

2005 No. 2292 (L.21)

SUPREME COURT OF ENGLAND AND WALES
COUNTY COURTS, ENGLAND AND WALES

The Civil Procedure (Amendment No.3) Rules 2005

Made - - - - - *8th August 2005*

Laid before Parliament *19th August 2005*

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 of court under section 1 of that Act, after consulting in accordance with section 2(6)(a) of that Act, make the following Rules—

Citation, commencement and interpretation

1. These Rules may be cited as the Civil Procedure (Amendment No.3) Rules 2005 and shall come into force—

- (a) for the purposes of rules 11(a), 14, 16 and 19(a) on 6th April 2006;
- (b) for the purposes of rules 50, 51 and 52 on 21st October 2005;
- (c) for all other purposes, and for the purpose of this rule, on 1st October 2005.

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(b);
- (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.

Amendment to the Civil Procedure Rules 1998

3. In rule 3.1, after sub-paragraph (l), insert—

“(ll) order any party to file and serve an estimate of costs;”.

4. In rule 3.3(7), after “an application”, insert “(including an application for permission to appeal or for permission to apply for judicial review)”.

(a) 1997 c. 12.

(b) S.I. 1998/3132. There are relevant amendments in 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. 2001/4015, S.I. 2002/2058, S.I. 2002/3219, S.I. 2003/1242, S.I. 2003/3361, S.I. 2004/1306, S.I. 2004/3419 and S.I. 2004/2072

5. In rule 3.7—

- (a) in sub-paragraph (4)(i), for “the claim shall be struck out” substitute “the claim will automatically be struck out without further order of the court”; and
- (b) in sub-paragraph (6)(a), for “the claim shall be struck out” substitute “the claim will automatically be struck out without further order of the court”.

6. After rule 3.7 insert—

“3.7A—(1) This rule applies where a defendant files a counterclaim without—

- (a) payment of the fee specified by the relevant Fees Order; or
- (b) making an application for an exemption from or remission of the fee.

(2) The court will serve a notice on the defendant requiring payment of the fee specified in the relevant Fees Order if, at the time the fee is due, the defendant has not paid it or made an application for exemption or remission.

(3) The notice will specify the date by which the defendant must pay the fee.

(4) If the defendant does not—

- (a) pay the fee; or
- (b) make an application for an exemption from or remission of the fee,

by the date specified in the notice, the counterclaim will automatically be struck out without further order of the court.

(5) Where an application for exemption from or remission of a fee is refused, the court will serve notice on the defendant requiring payment of the fee by the date specified in the notice.

(6) If the defendant does not pay the fee by the date specified in the notice, the counterclaim will automatically be struck out without further order of the court.

(7) If—

- (a) the defendant applies to have the counterclaim reinstated; and
- (b) the court grants relief,

the relief will be conditional on the defendant either paying the fee or filing evidence of exemption from payment or remission of the fee within the period specified in paragraph (8).

(8) The period referred to in paragraph (7) is—

- (a) if the order granting relief is made at a hearing at which the defendant is present or represented, 2 days from the date of the order;
- (b) in any other case, 7 days from the date of service of the order on the defendant.”.

7. After rule 3.7A insert—

“Sanctions for dishonouring cheque

3.7B (1) This rule applies where any fee is paid by cheque and that cheque is subsequently dishonoured.

(2) The court will serve a notice on the paying party requiring payment of the fee which will specify the date by which the fee must be paid.

(3) If the fee is not paid by the date specified in the notice—

- (a) where the fee is payable by the claimant, the claim will automatically be struck out without further order of the court;
- (b) where the fee is payable by the defendant, the defence will automatically be struck out without further order of the court,

and the paying party shall be liable for the costs which any other party has incurred unless the court orders otherwise.

(Rule 44.12 provides for the basis of assessment where a right to costs arises under this rule)

(4) If—

- (a) the paying party applies to have the claim or defence reinstated; and
- (b) the court grants relief,

the relief shall be conditional on that party paying the fee within the period specified in paragraph (5).

(5) The period referred to in paragraph (4) is—

- (a) if the order granting relief is made at a hearing at which the paying party is present or represented, 2 days from the date of the order;
- (b) in any other case, 7 days from the date of service of the order on the paying party.

(6) For the purposes of this rule, ‘claimant’ includes a Part 20 claimant and ‘claim form’ includes a Part 20 claim.”.

8. In rule 5.4—

(a) for paragraph (3), substitute—

“(3) A party to proceedings may, unless the court orders otherwise, obtain from the records of the court a copy of any document listed in paragraph 4.2A of the Practice Direction.”; and

(b) in sub-paragraph (5)(a)(i), after “a claim form,”, insert “but not any documents filed with or attached to or intended by the claimant to be served with such claim form,”.

9. After rule 6.1, for the cross-reference, substitute—

“(For service in possession claims, see Part 55).”.

10. In rule 6.4—

(a) in paragraph (1), for “paragraph (2)”, substitute “paragraphs (2) and (2A)”;

(b) after paragraph (2), insert—

“(2A) In civil proceedings by or against the Crown, as defined in rule 66.1(2), documents required to be served on the Crown may not be served personally.”.

11. In rule 6.5—

(a) in paragraph (2), after “A party must give an address for service within the jurisdiction.”, insert—

“Such address must include a full postcode, unless the court orders otherwise.

(Paragraph 2.4 of the Practice Direction to Part 16 contains provision about the content of an address for service).”;

(b) after paragraph (7), insert—

“(8) In civil proceedings by or against the Crown, as defined in rule 66.1(2)—

- (a) service on the Attorney General must be effected on the Treasury Solicitor;
- (b) service on a government department must be effected on the solicitor acting for that department as required by section 18 of the Crown Proceedings Act 1947.

