
STATUTORY INSTRUMENTS

2001 No. 4015

The Civil Procedure (Amendment No. 5) Rules 2001

Citation, commencement and interpretation

1. These Rules may be cited as the Civil Procedure (Amendment No. 5) Rules 2001 and shall come into force—

- (a) for the purposes of rules 2, 37, 38 and 40, and this rule, on 14th January 2002;
- (b) for the purposes of rules 4 to 6, 9, 10, 13, 14, 18, 35 and 41, on 1st March 2002; and
- (c) for all other purposes, on 25th March 2002.

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⁽¹⁾;
- (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. In rule 2.3, in paragraph (2), for “relevant” substitute “rule or”.

4. In rule 6.18—

- (a) for sub-paragraph (g), substitute—
 - “(g) “domicile” is to be determined—
 - (i) in relation to a Convention territory, in accordance with sections 41 to 46 of the 1982 Act;
 - (ii) in relation to a Regulation State, in accordance with the Judgments Regulation and paragraphs 9 to 12 of Schedule 1 to the Civil Jurisdiction and Judgments Order 2001;”;
- (b) at the end of sub-paragraph (h), delete “and”; and
- (c) after sub-paragraph (i), insert—
 - “(j) “the Judgments Regulation” means Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; and
 - (k) “Regulation State” in any provision, in the application of that provision in relation to the Regulation, has the same meaning as “Member State” in the Judgments Regulation, that is all Member States except Denmark.”.

⁽¹⁾ S.I. 1998/3132, as amended by S.I. 1999/1008, S.I. 2000/221, S.I. 2000/940, S.I. 2000/1317, S.I. 2000/2092, S.I. 2001/256, S.I. 2001/1388, S.I. 2001/1769 and S.I. 2001/2792.

5. In rule 6.19(1)(a), for “any part of the United Kingdom”, substitute “any other part of the United Kingdom”.

6. After rule 6.19(1) insert—

“(1A) A claim form may be served on a defendant out of the jurisdiction where each claim included in the claim form made against the defendant to be served is a claim which the court has power to determine under the Judgments Regulation and—

- (a) no proceedings between the parties concerning the same claim are pending in the courts of any other part of the United Kingdom or any other Regulation State; and
- (b) (i) the defendant is domiciled in the United Kingdom or in any Regulation State;
- (ii) Article 22 of the Judgments Regulation refers to the proceedings; or
- (iii) the defendant is a party to an agreement conferring jurisdiction to which Article 23 of the Judgments Regulation refers.”.

7. In rule 6.20—

- (a) omit the cross-reference after paragraph (15); and
- (b) after the cross-reference after paragraph (17), insert—

“Admiralty claims

(17A) a claim is—

- (a) in the nature of salvage and any part of the services took place within the jurisdiction; or
- (b) to enforce a claim under section 153, 154 or 175 of the Merchant Shipping Act 1995(2).”.

8. In rule 6.21, after paragraph (4), insert—

“(The second practice direction to this Part sets out how the periods referred to in paragraphs (a), (b) and (c) are calculated.)”.

9. In rule 6.22—

- (a) in paragraph (2)—
 - (i) after “6.19(1)” insert “or (1A)”; and
 - (ii) after “Contracting State” insert “or Regulation State”; and
- (b) in paragraph (4), after “6.19(1)” insert “or (1A)”.

10. In rule 6.23—

- (a) in paragraph (2)—
 - (i) after “6.19(1)” insert “or (1A)”; and
 - (ii) after “Contracting State” insert “or Regulation State”; and
- (b) in paragraph (4), after “6.19(1)” insert “or (1A)”.

11. In rule 8.3, omit paragraph (4).

12. In Part 11—

- (a) in rule 11(4), for paragraph (a), substitute—
 - “(a) be made within 14 days after filing an acknowledgment of service; and”;

- (b) after rule 11(4), omit the cross-reference;
- (c) in rule 11(5), for “for filing a defence” substitute “specified in paragraph (4)”;
- (d) for rule 11(9) substitute—
 - “(9) If a defendant makes an application under this rule, he must file and serve his written evidence in support with the application notice, but he need not before the hearing of the application file—
 - (a) in a Part 7 claim, a defence; or
 - (b) in a Part 8 claim, any other written evidence.”; and
- (e) omit rule 11(10).

