

2008 No. 2178 (L. 10)

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

The Civil Procedure (Amendment) Rules 2008

Made - - - - - 7th August 2008

Laid before Parliament 15th August 2008

Coming into force in accordance with rule 1



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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.—(1) These Rules may be cited as the Civil Procedure (Amendment) Rules 2008.

(2) Except as provided in paragraphs (3) and (4), these Rules come into force on 1st October 2008.

(3) Rules 6(a), 7 and 38 of these Rules and Schedule 2 to these Rules come into force—

(a) in so far as they relate to European orders for payment made under Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure(b), on 12th December 2008; and

(b) in so far as they relate to the European small claims procedure under Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure(c), on 1st January 2009.

(4) Rules 37(b), (c) and (d) of these Rules come into force on 12th December 2008.

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(d);

(b) a reference to an Order by number and prefixed “RSC” means the RSC Order so numbered in Schedule 1 to those Rules; and

(c) a reference to an Order by number and prefixed “CCR” means the CCR Order so numbered in Schedule 2 to those Rules.

(a) 1997 c. 12.

(b) OJ No. L399, 30.12.2006, p.1.

(c) OJ No. L199, 31.7.2007, p.1.

(d) S.I. 1998/3132. There are relevant amendments in S.I. 1999/1008, 2000/221, 2000/940, 2000/1317, 2000/2092, 2001/256, 2001/1388, 2001/2792, 2001/4015, 2002/2058, 2003/1242, 2003/3361, 2004/1306, 2004/3419, 2005/2292, 2005/3515, 2006/1689, 2006/3435, 2007/1655, 2007/2204 and 2007/3543.

Amendments to the Civil Procedure Rules 1998

3. In rule 2.3(1), in the parenthesis below the definition of “defendant’s home court”, for “Rule 6.5” substitute “Rule 6.23”.

4. In rule 3.7—

- (a) in paragraph (4)(ii), for “shall” substitute “will”;
- (b) in the parenthesis below paragraph (4)(ii), after “this rule” insert “and contains provisions about when a costs order is deemed to have been made and applying for an order under section 194(3) of the Legal Services Act 2007(a)”;
- (c) in paragraph (6)(b), for “shall” substitute “will”; and
- (d) in paragraph (7), for “shall” substitute “will”.

5. For Part 6 substitute Part 6 (Service of documents) as set out in Schedule 1 to these Rules.

6. In Part 7—

- (a) in rule 7.2, after the fourth parenthesis below paragraph (2) insert—
“(Part 78 provides procedures for European orders for payment and for the European small claims procedure.)”;
- (b) in rule 7.4(3)—
 - (i) for “he” substitute “the claimant”; and
 - (ii) omit “together with a certificate of service”;
- (c) omit the parenthesis “(Rule 6.10 makes provision for a certificate of service).” below rule 7.4(3); and
- (d) for rules 7.5 and 7.6 substitute—

“Service of a claim form

7.5.—(1) Where the claim form is served within the jurisdiction, the claimant must complete the step required by the following table in relation to the particular method of service chosen, before 12.00 midnight on the calendar day four months after the date of issue of the claim form.

<i>Method of service</i>	<i>Step required</i>
First class post, document exchange or other service which provides for delivery on the next business day	Posting, leaving with, delivering to or collection by the relevant service provider
Delivery of the document to or leaving it at the relevant place	Delivering to or leaving the document at the relevant place
Personal service under rule 6.5	Completing the relevant step required by rule 6.5(3)
Fax	Completing the transmission of the fax
Other electronic method	Sending the e-mail or other electronic transmission

(2) Where the claim form is to be served out of the jurisdiction, the claim form must be served in accordance with Section IV of Part 6 within 6 months of the date of issue.

Extension of time for serving a claim form

7.6.—(1) The claimant may apply for an order extending the period for compliance with rule 7.5.

(a) 2007 c. 29.

(2) The general rule is that an application to extend the time for compliance with rule 7.5 must be made—

- (a) within the period specified by rule 7.5; or
- (b) where an order has been made under this rule, within the period for service specified by that order.

(3) If the claimant applies for an order to extend the time for compliance after the end of the period specified by rule 7.5 or by an order made under this rule, the court may make such an order only if—

- (a) the court has failed to serve the claim form; or
- (b) the claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so; and
- (c) in either case, the claimant has acted promptly in making the application.

(4) An application for an order extending the time for compliance with rule 7.5—

- (a) must be supported by evidence; and
- (b) may be made without notice.”.

7. In rule 8.1, after the parenthesis below paragraph (6) insert—

“(Part 78 provides procedures for European orders for payment and for the European small claims procedure.)”.

8. In Part 10—

- (a) in rule 10.3(2)—
 - (i) in sub-paragraph (a)—
 - (aa) for “6.22” substitute “6.35”; and
 - (bb) after “jurisdiction” insert “under rule 6.32 or 6.33”;
 - (ii) in sub-paragraph (b), for “6.16(4)” substitute “6.12(3)”; and
 - (iii) in sub-paragraph (c)—
 - (aa) for “6.21(4)” substitute “6.37(5)”; and
 - (bb) for “Practice Direction 6B” substitute “Practice Direction B supplementing Part 6”;
- (b) in rule 10.5(a) for “his” substitute “the defendant’s”; and
- (c) in the first parenthesis below rule 10.5(b)—
 - (i) for “6.5” substitute “6.23”; and
 - (ii) for “jurisdiction” substitute “United Kingdom”.

9. In Part 12—

- (a) for the second parenthesis below rule 12.3(3)(c)(ii) substitute—

“(Rule 6.17 provides that, where the claim form is served by the claimant, the claimant may not obtain default judgment unless a certificate of service has been filed.)”;
- (b) for the third parenthesis below rule 12.3(3)(c)(ii) substitute—

“(Article 19(1) of the Service Regulation (which has the same meaning as in rule 6.31(e)) applies in relation to judgment in default where the claim form is served in accordance with that Regulation.)”;
- (c) in rule 12.4(4), for “rule 6.5(8)” substitute “rule 6.10”;
- (d) in rule 12.10—
 - (i) at the beginning of paragraph (b) for “he” substitute “the claimant”;
 - (ii) in paragraph (b)(i)—

- (aa) for “6.19(1) or (1A)” substitute “6.32(1), 6.33(1) or 6.33(2)”; and
- (bb) for “service without leave” substitute “service where permission of the court is not required”; and
- (iii) in paragraph (b)(ii), for “Regulation State” substitute “Member State”;
- (e) in rule 12.11(4)(a), for “6.19(1) or 6.19(1A)” substitute “6.32(1), 6.33(1) or 6.33(2)”; and
- (f) in rule 12.11(6)—
 - (i) in sub-paragraph (a)(ii), for “Regulation State” substitute “Member State”;
 - (ii) in sub-paragraph (d), after “;” insert “and”;
 - (iii) in sub-paragraph (e), for “; and” substitute “.”; and
 - (iv) omit sub-paragraph (f).

