

2013 No. 1974 (L. 19)

SENIOR COURTS OF ENGLAND AND WALES

COUNTY COURTS, ENGLAND AND WALES

The Civil Procedure (Amendment No.7) Rules 2013

Made - - - - *7th August 2013*

Laid before Parliament *9th August 2013*

Coming into force - - *1st October 2013*

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, 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.7) Rules 2013.
2. These Rules shall come into force on 1st October 2013.
3. 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(b);
 - (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 by “CCR” means the CCR Order so numbered in Schedule 2 to those Rules.

Amendments to the Civil Procedure Rules 1998

4. In Part 3—
 - (a) in rule 3.1(2)(ll), for “serve an estimate of costs” substitute “exchange a costs budget”;

(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, 146, Schedule 4 Part 1 paragraphs 261 and 262 and Schedule 18, Part 2.

(b) S.I. 1998/3132. There are relevant amendments in S.I. 2000/221 rules 13, 18(4) Schedule 3 Part II, Schedule 4 Part II; S.I. 2000/1317 rules 4, 5, 6, 7, 8, 11; S.I. 2001/256 rule 17 Schedule 1; S.I. 2001/4015, rule 29(e) Schedule 6; S.I. 2002/2058 rules 8, 26, Schedule 6; S.I. 2002/3219 rule 8, Schedule; S.I. 2004/3419 rule 16, Schedule 2; S.I. 2005/2292, rules 3, 7; S.I. 2006/3435 rule 7(1), Schedule; S.I. 2007/2204 rule 8, Schedule 2; S.I. 2008/2178 rules 4(b), 17(c)(iii), 18(b); S.I. S.I. 2009/2092 rules 12, 14, Schedule 1; 2009/3390 rules 6(b), 7(a), 7(b), 11, 12, 20(b), 38, 41(b), 42; S.I. 2010/621 rules 5(c), 6(d), (g), (h); S.I. 2010/1953 rule 8(c), Schedule 2; S.I. 2011/1043 article 4(1); S.I. 2012/2208 rules 2, 10; S.I. 2013/262, rules 5(h), 7(b)(ii)(aa), 9(c), 10(d), 16, 19, Schedule; S.I. 2013/534 regulation 14, Schedule, Part 2, paragraph 13; S.I. 2013/789 rule 3; and S.I. 2013/1695 rules 6, 7, Schedule.

- (b) in rule 3.7, in the words in parentheses that follow paragraph (4), for “44.12” substitute “44.9”; and
- (c) in rule 3.7B, in the words in parentheses that follow paragraph (3), for “44.12” substitute “44.9”.

5. In rule 7.2, omit the words in the third and fourth sets of parentheses that follow paragraph (2).

6. In Part 8—

- (a) in rule 8.2, omit the words in the third and fourth sets of parentheses that follow subparagraph (e); and
- (b) in rule 8.3, omit the words in the two sets of parentheses that follow paragraph (3).

7. In Part 15—

- (a) in rule 15.6, omit the words in the second and third sets of parentheses that follow the rule; and
- (b) for rule 15.8, substitute—

“Reply to defence

15.8. If a claimant files a reply to the defence, the claimant must—

- (a) file the reply with a directions questionnaire; and
- (b) serve the reply on the other parties at the same time as it is filed.

(Rule 26.3(1) and (6) requires the parties to file directions questionnaires and specifies the period for doing so).

(Part 22 requires a reply to be verified by a statement of truth).”

8. In rule 16.2, omit the words in the second and third sets of parentheses that follow paragraph (5).

9. In Part 21—

- (a) in rule 21.1, in the words in the second set of parentheses following paragraph (2), for “48.5” substitute “46.4”; and
- (b) in rule 21.12, in the words in the parentheses following paragraph (3), for “44.1(1)(a)” substitute “44.1(1)”.