(The practice direction to Part 66 gives the list published under section 17 of that Act of the solicitors acting for the different government departments on whom service is to be effected, and of their addresses).”.

12. In rule 6.7(1), after “A document which is served in accordance with these rules or any relevant practice direction shall be deemed to be served on the day shown in the following table”,

omit “(Rule 2.8 excludes a Saturday, Sunday, a Bank Holiday, Christmas Day or Good Friday from calculations of periods of 5 days or less)”.

13. For rule 6.11, and for the heading “Notice of non-service”, substitute—

“Notification of outcome of postal service by the court

6.11 Where—

- (a) a document to be served by the court is served by post; and
- (b) such document is returned to the court,

the court must send notification to the party who requested service stating that the document has been returned.

Notice of non-service by bailiff

6.11A Where—

- (a) the court bailiff is to serve a document; and
- (b) the bailiff is unable to serve it,

the court must send notification to the party who requested service.”.

14. After rule 6.13 insert—

“(Paragraph 2.4 of the Practice Direction to Part 16 contains provision about the content of an address for service).”.

15. In rule 6.20, paragraph (16)—

- (a) for the heading “Claims by the Inland Revenue”, substitute “Claims by HM Revenue and Customs”; and
- (b) for “Commissioners of the Inland Revenue”, substitute “Commissioners for HM Revenue and Customs”.

16. After rule 9.2 insert—

“(Paragraph 10.6 of the Practice Direction to Part 16 contains provision about the content of the admission, defence or acknowledgment of service).”.

17. In rule 10.3(2)—

- (a) at the end of sub-paragraph (a), omit “and”; and
- (b) at the end of sub-paragraph (b), insert—

“; and

- (c) rule 6.21(4) (which requires the court to specify the period within which the defendant may file an acknowledgment of service calculated by reference to Practice Direction 6B when it makes an order giving permission to serve a claim form out of the jurisdiction).”.

18. In rule 11(7)—

- (a) at the end of sub-paragraph (a), omit “and”; and
- (b) at the end of sub-paragraph (b), insert—

“; and

- (c) the court shall give directions as to the filing and service of the defence in a claim under Part 7 or the filing of evidence in a claim under Part 8 in the event that a further acknowledgment of service is filed.”.

19. In rule 12.4—

- (a) in sub-paragraph (2), after “where rule 12.9 or rule 12.10 so provides”, insert—
“,
and where the defendant is an individual, the claimant must provide the defendant’s date of birth (if known) in Part C of the application notice.”; and
- (b) after paragraph (3), insert—
“(4) In civil proceedings against the Crown, as defined in rule 66.1(2), a request for a default judgment must be considered by a Master or district judge, who must in particular be satisfied that the claim form and particulars of claim have been properly served on the Crown in accordance with section 18 of the Crown Proceedings Act 1947 and rule 6.5(8).”.

20. In rule 12.10, for sub-paragraph (a), substitute—

- “(a) the claim is—
(i) a claim against a child or patient; or
(ii) a claim in tort by one spouse or civil partner against the other.”.

21. In rule 12.11, paragraph (3), after “a claim in tort between spouses”, insert “or civil partners”.

22. In rule 16.2, after paragraph (1), insert—

- “(1A) In civil proceedings against the Crown, as defined in rule 66.1(2), the claim form must also contain—
(a) the names of the government departments and officers of the Crown concerned;
and
(b) brief details of the circumstances in which it is alleged that the liability of the Crown arose.”.

23. In rule 19.4, after paragraph (4), insert—

- “(4A) The Commissioners for HM Revenue and Customs may be added as a party to proceedings only if they consent in writing.”.

24. After rule 19.7A insert—

“Postal Services Act 2000 (c.26)

19.7B—(1) An application under section 92 of the Postal Services Act 2000 for permission to bring proceedings in the name of the sender or addressee of a postal packet or his personal representative is made in accordance with Part 8.

(2) A copy of the application notice must be served on the universal service provider and on the person in whose name the applicant seeks to bring the proceedings.”.

25. After rule 21.11 insert—

“Expenses incurred by a litigation friend

21.11A—(1) In proceedings to which rule 21.11 applies, a litigation friend who incurs expenses on behalf of a child or patient in any proceedings is entitled to recover the amount paid or payable out of any money recovered or paid into court to the extent that it—

- (a) has been reasonably incurred; and
(b) is reasonable in amount.

(2) Expenses may include all or part of—

- (a) an insurance premium, as defined by rule 43.2(1)(m); or
(b) interest on a loan taken out to pay an insurance premium or other recoverable disbursement.

(3) No application may be made under this rule for expenses that—

- (a) are of a type that may be recoverable on an assessment of costs payable by or out of money belonging to a child or patient; but
- (b) are disallowed in whole or in part on such an assessment.

(Expenses which are also “costs” as defined in rule 43.2(1)(a) are dealt with under rule 48.5(2)).

(4) In deciding whether the expense was reasonably incurred and reasonable in amount, the court must have regard to all the circumstances of the case including the factors set out in rule 44.5(3).

(5) When the court is considering the factors to be taken into account in assessing the reasonableness of expenses incurred by the litigation friend on behalf of a child or patient, it will have regard to the facts and circumstances as they reasonably appeared to the litigation friend or child’s or patient’s legal representative when the expense was incurred.

(6) Where the claim is settled or compromised, or judgment is given, on terms that an amount not exceeding £5,000 is paid to the child or patient, the total amount the litigation friend may recover under paragraph (1) of this rule shall not exceed 25% of the sum so agreed or awarded, unless the Court directs otherwise. Such total amount shall not exceed 50% of the sum so agreed or awarded.”.