10. For the second parenthesis below rule 13.3(2) substitute—

“(Article 19(4) of the Service Regulation (which has the same meaning as in rule 6.31(e)) applies to applications to appeal a judgment in default when the time limit for appealing has expired.)”.

11. In rule 14.2(2)—

- (a) in sub-paragraph (a)—
 - (i) for “6.22” substitute “6.35”; and
 - (ii) after “jurisdiction” insert “under rule 6.32 or 6.33”; and
- (b) in sub-paragraph (b), for “6.16(4)” substitute “6.12(3)”.

12. In rule 15.4(2)—

- (a) in sub-paragraph (a)—
 - (i) for “6.23” substitute “6.35”; and
 - (ii) after “jurisdiction” insert “under rule 6.32 or 6.33”;
- (b) in sub-paragraph (b), for “he” substitute “the defendant”; and
- (c) in sub-paragraph (d), for “6.16(4)” substitute “6.12(3)”.

13. In Part 16—

- (a) in rule 16.5(8), for “he” substitute “the defendant”; and
- (b) in the second parenthesis below rule 16.5(8)—
 - (i) for “6.5” substitute “6.23”; and
 - (ii) for “jurisdiction” substitute “United Kingdom”.

14. For the parenthesis below rule 20.13(2) substitute—

“(Part 66 contains provisions about counterclaims and other Part 20 claims in relation to proceedings by or against the Crown.)”.

15. In Part 21—

- (a) in the first parenthesis below rule 21.1(2)(e), for “Rule 6.6 contains” substitute “Rules 6.13 and 6.25 contain”;
- (b) in rule 21.5(4)—
 - (i) in sub-paragraph (a), for “6.6” substitute “6.13”; and
 - (ii) in sub-paragraph (b), for “he files” substitute “filing”;
- (c) in the parenthesis below rule 21.5(4)(b), for “Rule 6.10 sets” substitute “Rules 6.17 and 6.29 set”; and
- (d) in rule 21.8(1), for “6.6” substitute “6.13”.

16. In the second parenthesis below rule 26.3(7), for “Rule 6.7 specifies” substitute “Rules 6.14 and 6.26 specify”.

17. In Part 36—

- (a) in the table of contents, for “Deduction of benefits” substitute “Deduction of benefits and lump sum payments”;
- (b) in rule 36.9—
 - (i) in paragraph 3(b), for “benefits” substitute “amounts”; and
 - (ii) for the second parenthesis below paragraph (3)(d) substitute—
“(Rule 36.15 defines “deductible amounts”).”;
- (c) in rule 36.10—
 - (i) in paragraph (1), for “his” substitute “the”;
 - (ii) in paragraph (2), for “his” substitute “the”;
 - (iii) below the parenthesis following paragraph (3), insert—
“(Rule 44.12 contains provisions about when a costs order is deemed to have been made and applying for an order under section 194(3) of the Legal Services Act 2007.)”; and
 - (iv) in paragraph (5)(a), for “his” substitute “the”; and
- (d) in rule 36.15—
 - (i) for the heading to rule 36.15 and for paragraphs (1) and (2) substitute—

“Deduction of benefits and lump sum payments

36.15.—(1) In this rule and rule 36.9—

- (a) “the 1997 Act” means the Social Security (Recovery of Benefits) Act 1997(a);
- (b) “the 2008 Regulations” means the Social Security (Recovery of Benefits)(Lump Sum Payments) Regulations 2008(b);
- (c) “recoverable amount” means—
 - (i) “recoverable benefits” as defined in section 1(4)(c) of the 1997 Act; and
 - (ii) “recoverable lump sum payments” as defined in regulation 4 of the 2008 Regulations;
- (d) “deductible amount” means—
 - (i) any benefits by the amount of which damages are to be reduced in accordance with section 8 of, and Schedule 2 to the 1997 Act (“deductible benefits”); and
 - (ii) any lump sum payment by the amount of which damages are to be reduced in accordance with regulation 12 of the 2008 Regulations (“deductible lump sum payments”); and
- (e) “certificate”—
 - (i) in relation to recoverable benefits is construed in accordance with the provisions of the 1997 Act; and
 - (ii) in relation to recoverable lump sum payments has the meaning given in section 29 of the 1997 Act as applied by regulation 2 of, and modified by Schedule 1 to the 2008 Regulations.

(2) This rule applies where a payment to a claimant following acceptance of a Part 36 offer would be a compensation payment as defined in section 1(4)(b) or 1A(5)(b) of the 1997 Act.”;

- (ii) in paragraph (3)—

(a) 1997 c. 27.
(b) S.I. 2008/1596.

- (aa) in sub-paragraph (a), for “benefits” substitute “amounts”; and
- (bb) in sub-paragraph (b) for “benefits” substitute “amounts”;
- (iii) in paragraph (5), omit “of recoverable benefits”;
- (iv) in paragraph (6)(b)—
 - (aa) for “benefit” substitute “amount”; and
 - (bb) for “that” substitute “the”;
- (v) in paragraph (6)(c), for “after deduction of the amount of benefit” substitute “of compensation”;
- (vi) for paragraph (7) substitute—

“(7) If at the time the offeror makes the Part 36 offer, the offeror has applied for, but has not received a certificate, the offeror must clarify the offer by stating the matters referred to in paragraphs (6)(b) and (6)(c) not more than 7 days after receipt of the certificate.”;
- (vii) in paragraph (8)—
 - (aa) for “he” substitute “the claimant”; and
 - (bb) for “benefits” substitute “amounts”;
- (viii) for the parenthesis following paragraph (8) substitute—

“(Section 15(2) of the 1997 Act provides that the court must specify the compensation payment attributable to each head of damage. Schedule 1 to the 2008 Regulations modifies section 15 of the 1997 Act in relation to lump sum payments and provides that the court must specify the compensation payment attributable to each or any dependant who has received a lump sum payment.)”;
- (ix) in paragraph (9) and in the parenthesis following paragraph (9), in each place where it appears, for “benefits” substitute “amounts”.

18. In rule 38.6—

- (a) in paragraph (1)—
 - (i) for “he” substitute “the claimant”; and
 - (ii) for “him” substitute “the defendant”; and
- (b) in the parenthesis below paragraph (3)—
 - (i) after “where” insert “the”; and
 - (ii) after “discontinuance” insert “and contains provisions about when a costs order is deemed to have been made and applying for an order under section 194(3) of the Legal Services Act 2007”.

