

2005 No. 3515 (L. 32)

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

The Civil Procedure (Amendment No.4) Rules 2005

<i>Made</i> - - - -	<i>16th December 2005</i>
<i>Laid before Parliament</i>	<i>21st December 2005</i>
<i>Coming into force</i> - -	<i>6th April 2006</i>

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.4) Rules 2005 and shall come into force on 6th April 2006.

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).

Amendment to the Civil Procedure Rules 1998

3. In the table following rule 2.1, after “Adoption Act 1976, s.66” insert “or Adoption and Children Act 2002, s.141(c)”.

4. In Part 6—

- (a) in rule 6.2(1), sub-paragraph (b), after “first class post” insert “(or an alternative service which provides for delivery on the next working day)”;
- (b) in rule 6.5(4), sub-paragraph (a), after “first class post” insert “(or an alternative service which provides for delivery on the next working day)”; and
- (c) in the table following rule 6.7(1), after “first class post” insert “(or an alternative service which provides for delivery on the next working day)”.

5. In rule 16.2(1)—

- (a) after sub-paragraph (c), omit “and”; and

(a) 1997 c. 12.

(b) S.I. 1998/3132. There are relevant amendments in S.I. 1999/1008, S.I. 2000/1317, S.I. 2000/221, S.I. 2000/2092, S.I. 2001/256, S.I. 2001/4015, S.I. 2001/2792, S.I. 2002/2058, S.I. 2002/3219, S.I. 2003/1242, S.I. 2003/2113, S.I. 2003/3361, S.I. 2004/3419, S.I. 2004/2072, S.I. 2005/352 and S.I. 2005/2292.

(c) 2002 c.38.

- (b) after sub-paragraph (c), insert—
 - “(cc) where the claimant’s only claim is for a specified sum, contain a statement of the interest accrued on that sum; and”.

6. For Part 20, substitute Part 20 as set out in the Schedule to these Rules.

7. In Part 25—

- (a) in rule 25.1—
 - (i) after sub-paragraph (n), omit “and”; and
 - (ii) after sub-paragraph (o), insert—
 - “; and
 - (p) an order under Article 9 of Council Directive (EC) 2004/48 on the enforcement of intellectual property rights (order in intellectual property proceedings making the continuation of an alleged infringement subject to the lodging of guarantees).”; and
- (b) in rule 25.2, for paragraph (3) substitute “Where it grants an interim remedy before a claim has been commenced, the court should give directions requiring a claim to be commenced.”.

8. In rule 30.5, for paragraph (2) substitute—

“(2) A judge dealing with claims in a specialist list may order proceedings to be transferred to or from that list.”.

9. After rule 40.2(2), insert—

“(3) Paragraph (4) applies where a party applies for permission to appeal against a judgment or order at the hearing at which the judgment or order was made.

- (4) Where this paragraph applies, the judgment or order shall state—
 - (a) whether or not the judgment or order is final;
 - (b) whether an appeal lies from the judgment or order and, if so, to which appeal court;
 - (c) whether the court gives permission to appeal; and
 - (d) if not, the appropriate appeal court to which any further application for permission may be made.

(Paragraph 4.3B of the Practice Direction supplementing Part 52 deals with the court’s power to adjourn a hearing where a judgment or order is handed down and no application for permission to appeal is made at that hearing”).

10. For rule 44.16, substitute—

“**44.16**—(1) This rule applies where the Conditional Fee Agreements Regulations 2000 or the Collective Conditional Fee Agreements Regulations 2000 continues to apply to an agreement which provides for a success fee.

- (2) Where—
 - (a) the court disallows any amount of a legal representative’s percentage increase in summary or detailed assessment proceedings; and
 - (b) the legal representative applies for an order that the disallowed amount should continue to be payable by his client,

the court may adjourn the hearing to allow the client to be—

- (i) notified of the order sought; and
- (ii) separately represented.

(Regulation 3(2)(b) of the Conditional Fee Agreements Regulations 2000, which applies to Conditional Fee Agreements entered into before 1st November 2005, provides that a

conditional fee agreement which provides for a success fee must state that any amount of a percentage increase disallowed on assessment ceases to be payable unless the court is satisfied that it should continue to be so payable. Regulation 5(2)(b) of the Collective Conditional Fee Agreements Regulations 2000, which applies to Collective Conditional Fee Agreements entered into before 1st November 2005, makes similar provision in relation to collective conditional fee agreements.)”.

