

2019 No. 342 (L. 3)

SENIOR COURTS OF ENGLAND AND WALES

COUNTY COURT, ENGLAND AND WALES

The Civil Procedure (Amendment) Rules 2019

Made - - - - - *17th February 2019*

Laid before Parliament *25th February 2019*

Coming into force - - - *6th April 2019*

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) Rules 2019 and come into force on 6th April 2019.

(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 16 of these Rules.

Amendment of Part 5

3. In the table of contents to Part 5, after the entry for “Register of claims”, insert—

“Supply of documents to Attorney-General from court records Rule 5.4A”.

Amendment of Part 21

4. In rule 21.12—

(a) in paragraph (1A)—

(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. 2005/3515, S.I. 2006/1689, S.I. 2007/2204, S.I. 2008/2178, S.I. 2009/3390, S.I. 2013/262, S.I. 2014/3299, S.I. 2014/407, S.I. 2014/954; S.I. 2015/670, S.I. 2017/95, S.I. 2017/889, S.I. 2018/975 and section 59(5) of, and Schedule 11, Part 2, paragraph 1(2) to, the Constitutional Reform Act 2005 (c. 4).

- (i) after “Costs recoverable”, insert “in respect of a child”;
- (ii) in sub-paragraph (a), omit “incurred by or on behalf of a child and”; and
- (iii) in sub-paragraph (b), omit “by or on behalf of a child”; and
- (b) in paragraph (8), for “Except in a case in which the costs payable to a child or a protected party are fixed by these rules” substitute “Except in a case to which Section II, III or IIIA of Part 45 applies, and a claim under rule 45.13 or 45.29J has not been made”.

Amendment of Part 27

5. In rule 27.2(1), in sub-paragraph (h), after “(general rule – hearing to be in public)” insert “and rule 39.8 (communications with the court)”.

Amendment of Part 39

6. In the table of contents to Part 39, after the entry for “Impounded documents”, insert—

“Communications with the court	Rule 39.8
Recording and transcription of proceedings	Rule 39.9
Discontinuance and settlement	Rule 39.10”.

7. For rule 39.1 substitute—

“**39.1.**—(1) In this Part—

- (a) “hearing” means the making of any interim or final decision by a judge at which a person is, or has a right to be, heard in person, by telephone, by video or by any other means which permits simultaneous communication; and
- (b) “judge” has the same meaning as in rule 2.3(1).

(2) This Part is subject to rule 62.10 (hearings in arbitration claims).”.

8. In rule 39.2—

(a) for paragraphs (1) and (2) substitute—

“(1) The general rule is that a hearing is to be in public. A hearing may not be held in private, irrespective of the parties’ consent, unless and to the extent that the court decides that it must be held in private, applying the provisions of paragraph (3).

(2) In deciding whether to hold a hearing in private, the court must consider any duty to protect or have regard to a right to freedom of expression which may be affected.

(2A) The court shall take reasonable steps to ensure that all hearings are of an open and public character, save when a hearing is held in private.”;

(b) in paragraph (3)—

(i) for “may be in private if” substitute “must be held in private if, and only to the extent that, the court is satisfied of one or more of the matters set out in sub-paragraphs (a) to (g) and that it is necessary to sit in private to secure the proper administration of justice”; and

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

“(g) the court for any other reason considers this to be necessary to secure the proper administration of justice.”; and

(c) for paragraph (4) substitute—

“(4) The court must order that the identity of any party or witness shall not be disclosed if, and only if, it considers non-disclosure necessary to secure the proper administration of justice and in order to protect the interests of that party or witness.

(5) Unless and to the extent that the court otherwise directs, where the court acts under paragraph (3) or (4), a copy of the court’s order shall be published on the website of the

Judiciary of England and Wales (which may be found at www.judiciary.uk). Any person who is not a party to the proceedings may apply to attend the hearing and make submissions, or apply to set aside or vary the order.”

9. After rule 39.7, insert—

“Communications with the court

39.8.—(1) Any communication between a party to proceedings and the court must be disclosed to, and if in writing (whether in paper or electronic format), copied to, the other party or parties or their representatives.

(2) Paragraph (1) applies to any communication in which any representation is made to the court on a matter of substance or procedure but does not apply to communications that are purely routine, uncontentious and administrative.

(3) A party is not required under paragraph (1) to disclose or copy a communication if there is a compelling reason for not doing so, and provided that any reason is clearly stated in the communication.

(4) A written communication required under paragraph (1) to be copied to the other party or parties or their representatives, must state on its face that it is being copied to that person or those persons, stating their identity and capacity.

(5) Unless the court directs otherwise, a written communication which does not comply with paragraph (4) will be returned to the sender without being considered by the court, with a brief explanation of why it is being returned.