19. In rule 38.8—

- (a) for paragraph (1)(b) substitute—

“(b) a claimant is liable to—

 - (i) pay costs under rule 38.6; or
 - (ii) make a payment pursuant to an order under section 194(3) of the Legal Services Act 2007; and”;
- (b) in paragraph (1)(c)—
 - (i) after “those costs” insert “or make the payment”; and
 - (ii) in sub-paragraph (ii) after “to be paid” insert “or the payment to be made”;
- (c) in paragraph (2)—
 - (i) for “he” substitute “the claimant”; and
 - (ii) after “rule 38.6” insert “or makes the payment pursuant to an order under section 194(3) of the Legal Services Act 2007”; and
- (d) below paragraph (2) insert—

“(Rules 44.3C and 44.12 contain provisions about applying for an order under section 194(3) of the Legal Services Act 2007.)”.

20. For the parenthesis below rule 40.4(2)(b) substitute—

“(Rule 6.21 sets out who is to serve a document other than the claim form.)”.

21. For the first parenthesis below rule 42.2(6)(b)(ii) substitute—

“(Rules 6.23 and 6.24 contain provisions about a party’s address for service.)”.

22. In rule 43.2(1)—

(a) in sub-paragraph (e), for “his” substitute “that”;

(b) in sub-paragraph (k)(iii), for “his” substitute “that person’s”;

(c) in sub-paragraph (n) omit “and”;

(d) in sub-paragraph (o) for “.” substitute “;”;

(e) after sub-paragraph (o) insert—

“(p) “free of charge” has the same meaning as in section 194(10) of the Legal Services Act 2007;

(q) “pro bono representation” means legal representation provided free of charge; and

(r) “the prescribed charity” has the same meaning as in section 194(8) of the Legal Services Act 2007.”.

23. In Part 44—

(a) in the table of contents, after the entry “Limits on recovery under funding arrangements” insert the entry—

“Orders in respect of pro bono representation Rule 44.3C”;

(b) in rule 44.1, for “costs and entitlement to costs” substitute “costs, entitlement to costs and orders in respect of pro bono representation”;

(c) after rule 44.3B insert—

“Orders in respect of pro bono representation

44.3C—(1) In this rule, “the 2007 Act” means the Legal Services Act 2007.

(2) Where the court makes an order under section 194(3) of the 2007 Act—

(a) the court may order the payment to the prescribed charity of a sum no greater than the costs specified in Part 45 to which the party with pro bono representation would have been entitled in accordance with that Part and in respect of that representation had it not been provided free of charge; or

(b) where Part 45 does not apply, the court may determine the amount of the payment (other than a sum equivalent to fixed costs) to be made by the paying party to the prescribed charity by—

(i) making a summary assessment; or

(ii) making an order for detailed assessment,

of a sum equivalent to all or part of the costs the paying party would have been ordered to pay to the party with pro bono representation in respect of that representation had it not been provided free of charge.

(3) Where the court makes an order under section 194(3) of the 2007 Act, the order must specify that the payment by the paying party must be made to the prescribed charity.

(4) The receiving party must send a copy of the order to the prescribed charity within 7 days of receipt of the order.

(5) Where the court considers making or makes an order under section 194(3) of the 2007 Act, Parts 43 to 48 apply, where appropriate, with the following modifications—

- (a) references to “costs orders”, “orders about costs” or “orders for the payment of costs” are to be read, unless otherwise stated, as if they refer to an order under section 194(3);
- (b) references to “costs” are to be read, as if they referred to a sum equivalent to the costs that would have been claimed by, incurred by or awarded to the party with pro bono representation in respect of that representation had it not been provided free of charge; and
- (c) references to “receiving party” are to be read, as meaning a party who has pro bono representation and who would have been entitled to be paid costs in respect of that representation had it not been provided free of charge.”;
- (d) in rule 44.12, after paragraph (1) insert—
 - “(1A) Where such an order is deemed to be made in favour of a party with pro bono representation, that party may apply for an order under section 194(3) of the Legal Services Act 2007.”; and
- (e) in rule 44.13(1)—
 - (i) for sub-paragraph (a) substitute—
 - “(a) subject to paragraphs (1A) and (1B), the general rule is that no party is entitled—
 - (i) to costs; or
 - (ii) to seek an order under section 194(3) of the Legal Services Act 2007, in relation to that order; but”;
 - (ii) in sub-paragraph (b) for “him” substitute “that party”.

24. In Table 4 below rule 45.5, for the entry—

“Where service by an alternative method is permitted by an order under rule 6.8 for each individual served	£53.25”
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substitute—

“Where service by an alternative method or at an alternative place is permitted by an order under rule 6.15 for each individual served	£53.25”.
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25. In Part 47—

- (a) for rule 47.5 substitute—

“Application of this Section

47.5 This Section of Part 47 applies where a cost officer is to make a detailed assessment of—

- (a) costs which are payable by one party to another; or
- (b) the sum which is payable by one party to the prescribed charity pursuant to an order under section 194(3) of the Legal Services Act 2007.”;
- (b) in rule 47.11—
 - (i) in paragraph (1), for “he” substitute “that party”;
 - (ii) in paragraph (3)—
 - (aa) for “him” substitute “that party”; and
 - (bb) for “shall” substitute “will”; and
 - (iii) after paragraph (3) insert—
 - “(4) A receiving party who obtains a default costs certificate in detailed assessment proceedings pursuant to an order under section 194(3) of the Legal Services Act 2007 must send a copy of the default costs certificate to the prescribed charity.”;
- (c) in rule 47.12, after the parenthesis below paragraph (4) insert—

“(5) Where the court sets aside or varies a default costs certificate in detailed assessment proceedings pursuant to an order under section 194(3) of the Legal Services Act 2007, the receiving party must send a copy of the order setting aside or varying the default costs certificate to the prescribed charity.”;

(d) in rule 47.15, after paragraph (3) insert—

“(4) Where the court—

- (a) issues an interim costs certificate; or
- (b) amends or cancels an interim certificate,

in detailed assessment proceedings pursuant to an order under section 194(3) of the Legal Services Act 2007, the receiving party must send a copy of the interim costs certificate or the order amending or cancelling the interim costs certificate to the prescribed charity.”;

(e) in rule 47.16, after the parenthesis below paragraph (5) insert—

“(6) Where the court issues a final costs certificate in detailed assessment proceedings pursuant to an order under section 194(3) of the Legal Services Act 2007, the receiving party must send a copy of the final costs certificate to the prescribed charity.”; and

(f) in rule 47.18—

- (i) in paragraph (1), for “his” substitute “the”; and
- (ii) after paragraph (1) insert—

“(1A) Paragraph (1) does not apply where the receiving party has pro bono representation in the detailed assessment proceedings but that party may apply for an order in respect of that representation under section 194(3) of the Legal Services Act 2007.”.