26. In rule 23.12, after “dismisses an application”, insert “(including an application for permission to appeal or for permission to apply for judicial review)”.

27. In rule 24.4, after paragraph (1), insert—

“(1A) In civil proceedings against the Crown, as defined in rule 66.1(2), a claimant may not apply for summary judgment until after expiry of the period for filing a defence specified in rule 15.4.”.

28. In rule 26.4(2)—

- (a) after “the court will direct that the proceedings”, insert “, either in whole or in part,”; and
- (b) after “be stayed for one month”, insert “, or for such specified period as it considers appropriate.”.

29. In rule 27.2—

- (a) in sub-paragraph (1)(f), before “Part 18”, insert “Subject to paragraph (3),”; and
- (b) after paragraph (2), insert—

“(3) The court of its own initiative may order a party to provide further information if it considers it appropriate to do so.”.

30. In rule 27.9, for paragraph (1), substitute—

“(1) If a party who does not attend a final hearing—

- (a) has given written notice to the court and the other party at least 7 days before the hearing date that he will not attend;
- (b) has served on the other party at least 7 days before the hearing date any other documents which he has filed with the court; and
- (c) has, in his written notice, requested the court to decide the claim in his absence and has confirmed his compliance with paragraphs (a) and (b) above,

the court will take into account that party’s statement of case and any other documents he has filed and served when it decides the claim.”.

31. In rule 27.14—

- (a) after paragraph (2), insert—

“(2A) A party’s rejection of an offer in settlement will not of itself constitute unreasonable behaviour under paragraph (2)(d) but the court may take it into consideration when it is applying the unreasonableness test.

(Rule 36.2(5) allows the court to order Part 36 costs consequences in a small claim).”;

- (b) in sub-paragraph (3)(c), after “loss of earnings”, insert “or loss of leave”; and
- (c) for paragraph (5) substitute—

“(5) Where—

- (a) the financial value of a claim exceeds the limit for the small claims track; but
- (b) the claim has been allocated to the small claims track in accordance with rule 26.7(3),

the small claims track costs provisions will apply unless the parties agree that the fast track costs provisions are to apply.

(6) Where the parties agree that the fast track costs provisions are to apply, the claim will be treated for the purposes of costs as if it were proceeding on the fast track except that trial costs will be in the discretion of the court and will not exceed the amount set out for the value of claim in rule 46.2 (amount of fast track trial costs).”.

32. In rule 28.5—

- (a) for paragraph (3) substitute—

“(3) If no party files the completed pre-trial checklist by the date specified, the court will order that unless a completed pre-trial checklist is filed within 7 days from service of that order, the claim, defence and any counterclaim will be struck out without further order of the court.”; and

- (b) after paragraph (3), insert—

“(4) If—

- (a) a party files a completed pre-trial checklist but another party does not;
- (b) a party has failed to give all the information requested by the pre-trial checklist; or
- (c) the court considers that a hearing is necessary to enable it to decide what directions to give in order to complete preparation of the case for trial,

the court may give such directions as it thinks appropriate.”.

33. In rule 29.6—

- (a) for paragraph (3) substitute—

“(3) If no party files the completed pre-trial checklist by the date specified, the court will order that unless a completed pre-trial checklist is filed within 7 days from service of that order, the claim, defence and any counterclaim will be struck out without further order of the court.”; and

- (b) after paragraph (3), insert—

“(4) If—

- (a) a party files a completed pre-trial checklist but another party does not;
- (b) a party has failed to give all the information requested by the pre-trial checklist; or
- (c) the court considers that a hearing is necessary to enable it to decide what directions to give in order to complete preparation of the case for trial,

the court may give such directions as it thinks appropriate.”.

34. In rule 30.3, after sub-paragraph (2)(g), insert—

“;

- (h) in the case of civil proceedings by or against the Crown, as defined in rule 66.1(2), the location of the relevant government department or officers of the Crown and, where appropriate, any relevant public interest that the matter should be tried in London.”.

35. In rule 30.8—

- (a) in sub-paragraph (1), after “Queen’s Bench Division”, insert “(other than proceedings in the Commercial or Admiralty Courts)”; and
- (b) after sub-paragraph (3), insert—

“(4) If any such proceedings which have been commenced in the Queen’s Bench Division or a Mercantile Court fall within the scope of rule 58.1(2), any party to those proceedings may apply for the transfer of the proceedings to the Commercial Court, in accordance with rule 58.4(2) and rule 30.5(3). If the application is refused, the proceedings must be transferred to the Chancery Division of the High Court at the Royal Courts of Justice.”.

36. After rule 32.19 insert—

“Notarial acts and instruments

32.20 A notarial act or instrument may be received in evidence without further proof as duly authenticated in accordance with the requirements of law unless the contrary is proved.”.

37. In rule 40.3—

- (a) in sub-paragraph (1), for “Every” substitute “Except as is provided at paragraph (4) below or by any Practice Direction, every”; and
- (b) after paragraph (3), insert—

“(4) Except for orders made by the court of its own initiative and unless the court otherwise orders, every judgment or order made in claims proceeding in the Queen’s Bench Division at the Royal Courts of Justice, other than in the Administrative Court, will be drawn up by the parties, and rule 40.3 is modified accordingly.”.

38. In rule 44.13—

- (a) in sub-paragraph (1)(a), at the beginning insert “subject to paragraphs (1A) and (1B),”; and
- (b) after paragraph (1), insert—

“(1A) Where the court makes—

- (a) an order granting permission to appeal;
- (b) an order granting permission to apply for judicial review; or
- (c) any other order or direction sought by a party on an application without notice, and its order does not mention costs, it will be deemed to include an order for applicant’s costs in the case.

