enforcement officer”.

24. In RSC Order 46, rule 9—

- (a) in paragraph (1), after “directed” insert “or the relevant enforcement officer”; and
- (b) in paragraph (2), after “sheriff”, in both places that it occurs, insert “or enforcement officer”.

25. RSC Order 47, rule 2 is revoked.
26. In RSC Order 47, rule 4, after “sheriff” insert “or enforcement officer”.
27. In RSC Order 47, rule 5, in paragraph (1), after “the writ was directed” insert “or the district of the relevant enforcement officer”.
28. In RSC Order 47, rule 6—
- (a) for paragraph (1) substitute—

“(1) An order of the court under paragraph 10 of Schedule 7 to the Courts Act 2003 that a sale of goods seized under an execution may be made otherwise than by public auction may be made on the application of—

 - (a) the person at whose instance the writ of execution under which the sale is to be made was issued;
 - (b) the person against whom that writ was issued (in this rule referred to as “the judgment debtor”);
 - (c) if the writ was directed to a sheriff, that sheriff; and
 - (d) if the writ was directed to one or more enforcement officers, the relevant enforcement officer.”;
 - (b) for paragraph (3) substitute—

“(3) Where the applicant for an order under this rule is not the sheriff or enforcement officer, the sheriff or enforcement officer must, on the demand of the applicant, send to the applicant a list stating—

 - (a) whether he has notice of the issue of another writ or writs of execution against the goods of the judgment debtor; and
 - (b) so far as is known to him, the name and address of every creditor who has obtained the issue of another such writ of execution,

and where the sheriff or enforcement officer is the applicant, he must prepare such a list.”;
 - (c) in paragraph (4), for “the sheriff’s list” substitute “the list under paragraph (3)”;
 - (d) for paragraph (5) substitute—

“(5) Service of the application notice on a person named in the list under paragraph (3) is notice to him for the purpose of paragraph 10(3) of Schedule 7 to the Courts Act 2003.

(Paragraph 10(3) provides that if the person who seized the goods has notice of another execution or other executions, the court must not consider an application for leave to sell privately until the notice prescribed by Civil Procedure Rules has been given to the other execution creditor or creditors); and
 - (e) in paragraph (6), for “the sheriff’s list” substitute “the list under paragraph (3)”.
29. In RSC Order 52, after rule 7 insert—

“Warrant for arrest

Rule 7A. A warrant for the arrest of a person against whom an order of committal has been made shall not, without further order of the court, be enforced more than 2 years after the date on which the warrant is issued.”.

30. In RSC Order 79, rule 9(11), for “an order of certiorari” substitute “a quashing order”.
31. In RSC Order 93, rule 22, for “application for mandamus”, substitute “applications for a mandatory order”.

32. In CCR Order 16, rule 7, after paragraph (1) insert—

“(1A) In this rule references to the sheriff shall be interpreted as including references to an individual authorised to act as an enforcement officer under the Courts Act 2003.”.

33. In CCR Order 29, rule 1, after paragraph (5), insert—

“(5A) A warrant of committal shall not, without further order of the court, be enforced more than 2 years after the date on which the warrant is issued.”.

34. In CCR Order 49, rule 17—

(a) in paragraph (1)—

(i) after sub-paragraph (a) insert—

“(aa) “the Religion or Belief Regulations” means the Employment Equality (Religion or Belief) Regulations 2003⁽⁶⁾ and “the Sexual Orientation Regulations” means the Employment Equality (Sexual Orientation) Regulations 2003⁽⁷⁾”; and

(ii) for sub-paragraph (b) substitute—

“(b) in relation to proceedings under any of those Acts or Regulations, expressions which are used in the Act or Regulations concerned have the same meanings in this rule as they have in that Act or those Regulations.”;

(b) in paragraph (4), for “or section 57, 62 or 63 of the Act of 1976” substitute “, section 57, 62 or 63 of the Act of 1976, regulation 31 of the Religion or Belief Regulations or regulation 31 of the Sexual Orientation Regulations”;