26. In rule 52.3—

- (a) in paragraph (4A) omit “The court may not make such an order in family proceedings.”; and
- (b) omit the parenthesis immediately following paragraph (4A).

27. In rule 54.28B—

- (a) in paragraph (1), for “rules 6.4(2) and 6.5(5)” substitute “rules 6.7 and 6.23(2)(a)”; and
- (b) in paragraph (2)—
 - (i) in sub-paragraph (a), for “his” substitute “the appellant’s”;
 - (ii) in sub-paragraph (b)—
 - (aa) for “his address” substitute “the appellant’s address”; and
 - (bb) for “working” substitute “business”; and
 - (iii) at the end of that paragraph, for “his representative” substitute “the appellant’s representative”.

28. In Part 55—

- (a) in rule 55.8(6)—
 - (i) for “he” substitute “the claimant”; and
 - (ii) for “6.14(2)(a)” substitute “6.17(2)(a)”; and
- (b) in rule 55.23(3), for “6.14(2)(a)” substitute “6.17(2)(a)”.

29. In Part 56—

- (a) in rule 56.1(1)—
 - (i) in sub-paragraph (d) omit “or”;
 - (ii) in sub-paragraph (e), for “.” substitute “; or”; and

- (iii) after sub-paragraph (e) insert—
 - “(f) section 214 of the Housing Act 2004(a).”;
 - (b) in rule 56.2(2)—
 - (i) for “The claim” substitute “Unless an enactment provides otherwise, the claim”; and
 - (ii) for “his” substitute “the”; and
 - (c) in rule 56.3—
 - (i) in paragraph (3)(a)(ii) after “;” insert “and”;
 - (ii) omit paragraph (3)(b); and
 - (iii) for paragraph (4) substitute—
 - “(4) Where the claim is an opposed claim the claimant must use the Part 7 procedure.”.
- 30. In Part 57—**
- (a) in rule 57.4(3)—
 - (i) for “6.19” substitute “6.32 or 6.33”;
 - (ii) for “6.22” substitute “6.35”;
 - (iii) for “the practice direction supplementing Section 3 of Part 6” substitute “Practice Direction B supplementing Part 6”; and
 - (b) in rule 57.16(4A)—
 - (i) for “6.19” substitute “6.32 or 6.33”;
 - (ii) for “6.22” substitute “6.35”;
 - (iii) for “the practice direction supplementing Section III of Part 6” substitute “Practice Direction B supplementing Part 6”.
- 31. In Part 58—**
- (a) in rule 58.6(3), for “rules 6.16(4), 6.21(4) and 6.22” substitute “rules 6.12(3), 6.35 and 6.37(5)”; and
 - (b) in rule 58.10(2), for “Rule 6.23 (period)” substitute “Rule 6.35 (in relation to the period)”.
- 32. In Part 59—**
- (a) in rule 59.5(3), for “6.16(4), 6.21(4) and 6.22” substitute “6.12(3), 6.35 and 6.37(5)”; and
 - (b) in rule 59.9(2), for “Rule 6.23 (period)” substitute “Rule 6.35 (in relation to the period)”.
- 33. In Part 61—**
- (a) In rule 61.4(7)(b), for “Section III” substitute “Section IV”; and
 - (b) in rule 61.11—
 - (i) in paragraph (5), for “Section III” substitute “Section IV”; and
 - (ii) in paragraph (7)—
 - (aa) in sub-paragraph (a)(ii), for “he” substitute “the defendant”;
 - (bb) in sub-paragraph (b), for “he” substitute “the defendant”; and
 - (cc) in sub-paragraph (b), for “6.22” substitute “6.35”.
- 34. In Part 62—**
- (a) in rule 62.5(3), for “6.24 to 6.29” substitute “6.40 to 6.46”;
 - (b) in rule 62.16(4), for “6.24 to 6.29” substitute “6.40 to 6.46”;
 - (c) in rule 62.18(8)(b), for “6.24 to 6.29” substitute “6.40 to 6.46”; and

(a) 2004 c. 34.

- (d) in rule 62.20(1)(a), for “United Kingdom Overseas Territory (within the meaning of rule 6.18(f))” substitute “British overseas territory”.

35. In rule 63.16(2)—

- (a) in sub-paragraph (a)—
 - (i) for “Patent” substitute “Intellectual Property”; and
 - (ii) for “jurisdiction” substitute “United Kingdom”;
- (b) in sub-paragraph (b), for “6.19(1) or (1A)” substitute “6.32(1), 6.33(1) or 6.33(2)”; and
- (c) in sub-paragraph (b)(i), for “Patent” substitute “Intellectual Property”.

36. In Part 65—

- (a) in the table of contents, omit—
 - (i) the entry “VI DRINKING BANNING ORDERS UNDER THE VIOLENT CRIME REDUCTION ACT 2006(a)”; and
 - (ii) the entries relating to rules 65.31 to 65.36;
- (b) in rule 65.1—
 - (i) in paragraph (e), after “Protection from Harassment Act 1997(b);” insert “and”; and
 - (ii) omit paragraph (f); and
- (c) in rule 65.18(5)—
 - (i) for “he” substitute “the claimant”; and
 - (ii) for “6.14(2)(a)” substitute “6.17(2)(a)”; and
- (d) omit Section VI.

37. In Part 74—

- (a) in rule 74.6—
 - (i) in paragraph (1)(a), for “him” substitute “the judgment debtor”;
 - (ii) for paragraph (1)(b) substitute—
 - “(b) as provided by—
 - (i) section 725 of the Companies Act 1985(c); or
 - (ii) the Companies Act 2006(d); or”; and
 - (iii) in paragraph (2), for “6.24, 6.25, 6.26 and 6.29” substitute “6.40, 6.42, 6.43 and 6.46”;
- (b) for rule 74.31(2) and the two parentheses below that rule substitute—
 - “(2) Where a person applies 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 the application.
 - (Part 70 contains further rules about enforcement.)”;
- (c) in rule 74.32—
 - (i) in paragraph (2)(a), after “order” insert “(“the affected persons”)”;
 - (ii) in paragraph (2)(b), after “Wales” insert “(“the relevant courts”)”;
 - (iii) for paragraph (3) substitute—
 - “(3) Upon service of the order on the affected persons, all enforcement proceedings under the EEO in the relevant courts will cease.”; and

(a) 2006 c. 38.
(b) 1997 c. 40.
(c) 1985 c. 6.
(d) 2006 c. 46.

