

2007 No. 3543 (L. 31)

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

The Civil Procedure (Amendment No.2) Rules 2007

Made - - - - - *17th December 2007*

Laid before Parliament *18th December 2007*

Coming into force in accordance with rule 1

The Civil Procedure Rule Committee, in exercise of the power conferred by 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.2) Rules 2007 and come into force—

- (a) for the purposes of this rule and rules 2, 9 and 13, on 31st March 2008; and
- (b) for all other purposes, on 6th April 2008.

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).

Amendments to the Civil Procedure Rules 1998

3. In rule 3.7—

- (a) at the end of paragraph (1)(c), omit “or”;
- (b) at the end of paragraph (1)(d), for “.” substitute “; or”;
- (c) after paragraph (1)(d), insert—
 - “(e) the fee payable for a hearing specified by the relevant Fees Order is not paid.”;
- (d) in paragraph (2), for “exemption or” substitute “full or part”;
- (e) in paragraph (4)(b), for “an exemption from or” substitute “full or part”;
- (f) for paragraph (5) substitute—
 - “(5) Where an application for—
 - (a) full or part remission of a fee is refused, the court will serve notice on the claimant requiring payment of the full fee by the date specified in the notice; or

(a) 1997 c.12.

(b) S.I. 1998/3132. There are relevant amendments in S.I. 2000/221, 2000/2092, 2001/1388, 2002/2058, 2003/364, 2003/1242, 2003/1329, 2005/352, 2005/656, 2005/2292, 2005/3515, 2006/3435 and 2007/2204.

(b) part remission of a fee is granted, the court will serve notice on the claimant requiring payment of the balance of the fee by the date specified in the notice.”; and

(g) in paragraph (7), for “exemption from payment or” substitute “full or part”.

4. In rule 3.7A—

(a) for paragraph (1) substitute—

“(1) This rule applies where—

(a) a defendant files a counterclaim without—

- (i) payment of the fee specified by the relevant Fees Order; or
- (ii) making an application for full or part remission of the fee; or

(b) the proceedings continue on the counterclaim alone and—

- (i) an allocation questionnaire or a pre-trial check list (listing questionnaire) is filed without payment of the fee specified by the relevant Fees Order;
- (ii) the court dispenses with the need for an allocation questionnaire or a pre-trial check list or both;
- (iii) these Rules do not require an allocation questionnaire or a pre-trial checklist to be filed in relation to the claim in question; or
- (iv) the fee payable for a hearing specified by the relevant Fees Order is not paid.”;

(b) in paragraph (2), for “exemption or” substitute “full or part”;

(c) in paragraph (4)(b), for “an exemption from or” substitute “full or part”;

(d) for paragraph (5) substitute—

“(5) Where an application for—

- (a) full or part remission of a fee is refused, the court will serve notice on the defendant requiring payment of the full fee by the date specified in the notice; or
- (b) part remission of a fee is granted, the court will serve notice on the defendant requiring payment of the balance of the fee by the date specified in the notice.”; and

(e) in paragraph (7), for “exemption from payment or” substitute “full or part”.

5. In Part 19—

(a) in rule 19.9(1)(b), for “944” substitute “996”;

(b) in rule 19.9A(1), for “261(2)” substitute “261(1)”;

(c) for rule 19.9C(5) substitute—

“(5) Rules 19.9A (except for paragraph (1) of that rule) and 19.9B apply to the permission application as if the body corporate or trade union were a company.”;

(d) in rule 19.9D, for “994” substitute “996”; and

(e) in rule 19.9F, for “discontinued or settled” substitute “discontinued, settled or compromised”.

6. After rule 52.17, in the heading “VI STATUTORY RIGHTS OF APPEAL”, for “VI” substitute “IV”.

7. In Part 54—

(a) in the table of contents, omit—

- (i) “II STATUTORY REVIEW UNDER THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002(a)”; and
 - (ii) the entries relating to rules 54.21 to 54.27;
 - (b) for rule 54.19(2) substitute—
 - “(2) The court may—
 - (a) (i) remit the matter to the decision-maker; and
 - (ii) direct it to reconsider the matter and reach a decision in accordance with the judgment of the court; or
 - (b) in so far as any enactment permits, substitute its own decision for the decision to which the claim relates.
- (Section 31 of the Supreme Court Act 1981(b) enables the High Court, subject to certain conditions, to substitute its own decision for the decision in question.)”;
- (c) omit rule 54.19(3) and the parenthesis following that rule; and
 - (d) after rule 54.20—
 - (i) omit the heading “Section II – Statutory Review under the Nationality, Immigration and Asylum Act 2002”; and
 - (ii) omit rules 54.21 to 54.27.

