

**2017 No. 889 (L. 12)**

**SENIOR COURTS OF ENGLAND AND WALES**

**COUNTY COURT, ENGLAND AND WALES**

**The Civil Procedure (Amendment No. 2) Rules 2017**

*Made* - - - - *6th September 2017*

*Laid before Parliament* *8th September 2017*

*Coming into force in accordance with rule 1*

The Civil Procedure Rule Committee, having power under section 2 of the Civil Procedure Act 1997(a) to make rules 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.**—(1) These Rules may be cited as the Civil Procedure (Amendment No. 2) Rules 2017 and come into force on 1st October 2017.

(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 11 of these Rules.

**Amendment of Part 3**

**3.** In rule 3.1—

(a) after paragraph (2)(b) insert—

“(bb) require that any proceedings in the High Court be heard by a Divisional Court of the High Court;” and

(b) after paragraph (3) insert—

“(3A) Where the court has made a direction in accordance with paragraph (2)(bb) the proceedings shall be heard by a Divisional Court of the High Court and not by a single judge.”.

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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) S.I. 1998/3132. There are relevant amendments in S.I. 2001/4015, S.I. 2004/1306, S.I. 2005/2292, S.I. 2005/3515, S.I. 2006/1689, S.I. 2008/2178, S.I. 2013/262, S.I. 2014/407, S.I. 2015/1569, S.I. 2016/234 and S.I. 2016/788.

### **Amendment of Part 30**

4. In Rule 30.8(4), for “Mercantile Court” substitute “Circuit Commercial Court”.

### **Amendment of Part 47**

5. In Rule 47.6—

- (a) in paragraph (1)—
  - (i) for sub-paragraph (b) substitute—  
“(b) a copy or copies of the bill of costs, as required by Practice Direction 47; and”; and
  - (ii) in sub-paragraph (c), for “if a costs management order has been made,” substitute “if required by Practice Direction 47,”; and
- (b) in paragraph (2), for “if a costs management order has been made,” substitute “if required by Practice Direction 47,”.

### **Amendment of Part 52**

6. In Rule 52—

- (a) in Rule 52.3(1)(a)(iii), after “the Children Act 1989” insert “or section 119 of the Social Services and Well-being (Wales) Act 2014(a)”; and
- (b) in Rule 52.4—
  - (i) in paragraph (1), after “oral hearing”, for “except” substitute “unless the court otherwise directs, or”; and
  - (ii) in paragraph (4), for “Mercantile” substitute “Circuit Commercial”.

### **Amendment of Part 59**

7.—(1) In the heading to Part 59, for “MERCANTILE COURTS” substitute “CIRCUIT COMMERCIAL COURTS”.

- (2) In Part 59—

- (a) for “Mercantile Court”, in each place it appears, substitute “Circuit Commercial Court”;
- (b) for “mercantile claim”, in each place it appears, substitute “Circuit Commercial claim”;
- (c) for “mercantile claims”, in each place it appears, substitute “Circuit Commercial claims”;  
and
- (d) for “Mercantile judge”, in each place it appears, substitute “Circuit Commercial judge”.

- (3) In Rule 59.1—

- (a) in paragraph (1) for “Mercantile Courts” substitute “Circuit Commercial Courts”; and
- (b) in paragraph (2)(b) substitute—  
“(b) is not required to proceed in another specialist list of the Business and Property Courts.”.

### **Amendment of Part 61**

8. In Rule 61.2(3)—

- (a) in sub-paragraph (b), for “Mercantile Court” substitute “Circuit Commercial Court” and
- (b) in sub-paragraph (c), for “Mercantile list” substitute “Circuit Commercial list”.

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(a) 2014 anaw 4.

## **Amendment of Part 62**

9. In Rule 62.1(3), for “Mercantile Court”, in both places it appears, substitute “Circuit Commercial Court”.

## **Amendment of Part 78**

10.—(1) For Rule 78.5(1)(a) and (b), substitute—

- “(a) the EOP application will be treated as if it had been started as a claim under Part 7 if –
  - (i) the claimant has requested under article 7 of the EOP Regulation that such a transfer be made in the event of opposition;
  - (ii) the claimant has requested that the claim be transferred to the ESCP procedure in the event of opposition, but the claim does not fall within the scope of the ESCP Regulation; or
  - (iii) the claimant has not specified a preferred procedure in the event of opposition; and
- (b) the EOP application will be treated as if it had been started under the ESCP Regulation if—
  - (i) the claimant has requested under article 7 of the EOP Regulation that such a transfer be made in the event of opposition; and
  - (ii) the claim is within the scope of the ESCP Regulation.”.