10. In rule 25.14, in the words in the parentheses following paragraph (2)(b), for “48.2” substitute “46.2”.

11. In rule 28.2(5), for “Part 46” substitute “Section VI of Part 45”.

12. In Part 29, in the title to rule 29.8, omit “fixing or”.

13. In Part 31, in the heading to rule 31.5, omit “limited to standard disclosure”.

14. In Part 36—

- (a) in rule 36.1, in the words in parentheses that follow paragraph (2), for “44.3” substitute “44.2”;
- (b) in rule 36.10—
 - (i) in the words in the first set of parentheses that follows paragraph (3), for “44.4(2)” substitute “44.3(2)”; and
 - (ii) in the words in the second set of parentheses that follows paragraph (3), for “44.12” substitute “44.9”; and
- (c) in rule 36.14—

- (i) in paragraph (2)(a), omit “his”; and
- (ii) in the words in parentheses that follow paragraph (6), for “44.3” substitute “44.2”.

15. In Part 38—

- (a) in rule 38.6, in the words in parentheses after paragraph (3), for “44.12” substitute “44.9”; and
- (b) in rule 38.8, in the words in parentheses after paragraph (2) for “44.3C and 44.12” substitute “44.9 and 46.7”.

16. In rule 39.4, in the words in parentheses following the reference to rule 29.8, omit “fixing or”.

17. In rule 40.18, in the words in parentheses following paragraph (2), for “the Costs Practice Direction” substitute “paragraph 5.2 of Practice Direction 44.”.

18. In rule 42.2, omit the words in the second set of parentheses that follow paragraph (6).

19. After rule 44.9(1)(a), insert-

“(a1) rule 3.7B (sanctions for dishonouring cheque);”.

20. In Part 45—

- (a) In the index to that Part, in the entry for Section IV, for “A PATENTS COUNTY COURT” substitute “THE INTELLECTUAL PROPERTY ENTERPRISE COURT”;
- (b) in rule 45.18(6), for “value added tax (VAT)” substitute “VAT”;
- (c) in the heading to Section IV, for “A PATENTS COUNTY COURT” substitute “THE INTELLECTUAL PROPERTY ENTERPRISE COURT”;
- (d) in rule 45.29E, in Table D, in part A, in the entry for fixed costs where the agreed damages are more than £5,000, but less than £10,000, in subparagraph (b), for “10.5%” substitute “10%”;
- (e) in rule 45.29H(3)—
 - (i) for “if” substitute “If”; and
 - (ii) for “; and” substitute “.”;
- (f) in rule 45.30—
 - (i) in paragraph (1), for “a patents county court” substitute “the Intellectual Property Enterprise Court”; and
 - (ii) in paragraph (2)(b), after “certified by a court” insert “or by the Comptroller-General of Patents, Designs and Trade Marks”;
- (g) in rule 45.31—
 - (i) after paragraph (4) insert—

“(4A) Subject to assessment where appropriate, the following may be recovered in addition to the amount of the scale costs set out in Practice Direction 45 – Fixed Costs—

 - (a) court fees;
 - (b) costs relating to the enforcement of any court order; and
 - (c) wasted costs.”; and
 - (ii) in paragraph (5), for “value added tax (VAT)” substitute “VAT”; and
- (h) at the end of rule 45.38(3)(a)(ii), for “.” substitute “; and”.

21. In Part 46—

- (a) for rule 46.6(4), substitute—

“(4) The general rule is that a group litigant who is the paying party will, in addition to any liability to pay the receiving party, be liable for—

- (a) the individual costs of that group litigant’s claim; and
- (b) an equal proportion, together with all the other group litigants, of the common costs.”; and
- (b) in rule 46.7(1)(a), for “he” substitute “the”.

22. In rule 47.15, for paragraph (5) substitute—

“(5) In proceedings which do not go beyond provisional assessment, the maximum amount the court will award to any party as costs of the assessment (other than the costs of drafting the bill of costs) is £1,500 together with any VAT thereon and any court fees paid by that party.”.