13. In rule 12.10—

- (a) in paragraph (b)(i)—
 - (i) after “6.19(1)” insert “or (1A)”;
 - (ii) omit “under the Civil Jurisdiction and Judgments Act 1982(3)”;
- (b) in paragraph (b)(ii), after “Convention territory” insert “or Regulation State”.

14. In rule 12.11—

- (a) in paragraph (4), for sub-paragraph (a) substitute—
 - “(a) the claim under the Civil Jurisdiction and Judgments Act 1982 or the Judgments Regulation, was served in accordance with rules 6.19(1) or 6.19(1A) as appropriate;”;
- (b) in paragraph (6)—
 - (i) for sub-paragraph (a) substitute—
 - “(a) “domicile” is to be determined—
 - (i) in relation to a Convention territory, in accordance with sections 41 to 46 of the Civil Jurisdiction and Judgments Act 1982;
 - (ii) in relation to a Regulation State, in accordance with the Judgments Regulation and paragraphs 9 to 12 of Schedule 1 to the Civil Jurisdiction and Judgments Order 2001;”;
 - (ii) at the end of sub-paragraph (c), delete “and”; and
 - (iii) after sub-paragraph (d), insert—
 - “(e) “the Judgments Regulation” means Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; and
 - (f) “Regulation State” has the same meaning as “Member State” in the Judgments Regulation, that is all Member States except Denmark.”

15. In rule 20.6—

- (a) at the beginning, insert “(1)”;
- (b) after paragraph (1), insert—
 - “(2) A defendant may file and serve a notice under this rule—

(3) 1982 c. 27, as amended by the Civil Jurisdiction and Judgments Act 1991 (c. 12) and by S.I. 1989/1346, S.I. 1990/2591, S.I. 1993/603 and S.I. 2000/1824. The Civil Jurisdiction and Judgments Order 2001 will make further amendments when it comes into force on 1st March 2002.

- (a) without the court’s permission, if he files and serves it—
 - (i) with his defence; or
 - (ii) if his claim for contribution or indemnity is against a defendant added to the claim later, within 28 days after that defendant files his defence; or
 - (b) at any other time with the court’s permission.”.
- 16.** In rule 22.1, in paragraph (1)—
- (a) at the end of sub-paragraph (d), delete “and”; and
 - (b) at the end of sub-paragraph (e), insert—
 - “; and
 - (f) any other document where a rule or practice direction requires.”.
- 17.** In rule 25.10, in sub-paragraph (a), after “interim injunction^(g1)”, insert “other than a freezing injunction”.
- 18.** In rule 25.13(2), in sub-paragraphs (a)(ii) and (b)(ii), after “Lugano Convention” insert “or the Regulation”.
- 19.** In rule 26.3, after paragraph (6), insert—
- “(6A) The date for filing the completed allocation questionnaire may not be varied by agreement between the parties.”.
- 20.** In rule 31.14—
- (a) at the beginning, insert “(1)”;
 - (b) at the end of sub-paragraph (c), insert “or”;
 - (c) at the end of sub-paragraph (d), for “; or” substitute “.”;
 - (d) omit sub-paragraph (e); and
 - (e) after paragraph (1), but before the cross-reference, insert—
 - “(2) Subject to rule 35.10(4), a party may apply for an order for inspection of any document mentioned in an expert’s report which has not already been disclosed in the proceedings.”.
- 21.** In rule 35.12, in paragraph (1), for sub-paragraphs (a) and (b) substitute—
- “(a) identify and discuss the expert issues in the proceedings; and
 - (b) where possible, reach an agreed opinion on those issues.”.
- 22.** In rule 35.14—
- (a) for paragraph (2) substitute—
 - “(2) An expert must, unless the court orders otherwise, provide a copy of any proposed request for directions under paragraph (1)—
 - (a) to the party instructing him, at least 7 days before he files the request; and
 - (b) to all other parties, at least 4 days before he files it.”; and
 - (b) in paragraph (3)—
 - (i) after “served with” insert “a copy of the directions.”; and
 - (ii) omit sub-paragraphs (a) and (b).
- 23.** After rule 37.4, insert—

“Payment into court under enactments

37.5 A practice direction may set out special provisions with regard to payments into court under various enactments.”.

24. In rule 44.13, for paragraph 1 substitute—

“(1) Where the court makes an order which does not mention costs—

- (a) the general rule is that no party is entitled to costs in relation to that order; but
- (b) this does not affect any entitlement of a party to recover costs out of a fund held by him as trustee or personal representative, or pursuant to any lease, mortgage or other security.”.