- (d) in rule 74.33—
 - (i) for the heading to the rule substitute “Stay of or limitation on enforcement”; and
 - (ii) in paragraph (1), omit “by application”.

38. After Part 77 insert Part 78 (European order for payment and European small claims procedures) as set out in Schedule 2 to these Rules.

39. In RSC Order 115—

- (a) in rule 17—
 - (i) in paragraph (1)—
 - (aa) for “delivering it to him” substitute “delivering it to that person”; and
 - (bb) for “to him at his” substitute “to that person’s”; and
 - (ii) in paragraph (2), for “6.24, 6.25 and 6.29 shall” substitute “6.40, 6.42 and 6.46”; and
- (b) in rule 33(2), for “6.24, 6.25 and 6.29 shall” substitute “6.40, 6.42 and 6.46”.

40. In CCR Order 27—

- (a) in rule 5(1), for “6.2” substitute “6.20”; and
- (b) in rule 17(3A), for “6.2” substitute “6.20”.

41. In CCR Order 28—

- (a) in rule 2(2)—
 - (i) for “his” substitute “the judgment creditor’s”;
 - (ii) for “the judgment summons shall” substitute “the judgment summons will”;
 - (iii) omit “an officer of”;
 - (iv) for “sending it to him” substitute “sending it to the debtor”; and
 - (v) for “the date of service shall be” substitute “the date of service is”; and
- (b) in rule 3—
 - (i) in paragraph (2)—
 - (aa) for “shall” substitute “will”;
 - (bb) for “6.11” substitute “6.18”; and
 - (cc) omit “office”; and
 - (ii) in paragraph (3) omit “shall”.

42. In CCR Order 29, rule 1(6)—

- (a) for “thereof” substitute “of the judgment or order”; and
- (b) in sub-paragraph (b), for “telegram” substitute “fax, e-mail”.

43. In CCR Order 33, rule 4(3), for “6.2” substitute “6.20”.

Transitional Provision

44. The amendments made by rule 26 of these Rules to rule 52.3 do not apply to proceedings where the notice of appeal was filed before 1st October 2008 and rule 52.3 in force immediately before that date will continue to apply to those proceedings as if that rule had not been amended.

Martin Moore-Bick, L.J.
Master Steven Whitaker
HHJ Stephen Oliver-Jones Q.C.
District Judge Robert Hill
District Judge Suzanne Burn
David di Mambro

*Philip Rainey
Nicholas Burkhill
Katy Peters
Peter Candon
David Grant*

I allow these Rules
Signed by authority of the Lord Chancellor

Bridget Prentice
Parliamentary Under Secretary of State
Ministry of Justice

7th August 2008

SCHEDULE 1

Rule 5

“PART 6

SERVICE OF DOCUMENTS

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I SCOPE OF THIS PART AND INTERPRETATION

Part 6 rules about service apply generally

6.1. This Part applies to the service of documents, except where—

- (a) another Part, any other enactment or a practice direction makes different provision;
or
- (b) the court orders otherwise.

(Other Parts, for example, Part 54 (Judicial Review) and Part 55 (Possession Claims) contain specific provisions about service.)

Interpretation

6.2. In this Part—

- (a) “bank holiday” means a bank holiday under the Banking and Financial Dealings Act 1971(a) in the part of the United Kingdom where service is to take place;
- (b) “business day” means any day except Saturday, Sunday, a bank holiday, Good Friday or Christmas Day;
- (c) “claim” includes petition and any application made before action or to commence proceedings and “claim form”, “claimant” and “defendant” are to be construed accordingly; and
- (d) “solicitor” includes other authorised litigators within the meaning of the Courts and Legal Services Act 1990(b).

II SERVICE OF THE CLAIM FORM IN THE JURISDICTION

Methods of service

6.3.—(1) A claim form may be served by any of the following methods—

- (a) personal service in accordance with rule 6.5;
- (b) first class post, document exchange or other service which provides for delivery on the next business day, in accordance with Practice Direction A supplementing this Part;
- (c) leaving it at a place specified in rule 6.7, 6.8, 6.9 or 6.10;
- (d) fax or other means of electronic communication in accordance with Practice Direction A supplementing this Part; or
- (e) any method authorised by the court under rule 6.15.

(2) A company may be served—

- (a) by any method permitted under this Part; or
- (b) by any of the methods of service set out in the Companies Act 1985(c) or the Companies Act 2006(d).

(3) A limited liability partnership may be served—

- (a) by any method permitted under this Part; or
- (b) by any of the methods of service set out in section 725 of the Companies Act 1985.

Who is to serve the claim form

6.4.—(1) The court will serve the claim form except where—

- (a) a rule or practice direction provides that the claimant must serve it;
- (b) the claimant notifies the court that the claimant wishes to serve it; or
- (c) the court orders or directs otherwise.

(2) Where the court is to serve the claim form, it is for the court to decide which method of service is to be used.

(3) Where the court is to serve the claim form, the claimant must, in addition to filing a copy for the court, provide a copy for each defendant to be served.

(4) Where the court has sent—

(a) 1971 c. 80.
(b) 1990 c. 41.
(c) 1985 c. 6.
(d) 2006 c. 46.

- (a) a notification of outcome of postal service to the claimant in accordance with rule 6.18; or
 - (b) a notification of non-service by a bailiff in accordance with rule 6.19,
- the court will not try to serve the claim form again.

Personal service

6.5.—(1) Where required by another Part, any other enactment, a practice direction or a court order, a claim form must be served personally.

(2) In other cases, a claim form may be served personally except—

- (a) where rule 6.7 applies; or
- (b) in any proceedings against the Crown.

(Part 54 contains provisions about judicial review claims and Part 66 contains provisions about Crown proceedings.)

(3) A claim form is served personally on—

- (a) an individual by leaving it with that individual;
- (b) a company or other corporation by leaving it with a person holding a senior position within the company or corporation; or
- (c) a partnership (where partners are being sued in the name of their firm) by leaving it with—
 - (i) a partner; or
 - (ii) a person who, at the time of service, has the control or management of the partnership business at its principal place of business.

(Practice Direction A supplementing this Part sets out the meaning of “senior position”.)

Where to serve the claim form – general provisions

6.6.—(1) The claim form must be served within the jurisdiction except where rule 6.11 applies or as provided by Section IV of this Part.

(2) The claimant must include in the claim form an address at which the defendant may be served. That address must include a full postcode, unless the court orders otherwise.

(Paragraph 2.4 of the practice direction supplementing Part 16 contains provisions about postcodes.)