23. In rule 52.1, in the words in parentheses that follow paragraph 2, for “47.20 to 47.23” substitute “47.21 to 47.24”.

24. In rule 55.9(3), for “46.2” substitute “45.38”.

25. In rule 62.7(1), for “an allocation questionnaire” substitute “a directions questionnaire”.

26. In Part 63—

- (a) in the index to the Part—
 - (i) in the entry for Section V, for “PATENTS COUNTY COURT” substitute “INTELLECTUAL PROPERTY ENTERPRISE COURT”; and
 - (ii) for the entry for rule 63.19 substitute “Enterprise judges and district judges”;
- (b) in rule 63.1(2)—
 - (i) for subparagraph (g) substitute—

“(g) ‘Intellectual Property Enterprise Court’ means a specialist list established within the Chancery Division of the High Court;”;
 - (ii) for subparagraph (h) substitute—

“(h) ‘enterprise judge’ means a judge authorised by the Chancellor of the High Court to sit in the Intellectual Property Enterprise Court;”;
 - (iii) in subparagraph (j)—
 - (aa) in sub-subparagraph (iv), for “40/94” substitute “207/2009”;
 - (bb) in sub-subparagraph (v), at the end omit “and”;
 - (cc) in sub-subparagraph (vi), at the end insert “and”; and
 - (dd) after sub-subparagraph (vi), insert—

“(vii) Community plant variety rights maintained by the Community Plant Variety Right Office under Article 87 of Council Regulation (EC) No. 2100/94; and”;

and
- (c) in rule 63.1(3), after “allocated to the multi-track.” insert “Rule 26.3(1) applies save for the modification that the court will send the parties a notice requiring the parties to file proposed directions by the date specified in the notice. For a claim which is allocated to the multi-track by this rule, rule 26.3(1B) and rules 26.4 to 26.10 do not apply.”;
- (d) in rule 63.2, in paragraph (2)(b), for “a patents county court” substitute “the Intellectual Property Enterprise Court”;
- (e) in rule 63.3, for “and a patents county court form specialist lists” substitute “form a specialist list”;
- (f) in rule 63.8—
 - (i) in paragraph (1), for “an allocation questionnaire” substitute “a directions questionnaire”; and
 - (ii) in paragraph (2)(b), for the words in parentheses, substitute “(the parties must endeavour to agree case management directions)”;

- (g) in rule 63.13(b), for “a patents county court” substitute “the Intellectual Property Enterprise Court”;
- (h) in Section V, for the heading to that Section, substitute “INTELLECTUAL PROPERTY ENTERPRISE COURT”;
- (i) in rule 63.17, for “a patents county court” substitute “the Intellectual Property Enterprise Court”;
- (j) after rule 63.17 insert—

“**63.17A.**—(1) In proceedings in the Intellectual Property Enterprise Court in which a claim is made for damages or an account of profits, the amount or value of that claim shall not exceed £500,000.

(2) In determining the amount or value of a claim for the purpose of paragraph (1), a claim for—

- (a) interest, other than interest payable under an agreement; or
- (b) costs,

shall be disregarded.

(3) Paragraph (1) shall not apply if the parties agree that the Intellectual Property Enterprise Court shall have jurisdiction to award damages or profits in excess of £500,000.”

- (k) for rule 63.18 substitute—

“**63.18.**—(1) Rule 30.5 applies save for the modifications—

- (a) a judge sitting in the County Court or the general Chancery Division may order proceedings to be transferred to the Intellectual Property Enterprise Court; and
- (b) an application for the transfer of proceedings from the County Court or the general Chancery Division to the Intellectual Property Enterprise Court may be made to a judge sitting in the County Court or the general Chancery Division respectively.

(2) When considering whether to transfer proceedings to or from the Intellectual Property Enterprise Court, the court will have regard to the provisions of Practice Direction 30.”;

- (l) in rule 63.19—

- (i) for the heading to the rule, substitute “Enterprise judges and district judges”;
- (ii) in paragraph (1), for the words “a patents county court” to the end, substitute “the Intellectual Property Enterprise Court will be dealt with by an enterprise judge.”;
- (iii) after paragraph (1) insert—

“(1A) For the purposes of the Practice Direction 52A – Appeals: General Provisions, a decision of the enterprise judge shall be treated as a decision by a circuit judge hearing a specialist claim in the County Court.”; and

- (iv) for paragraph (2) substitute—

“(2) Unless the court otherwise orders, the following matters will be dealt with by a district judge—

- (a) allocation of claims to the small claims track or multi-track in accordance with rule 63.27(3);
- (b) claims allocated to the small claims track; and
- (c) all proceedings for the enforcement of any financial element of an Intellectual Property Enterprise Court judgment.