(2) After Rule 78.5, insert—

### **“Procedure where EOP application treated as if started as a claim under Part 7**

**78.5A.**—(1) Where the EOP application is treated as if it had been started as a claim under Part 7, pursuant to Rule 78.5(1)(a)—

- (a) the EOP application form A will be treated as a Part 7 claim form including particulars of claim; and
- (b) thereafter, these Rules apply with necessary modifications and subject to this rule and rules 78.6 and 78.7.

(2) When the court notifies the claimant in accordance with article 17(3) of the EOP Regulation the court will also—

- (a) notify the claimant—
  - (i) that the EOP application form A is now treated as a Part 7 claim form including particulars of claim; and
  - (ii) of the time within which the defendant must respond under Rule 78.6; and
- (b) notify the defendant—
  - (i) that a statement of opposition has been received;
  - (ii) that the application will not continue under Part 78;
  - (iii) that the application has been transferred under article 17 of the EOP Regulation;
  - (iv) that the EOP application form A is now treated as a Part 7 claim form including particulars of claim; and
  - (v) of the time within which the defendant must respond under Rule 78.6.

## **Procedure where EOP application treated as if started as a claim under the ESCP Regulation**

**78.5B.**—(1) Where an EOP application is treated as if it had been started as a claim under the ESCP Regulation pursuant to Rule 78.5(1)(b)—

- (a) the EOP application form A will be treated as an ESCP claim form; and
- (b) thereafter, these Rules apply subject to the ESCP Regulation and the modifications in paragraph (2).

(2) When the court notifies the claimant of the transfer in accordance with article 17(5) of the EOP Regulation the court will also—

- (a) notify the claimant—
  - (i) that the EOP application form A is now treated as ESCP claim form; and
  - (ii) of the time within which the defendant must respond under article 5 of the ESCP Regulation; and
- (b) notify the defendant—
  - (i) that a statement of opposition has been received;
  - (ii) that the application has been transferred under article 17 of the EOP Regulation;
  - (iii) that the EOP application form A is now treated as an ESCP claim form A; and
  - (iv) of the time within which the defendant must respond under article 5 of the ESCP Regulation.”.

(3) In the heading to Rule 78.6, for “transferred under article 17 of the EOP Regulation”, substitute “treated as if started as a claim under Part 7”.

(4) In Rule 78.6(1), for “78.5(2)(b)” substitute “78.5A(2)(b)”.

(5) In the heading to Rule 78.7, after “Default judgment”, insert “where an EOP application is treated as if started as a claim under Part 7”.

(6) For Rule 78.12(2)(a), substitute—

- “(a) ‘ESCP Regulation’ means Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure, as amended by Regulation EU 2421/2015 of 16 December 2015; (A copy of the amended ESCP Regulation can be found at Annex 2A. The relevant forms can be found at the end of the previous version of the ESCP Regulation at Annex 2B.)”.

## **Amendment of Part 83**

**11.**—(1) In Rule 83.9—

- (a) in paragraph (5), for “The” substitute “Subject to paragraph (5A), the”; and
- (b) after paragraph (5) insert—

“(5A) Where a request is made for a writ of possession to enforce a notice under section 33D of the Immigration Act 2014<sup>(a)</sup> (termination of agreement where all occupiers disqualified), a copy of that notice must be filed with the request instead of the judgment or order required by paragraph (5)(a)(i).”.

(2) In Rule 83.13(2), after “any land” insert “, or to enforce a notice under section 33D of the Immigration Act 2014.”.

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(a) 2014 c.22. Section 33D was inserted by section 40(2) of the Immigration Act 2016 (c.19).

*The Right Honourable Sir Terrence Etherton, MR  
Michael Briggs LJ  
Mr Justice Birss  
Mr Justice Kerr  
Master Richard Roberts  
His Honour Judge Martin McKenna  
District Judge Christopher Lethem  
Richard Viney  
Brett Dixon  
Andrew Underwood  
Lizzie Iron*

I allow these Rules  
Signed by authority of the Lord Chancellor

*Dominic Raab*  
Minister of State for Justice  
Ministry of Justice

6th September 2017

### **EXPLANATORY NOTE**

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

These Rules amend the Civil Procedure Rules 1998 (SI 1998/3132), by—

- amending Part 3 to make clear the court’s power to require proceedings to be heard before a Divisional Court of the High Court;
- amending Part 47 to refer to provision now made by Practice Direction 47;
- amending Part 52 to include a reference to the Social Services and Well-being (Wales) Act 2014 and to make clear that “rolled-up” hearings of applications for permission to appeal and the appeal remain possible;
- amending Part 59 to reflect the change of name of the Mercantile Court to the Circuit Commercial Court and making consequential amendments to Parts 30, 52, 61 and 62;
- amending Part 78 to give effect to changes in the EU Regulation establishing a European small claims procedure;
- amending Part 83 to require the court’s permission for issue of a writ of possession to enforce a notice of eviction under the Immigration Act 2014 (c. 22) as amended.

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