25. In rule 45.1—

- (a) in paragraph (2)(a), after “sum of money”, insert “where the value of the claim exceeds £25”;
- (b) at the end of paragraph (2)(b), insert “and the value of the claim exceeds £25; or”; and
- (c) after paragraph (2)(b)—
 - (i) omit “and in either case the value of the claim exceeds £25.”; and
 - (ii) insert—
 - “(c) a judgment creditor has taken steps under Parts 70 to 73 to enforce a judgment or order.”

26. After rule 45.5, insert rule 45.6, as set out in Schedule 1 to these Rules.

27. In rule 48.4, for paragraphs (2) and (3) substitute—

“(2) The general rule is that he is entitled to be paid the costs of those proceedings, insofar as they are not recovered from or paid by any other person, out of the relevant trust fund or estate.

(3) Where he is entitled to be paid any of those costs out of the fund or estate, those costs will be assessed on the indemnity basis.”.

28. In Part 49, in paragraph (2), omit sub-paragraphs (a), (b), (c) and (e).

29. After Part 57, insert—

- (a) Part 58 (Commercial Court) as set out in Schedule 2 to these Rules;
- (b) Part 59 (Mercantile Courts) as set out in Schedule 3;
- (c) Part 60 (Technology and Construction Court claims) as set out in Schedule 4;
- (d) Part 61 (Admiralty claims) as set out in Schedule 5; and
- (e) Part 62 (Arbitration claims) as set out in Schedule 6.

30. In rule 70.5—

(a) in the note after paragraph (2), at the end insert—

“;

(v) judgments to which Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters applies”; and

(b) in paragraph (8), for “Value Added Tax tribunal” substitute “VAT and duties tribunal”.

31. In rule 71.8, in paragraph (4)(b), for “attend court at that time and place” substitute “comply with any term on which the committal order is suspended”.

32. In rule 72.1, in paragraph (2), for “which is a deposit-taking business for the purposes of the Banking Act 1987”, substitute “in the course of which he lawfully accepts deposits in the United Kingdom”.

33. In rule 72.6, in paragraph (2)(c)—

(a) at the end of sub-paragraph (i) omit “and”; and

(b) after sub-paragraph (ii) insert—

“; and

(iii) whether the bank or building society asserts any right to the money in the account, whether pursuant to a right of set-off or otherwise, and if so giving details of the grounds for that assertion.”.

34. In RSC Order 62, in Part III of Appendix 3, omit paragraphs 3 and 4.

35. In RSC Order 71—

(a) in rule 32(2), after “6.25” insert “, 6.26”;

(b) for rule 33, substitute—

“**Rule 33.**—(1) An appeal under Article 37 or Article 40 of Schedule 1 or 3C to the Act of 1982 must be made in accordance with CPR Part 52, except that—

(a) permission is not required; and

(b) the appellant’s notice must be served—

(i) in the case of an appeal under Article 37 of Schedule 1 or 3C to the Act of 1982, within one month of service of notice of registration of the judgment, or two months of service of such notice where that notice was served on a party not domiciled within the jurisdiction;

(ii) in the case of an appeal under Article 40 of Schedule 1 or 3C to the Act of 1982, within one month of the determination of the application under rule 27.

(2) If—

(a) the party against whom judgment was given is not domiciled in a Convention territory, and

(b) an application to extend the time for appealing is made within two months of service of notice of registration,

the court may extend the period within which an appeal may be made against the order for registration, except on the grounds of distance.”;

(c) in rule 36, in paragraph (2)(b), for the words from “any document” to the end, substitute—

“any document showing that for these proceedings the applicant is an assisted person or an LSC funded client, as defined in CPR rule 43.2(1)(h) and (i)”;

(d) after Part IV, insert Part V as set out in Schedule 7 to these Rules.