(6) In addition to returning a communication under paragraph (5), where a party fails to comply with paragraph (1) the court may, subject to hearing the parties, impose sanctions or exercise its other case management powers under Part 3.

(7) Paragraph (1) does not apply to communications authorised by a rule or practice direction to be sent to the court without at the same time being provided to the other party or parties or their representatives.

Recording and transcription of proceedings

39.9.—(1) At any hearing, whether in the High Court or the County Court, the proceedings will be tape recorded or digitally recorded unless the judge directs otherwise.

(2) No party or member of the public may use unofficial recording equipment in any court or judge’s room without the permission of the court. (To do so without permission constitutes a contempt of court under section 9 of the Contempt of Court Act 1981(a).)

(3) Any party or person may require a transcript or transcripts of the recording of any hearing to be supplied to them, upon payment of the charges authorised by any scheme in force for the making of the recording or the transcript.

(Paragraph 6(2) of Practice Direction 52C (Appeals to the Court of Appeal) deals with the provision of transcripts for use in the Court of Appeal at public expense.)

(4) Where the person requiring the transcript or transcripts is not a party to the proceedings and the hearing or any part of it was held in private under rule 39(2), paragraph (3) of this rule does not apply unless the court so orders.

(5) At any hearing, whether in public or in private, the judge may give appropriate directions to assist a party, in particular one who is or has been or may become unrepresented, for the compilation and sharing of any note or other informal record of the proceedings made by another party or by the court.

(a) 1981 c. 49. Section 9 was amended by the Crime and Courts Act 2013 (c. 22), sections 31(1) to (4) and 32(8).

Discontinuance and settlement

39.10.—(1) Where a claim is discontinued or settled after a date for the trial or trial window (the period during which it is expected that the trial will take place) has been fixed, the parties must ensure that the listing officer for the trial court is notified immediately.

(2) If an order is drawn up giving effect to the discontinuance or settlement, a copy of the order should be filed with the listing officer.”.

Amendment of Part 61

10. In rule 61.1, in paragraph (2)—

(a) after sub-paragraph (b), insert—

“(ba) “the Admiralty Judge” means the judge in charge of the Admiralty Court and any other judge authorised to sit in the Admiralty Court;

(bb) “the Admiralty Registrar” means the holder of the office of this name listed in column 1 of Part II of Schedule 2 to the Senior Courts Act 1981(a) or any person who is authorised to exercise the powers of this office in accordance with s.91(1) of the Act(b);

(bc) “claim in personam” means an admiralty claim, other than a claim in rem, brought in accordance with section 21(1) of the Senior Courts Act 1981;”;

(b) in sub-paragraph (c), after “admiralty action in rem”, insert “brought in accordance with section 21(2) to (5) of the Senior Courts Act 1981;”;

(c) in sub-paragraph (k), after the semi-colon, omit “and”; and

(d) in sub-paragraph (l), for “Queen’s Bench Master with responsibility for Admiralty claims,” substitute “Admiralty Registrar; and”.

11. In rule 61.2, in paragraph (3)—

(a) in sub-paragraph (a), for “list” substitute “Court”;

(b) in sub-paragraph (b), after the semi-colon, insert “or”; and

(c) omit sub-paragraph (c).

12. In rule 61.4—

(a) in paragraph (7)—

(i) after “a collision claim”, insert “in personam”;

(ii) at the end of the paragraph, for the full stop substitute “; or”; and

(iii) after the last sentence of the paragraph, insert—

“(c) rule 6.33 applies.”;

(b) in paragraph (9) for “Part 20 claim”, in each place it appears, substitute “counterclaim”; and

(c) in paragraph (11)—

(i) in paragraph (a)(ii), for “in the percentage to which he would have been entitled had the offer been accepted” substitute “in accordance with the apportionment found at trial”; and

(a) 1981 c. 54. Part 2 of Schedule II was substituted, subject to transitional provisions specified in S.I. 2008/1653, article 3, by the Tribunals, Courts and Enforcement Act 2007 (c. 15), Schedule 10(1), paragraph 13(3), to which there are other amendments not relevant to these Rules.

(b) Section 91(1) was amended by the Constitutional Reform Act 2005 (c. 4), Schedule 4(1), paragraphs 139(2)(c), Schedule 11 (4), paragraph 26(2) and Schedule 18(2), paragraph 1, the Tribunals, Courts and Enforcement Act 2007, Part 2, section 57(2)(b) and the Crime and Courts Act 2013 (c. 22), Schedule 13(4), paragraph 35(2)(a) and (b), which have effect as S.I. 2013/2200 and subject to transitional and savings provisions in section 15 and Schedule 8 of the 2013 Act and S.I. 2013/2192, articles 48 and 49.