(1B) Any party affected by a deemed order for costs under paragraph (1A) may apply at any time to vary the order.”.

39. In rule 45.20(2), after sub-paragraph (a)(iii), insert—

“(iv) relates to an injury to which Section V of this Part applies; or”.

40. After Section IV of Part 45 insert Section V as set out in Schedule 1 to these Rules.

41. In rule 48.5—

- (a) in sub-paragraph (2)(a), after “the court must order a detailed assessment of the costs payable by”, insert “, or out of money belonging to,”;
- (b) at the end of sub-paragraph (2)(a), after “any party who is a child or patient”, omit “to his solicitor”; and
- (c) in sub-paragraph (4)(b), after “payable by the child or patient”, omit “to his solicitor”.

42. In rule 55.1—

- (a) at the end of sub-paragraph (f), omit “and”; and
- (b) after sub-paragraph (g), insert—
 - “; and
 - (h) “a suspension claim” means a claim made by a landlord for an order under section 121A of the 1985 Act.”.

43. In rule 55.2, after paragraph (1), for the cross-reference substitute—

“(Where a demotion claim or a suspension claim (or both) is made in the same claim form in which a possession claim is started, this Section of this Part applies as modified by rule 65.12. Where the claim is a demotion claim or a suspension claim only, or a suspension claim made in addition to a demotion claim, Section III of Part 65 applies).”.

44. After rule 55.10 insert—

“Electronic issue of certain possession claims

55.10A—(1) A practice direction may make provision for a claimant to start certain types of possession claim in certain courts by requesting the issue of a claim form electronically.

(2) The practice direction may, in particular—

- (a) provide that only particular provisions apply in specific courts;
- (b) specify—
 - (i) the type of possession claim which may be issued electronically;
 - (ii) the conditions that a claim must meet before it may be issued electronically;
- (c) specify the court where the claim may be issued;
- (d) enable the parties to make certain applications or take further steps in relation to the claim electronically;
- (e) specify the requirements that must be fulfilled in relation to such applications or steps;
- (f) enable the parties to correspond electronically with the court about the claim;
- (g) specify the requirements that must be fulfilled in relation to electronic correspondence;
- (h) provide how any fee payable on the filing of any document is to be paid where the document is filed electronically.

(3) The Practice Direction may disapply or modify these Rules as appropriate in relation to possession claims started electronically.”.

45. After rule 60.6 insert—

“Judgments and Orders

60.7—(1) Except for orders made by the court of its own initiative and unless the court otherwise orders, every judgment or order made in claims proceeding in the Technology and Construction Court will be drawn up by the parties, and rule 40.3 is modified accordingly.

(2) An application for a consent order must include a draft of the proposed order signed on behalf of all the parties to whom it relates.

(3) Rule 40.6 (consent judgments and orders) does not apply.”.

46. In rule 63.1, after sub-paragraph (2)(g), insert—

“(gg) “patents judge” means a person nominated under section 291(1) of the 1988 Act as the patents judge of a patents county court;”.

47. After rule 63.4 insert—

“Patents Judge

63.4A—(1) Subject to paragraph (2), proceedings in the patents county court shall be dealt with by the patents judge.

(2) When a matter needs to be dealt with urgently and it is not practicable or appropriate for the patents judge to deal with such matter, the matter may be dealt with by another judge with appropriate specialist experience who shall be nominated by the Vice-Chancellor.”.

48. In Part 65—

- (a) for the heading to Section III, substitute “Demotion claims, proceedings related to demoted tenancies and applications to suspend the right to buy”;
- (b) in rule 65.11, paragraph (1)—
 - (i) at the end of sub-paragraph (a), omit “and”; and
 - (ii) after sub-paragraph (a), insert—

“(aa) claims by a landlord for an order under section 121A of the Housing Act 1985 (‘a suspension order’); and”;
- (c) in rule 65.11, paragraph (2)—
 - (i) at the end of sub-paragraph (a), omit “and”; and
 - (ii) at the end of sub-paragraph (b), insert—

“;

 - (c) “suspension claim” means a claim made by a landlord for a suspension order; and
 - (d) “suspension period” means the period during which the suspension order suspends the right to buy in relation to the dwelling house.”;
- (d) in rule 65.12—
 - (i) in the heading, after “Demotion claims”, insert “or suspension claims”; and
 - (ii) after “Where a demotion order”, insert “or suspension order (or both)”;
- (e) in rule 65.13—
 - (i) in the heading, after “Other demotion”, insert “or suspension”; and
 - (ii) after “Where a demotion claim”, insert “or suspension claim (or both)”;
- (f) in rule 65.14—
 - (i) in the heading, after “Starting a demotion”, insert “or suspension”; and
 - (ii) in paragraph (1), for “The demotion claim”, substitute “The claim”;
- (g) in rule 65.17, paragraph (3), after “Part 12 (default judgment) does not apply”, omit “in a demotion claim”;
- (h) in rule 65.18—
 - (i) in sub-paragraph (1)(a), for “decide the demotion claim”, substitute “decide the claim”;
 - (ii) in paragraph (2), for “the demotion claim”, substitute “the claim” in both places where it occurs; and
 - (iii) in sub-paragraph (3)(a), for “the demotion claim”, substitute “the claim”; and
- (i) in rule 65.19, for “a demotion claim”, substitute “the claim”.

49. After Part 65 insert Part 66 (Crown Proceedings) as set out in Schedule 2 to these Rules.

50. In rule 74.1—

- (a) after paragraph (4), insert new paragraph (4A)—

“(4A) Section V applies to—

- (a) the certification of judgments and court settlements in England and Wales as European Enforcement Orders; and
- (b) the enforcement in England and Wales of judgments, court settlements and authentic instruments certified as European Enforcement Orders by other Member States.”; and

(b) in paragraph (5), after sub-paragraph (d), insert—

“;

- (e) “the EEO Regulation” means Council Regulation (EC) No 805/2004 creating a European Enforcement Order for uncontested claims.”.