36. RSC Order 74 is revoked.

37. In RSC Order 92, omit rule 3A.

38. In RSC Order 93—

(a) in rule 22—

- (i) in the heading and in paragraph (1), for “the Financial Services Act 1986” substitute “the Financial Services and Markets Act 2000(4)”;
 - (ii) in paragraph (3), for “the Secretary of State or a designated agency under section 72” substitute “the Financial Services Authority under section 367”;
 - (iii) for paragraph (4) substitute—
 - “(4) Where there is a question of the construction of any rule or other instrument made by or with the approval or consent of the Financial Services Authority under the Act, that Authority may make representations to the court.”; and
 - (b) omit rule 23.
- 39.** In CCR Order 28—
- (a) after rule 1(2), insert—
 - “(3) The judgment creditor must file with the request all written evidence on which he intends to rely.”;
 - (b) in rule 2—
 - (i) for paragraph (3)(b), substitute—
 - “(b) it is made under section 110(2) of the Act.”; and
 - (ii) for paragraph (4), substitute—
 - “(4) The written evidence on which the judgment creditor intends to rely must be served with the judgment summons.”
 - ;
 - (c) in rule 3(1), for “A judgment summons shall”, substitute “The judgment summons and written evidence must”;
 - (d) after rule 4(1), insert—
 - “(1A) An order made under section 110(1) of the Act must be served personally on the judgment debtor.
 - (1B) Copies of—
 - (a) the judgment summons; and
 - (b) the written evidence,must be served with the order.”;
 - (e) for rule 5, substitute—

“Evidence

- 5.—**(1) No person may be committed on an application for a judgment summons unless—
 - (a) the order is made under section 110(2) of the Act; or
 - (b) the judgment creditor proves that the debtor—
 - (i) has or has had since the date of the judgment or order the means to pay the sum in respect of which he has made default; and
 - (ii) has refused or neglected or refuses or neglects to pay that sum.
- (2) The debtor may not be compelled to give evidence.”; and
- (f) omit rule 10(3).

- 40.** In CCR Order 34, in paragraph (a) of rule 1—
- (a) for “section 14 or 92” substitute “section 14, 92 or 118”; and
 - (b) after “seized in execution,” insert “or by wilfully insulting a judge, juror, witness or any officer of the court.”.

- 41.** In CCR Order 35—

- (a) in rule 3, in paragraph (2)(b), for the words from “any document” to the end, substitute—
 - “any document showing that for these proceedings the applicant is an assisted person or an LSC funded client, as defined in CPR rule 43.2(1)(h) and (i);”;
- (b) after rule 3, insert—

“Application under Article 54 of the Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

3A.—(1) An application to the court by an interested party for a certificate under Article 54 of Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be made—

- (a) without notice being served on any other party; and
 - (b) on witness statement or affidavit.
- (2) A witness statement or affidavit under paragraph (1)(b) must—
- (a) give particulars of the proceedings in which the judgment was obtained;
 - (b) contain evidence of service of the claim form by which the proceedings were begun where judgment was given in default of appearance by the defendant; and
 - (c) where appropriate, include any document showing that for these proceedings the applicant is an assisted person or an LSC funded client, as defined in CPR rule 43.2(1)(h) and (i).
- (3) A sealed copy of the judgment shall be issued together with a sealed certificate, in the form of Annex V to the Council Regulation, signed by the district judge.”.

- 42.** In CCR Order 38, in Appendix B—

- (a) in Part I—
 - (i) in the heading, omit “, APPLICATIONS TO ENFORCE AN AWARD”; and
 - (ii) in paragraph 1, omit sub-paragraph (e);
- (b) in Part II, for paragraph (d)(ii) in column 1 of the Table, substitute—
 - “(ii) possession of land, where one of the grounds for possession is arrears of rent (whether or not the order for possession is suspended on terms) and the defendant has neither delivered a defence, admission or counterclaim, nor otherwise denied liability”; and
- (c) in Part III, in the Table, omit items 7, 8 and 11.

Transitional provisions and Savings

43.—(1) Where proceedings for the possession of land are issued before 25th March 2002, rule 42(b) shall not apply, and CCR Order 38 shall apply as if it had not been amended.

(2) Where on or after 25th March 2002 fixed costs are to be awarded in enforcement proceedings which, pursuant to rule 24 of the Civil Procedure (Amendment No. 4) Rules 2001(5), continue to be governed by rules in Schedule 1 or Schedule 2 to the Civil Procedure Rules 1998 rather than rules in Parts 70 to 73, the rules governing enforcement costs in force immediately before 25th March 2002 shall continue to apply as if they had not been revoked.

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I allow these Rules

Dated 13th December 2001

Irvine of Lairg, C.