11. In Part 52—

- (a) in rule 52.1, in the cross-reference following paragraph (2)—
 - (i) for “47.21” substitute “47.20”; and
 - (ii) for “47.26” substitute “47.23”;
- (b) in rule 52.3(6), for “Permission to appeal will only be given where” substitute “Permission to appeal may be given only where”; and
- (c) in rule 52.4—
 - (i) in paragraph (2)(a), after “such period as may be directed by the lower court” insert “(which may be longer or shorter than the period referred to in sub-paragraph (b))”;
 - (ii) in paragraph (2)(b), for “14” substitute “21”; and
 - (iii) in paragraph (3), for “an appeal notice” substitute “an appellant’s notice”.

12. In Part 54—

- (a) in rule 54.28(2), after sub-paragraph (e) insert—
 - “(ea) “fast track case” means any case in relation to which an order made under section 26(8) of the 2004 Act provides that the time period for making an application under section 103A(1) of the 2002 Act or giving notification under paragraph 30(5) of Schedule 2 to the 2004 Act is less than 5 days;”;
- (b) after rule 54.28, insert—

“Representation of applicants while filter provision has effect

54.28A—(1) This rule applies during any period in which the filter provision has effect.

(2) An applicant may, for the purpose of taking any step under rule 54.29 or 54.30, be represented by any person permitted to provide him with immigration advice or immigration services under section 84 of the Immigration and Asylum Act 1999(a).

(3) A representative acting for an applicant under paragraph (2) shall be regarded as the applicant’s legal representative for the purpose of rule 22.1 (Documents to be verified by a statement of truth) regardless of whether he would otherwise be so regarded.

Service of documents on appellants within the jurisdiction

54.28B—(1) In proceedings under this Section, rules 6.4(2) and 6.5(5) do not apply to the service of documents on an appellant who is within the jurisdiction.

(2) Where a representative is acting for an appellant who is within the jurisdiction, a document must be served on the appellant by—

- (a) serving it on his representative; or
 - (b) serving it on the appellant personally or sending it to his address by first class post, but if the document is served on the appellant under sub-paragraph (b), a copy must also at the same time be sent to his representative.”;
- (c) in rule 54.29—

(a) 1999 c. 33. Part V of that Act has been amended by the Nationality, Immigration and Asylum Act 2002 (c. 41), section 140, and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), sections 37 to 41 and 47, and Schedule 4.

- (i) in paragraph (1), for “(4)” substitute “(5)”;
 - (ii) in paragraph (2), for “The applicant” substitute “During any period in which the filter provision does not have effect, the applicant”; and
 - (iii) after paragraph (2), insert—
“(2A) During any period in which the filter provision has effect, the applicant must file with the application notice a list of the documents referred to in paragraph (2)(a) to (e).”;
 - (d) in rule 54.32—
 - (i) for the opening words of paragraph (2) substitute—
“(2) Where a party applies for an order for reconsideration in a fast track case—”; and
 - (ii) omit paragraph (3); and
 - (e) in rule 54.34—
 - (i) in paragraph (2), after “Where” insert “the appellant is within the jurisdiction and”;
 - (ii) after paragraph (2) insert—
“(2A) Paragraph (2) does not apply in a fast track case.”;
 - (iii) for paragraph (3)(b), substitute—
“(b) immediately after serving the order, notify—
 - (i) the court; and
 - (ii) where the order requires the Tribunal to reconsider its decision on the appeal, the Tribunal,
on what date and by what method the order was served.”;
 - (iv) in paragraph (5), after “3(b)” insert “(i)”; and
 - (v) after paragraph (5), insert—
“(5A) Where the court serves an order for reconsideration under paragraph (5), it will notify the Tribunal of the date on which the order was served.”.
- 13.** In rule 55.13(3), after “first class post” insert “(or an alternative service which provides for delivery on the next working day)”.
- 14.** In rule 58.4(2), for “Rule 30.5(3) applies” substitute “Rule 30.5 applies”.
- 15.** In rule 59.3, for “Rule 30.5(3) applies” substitute “Rule 30.5 applies”.
- 16.** In rule 61.2(3), for “30.5(3)” substitute “30.5”.
- 17.** In rule 62.3(4), for “30.5(3)” substitute “30.5”.
- 18.** In Part 63—
- (a) in rule 63.1, after paragraph (2), insert—
“(3) Claims to which this Part applies are allocated to the multi-track.”; and
 - (b) omit rule 63.7(1).
- 19.** In rule 75.3(6), after “first class post” insert “(or an alternative service which provides for delivery on the next working day)”.

Sir Anthony Clarke, M.R.
John Dyson, L.J.
Rupert Jackson, J.
Terrence Etherton, J.
Stephen Oliver-Jones
Steven Whitaker
Carlos Dabezies
David di Mambro

*Juliet Herzog
Philip Rainey
Nicholas Burkill
Richard Walford
Peter Candon
Andrew Parker*

I allow these Rules

Dated 16th December 2005

Falconer of Thoroton, C.