(3) Paragraph (2) does not apply where an order made by the court under rule 6.15 (service by an alternative method or at an alternative place) specifies the place or method of service of the claim form.

Service of the claim form on a solicitor

6.7. Subject to rule 6.5(1), where—

- (a) the defendant has given in writing the business address within the jurisdiction of a solicitor as an address at which the defendant may be served with the claim form; or
- (b) a solicitor acting for the defendant has notified the claimant in writing that the solicitor is instructed by the defendant to accept service of the claim form on behalf of the defendant at a business address within the jurisdiction,

the claim form must be served at the business address of that solicitor.

(“Solicitor” has the extended meaning set out in rule 6.2(d).)

Service of the claim form where the defendant gives an address at which the defendant may be served

6.8. Subject to rules 6.5(1) and 6.7—

- (a) the defendant may be served with the claim form at an address within the jurisdiction which the defendant has given for the purpose of being served with the proceedings; or
- (b) in any claim by a tenant against a landlord, the claim form may be served at an address given by the landlord under section 48 of the Landlord and Tenant Act 1987^(a).

Service of the claim form where the defendant does not give an address at which the defendant may be served

6.9.—(1) This rule applies where—

- (a) rule 6.5(1) (personal service);
- (b) rule 6.7 (service of claim form on solicitor); and
- (c) rule 6.8 (defendant gives address at which the defendant may be served),

do not apply and the claimant does not wish to effect personal service under rule 6.5(2).

(2) Subject to paragraphs (3) to (6), the claim form must be served on the defendant at the place shown in the following table.

<i>Nature of defendant to be served</i>	<i>Place of service</i>
1. Individual	Usual or last known residence.
2. Individual being sued in the name of a business	Usual or last known residence of the individual; or principal or last known place of business.
3. Individual being sued in the business name of a partnership	Usual or last known residence of the individual; or principal or last known place of business of the partnership.
4. Limited liability partnership	Principal office of the partnership; or any place of business of the partnership within the jurisdiction which has a real connection with the claim.
5. Corporation (other than a company) incorporated in England and Wales	Principal office of the corporation; or any place within the jurisdiction where the corporation carries on its activities and which has a real connection with the claim.
6. Company registered in England and Wales	Principal office of the company; or any place of business of the company within the jurisdiction which has a real connection with the claim.
7. Any other company or corporation	Any place within the jurisdiction where the corporation carries on its activities; or any place of business of the company within the jurisdiction.

(3) Where a claimant has reason to believe that the address of the defendant referred to in entries 1, 2 or 3 in the table in paragraph (2) is an address at which the defendant no longer resides or carries on business, the claimant must take reasonable steps to ascertain the address of the defendant’s current residence or place of business (“current address”).

^(a) 1987 c. 31.

- (4) Where, having taken the reasonable steps required by paragraph (3), the claimant—
- (a) ascertains the defendant’s current address, the claim form must be served at that address; or
 - (b) is unable to ascertain the defendant’s current address, the claimant must consider whether there is—
 - (i) an alternative place where; or
 - (ii) an alternative method by which, service may be effected.
- (5) If, under paragraph (4)(b), there is such a place where or a method by which service may be effected, the claimant must make an application under rule 6.15.
- (6) Where paragraph (3) applies, the claimant may serve on the defendant’s usual or last known address in accordance with the table in paragraph (2) where the claimant—
- (a) cannot ascertain the defendant’s current residence or place of business; and
 - (b) cannot ascertain an alternative place or an alternative method under paragraph (4)(b).

Service of the claim form in proceedings against the Crown

- 6.10.** In proceedings against the Crown—
- (a) service on the Attorney General must be effected on the Treasury Solicitor; and
 - (b) service on a government department must be effected on the solicitor acting for that department.

(The practice direction supplementing Part 66 gives the list published under section 17 of the Crown Proceedings Act 1947^(a) of the solicitors acting in civil proceedings (as defined in that Act) for the different government departments on whom service is to be effected, and of their addresses.)

Service of the claim form by contractually agreed method

- 6.11.**—(1) Where—
- (a) a contract contains a term providing that, in the event of a claim being started in relation to the contract, the claim form may be served by a method or at a place specified in the contract; and
 - (b) a claim solely in respect of that contract is started,

the claim form may, subject to paragraph (2), be served on the defendant by the method or at the place specified in the contract.

- (2) Where in accordance with the contract the claim form is to be served out of the jurisdiction, it may be served—
- (a) if permission to serve it out of the jurisdiction has been granted under rule 6.36; or
 - (b) without permission under rule 6.32 or 6.33.

Service of the claim form relating to a contract on an agent of a principal who is out of the jurisdiction

- 6.12.**—(1) The court may, on application, permit a claim form relating to a contract to be served on the defendant’s agent where —
- (a) the defendant is out of the jurisdiction;

(a) 1947 c. 44.

- (b) the contract to which the claim relates was entered into within the jurisdiction with or through the defendant's agent; and
 - (c) at the time of the application either the agent's authority has not been terminated or the agent is still in business relations with the defendant.
- (2) An application under this rule—
- (a) must be supported by evidence setting out—
 - (i) details of the contract and that it was entered into within the jurisdiction or through an agent who is within the jurisdiction;
 - (ii) that the principal for whom the agent is acting was, at the time the contract was entered into and is at the time of the application, out of the jurisdiction; and
 - (iii) why service out of the jurisdiction cannot be effected; and
 - (b) may be made without notice.
- (3) An order under this rule must state the period within which the defendant must respond to the particulars of claim.
- (4) Where the court makes an order under this rule—
- (a) a copy of the application notice and the order must be served with the claim form on the agent; and
 - (b) unless the court orders otherwise, the claimant must send to the defendant a copy of the application notice, the order and the claim form.
- (5) This rule does not exclude the court's power under rule 6.15 (service by an alternative method or at an alternative place).

Service of the claim form on children and protected parties

- 6.13.**—(1) Where the defendant is a child who is not also a protected party, the claim form must be served on—
- (a) one of the child's parents or guardians; or
 - (b) if there is no parent or guardian, an adult with whom the child resides or in whose care the child is.
- (2) Where the defendant is a protected party, the claim form must be served on—
- (a) one of the following persons with authority in relation to the protected party as—
 - (i) the attorney under a registered enduring power of attorney;
 - (ii) the donee of a lasting power of attorney; or
 - (iii) the deputy appointed by the Court of Protection; or
 - (b) if there is no such person, an adult with whom the protected party resides or in whose care the protected party is.
- (3) Any reference in this Section to a defendant or a party to be served includes the person to be served with the claim form on behalf of a child or protected party under paragraph (1) or (2).
- (4) The court may make an order permitting a claim form to be served on a child or protected party, or on a person other than the person specified in paragraph (1) or (2).
- (5) An application for an order under paragraph (4) may be made without notice.
- (6) The court may order that, although a claim form has been sent or given to someone other than the person specified in paragraph (1) or (2), it is to be treated as if it had been properly served.
- (7) This rule does not apply where the court has made an order under rule 21.2(3) allowing a child to conduct proceedings without a litigation friend.

