
STATUTORY INSTRUMENTS

2004 No. 2072

The Civil Procedure (Amendment No.2) Rules 2004

Citation, commencement and interpretation

1. These Rules may be cited as the Civil Procedure (Amendment No.2) Rules 2004 and shall come into force—

- (a) for the purposes of rules 2 and 14, and this rule, on 1st September 2004; and
- (b) for all other purposes, on 1st October 2004.

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); and
- (b) 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 (1), after the definition of “child” insert—

““civil restraint order” means an order restraining a party—

- (a) from making any further applications in current proceedings (a limited civil restraint order);
- (b) from issuing certain claims or making certain applications in specified courts (an extended civil restraint order); or
- (c) from issuing any claim or making any application in specified courts (a general civil restraint order).”.

4. In rule 3.3, after paragraph (6) insert—

“(7) If the court of its own initiative strikes out a statement of case or dismisses an application, and it considers that the claim or application is totally without merit—

- (a) the court’s order must record that fact; and
- (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.”.

5. In rule 3.4, after paragraph (5) insert—

“(6) If the court strikes out a claimant’s statement of case and it considers that the claim is totally without merit—

- (a) the court’s order must record that fact; and
- (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.”.

(1) S.I.1998/3132. There are relevant amendments in S.I. 2000/221, S.I. 2000/1317, S.I. 2001/4015, S.I. 2003/2113, S.I. 2003/3361 and S.I. 2004/1306.

6. After rule 3.10, insert—

“Power of the court to make civil restraint orders

3.11. A practice direction may set out—

- (a) the circumstances in which the court has the power to make a civil restraint order against a party to proceedings;
- (b) the procedure where a party applies for a civil restraint order against another party; and
- (c) the consequences of the court making a civil restraint order.”.

7. For rule 5.4 substitute—

“Supply of documents from court records – general

5.4.—(1) A court or court office may keep a publicly accessible register of claims which have been issued out of that court or court office.

(2) Any person who pays the prescribed fee may, during office hours, search any available register of claims.

(The practice direction contains details of available registers.)

(3) A party to proceedings may, unless the court orders otherwise, obtain from the records of the court a copy of—

- (a) a statement of case;
- (b) a judgment or order given or made in public (whether made at a hearing or without a hearing);
- (c) an application notice, other than in relation to—
 - (i) an application by a solicitor for an order declaring that he has ceased to be the solicitor acting for a party; or
 - (ii) an application for an order that the identity of a party or witness should not be disclosed;
- (d) any written evidence filed in relation to an application, other than a type of application mentioned in sub-paragraph (c)(i) or (ii);
- (e) a notice of payment into court;
- (f) an appellant’s notice or respondent’s notice.

(4) A party to proceedings may, if the court gives permission, obtain from the records of the court a copy of any other document filed by a party or communication between the court and a party or another person.

(5) Any other person may—

- (a) unless the court orders otherwise, obtain from the records of the court a copy of—
 - (i) a claim form, subject to paragraph (6) and to any order of the court under paragraph (7);
 - (ii) a judgment or order given or made in public (whether made at a hearing or without a hearing), subject to paragraph (6); and
- (b) if the court gives permission, obtain from the records of the court a copy of any other document filed by a party, or communication between the court and a party or another person.

(6) A person may obtain a copy of a claim form or a judgment or order under paragraph (5)(a) only if—

- (a) where there is one defendant, the defendant has filed an acknowledgment of service or a defence;
- (b) where there is more than one defendant, either—
 - (i) all the defendants have filed an acknowledgment of service or a defence;
 - (ii) at least one defendant has filed an acknowledgment of service or a defence, and the court gives permission;
- (c) the claim has been listed for a hearing; or
- (d) judgment has been entered in the claim.

(7) The court may, on the application of a party or of any person identified in the claim form—

- (a) restrict the persons or classes of persons who may obtain a copy of the claim form;
- (b) order that persons or classes of persons may only obtain a copy of the claim form if it is edited in accordance with the directions of the court; or
- (c) make such other order as it thinks fit.

(8) A person wishing to obtain a copy of a document under paragraph (3), (4) or (5) must pay any prescribed fee and—

- (a) if the court’s permission is required, file an application notice in accordance with Part 23; or
- (b) if permission is not required, file a written request for the document.

(9) An application for permission to obtain a copy of a document, or for an order under paragraph (7), may be made without notice, but the court may direct notice to be given to any person who would be affected by its decision.

(10) Paragraphs (3) to (9) of this rule do not apply in relation to any proceedings in respect of which a rule or practice direction makes different provision.”.

8. In rule 6.20, in paragraph (3), after “will be served” insert “(otherwise than in reliance on this paragraph)”.

9. After rule 23.11 insert—

“Dismissal of totally without merit applications

23.12. If the court dismisses an application and it considers that the application is totally without merit—

- (a) the court’s order must record that fact; and
- (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.”.

10. In Part 45, at the end of the table of contents, insert the text set out in Part I of the Schedule to these Rules.

11. In rule 45.10, in paragraph (2)—

- (a) in sub-paragraph (b), for “body of a prescribed description within the meaning of section 30(1) of the Access to Justice Act 1999” substitute “membership organisation”; and
- (b) after sub-paragraph (b) insert the following cross-reference—

“(“membership organisation” is defined in rule 43.2(1)(n))”.

12. After Section III of Part 45, insert Section IV as set out in Part II of the Schedule to these Rules.

13. In rule 52.10, after paragraph (4), insert—

“(5) If the appeal court—

- (a) refuses an application for permission to appeal;
- (b) strikes out an appellant’s notice; or
- (c) dismisses an appeal,

and it considers that the application, the appellant’s notice or the appeal is totally without merit, the provisions of paragraph (6) must be complied with.

(6) Where paragraph (5) applies—

- (a) the court’s order must record the fact that it considers the application, the appellant’s notice or the appeal to be totally without merit; and
- (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.”.

14. In rule 65.3—

- (a) in paragraph (1), for “section 153A, 153B or 153D”, substitute “Chapter III of Part V”;
- (b) in paragraph (2)(c), for “affidavit evidence”, substitute “a witness statement”;
- (c) in paragraph (4)(a), for “affidavit”, substitute “witness statement”;
- (d) in paragraph (5), for “affidavit”, substitute “witness statement”;
- (e) in paragraph (6)(a), for “affidavit”, substitute “witness statement”.

15. In CCR Order 49, rule 17—

- (a) in paragraph (4), for “section 25” substitute “section 17B or 25”;
- (b) in paragraph (6), for “section 66” substitute “section 65”; and
- (c) in paragraph (8), after “section 26 of” insert “or Schedule 3A to”.

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I allow these Rules

Dated 29th July 2004

Falconer of Thoroton C.