8. In rule 57.7(4)(b), for “was not of sound mind, memory and understanding” substitute “lacked testamentary capacity”.

9. In Part 75—

- (a) in rule 75.1—
 - (i) in paragraph (1), after “practice direction” insert “supplementing this Part”;
 - (ii) after paragraph (1)(b), insert—
 - “(Rule 21.1(1)(c) provides that Part 21 (children and protected parties) does not apply to proceedings under this Part where one of the parties is a child.)”;
 - (iii) in paragraph (2)(b)(i), for “he” substitute “the bailiff”;
 - (iv) at the end of paragraph (2)(b)(iii), for “.” substitute “;”;
 - (v) in paragraph (2)(d)(i), after “statutory declaration” insert “or witness statement”; and
 - (vi) in paragraph (2)(f), after “practice direction” insert “supplementing this Part”;
- (b) in rule 75.2(2)(a), for “shall be” substitute “is”;
- (c) in rule 75.3—
 - (i) in paragraph (2)(c)(v), after “practice direction” insert “supplementing this Part”;
 - (ii) in paragraph (3), for “sealing” substitute “registering”;
 - (iii) for paragraph (4) substitute—
 - “(4) On receipt of a registered request the authority may draw up the order and must—
 - (a) insert in the order the date by which the respondent must either—
 - (i) comply with the order; or
 - (ii) file a statutory declaration or witness statement; and
 - (b) attach to the order a form of statutory declaration or witness statement for the respondent’s use.”;
 - (iv) for paragraph (5) substitute—

(a) 2002 c.41.

(b) 1981 c.54. Section 31 is amended by section 141 of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

“(5) The authority must serve in accordance with Part 6 the order (and the form of statutory declaration or witness statement) on the respondent within 15 days of the date on which the request is registered by the court.”; and

- (v) revoke paragraph (6);
- (d) in rule 75.5(1), after “practice direction” insert “supplementing this Part”;
- (e) in rule 75.6(b), for “rules 1 and 9” substitute “rule 1”;
- (f) in rule 75.8—
 - (i) after “the filing of a statutory declaration” insert “or a witness statement”;
 - (ii) in paragraph (a), after “statutory declaration” insert “or witness statement”;
- (g) in rule 75.9, for “If an” substitute “Where the”;
- (h) in rule 75.10(i) for “reasons” substitute “reason why”; and
- (i) in rule 75.11—
 - (i) for “If” substitute “Where”;
 - (ii) for “an” substitute “the”; and
 - (iii) for “defendant” substitute “respondent”.

10. In Part 76—

- (a) in rule 76.1(3), omit sub-paragraph (g);
- (b) in rule 76.14(1)—
 - (i) after “no later than 28 days after receiving” omit “notice of”;
 - (ii) in sub-paragraph (a), for “order that is the subject of the appeal” substitute “notice setting out the terms of the order, renewal or modification that is the subject of the appeal”; and
 - (iii) in sub-paragraph (b), before “the decision by the Secretary of State” insert “notice of”;
- (c) in rule 76.23—
 - (i) in paragraph (1), for “relevant law officer” substitute “Attorney General”;
 - (ii) in paragraph (3), for “relevant law officer” in both places where it occurs substitute “Attorney General”; and
 - (iii) in paragraph (4), for “relevant law officer” substitute “Attorney General”;
- (d) in rule 76.25(3)(c), for “relevant law officer” substitute “Attorney General”;
- (e) in rule 76.29(2)(b)(i), after “rule 76.25(5)(b)” insert “to the same or substantially the same communication”; and
- (f) for rule 76.33(4) substitute—

“(4) Where the Secretary of State makes an application under paragraph (3), he must at the same time serve on the special advocate, if one has been appointed—

 - (a) a copy of the application; and
 - (b) a copy of the notice served on the Secretary of State pursuant to paragraph (2).”.

11. After Part 76, insert Part 77 (Provisions in Support of Criminal Justice) as set out in the Schedule to these Rules.

12. Revoke RSC Order 96 in Schedule 1 to the Civil Procedure Rules 1998.

Transitional provisions

13. The amendments made by rule 9(c)(iii) and (iv) of these Rules to rule 75.3(4) and (5) and the omission of rule 75.3(6) by rule 9(c)(v) of these Rules do not apply to proceedings where the authority filed a request pursuant to rule 75.3(1) before 31st March 2008 and the rules of court in

force immediately before that date will continue to apply to those proceedings as if they had not been amended or revoked.