51. After rule 74.1 insert the following signpost—

“(A copy of the EEO Regulation is annexed to Practice Direction 74B European Enforcement Orders and can be found at http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_143/l_14320040430en00150039.pdf”).

52. After Section IV of Part 74 insert Section V as set out in Schedule 3 to these Rules.

53. In RSC Order 77, rule 8A, for “Commissioners of Inland Revenue”, substitute “Commissioners for HM Revenue and Customs”.

54. In CCR Order 49 rule 17(6), after “section 65 of the Act of 1976,” insert “section 56 of the Act of 1995,”.

55. The following provisions are revoked—

- (a) RSC Order 77;
- (b) CCR Order 42; and
- (c) CCR Order 49, rule 15.

John Dyson, L.J.
Rupert Jackson, J.
Terence Etherton, J.
Stephen Oliver-Jones
Steven Whitaker
Carlos Dabezies
David di Mambro
Richard Walford
Andrew Parker
Tina Jones
Juliet Herzog
Philip Rainey
Nicholas Burkill
Peter Candon

I allow these Rules

Dated 8th August 2005

Falconer of Thoroton, C.

“V FIXED RECOVERABLE SUCCESS FEES IN EMPLOYER’S LIABILITY DISEASE CLAIMS

Scope and Interpretation

45.23—(1) Subject to paragraph (2), this Section applies where—

- (a) the dispute is between an employee (or, if the employee is deceased, the employee’s estate or dependants) and his employer (or a person alleged to be liable for the employer’s alleged breach of statutory or common law duties of care); and
- (b) the dispute relates to a disease with which the employee is diagnosed that is alleged to have been contracted as a consequence of the employer’s alleged breach of statutory or common law duties of care in the course of the employee’s employment; and
- (c) the claimant has entered into a funding arrangement of a type specified in rule 43.2(1)(k)(i).

(2) This Section does not apply where—

- (a) the claimant sent a letter of claim to the defendant containing a summary of the facts on which the claim is based and main allegations of fault before 1st October 2005; or
- (b) rule 45.20(2)(b) applies.

(3) For the purposes of this Section—

- (a) rule 45.15(6) applies;
- (b) “employee” has the meaning given to it by section 2(1) of the Employers’ Liability (Compulsory Insurance) Act 1969;
- (c) “Type A claim” means a claim relating to a disease or physical injury alleged to have been caused by exposure to asbestos;
- (d) “Type B claim” means a claim relating to—
 - (i) a psychiatric injury alleged to have been caused by work-related psychological stress;
 - (ii) a work-related upper limb disorder which is alleged to have been caused by physical stress or strain, excluding hand/arm vibration injuries; and
- (e) “Type C claim” means a claim relating to a disease not falling within either type A or type B.

(The Table annexed to the Practice Direction supplementing Part 45 contains a non-exclusive list of diseases within Type A and Type B).

Percentage increase of solicitors’ fees

45.24—(1) In the cases to which this Section applies, subject to rule 45.26, the percentage increase which is to be allowed in relation to solicitors’ fees is—

- (a) 100% if the claim concludes at trial; or
- (b) where—
 - (i) the claim concludes before a trial has commenced; or
 - (ii) the dispute is settled before a claim is issued,
 to be determined by rule 45.24(2).

(2) Where rule 45.24(1)(b) applies, the percentage increase which is to be allowed in relation to solicitors' fees is—

- (a) in type A claims—
 - (i) 30% if a membership organisation has undertaken to meet the claimant's liabilities for legal costs in accordance with section 30 of the Access to Justice Act 1999; and
 - (ii) 27.5% in any other case;
- (b) in type B claims, 100%; and
- (c) in type C claims—
 - (i) 70% if a membership organisation has undertaken to meet the claimant's liabilities for legal costs in accordance with section 30 of the Access to Justice Act 1999; and
 - (ii) 62.5% in any other case.

("Membership organisation" is defined in rule 43.2(1)(n)).

Percentage increase of counsel's fees

45.25—(1) In the cases to which this Section applies, subject to rule 45.26, the percentage increase which is to be allowed in relation to counsel's fees is—

- (a) 100% if the claim concludes at trial; or
- (b) where—
 - (i) the claim concludes before a trial has commenced; or
 - (ii) the dispute is settled before a claim is issued,
 to be determined by rule 45.25(2).

(2) Where rule 45.25(1)(b) applies, the percentage increase which is to be allowed in relation to counsel's fees is—

- (a) if the claim has been allocated to the fast track, the amount shown in Table 6; and
- (b) if the claim has been allocated to the multi-track, the amount shown in Table 7.

(3) Where a trial period has been fixed, rules 45.17(2) to 45.17(5) apply for the purposes of determining the date fixed for the commencement of the trial.

Table 6

Claims allocated to the fast track

	If the claim concludes 14 days or less before the date fixed for commencement of the trial	If the claim concludes more than 14 days before the date fixed for commencement of the trial or before any such date has been fixed
Type A claim	50%	27.5%
Type B claim	100%	100%
Type C claim	62.5%	62.5%

Table 7

Claims allocated to the multi-track

	If the claim concludes 21 days or less before the date fixed for commencement of the trial	If the claim concludes more than 21 days before the date fixed for commencement of the trial or before any such date has been fixed
Type A claim	75%	27.5%

Type B claim	100%	100%
Type C claim	75%	62.5%

Alternative percentage increase

45.26—(1) In cases to which this Section applies and subject to paragraph (2) below, rules 45.18(2) to (4) apply where the percentage increase is the amount allowed under rules 45.24 and 45.25.