(c) in paragraph (6), for “or section 66 of the Act of 1976” substitute “, section 66 of the Act of 1976, regulation 33 of the Religion or Belief Regulations or regulation 33 of the Sexual Orientation Regulations”; and

(d) in paragraph (8), for “or section 26 of the Act of 1995” substitute “, section 26 of the Act of 1995, paragraph 1(1) or (2) of Schedule 4 to the Religion or Belief Regulations or paragraph 1(1) or (2) of Schedule 4 to the Sexual Orientation Regulations”.

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⁽⁶⁾ S.I. 2003/1660.

⁽⁷⁾ S.I. 2003/1661.

I allow these Rules

Dated 21st December 2003

Falconer of Thoroton, C.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make amendments to the Civil Procedure Rules 1998 and to the RSC and CCR Rules in Schedules 1 and 2 to those Rules. In particular the following new provisions are inserted:

- A new rule 7.12 which provides for a practice direction to make provision for claims to be started electronically. The practice direction will provide for the continuation of the service known as Money Claim Online which is presently operating as a pilot scheme.
- A new rule 30.8 which requires any proceedings which raise an issue of competition law relating to the application of Article 81 or Article 82 of the EEC Treaty to be transferred to the Chancery Division.
- A new rule 34.13A which prescribes the procedure for applications to the High Court by a party to proceedings under Part 5 of the Proceeds of Crime Act 2002 for the issue of a letter of request for evidence to be taken abroad.
- A new rule 52.16(6A) which requires any request by a party to an appeal to the Court of Appeal for the review or reconsideration of a decision of a single judge or a court officer to be filed within 7 days after the party is served with notice of the decision.
- A new RSC Order 52 rule 7A and a new CCR Order 29 rule 1(5A) providing that a warrant for the arrest of a person against whom an order of committal has been made (in the High Court) or a warrant of committal (in a county court) shall not, without further order of the court, be enforced more than 2 years after the date on which the warrant is issued.

In addition the following amendments are made:

- Rule 45.10 is amended to clarify that, in costs-only proceedings brought under Section II of Part 45 by a party funded by a body which indemnifies its members or other persons against liabilities for costs which they may incur in proceedings, the court may allow that party as a disbursement a sum not exceeding such amount as would be allowed under section 30 of the Access to Justice Act 1999.
- Rule 45.11 is amended to specify the amount of the success fee which a claimant may recover in proceedings under Section II of Part 45 if he has entered into a conditional fee agreement or a collective conditional fee agreement which provides for a success fee.
- Rule 52.12(1) is amended to clarify that the fact that a Part 36 offer or payment has been made must not be disclosed to a judge who is to hear or determine an application for permission to appeal.
- Rule 54.1 and RSC Orders 45, 79 and 93 are amended to omit references to the Latin names of the prerogative orders available by judicial review, and rule 54.3 is amended to allow the remedies of restitution and the award of a liquidated sum to be sought on a claim for judicial review.
- RSC Orders 45 to 47 (enforcement) and RSC Order 17 and CCR Order 16 (interpleader) are amended in consequence of the enactment of section 99 of and Schedule 7 to the Courts Act 2003, which abolish any rule of law requiring a writ of execution issued from the High Court to be directed to a sheriff and provide for the authorisation of High Court enforcement officers.
- CCR Order 49 rule 17 (proceedings relating to discrimination) is amended to apply certain provisions of that rule to proceedings under the Employment Equality (Religion or Belief) Regulations 2003 and the Employment Equality (Sexual Orientation) Regulations 2003.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- Minor amendments are made to rule 21.1(2)(b) (the definition of “patient” for the purposes of Part 21), rule 57.9 (probate counterclaim in other proceedings), rules 63.7, 63.9 and 63.16 (patents and other intellectual property claims) and rule 74.19 (enforcement in England and Wales of European Community judgments).