Sir Anthony Clarke, M.R.
Martin Moore-Bick, L.J.
Rupert Jackson, J.
Michael Briggs, J.
HHJ Stephen Oliver-Jones Q.C.
Master Steven Whitaker
District Judge Robert Hill
District Judge Suzanne Burn
David di Mambro
Peter Candon
David Grant
Katy Peters
Philip Rainey

I allow these Rules
Signed by authority of the Lord Chancellor

17th December 2007

Bridget Prentice
Parliamentary Under Secretary of State
Ministry of Justice

“PART 77

PROVISIONS IN SUPPORT OF CRIMINAL JUSTICE

Contents of this Part

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Scope and interpretation

77.1.—(1) This Part contains rules about—

- (a) applications for a serious crime prevention order under section 8 of the Serious Crime Act 2007(a); and
- (b) related applications under sections 9, 17 and 18 of that Act.

(2) In this Part—

- (a) ‘the 2007 Act’ means the Serious Crime Act 2007; and
- (b) ‘SCPO’ means a serious crime prevention order under section 1 or section 19 of the 2007 Act.

Application for a SCPO

77.2. An application under section 8 of the 2007 Act for a SCPO must be started in accordance with Part 8 as modified by the practice direction supplementing this Part.

Applications by third parties to make representations and applications to vary or discharge a SCPO made by the High Court

77.3. An application under—

- (a) section 9 of the 2007 Act; or
- (b) section 17 or 18 of the 2007 Act to vary or discharge a SCPO made by the High Court,

must be made in accordance with Part 23 as modified by the practice direction supplementing this Part.

Application to vary or discharge a SCPO made by the Crown Court

77.4. An application under section 17 or 18 of the 2007 Act to vary or discharge a SCPO made by the Crown Court must be started in accordance with Part 8.

(a) 2007 c.27.

Where to make an application

77.5. Applications under this Part must be made to the Queen’s Bench Division of the High Court in one of the courts set out in the Practice Direction supplementing this Part.”

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules —

- amend rules 3.7 and 3.7A to—
 - include hearing fees and court fees (where the claim proceeds on a counterclaim alone) in the list of sanctions for non-payment; and
 - replace references to “exemption or remission” of court fees with “full or part remission” of court fees to reflect amendments made to the Civil Proceedings Fees Order 2004 (S.I. 2004/3121);
- make minor correcting amendments to rules 19.9(1)(b), 19.9A(1), 19.9C(5), 19.9D and 19.9F;
- make a minor correction to the heading of the section following rule 52.17;
- correct rule 57.7(4)(b) to refer to “lacked testamentary capacity” instead of “was not of sound mind, memory and understanding”;
- amend rule 54.19 as a result of the amendment to section 31 of the Supreme Court Act 1981 by section 141 of the Tribunals, Courts and Enforcement Act 2007 which enables the High Court in judicial review proceedings to substitute its own decision for the decision of the original decision-maker in certain circumstances;
- omit rules 54.21 to 54.27 as these refer to statutory appeals under section 101 of the Nationality, Immigration and Asylum Act 2002 (c. 41) which has been repealed and therefore these rules are now redundant;
- amend Part 75 to—
 - provide for witness statements instead of statutory declarations to be filed with the court in enforcement proceedings relating to parking contraventions, where permitted by any enactment;
 - require the authority to insert in the order the date by which the respondent must comply with the order or file a statutory declaration or witness statement (as appropriate); and
 - require the authority to serve the order on the respondent within 15 days of the date on which the request for the order was registered by the court;
- amend Part 76 to—
 - substitute “relevant law officer” with “Attorney General”;
 - clarify that under rule 76.14(1)(a) a notice of appeal must be given within 28 days after receiving notice of the control order, renewal or modification of the control that is the subject of the appeal;
 - clarify that where the Secretary of State has objected under rule 76.25(5)(b) to a proposed communication by the special advocate, under rule 76.29(2)(b)(i) the court must fix a hearing for the Secretary of State and the special advocate to make oral representations unless the court has previously considered an objection under rule 76.25(5)(b) to the same or substantially the same communication; and
 - amend rule 76.33(4) so that the Secretary of State must, when making an application under rule 76.33(3), serve on the special advocate a copy of the application and a copy of the notice served on the Secretary of State under rule 76.33(2);
- insert a new Part 77 which makes provision for applications for or relating to serious crime prevention orders under the Serious Crime Act 2007; and
- revoke RSC Order 96. The remaining provisions of RSC Order 96, rule 1 have been incorporated in the practice direction supplementing Part 8 and therefore this RSC Order is no longer required.

STATUTORY INSTRUMENTS

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