(2) For the purposes of this section, the sum of £250,000 shall be substituted for the sum of £500,000 in rules 45.18(2)(a) to (c).

(3) Where the percentage increase of fees is assessed by the court under rule 45.18(4), as applied by paragraph 1 above, the percentage increase to be allowed shall be the amount shown in Table 8.

(4) The percentage increase cannot be varied where the case concludes at trial.

Table 8

Type of claim	Amount Allowed	
A	If the percentage increase is assessed as greater than 40% or less than 15%, the percentage increase that is assessed by the court.	If the percentage increase is assessed as no greater than 40% and no less than 15%— (i) 27.5%; and (ii) the costs of the application and assessment shall be paid by the applicant.
B	If the percentage increase is assessed as less than 75%, the percentage increase that is assessed by the court.	If the percentage increase is assessed as no less than 75%— (i) 100%; and (ii) the costs of the application and assessment shall be paid by the applicant.
C	If the percentage increase is assessed as greater than 75% or less than 50%, the percentage increase that is assessed by the court.	If the percentage increase is assessed as no greater than 75% and no less than 50%— (i) 62.5%; and (ii) the costs of the application and assessment shall be paid by the applicant.

**“PART 66
CROWN PROCEEDINGS**

Contents of this Part

Scope of this Part and interpretation	Rule 66.1
Application of the Civil Procedure Rules	Rule 66.2
Action on behalf of the Crown	Rule 66.3
Counterclaims, other Part 20 claims, and set-off	Rule 66.4
Applications in revenue matters	Rule 66.5
Enforcement against the Crown	Rule 66.6
Money due from the Crown	Rule 66.7

Scope of this Part and interpretation

66.1— (1) This Part contains rules for civil proceedings by or against the Crown, and other civil proceedings to which the Crown is a party.

(2) In this Part—

- (a) “the Act” means the Crown Proceedings Act 1947;
- (b) “civil proceedings by the Crown” means the civil proceedings described in section 23(1) of the Act, but excluding the proceedings described in section 23(3);
- (c) “civil proceedings against the Crown” means the civil proceedings described in section 23(2) of the Act, but excluding the proceedings described in section 23(3);
- (d) “civil proceedings to which the Crown is a party” has the same meaning as it has for the purposes of Parts III and IV of the Act by virtue of section 38(4).

Application of the Civil Procedure Rules

66.2 These Rules and their practice directions apply to civil proceedings by or against the Crown and to other civil proceedings to which the Crown is a party unless this Part, a practice direction or any other enactment provides otherwise.

Action on behalf of the Crown

66.3—(1) Where by reason of a rule, practice direction or court order the Crown is permitted or required—

- (a) to make a witness statement,
- (b) to swear an affidavit,
- (c) to verify a document by a statement of truth;
- (d) to make a disclosure statement; or
- (e) to discharge any other procedural obligation,

that function shall be performed by an appropriate officer acting on behalf of the Crown.

(2) The court may if necessary nominate an appropriate officer.

Counterclaims, other Part 20 claims, and set-off

66.4—(1) In a claim by the Crown for taxes, duties or penalties, the defendant cannot make a counterclaim or other Part 20 claim or raise a defence of set-off.

(2) In any other claim by the Crown, the defendant cannot make a counterclaim or other Part 20 claim or raise a defence of set-off which is based on a claim for repayment of taxes, duties or penalties.

(3) In proceedings by or against the Crown in the name of the Attorney-General, no counterclaim or other Part 20 claim can be made or defence of set-off raised without the permission of the court.

(4) In proceedings by or against the Crown in the name of a government department, no counterclaim or other Part 20 claim can be made or defence of set-off raised without the permission of the court unless the subject-matter relates to that government department.

Applications in revenue matters

66.5—(1) This rule sets out the procedure under section 14 of the Act, which allows the Crown to make summary applications in the High Court in certain revenue matters.

(2) The application must be made in the High Court using the Part 8 procedure.

(3) The title of the claim form must clearly identify the matters which give rise to the application.

Enforcement against the Crown

66.6—(1) The following rules do not apply to any order against the Crown—

- (a) Parts 69 to 73;
- (b) RSC Orders 45 to 47 and 52; and
- (c) CCR Orders 25 to 29.

(2) In paragraph (1), “order against the Crown” means any judgment or order against the Crown, a government department, or an officer of the Crown as such, made—

- (a) in civil proceedings by or against the Crown;
- (b) in proceedings in the Administrative Court;
- (c) in connection with an arbitration to which the Crown is a party; or
- (d) in other civil proceedings to which the Crown is a party.

(3) An application under section 25(1) of the Act for a separate certificate of costs payable to the applicant may be made without notice.

Money due from the Crown

66.7—(1) None of the following orders—

- (a) a third party debt order under Part 72;
- (b) an order for the appointment of a receiver under Part 69; or
- (c) an order for the appointment of a sequestrator under RSC Order 45,

may be made or have effect in respect of any money due from the Crown.

(2) In paragraph (1), “money due from the Crown” includes money accruing due, and money alleged to be due or accruing due.

(3) An application for an order under section 27 of the Act—

- (a) restraining a person from receiving money payable to him by the Crown; and
- (b) directing payment of the money to the applicant or another person,

may be made under Part 23.

(4) The application must be supported by written evidence setting out the facts on which it is based, and in particular identifying the debt from the Crown.

(5) Where the debt from the Crown is money in a National Savings Bank account, the witness must if possible identify the number of the account and the name and address of the branch where it is held.