- (ii) in sub-paragraph (b)(i), for “in the percentage to which they would have been entitled had the offer been accepted” substitute “in accordance with the apportionment found at trial”.

13. In rule 61.6, for paragraph (2) substitute—

“(2) Unless the terms on which security has been given provide otherwise, the court may order that—

- (a) the amount of security be reduced, and may stay the claim until the order is complied with; or
- (b) the amount of security be increased, and may give the claimant permission to arrest or re-arrest the property proceeded against to obtain further security.”.

14. In rule 61.8 after paragraph (3), insert—

“(3A) A caution against release—

- (a) is valid for 12 months after the date it is entered in the Register; and
- (b) may be renewed for a further 12 months by filing a further request.”.

15. In rule 61.11—

(a) in paragraph (5)—

- (i) at the end of the paragraph, for the full stop substitute “; or”; and
- (ii) after the last sentence of the paragraph, insert—
“(d) rule 6.33 applies.”;

(b) for paragraph (18) substitute—

“(18) The claimant may constitute a limitation fund by—

- (a) making a payment into court;
- (b) providing security in such form and on such terms as considered adequate by the court; or
- (c) a combination of (a) and (b),

the procedure for which, in each case, is set out in Practice Direction 61.”;

(c) in paragraph (20)—

- (i) in sub-paragraph (a), after the semi-colon, omit “and”;
- (ii) in sub-paragraph (b), for the full stop substitute “; and”; and
- (iii) after sub-paragraph (b), insert—

“(c) any security provided will be discharged.”; and

(d) in paragraph (21), after “will not be paid out”, insert “, nor will any security provided be discharged,”.

16. In rule 61.13—

(a) in sub-paragraph (a), after the semi-colon, omit “or”;

(b) in sub-paragraph (b), at the end, for “, and” substitute “; or”;

(c) after sub-paragraph (b), insert—

“(c) a reference as defined in paragraph 13.1 of Practice Direction 61,”; and

(d) for “the parties”, substitute “and, whenever it does so, the parties”.

The Right Honourable Sir Terence Etherton, MR
Lord Justice Coulson
Mr Justice Birrs
Mr Justice Kerr
Master Cook
District Judge Lethem

*John Dagnall
Masood Ahmed
Andrew Underwood
Lizzie Iron*

I allow these Rules
Signed by authority of the Lord Chancellor

Lucy Frazer
Parliamentary Under-Secretary of State for Justice
Ministry of Justice

17th February 2019

EXPLANATORY NOTE

(This note is not part of the Rules)

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

- (a) amending the table of contents to Part 5 to correct an earlier minor drafting omission;
- (b) amending rule 21.12(1A), to clarify that the restrictions this rule imposes regarding the recoverability of costs and expenses by a litigation friend apply only where the litigation friend acts on behalf of a child and not when they act on behalf of a protected party;
- (c) amending rule 21.12(8), to clarify that a failure by the parties to agree an amount to be paid in respect of a disbursement of a kind permitted under section II, III or IIIA of Part 45, under which costs are fixed, should not preclude determination of a litigation friend's application for a payment out of a claimant's damages under rule 21.12(1);
- (d) amending Part 39 (Miscellaneous Provisions Relating to Hearings), as part of several changes to reflect more properly the principles of open justice, to include, with minor amendments, provisions previously included in Practice Direction 39A, which will be removed on the date that these Rules come in to force, as well as making a consequential amendment to Part 27;
- (e) amending Part 61 (Admiralty Claims), in order to, amongst other matters—
 - (i) address the lacuna in the present rules highlighted by *The Atlantik Confidence [2014] 1 Lloyd's Rep 1 586*, by creating a mechanism for limitation funds to be constituted by providing security as well as, or in addition to, paying money into court; and
 - (ii) make miscellaneous changes proposed by the Admiralty Court Users Committee, including the addition of definitions of both "Admiralty Judge" and "Admiralty Registrar", as well as including reference to claims "in personam", as opposed to what were previously termed "other claims", to correspond with the statutory language used in the Senior Courts Act 1981 (c.54), and to reform the rules as to costs in collision claims where a party at trial equals or betters certain offers made by them.

© Crown copyright 2019

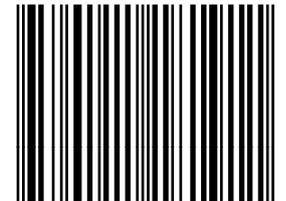
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£6.90

UK201902211028 02/2019 19585

<http://www.legislation.gov.uk/id/uksi/2019/342>

ISBN 978-0-11-118191-1



9 780111 181911