(3) For the purposes of the Practice Direction 52A – Appeals: General Provisions, a decision of a district judge shall be treated as a decision by a district judge hearing a specialist claim in the County Court. An appeal from such a decision shall be heard by an enterprise judge.”;

- (m) in rule 63.22—

- (i) in paragraph (2), after “the period for filing a defence” insert “where the defendant files an acknowledgment of service under Part 10”; and
- (ii) in paragraph (3), after “the period for filing a defence” insert “where the defendant files an acknowledgment of service under Part 10”;
- (n) in rule 63.23(2), for “consider an application by” substitute “permit”;
- (o) in rule 63.25(4), for “High Court” substitute “Patents Court or general Chancery Division”
- (p) in rule 63.26—
 - (i) in paragraph (2), for “will” substitute “may”; and
 - (ii) in paragraph (3), for “Section VII” substitute “Section IV”;
- (q) in rule 63.27—
 - (i) in paragraph (1), for “a patents county court” substitute “the Intellectual Property Enterprise Court”;
 - (ii) omit paragraph (2);
 - (iii) in paragraph (3) after “in accordance with Part 26 (case management – preliminary stage).” insert “For that purpose the court will send the parties a directions questionnaire and require them to file completed directions questionnaires and to serve them on all other parties within 14 days”; and
 - (iv) in paragraph (4)—
 - (aa) for “a patents county court”, in each place it occurs, substitute “the Intellectual Property Enterprise Court”; and
 - (bb) for “Section VII” substitute “Section IV”; and
- (r) in rule 63.28, for “a patents county court” substitute “the Intellectual Property Enterprise Court”;

27. In Part 67—

- (a) in rule 67.1, in the words in the first set of parentheses that follow paragraph (2), for “Part 48 and Section 56 of the Costs Practice Direction” substitute “Section II of Part 46 and paragraphs 6.4 to 6.19 of Practice Direction 46”; and
- (b) in rule 67.3, in the words in the second set of parentheses following paragraph (1)(b), for “Section 31 of the Costs Practice Direction” substitute “paragraphs 4.1 to 4.3 of Practice Direction 47”.

28. For Part 68, substitute Part 68 as set out in the Schedule to these Rules.

29. In RSC Order 17 rule 8—

- (1) in paragraph (2)(a), for “44.4” substitute “44.3”;
- (2) in paragraph (2)(b), for “44.5” substitute “44.4”;
- (3) in paragraph (2)(c), for “48.4” substitute “46.3”; and
- (4) in paragraph (2)(d), for “48.6” substitute “46.5”.

Transitional provisions

30. As from 1st October 2013—

- (a) proceedings started in a patents county court may be continued in the Intellectual Property Enterprise Court as if they had been started in that court;
- (b) anything done in accordance with the rules which applied to a patents county court is to be treated as if it had been done in accordance with any rules applicable to corresponding proceedings in the Intellectual Property Enterprise Court; and
- (c) any act, judgment or order of a patents county court has the same effect as if it had been an act, judgment or order of the Intellectual Property Enterprise Court and, accordingly,

further proceedings may be taken in the Intellectual Property Enterprise Court in respect of such an act, judgment or order.

The Right Honourable Lord Dyson, MR
Stephen Richards, LJ
Philip Sales, J
Master Barbara Fontaine
District Judge Suzanne Burn
District Judge Christopher Lethem
Edward Pepperall QC
Katy Peters
Amanda Stevens

I allow these Rules
Signed by authority of the Lord Chancellor

Jeremy Wright
Parliamentary Under Secretary of State
Ministry of Justice

7th August 2013

SCHEDULE

Rule 28

“PART 68

References to the European Court

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Interpretation

68.1. In this Part—

- (a) “the court” means the court making the order;
- (b) “the European Court” means the Court of Justice of the European Union;
- (c) “order” means an order referring a question to the European Court for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union^(a) or as provided for under any agreement to which the European Union or the Member States of the European Union are parties;
- (d) “reference” means a request to the European Court for a preliminary ruling; and
- (e) “European Court Procedure Rules” means the Rules of Procedure of the European Court, published on 29 September 2012^(b).

^(a) See the Treaty of Lisbon, article 1(11), Official Journal of the European Union C306/1, 17.12.2007.

^(b) Official Journal of the European Union, L 265/1, 29.09.2012.