(6) Notice of the application, with a copy of the written evidence, must be served—

- (a) on the Crown, and
- (b) on the person to be restrained,

at least 7 days before the hearing.

(7) Rule 72.8 applies to an application under this rule as it applies to an application under rule 72.2 for a third party debt order, except that the court will not have the power to order enforcement to issue against the Crown.”

“V EUROPEAN ENFORCEMENT ORDERS

Interpretation

74.27 In this Section—

- (a) “European Enforcement Order” has the meaning given in the EEO Regulation;
- (b) “EEO” means European Enforcement Order;
- (c) “judgment”, “authentic instrument”, “member state of origin”, “member state of enforcement”, and “court of origin” have the meanings given by Article 4 of the EEO Regulation; and
- (d) “Regulation State” has the same meaning as ‘Member State’ in the EEO Regulation, that is all Member States except Denmark.

Certification of Judgments of the Courts of England and Wales

74.28 An application for an EEO certificate must be made by filing the relevant practice form in accordance with Article 6 of the EEO Regulation.

Applications for a certificate of lack or limitation of enforceability

74.29 An application under Article 6(2) of the EEO Regulation for a certificate indicating the lack or limitation of enforceability of an EEO certificate must be made to the court of origin by application in accordance with Part 23.

Applications for rectification or withdrawal

74.30 An application under Article 10 of the EEO Regulation for rectification or withdrawal of an EEO certificate must be made to the court of origin and may be made by application in accordance with Part 23.

Enforcement of European Enforcement Orders in England and Wales

74.31—(1) A person seeking to enforce an EEO in England and Wales must lodge at the court in which enforcement proceedings are to be brought the documents required by Article 20 of the EEO Regulation.

(2) Where a person applies—

- (a) to the High Court for a charging order, a writ of *feri facias* or an attachment of earnings order; or
- (b) to the county court for a warrant of execution or an attachment of earnings order,

to enforce an EEO expressed in a foreign currency, the application must contain a certificate of the sterling equivalent of the judgment sum at the close of business on the date nearest preceding the date of issue of the application.

(Section 1 of the Charging Orders Act 1979 provides that the High Court only has jurisdiction to make a charging order where the amount of the original judgment exceeds the county court limit.)

(Article 8 of the High Court and County Courts Jurisdiction Order 1991 provides that (1) judgments in excess of £5,000 shall only be enforced by execution against goods in the High Court (2) those in excess of £600 may be enforced in the High Court and (3) those for less than £600 shall only be enforced in the county court.)

Refusal of Enforcement

74.32—(1) An application under Article 21 of the EEO Regulation that the court should refuse to enforce an EEO must be made by application in accordance with Part 23 to the court in which the EEO is being enforced.

(2) The judgment debtor must, as soon as practicable, serve copies of any order made under Article 21(1) on—

- (a) all other parties to the proceedings and any other person affected by the order; and
- (b) any court in which enforcement proceedings are pending in England and Wales.

(3) Upon service of the order on those persons all enforcement proceedings in England and Wales under the EEO, in respect of those persons upon whom, and those courts at which, the order has been served in accordance with paragraph (2), will cease.

Stay or limitation of enforcement

74.33—(1) Where an EEO certificate has been lodged and the judgment debtor applies to stay or limit the enforcement proceedings under Article 23 of the EEO Regulation, such application must be made by application in accordance with Part 23 to the court in which the EEO is being enforced.

(2) The judgment debtor shall, as soon as practicable, serve a copy of any order made under the Article on—

- (a) all other parties to the proceedings and any other person affected by the order; and
- (b) any court in which enforcement proceedings are pending in England and Wales;

and the order will not have effect on any person until it has been served in accordance with this rule and they have received it.”

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules add the following new provisions to the Civil Procedure Rules 1998—

— A new rule 3.7A, which provides sanctions for non-payment of fees in respect of counterclaims.

— A new rule 3.7B, which provides sanction where a cheque tendered in payment of a fee payable on taking a particular step in proceedings is subsequently dishonoured.

— A new rule 6.11 and 6.11A, in substitution for the existing rule 6.11, which require the court to notify a party (who has requested it to serve a document) if that document is subsequently returned to the court or the court bailiff is unable to serve it.

— A new rule 19.7B, which makes provision for an application under section 92 of the Postal Services Act 2000 for permission to bring proceedings in the name of the sender or addressee of a postal packet to be made.

— A new rule 21.11A, which allows a litigation friend to recover reasonable expenses out of a child's or patient's funds. Consequential amendments are made to rule 48.5 to capture, for the purposes of assessment, costs payable to the litigation friend (as well as to the solicitor) and costs payable out of a child's or patient's funds (as well as those payable directly by the child or patient).

— A new rule 27.14(2A), which provides that the rejection of an offer to settle in cases on the small claims track does not itself constitute unreasonable behaviour, but may be taken into account when the court considers the reasonableness of the parties' conduct generally.

— A new rule 32.20, which gives probative force to notarial acts.

— A new rule 44.13(1A), which provides that where certain categories of order are silent with respect to costs, the order will be deemed to include an order for costs in the case.

— A new Section V of Part 45, which makes provision for personal injury claims against an employer relating to a disease. The Section makes provision for fixed percentage increases to apply to legal representative's fees in respect of success fees, where the claimant has entered into a conditional fee agreement or collective conditional fee agreement which provides for a success fee. Consequential amendment is made to rule 45.20, to differentiate Section IV and Section V claims.

— A new rule 55.10A, which enables a practice direction to make provision for a claimant to start certain types of possession claim in certain courts by requesting the issue of a claim form electronically.

— A new rule 60.7 which clarifies the position in the Technology and Construction Court that parties will draw up orders, unless the court orders otherwise. Similar provision is made for the Queen's Bench Division at the Royal Courts of Justice, by an amendment to rule 40.3.