SCHEDULE 1

Rule 6

“COUNTERCLAIMS AND OTHER ADDITIONAL CLAIMS

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Purpose of this Part

20.1 The purpose of this Part is to enable counterclaims and other additional claims to be managed in the most convenient and effective manner.

Scope and interpretation

20.2—(1) This Part applies to—

- (a) a counterclaim by a defendant against the claimant or against the claimant and some other person;
- (b) an additional claim by a defendant against any person (whether or not already a party) for contribution or indemnity or some other remedy; and
- (c) where an additional claim has been made against a person who is not already a party, any additional claim made by that person against any other person (whether or not already a party).

(2) In these Rules—

- (a) “additional claim” means any claim other than the claim by the claimant against the defendant; and
- (b) unless the context requires otherwise, references to a claimant or defendant include a party bringing or defending an additional claim.

Application of these Rules to additional claims

20.3—(1) An additional claim shall be treated as if it were a claim for the purposes of these Rules, except as provided by this Part.

(2) The following rules do not apply to additional claims—

- (a) rules 7.5 and 7.6 (time within which a claim form may be served);

- (b) rule 16.3(5) (statement of value where claim to be issued in the High Court); and
 - (c) Part 26 (case management - preliminary stage).
- (3) Part 12 (default judgment) applies to a counterclaim but not to other additional claims.
- (4) Part 14 (admissions) applies to a counterclaim, but only—
- (a) rules 14.1(1) and 14.1(2) (which provide that a party may admit the truth of another party’s case in writing); and
 - (b) rule 14.3 (admission by notice in writing - application for judgment),
- apply to other additional claims.

(Rule 12.3(2) sets out how to obtain judgment in default of defence for a counterclaim against the claimant, and rule 20.11 makes special provision for default judgment for some additional claims).

Defendant’s counterclaim against the claimant

20.4—(1) A defendant may make a counterclaim against a claimant by filing particulars of the counterclaim.

- (2) A defendant may make a counterclaim against a claimant—
 - (a) without the court’s permission if he files it with his defence; or
 - (b) at any other time with the court’s permission.

(Part 15 makes provision for a defence to a claim and applies to a defence to a counterclaim by virtue of rule 20.3).

(3) Part 10 (acknowledgment of service) does not apply to a claimant who wishes to defend a counterclaim.

Counterclaim against a person other than the claimant

20.5—(1) A defendant who wishes to counterclaim against a person other than the claimant must apply to the court for an order that that person be added as an additional party.

(2) An application for an order under paragraph (1) may be made without notice unless the court directs otherwise.

(3) Where the court makes an order under paragraph (1), it will give directions as to the management of the case.

Defendant’s additional claim for contribution or indemnity from another party

20.6—(1) A defendant who has filed an acknowledgment of service or a defence may make an additional claim for contribution or indemnity against a person who is already a party to the proceedings by—

- (a) filing a notice containing a statement of the nature and grounds of his additional claim; and
- (b) serving the notice on that party.

(2) A defendant may file and serve a notice under this rule—

- (a) without the court’s permission, if he files and serves it—
 - (i) with his defence; or
 - (ii) if his additional claim for contribution or indemnity is against a party added to the claim later, within 28 days after that party files his defence; or
- (b) at any other time with the court’s permission.

Procedure for making any other additional claim

20.7—(1) This rule applies to any additional claim except—

- (a) a counterclaim only against an existing party; and
- (b) a claim for contribution or indemnity made in accordance with rule 20.6.

(2) An additional claim is made when the court issues the appropriate claim form.

(Rule 7.2(2) provides that a claim form is issued on the date entered on the form by the court)

(3) A defendant may make an additional claim—

- (a) without the court's permission if the additional claim is issued before or at the same time as he files his defence;
- (b) at any other time with the court's permission.

(Rule 15.4 sets out the period for filing a defence).

(4) Particulars of an additional claim must be contained in or served with the additional claim.

(5) An application for permission to make an additional claim may be made without notice, unless the court directs otherwise.

Service of claim form

20.8—(1) Where an additional claim may be made without the court's permission, any claim form must—

- (a) in the case of a counterclaim against an additional party only, be served on every other party when a copy of the defence is served;
- (b) in the case of any other additional claim, be served on the person against whom it is made within 14 days after the date on which the additional claim is issued by the court.

(2) Paragraph (1) does not apply to a claim for contribution or indemnity made in accordance with rule 20.6.

(3) Where the court gives permission to make an additional claim it will at the same time give directions as to its service.

