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## STATUTORY INSTRUMENTS

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# 1998 No. 3132

## The Civil Procedure Rules 1998

### [<sup>F1</sup>PART 19

#### PARTIES AND GROUP LITIGATION

##### [<sup>F1</sup>II REPRESENTATIVE PARTIES

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#### Textual Amendments

- F1** Pt. 19 substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), [Sch. 2](#)

#### **Representative parties with same interest**

**19.6.**—(1) Where more than one person has the same interest in a claim—

- (a) the claim may be begun; or
- (b) the court may order that the claim be continued,

by or against one or more of the persons who have the same interest as representatives of any other persons who have that interest.

(2) The court may direct that a person may not act as a representative.

(3) Any party may apply to the court for an order under paragraph (2).

(4) Unless the court otherwise directs any judgment or order given in a claim in which a party is acting as a representative under this rule—

- (a) is binding on all persons represented in the claim; but
- (b) may only be enforced by or against a person who is not a party to the claim with the permission of the court.

(5) This rule does not apply to a claim to which rule 19.7 applies.

#### **Representation of interested persons who cannot be ascertained etc.**

**19.7.**—(1) This rule applies to claims about—

- (a) the estate of a deceased person;
- (b) property subject to a trust; or
- (c) the meaning of a document, including a statute.

(2) The court may make an order appointing a person to represent any other person or persons in the claim where the person or persons to be represented—

- (a) are unborn;

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- (b) cannot be found;
- (c) cannot easily be ascertained; or
- (d) are a class of persons who have the same interest in a claim and—
  - (i) one or more members of that class are within sub-paragraphs (a), (b) or (c); or
  - (ii) to appoint a representative would further the overriding objective.
- (3) An application for an order under paragraph (2)—
  - (a) may be made by—
    - (i) any person who seeks to be appointed under the order; or
    - (ii) any party to the claim; and
  - (b) may be made at any time before or after the claim has started.
- (4) An application notice for an order under paragraph (2) must be served on—
  - (a) all parties to the claim, if the claim has started;
  - (b) the person sought to be appointed, if that person is not the applicant or a party to the claim; and
  - (c) any other person as directed by the court.
- (5) The court’s approval is required to settle a claim in which a party is acting as a representative under this rule.
- (6) The court may approve a settlement where it is satisfied that the settlement is for the benefit of all the represented persons.
- (7) Unless the court otherwise directs, any judgment or order given in a claim in which a party is acting as a representative under this rule—
  - (a) is binding on all persons represented in the claim; but
  - (b) may only be enforced by or against a person who is not a party to the claim with the permission of the court.

## [<sup>F2</sup>Representation of beneficiaries by trustees etc.

**19.7A.**—(1) A claim may be brought by or against trustees, executors or administrators in that capacity without adding as parties any persons who have a beneficial interest in the trust or estate (“the beneficiaries”).

(2) Any judgment or order given or made in the claim is binding on the beneficiaries unless the court orders otherwise in the same or other proceedings.]

### Textual Amendments

**F2** Rule 19.7A inserted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **6(a)**

## Death

**19.8.**—(1) Where a person who had an interest in a claim has died and that person has no personal representative the court may order—

- (a) the claim to proceed in the absence of a person representing the estate of the deceased; or
  - (b) a person to be appointed to represent the estate of the deceased.
- (2) Where a defendant against whom a claim could have been brought has died and—

- (a) a grant of probate or administration has been made, the claim must be brought against the persons who are the personal representatives of the deceased;
  - (b) a grant of probate or administration has not been made—
    - (i) the claim must be brought against “the estate of” the deceased; and
    - (ii) the claimant must apply to the court for an order appointing a person to represent the estate of the deceased in the claim.
- (3) A claim shall be treated as having been brought against “the estate of” the deceased in accordance with paragraph (2)(b)(i) where—
- (a) the claim is brought against the “personal representatives” of the deceased but a grant of probate or administration has not been made; or
  - (b) the person against whom the claim was brought was dead when the claim was started.
- (4) Before making an order under this rule, the court may direct notice of the application to be given to any other person with an interest in the claim.
- (5) Where an order has been made under paragraphs (1) or (2)(b)(ii) any judgment or order made or given in the claim is binding on the estate of the deceased.

**Power to make judgments binding on non-parties**

- [<sup>F3</sup>19.8A.—(1) This rule applies to any claim relating to—
- (a) the estate of a deceased person;
  - (b) property subject to a trust; or
  - (c) the sale of any property.
- (2) The court may at any time direct that notice of—
- (a) the claim; or
  - (b) any judgment or order given in the claim,
- be served on any person who is not a party but who is or may be affected by it.
- (3) An application under this rule—
- (a) may be made without notice; and
  - (b) must be supported by written evidence which includes the reasons why the person to be served should be bound by the judgment in the claim.
- (4) Unless the court orders otherwise—
- (a) a notice of a claim or of a judgment or order under this rule must be—
    - (i) in the form required by the practice direction;
    - (ii) issued by the court; and
    - (iii) accompanied by a form of acknowledgment of service with any necessary modifications;
  - (b) a notice of a claim must also be accompanied by—
    - (i) a copy of the claim form; and
    - (ii) such other statements of case, witness statements or affidavits as the court may direct; and
  - (c) a notice of a judgment or order must also be accompanied by a copy of the judgment or order.
- (5) If a person served with notice of a claim files an acknowledgment of service of the notice within 14 days he will become a party to the claim.

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- (6) If a person served with notice of a claim does not acknowledge service of the notice he will be bound by any judgment given in the claim as if he were a party.
- (7) If, after service of a notice of a claim on a person, the claim form is amended so as substantially to alter the remedy claimed, the court may direct that a judgment shall not bind that person unless a further notice, together with a copy of the amended claim form, is served on him.
- (8) Any person served with a notice of a judgment or order under this rule—
- (a) shall be bound by the judgment or order as if he had been a party to the claim; but
  - (b) may, provided he acknowledges service—
    - (i) within 28 days after the notice is served on him, apply to the court to set aside or vary the judgment or order; and
    - (ii) take part in any proceedings relating to the judgment or order.
- (9) The following rules of Part 10 (acknowledgment of service) apply—
- (a) rule 10.4; and
  - (b) rule 10.5, subject to the modification that references to the defendant are to be read as references to the person served with the notice.
- (10) A notice under this rule is issued on the date entered on the notice by the court.]

#### Textual Amendments

**F3** Rule 19.8A substituted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **6(b)**

#### Derivative Claims

**19.9.**—(1) This rule applies where a company, other incorporated body or trade union is alleged to be entitled to claim a remedy and a claim is made by one or more members of the company, body or trade union for it to be given that remedy (a “derivative claim”).

(2) The company, body or trade union for whose benefit a remedy is sought must be a defendant to the claim.

(3) After the claim form has been issued the claimant must apply to the court for permission to continue the claim and may not take any other step in the proceedings except—

- (a) as provided by paragraph (5); or
- (b) where the court gives permission.

(4) An application in accordance with paragraph (3) must be supported by written evidence.

(5) The—

- (a) claim form;
- (b) application notice; and
- (c) written evidence in support of the application,

must be served on the defendant within the period within which the claim form must be served and, in any event, at least 14 days before the court is to deal with the application.

(6) If the court gives the claimant permission to continue the claim, the time within which the defence must be filed is 14 days after the date on which the permission is given or such period as the court may specify.

(7) The court may order the company, body or trade union to indemnify the claimant against any liability in respect of costs incurred in the claim.]

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**Changes to legislation:**

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