— A new rule 63.4A, which makes provision to secure that as far as practicable and appropriate, proceedings in the patents county court are dealt with by the patents judge. Consequential amendment is made to rule 63.1 to introduce a definition of patents judge.

— A new Part 66, which replaces RSC Order 77 and CCR Order 42. The amendments revoke the Crown's privileges in determining the venue of civil proceedings and in transferring civil proceedings from the county courts to the High Court. They also revoke procedural powers concerning the content of claim forms, default judgments, summary judgments and interrogatories in civil proceedings by or against the Crown. Consequential amendments are made to rule 6.1 (Rules about service), rule 6.4 (Personal service), rule 6.5 (Address for service), rule 12.4 (Procedure for obtaining default judgment), rule 12.10 (Default judgment obtained by making an application), rule 16.2 (Contents of the claim form), rule 19.4 (Procedure for adding and

substituting parties), rule 24.4 (Procedure for obtaining summary judgment) and rule 30.3 (Criteria for transfer order). RSC Order 77, CCR Order 42 and CCR Order 49, rule 15 are revoked. Amendments to the Crown Proceedings Act 1947 are made by the Civil Procedure (Modification of Crown Proceedings Act 1947) Order 2005.

— A new Section V of Part 74, which makes provision for the certification of judgments of the courts of England and Wales as European Enforcement Orders, and for the recognition and enforcement in England and Wales of judgments of other Contracting States that have been certified as European Enforcement Orders, under Council Regulation (EC) No 805/2004 creating a European Enforcement Order for uncontested claims (Official Journal L 143, 30/04/2004 P. 0015 – 0039). Consequential amendments are made to rule 74.1.

In addition, the following amendments are made:

— Rule 3.1 (the court's general case management powers) is amended to give the court an explicit power to order a party to file and serve an estimate of costs.

— Rule 3.3(7) and rule 23.12 are amended to clarify that where a court dismisses an application for permission to appeal or for permission to apply for judicial review, and it considers such application is totally without merit, the court order must record the fact, and the court consider whether it is appropriate to make a civil restraint order.

— Rule 5.4 (Supply of documents from court records) is amended to allow a party to proceedings to obtain a copy of a number of additional documents without requiring the permission of the court under rule 5.4(4).

— A number of separate amendments are made requiring parties to proceedings to provide specific information about themselves (or the other party) upon taking a particular step in the proceedings. A signpost has been inserted following Rule 6.5 (Address for service) and rule 6.13 (Defendant's address for service) drawing attention to amended provisions in the Practice Direction to Part 16 regarding the address for service, and following rule 9.2 (Defence, admission or acknowledgment of service) drawing attention to amended provisions in the Practice Direction to Part 16 requiring a defendant to provide his date of birth when filing a response to a claim. Rule 12.4 (Procedure for obtaining default judgment) is amended to require the claimant to provide the defendant's date of birth where the defendant does not file a response and the claimant makes an application for default judgment.

— Rule 6.20 (Service out of the jurisdiction where permission of the court is required - Claims by the Inland Revenue) and RSC Order 77 are amended to make changes to the Civil Procedure Rules consequential upon the Commissioners for Revenue and Customs Act 2005.

— Rule 11(7) is amended to make provision that where the defendant files a further acknowledgment of service, following an unsuccessful application for an order declaring that the court does not have jurisdiction, the court must give directions concerning the time for filing the defence in a Part 7 claim, or evidence in a Part 8 claim.

— Rules 12.10 and 12.11 (Default judgment obtained by making an application) are amended to make changes to the Civil Procedure Rules consequential upon the Civil Partnership Act 2004.

— Rule 26.4 (Stay to allow for settlement of case) is amended to allow the court greater flexibility when making an order staying the proceedings to allow the parties the opportunity to consider alternative dispute resolution.

— Rule 27.2 is amended to allow the court, in cases proceeding on the small claims track, to order a party to provide further information, notwithstanding the general dis-application of Part 18.

— Rule 27.9 (Non-attendance of parties at final hearing) is amended to require a party who will not be attending a hearing to notify the other party and serve on such party any documents filed at court.

— Rule 27.14 (Costs on the small claims track) is amended to provide that when a claim is allocated to the small claims track by consent, the small claims costs provisions will apply unless the parties agree otherwise.

— Rule 28.5 (Pre-trial checklist) and rule 29.6 (Pre-trial checklist) are amended to provide that in claims on the fast track and multi-track, respectively, if no party files a pre-trial checklist the claim/defence will be struck out and if one party files, the file will be submitted to the judge to give directions.

— Rule 30.8 (Transfer of competition law claims) is amended to allow commercial claims (within rule 58.1), which raise an issue of competition law to be heard in the Commercial Court.

— Rule 65.11, rule 65.12, rule 65.13, rule 65.14, rule 65.17, rule 65.18 and rule 65.19 are amended to make provision for suspension claims under section 121A of the Housing Act 1985 to be made. Consequential amendments are made to Part 55.

— Minor amendments are made to rule 3.7 (Sanction for non-payment of fees), rule 5.4(5) (supply of documents from court records), rule 6.7 (removal of the statutory signpost), rule 10.3 (The period for filing an acknowledgment of service), rule 27.14(3) (compensation for attendance at a hearing) and CCR Order 49, rule 17 (Disability Discrimination Act 1995).

The amendments, except those to rules 6.5(2), 6.13, 9.2, 12.4 and Part 74 come into force on 1st October 2005. The amendments to rules 6.5(2), 6.13, 9.2 and 12.4 come into force on 6th April 2006. The amendments to Part 74 come into force on 21st October 2005.

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