Matters relevant to question of whether an additional claim should be separate from the claim

20.9—(1) This rule applies where the court is considering whether to—

- (a) permit an additional claim to be made;
- (b) dismiss an additional claim; or
- (c) require an additional claim to be dealt with separately from the claim by the claimant against the defendant.

(Rule 3.1(2)(e) and (j) deal respectively with the court's power to order that part of proceedings be dealt with as separate proceedings and to decide the order in which issues are to be tried).

(2) The matters to which the court may have regard include—

- (a) the connection between the additional claim and the claim made by the claimant against the defendant;
- (b) whether the additional claimant is seeking substantially the same remedy which some other party is claiming from him; and

- (c) whether the additional claimant wants the court to decide any question connected with the subject matter of the proceedings—
 - (i) not only between existing parties but also between existing parties and a person not already a party; or
 - (ii) against an existing party not only in a capacity in which he is already a party but also in some further capacity.

Effect of service of an additional claim

20.10—(1) A person on whom an additional claim is served becomes a party to the proceedings if he is not a party already.

(2) When an additional claim is served on an existing party for the purpose of requiring the court to decide a question against that party in a further capacity, that party also becomes a party in the further capacity specified in the additional claim.

Special provisions relating to default judgment on an additional claim other than a counterclaim or a contribution or indemnity notice

20.11—(1) This rule applies if—

- (a) the additional claim is not—
 - (i) a counterclaim; or
 - (ii) a claim by a defendant for contribution or indemnity against another defendant under rule 20.6; and
- (b) the party against whom an additional claim is made fails to file an acknowledgment of service or defence in respect of the additional claim.

(2) The party against whom the additional claim is made—

- (a) is deemed to admit the additional claim, and is bound by any judgment or decision in the proceedings in so far as it is relevant to any matter arising in the additional claim;
- (b) subject to paragraph (3), if default judgment under Part 12 is given against the additional claimant, the additional claimant may obtain judgment in respect of the additional claim by filing a request in the relevant practice form.

(3) An additional claimant may not enter judgment under paragraph (2)(b) without the court's permission if—

- (a) he has not satisfied the default judgment which has been given against him; or
- (b) he wishes to obtain judgment for any remedy other than a contribution or indemnity.

(4) An application for the court's permission under paragraph (3) may be made without notice unless the court directs otherwise.

(5) The court may at any time set aside or vary a judgment entered under paragraph (2)(b).

Procedural steps on service of an additional claim form on a non-party

20.12—(1) Where an additional claim form is served on a person who is not already a party it must be accompanied by—

- (a) a form for defending the claim;
- (b) a form for admitting the claim;
- (c) a form for acknowledging service; and
- (d) a copy of—
 - (i) every statement of case which has already been served in the proceedings; and

- (ii) such other documents as the court may direct.
- (2) A copy of the additional claim form must be served on every existing party.

Case management where a defence to an additional claim is filed

20.13—(1) Where a defence is filed to an additional claim the court must consider the future conduct of the proceedings and give appropriate directions.

(2) In giving directions under paragraph (1) the court must ensure that, so far as practicable, the original claim and all additional claims are managed together.

(CCR Order 42, in Schedule 2, makes provision for an additional claim against the Crown where the Crown is not a party).”

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules introduce a revised Part 20, changing the term ‘Part 20 claim’ to ‘Additional Claim’.

In addition the following amendments are made—

- to rule 2.1, consequential upon implementation of the Adoption and Children Act 2002.
- to rules 6.2, 6.5, 6.7, 55.13 and 75.3, to permit service by an equivalent method to first class post.
- to rule 16.2, to amend the information to be contained in the claim form.
- to rules 25.1 and 25.2, consequential upon implementation of the Council Directive (EC) 2004/48 on the enforcement of intellectual property rights.
- to rule 30.5, to clarify that transfers into or out of a specialist list are dealt with by a judge of that list. Consequential amendments are made to rules 58.4, 59.3, 61.2 and 62.3.
- to rule 40.2, to require a judge to explain the routes of appeal where the losing party seeks permission to appeal and to state the prescribed route of appeal in the order granting permission.
- to rule 44.16, consequential upon the revocation of the Conditional Fee Agreements Regulations 2000 and the Collective Conditional Fee Agreements Regulations 2000.
- to the provisions of Section III of Part 54 relating to the representation of applicants and service of documents on appellants, to ensure greater consistency with the Asylum and Immigration Tribunal (Procedure) Rules 2005. The requirement of CPR 54.29(2) to file all relevant documents with the application notice is also disapplied so long as the filter provision applies.
- to Part 63, so that all claims brought under that Part are allocated to the multi-track.

Minor amendments are also made to Part 52.

The amendments will come into force on 6th April 2006.

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COUNTY COURTS, ENGLAND AND WALES

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