Making of order

68.2. An order may be made at any stage of the proceedings—

- (a) by the court of its own initiative; or
- (b) on an application by a party in accordance with Part 23.

(2) An order should not normally be made—

- (a) in the High Court, by a Master or district judge;
- (b) in a county court, by a district judge.

(3) The reference must contain the matters specified in the European Court Procedure Rules and comply with any guidance given by the European Court.

(4) The reference must be set out in a schedule to the order and the court may give directions on the preparation of the schedule.

Requests made by the court to the European Court

68.3.—(1) Any request made by the court to the European Court that—

- (a) one or more persons or entities concerned by the case be granted anonymity;
- (b) the reference be determined pursuant to the expedited preliminary ruling procedure;
- (c) the reference be determined pursuant to the urgent preliminary ruling procedure; or
- (d) the reference be given priority over other cases,

must be made in a document separate from the order or in a covering letter accompanying the order.

(2) Any such request must state the provision of the European Court Procedure Rules on which it is based and the matters of fact and law on which it is based. In the case of a request that the reference be determined pursuant to the urgent preliminary ruling procedure, it must also, so far as possible, indicate the answer that the court proposes to the question referred.

Transmission to the European Court

68.4.—(1) The order and, where relevant, any request made by the court to the European Court must be sent to the Senior Master for onward transmission to the European Court.

(2) The Senior Master will send a copy of the order and any such request to the Registrar of the European Court.

(3) Unless the court orders otherwise, the Senior Master will send those documents to the Registrar of the European Court without waiting for the time for appealing against the order to expire or for any application for permission to appeal or any appeal to be determined.

(4) Where any new parties are joined to the proceedings after the order has been sent to the Senior Master, details must be sent promptly to the Senior Master to inform the Registrar of the European Court.

Stay of proceedings

68.5. Where an order is made, unless the court orders otherwise the proceedings will be stayed until the European Court has given a preliminary ruling on the question referred to it.

EXPLANATORY NOTE

(This note is not part of the Order)

These Rules make the following amendments to the Civil Procedure Rules 1998 (CPR)—

- amendments to Part 45 (fixed costs) and Part 63 (intellectual property claims) in consequence of the abolition of the Patents County Court and to give effect to its reconstitution as a specialist list of the Chancery Division, to be named the “Intellectual Property Enterprise Court”. Rule 30 of these Rules includes transitional and savings provisions in this regard;
- an amendment to rule 47.15(5) to clarify the costs that may be awarded in respect of provisional assessment;
- a series of amendments in consequence of the introduction of new rules and, in particular, on costs, introduced by the Civil Procedure (Amendment) Rules 2013 (S.I. 2013/262):
 - rule 3.1(2) is amended in consequence of the introduction of costs budgets;
 - rules 7.2, 8.2, 8.3, 15.6 and 16.2 are amended in consequence of the reforms in relation to funding arrangements;
 - rules 15.8, 63.8(1) and 62.7(1) are amended in consequence of the introduction of directions questionnaires;
 - rule 29.8 and 63.8(2) are amended in consequence of changes in relation to timetabling and the steps following allocation to multi-track;
 - rules 3.7, 3.7B, 21.1, 25.14, 28.2, 36.1, 36.10, 36.14(6) (in the signpost to that rule), 38.6, 38.8, 39.4, 40.18, 44.9, 52.1, 55.9, 63.26, 67.1, 67.3 and RSC Order 17 rule 8 are amended to update cross-references;
- a series of minor amendments:
 - rule 21.12 is amended to correct an incorrect cross-reference;
 - rule 31.5 is amended to correct an incorrect heading;
 - rules 36.14(2)(a) and 46.6(4) are amended to make them gender neutral;
 - rules 45.18(6) and 45.31(5) are amended to take out duplicate definitions;
 - rules 45.29E, 45.29H(3), 45.38(3)(a)(ii) and 46.7(1)(a) are amended to correct typographical errors;
 - rule 42.2 is amended to remove the redundant words in the second set of parentheses after paragraph (6);
- the replacement of Part 68 – References to the European Court, to take account of changes to the EU Treaties, the new European Court Procedure Rules and updated guidance from the European Court to national courts: “Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings”.

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