(Part 21 contains rules about the appointment of a litigation friend and “child” and “protected party” have the same meaning as in rule 21.1.)

Deemed service

6.14. A claim form served in accordance with this Part is deemed to be served on the second business day after completion of the relevant step under rule 7.5(1).

Service of the claim form by an alternative method or at an alternative place

6.15.—(1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place.

(2) On an application under this rule, the court may order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service.

(3) An application for an order under this rule—

- (a) must be supported by evidence; and
- (b) may be made without notice.

(4) An order under this rule must specify—

- (a) the method or place of service;
- (b) the date on which the claim form is deemed served; and
- (c) the period for—
 - (i) filing an acknowledgment of service;
 - (ii) filing an admission; or
 - (iii) filing a defence.

Power of court to dispense with service of the claim form

6.16.—(1) The court may dispense with service of a claim form in exceptional circumstances.

(2) An application for an order to dispense with service may be made at any time and—

- (a) must be supported by evidence; and
- (b) may be made without notice.

Notice and certificate of service relating to the claim form

6.17.—(1) Where the court serves a claim form, the court will send to the claimant a notice which will include the date on which the claim form is deemed served under rule 6.14.

(2) Where the claimant serves the claim form, the claimant—

- (a) must file a certificate of service within 21 days of service of the particulars of claim, unless all the defendants to the proceedings have filed acknowledgments of service within that time; and
- (b) may not obtain judgment in default under Part 12 unless a certificate of service has been filed.

(3) The certificate of service must state—

- (a) where rule 6.7, 6.8, 6.9 or 6.10 applies, the category of address at which the claimant believes the claim form has been served; and
- (b) the details set out in the following table.

<i>Method of service</i>	<i>Details to be certified</i>
1. Personal service	Date of personal service.
2. First class post, document exchange or other service which provides for delivery on the next business day	Date of posting, or leaving with, delivering to or collection by the relevant service provider.
3. Delivery of document to or leaving it at a permitted place	Date when the document was delivered to or left at the permitted place.
4. Fax	Date of completion of the transmission.
5. Other electronic method	Date of sending the e-mail or other electronic transmission.
6. Alternative method or place	As required by the court.

Notification of outcome of postal service by the court

6.18.—(1) Where—

- (a) the court serves the claim form by post; and
- (b) the claim form is returned to the court,

the court will send notification to the claimant that the claim form has been returned.

(2) The claim form will be deemed to be served unless the address for the defendant on the claim form is not the relevant address for the purpose of rules 6.7 to 6.10.

Notice of non-service by bailiff

6.19. Where—

- (a) the court bailiff is to serve a claim form; and
- (b) the bailiff is unable to serve it on the defendant,

the court will send notification to the claimant.

III SERVICE OF DOCUMENTS OTHER THAN THE CLAIM FORM IN THE UNITED KINGDOM

Methods of service

6.20.—(1) A document may be served by any of the following methods—

- (a) personal service, in accordance with rule 6.22;
- (b) first class post, document exchange or other service which provides for delivery on the next business day, in accordance with Practice Direction A supplementing this Part;
- (c) leaving it at a place specified in rule 6.23;
- (d) fax or other means of electronic communication in accordance with Practice Direction A supplementing this Part; or
- (e) any method authorised by the court under rule 6.27.

(2) A company may be served—

- (a) by any method permitted under this Part; or
- (b) by any of the methods of service set out in the Companies Act 1985 or the Companies Act 2006.

(3) A limited liability partnership may be served—

- (a) by any method permitted under this Part; or
- (b) by any of the methods of service set out in section 725 of the Companies Act 1985.

Who is to serve

6.21.—(1) A party to proceedings will serve a document which that party has prepared except where—

- (a) a rule or practice direction provides that the court will serve the document; or
- (b) the court orders otherwise.

(2) The court will serve a document which it has prepared except where—

- (a) a rule or practice direction provides that a party must serve the document;
- (b) the party on whose behalf the document is to be served notifies the court that the party wishes to serve it; or
- (c) the court orders otherwise.

(3) Where the court is to serve a document, it is for the court to decide which method of service is to be used.

(4) Where the court is to serve a document prepared by a party, that party must provide a copy for the court and for each party to be served.

Personal service

6.22.—(1) Where required by another Part, any other enactment, a practice direction or a court order, a document must be served personally.

(2) In other cases, a document may be served personally except—

- (a) where the party to be served has given an address for service under rule 6.23(2)(a); or
- (b) in any proceedings by or against the Crown.

(3) A document may be served personally as if the document were a claim form in accordance with rule 6.5(3).

Address for service

6.23.—(1) A party to proceedings must give an address at which that party may be served with documents relating to those proceedings. The address must include a full postcode unless the court orders otherwise.

(Paragraph 2.4 of the practice direction supplementing Part 16 contains provisions about postcodes.)

(2) A party's address for service must be—

- (a) the business address within the United Kingdom of a solicitor acting for the party to be served; or
- (b) where there is no solicitor acting for the party to be served, an address within the United Kingdom at which the party resides or carries on business.

(3) Where there is no solicitor acting for the party to be served and the party does not have an address within the United Kingdom at which that party resides or carries on business, the party must give an address for service within the United Kingdom.

(Part 42 contains provisions about change of solicitor. Rule 42.1 provides that where a party gives the business address of a solicitor as that party's address for service, that solicitor will be considered to be acting for the party until the provisions of Part 42 are complied with.)

(4) Any document to be served in proceedings must be sent or transmitted to, or left at, the party's address for service under paragraph (2) or (3) unless it is to be served personally or the court orders otherwise.

(5) Where, in accordance with Practice Direction A supplementing this Part, a party indicates or is deemed to have indicated that they will accept service by fax, the fax number given by that party must be at the address for service.

(6) Where a party indicates in accordance with Practice Direction A supplementing this Part that they will accept service by electronic means other than fax, the e-mail address or electronic identification given by that party will be deemed to be at the address for service.

(7) In proceedings by or against the Crown, service of any document in the proceedings on the Crown must be effected in the same manner prescribed in rule 6.10 as if the document were a claim form.

(8) This rule does not apply where an order made by the court under rule 6.27 (service by an alternative method or at an alternative place) specifies where a document may be served.

Change of address for service

6.24. Where the address for service of a party changes, that party must give notice in writing of the change as soon as it has taken place to the court and every other party.

Service on children and protected parties

6.25.—(1) An application for an order appointing a litigation friend where a child or protected party has no litigation friend must be served in accordance with rule 21.8(1) and (2).

(2) Any other document which would otherwise be served on a child or a protected party must be served on the litigation friend conducting the proceedings on behalf of the child or protected party.

(3) The court may make an order permitting a document to be served on the child or protected party or on some person other than the person specified in rule 21.8 or paragraph (2).

(4) An application for an order under paragraph (3) may be made without notice.

(5) The court may order that, although a document has been sent or given to someone other than the person specified in rule 21.8 or paragraph (2), the document is to be treated as if it had been properly served.

(6) This rule does not apply where the court has made an order under rule 21.2(3) allowing a child to conduct proceedings without a litigation friend.

Deemed Service

6.26. A document, other than a claim form, served in accordance with these Rules or any relevant practice direction is deemed to be served on the day shown in the following table—

<i>Method of service</i>	<i>Deemed date of service</i>
1. First class post (or other service which provides for delivery on the next business day)	The second day after it was posted, left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day.
2. Document exchange	The second day after it was left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day.
3. Delivering the document to or leaving it at a permitted address	If it is delivered to or left at the permitted address on a business day before 4.30p.m., on that day; or in any other case, on the next business day after that day.

4. Fax	If the transmission of the fax is completed on a business day before 4.30p.m., on that day; or in any other case, on the next business day after the day on which it was transmitted.
5. Other electronic method	If the e-mail or other electronic transmission is sent on a business day before 4.30p.m., on that day; or in any other case, on the next business day after the day on which it was sent.
6. Personal service	If the document is served personally before 4.30p.m. on a business day, on that day; or in any other case, on the next business day after that day.

(Paragraphs 10.1 to 10.7 of Practice Direction A supplementing this Part contain examples of how the date of deemed service is calculated.)

Service by an alternative method or at an alternative place

6.27. Rule 6.15 applies to any document in the proceedings as it applies to a claim form and reference to the defendant in that rule is modified accordingly.

Power to dispense with service

6.28.—(1) The court may dispense with service of any document which is to be served in the proceedings.

(2) An application for an order to dispense with service must be supported by evidence and may be made without notice.

Certificate of service

6.29. Where a rule, practice direction or court order requires a certificate of service, the certificate must state the details required by the following table—

<i>Method of Service</i>	<i>Details to be certified</i>
1. Personal service	Date and time of personal service.
2. First class post, document exchange or other service which provides for delivery on the next business day	Date of posting, or leaving with, delivering to or collection by the relevant service provider.
3. Delivery of document to or leaving it at a permitted place	Date and time of when the document was delivered to or left at the permitted place.
4. Fax	Date and time of completion of the transmission.
5. Other electronic method	Date and time of sending the e-mail or other electronic transmission.
6. Alternative method or place permitted by the court	As required by the court.

IV SERVICE OF THE CLAIM FORM AND OTHER DOCUMENTS OUT OF THE JURISDICTION

Scope of this Section

6.30. This Section contains rules about—

- (a) service of the claim form and other documents out of the jurisdiction;
- (b) when the permission of the court is required and how to obtain that permission; and
- (c) the procedure for service.

(“Jurisdiction” is defined in rule 2.3(1).)

Interpretation

6.31. For the purposes of this Section—

- (a) “the Hague Convention” means the Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters signed at the Hague on 15 November 1965(a);
- (b) “the 1982 Act” means the Civil Jurisdiction and Judgments Act 1982(b);
- (c) “Civil Procedure Convention” means the Brussels and Lugano Conventions (as defined in section 1(1) of the 1982 Act) and any other Convention (including the Hague Convention) entered into by the United Kingdom regarding service out of the jurisdiction;
- (d) “the Judgments Regulation” means Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters(c), as amended from time to time and as applied by the Agreement made on 19 October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters(d);
- (e) “the Service Regulation” means Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents)(e), and repealing Council Regulation (EC) No. 1348/2000(f), as amended from time to time and as applied by the Agreement made on 19 October 2005 between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents on civil and commercial matters(g);
- (f) “Commonwealth State” means a state listed in Schedule 3 to the British Nationality Act 1981(h);
- (g) “Contracting State” has the meaning given by section 1(3) of the 1982 Act;
- (h) “Convention territory” means the territory or territories of any Contracting State to which the Brussels or Lugano Conventions (as defined in section 1(1) of the 1982 Act) apply; and
- (i) “domicile” is to be determined—
 - (i) in relation to a Convention territory, in accordance with sections 41 to 46 of the 1982 Act; and
 - (ii) in relation to a Member State, in accordance with the Judgments Regulation and paragraphs 9 to 12 of Schedule 1 to the Civil Jurisdiction and Judgments Order 2001(i).

(a) Cmnd. 3986.

(b) 1982 c. 27.

(c) OJ No L 12, 16.1.2001, p.1.

(d) OJ No L 299, 16.11.2005, p.62.

(e) OJ No L324, 10.12.2007, p.79.

(f) OJ No L160, 30.6.2000, p.37.

(g) OJ No L300, 17.11.2005, p.53.

(h) 1981 c. 61.

(i) S.I. 2001/3929.

Service of the claim form where the permission of the court is not required - Scotland and Northern Ireland

6.32.—(1) The claimant may serve the claim form on a defendant in Scotland or Northern Ireland where each claim made against the defendant to be served and included in the claim form is a claim which the court has power to determine under the 1982 Act and—

- (a) no proceedings between the parties concerning the same claim are pending in the courts of any other part of the United Kingdom; and
- (b) (i) the defendant is domiciled in the United Kingdom;
(ii) the proceedings are within paragraph 11 of Schedule 4 to the 1982 Act; or
(iii) the defendant is a party to an agreement conferring jurisdiction, within paragraph 12 of Schedule 4 to the 1982 Act.

(2) The claimant may serve the claim form on a defendant in Scotland or Northern Ireland where each claim made against the defendant to be served and included in the claim form is a claim which the court has power to determine under any enactment other than the 1982 Act notwithstanding that—

- (a) the person against whom the claim is made is not within the jurisdiction; or
- (b) the facts giving rise to the claim did not occur within the jurisdiction.

Service of the claim form where the permission of the court is not required - out of the United Kingdom

6.33.—(1) The claimant may serve the claim form on a defendant out of the United Kingdom where each claim made against the defendant to be served and included in the claim form is a claim which the court has power to determine under the 1982 Act and—

- (a) no proceedings between the parties concerning the same claim are pending in the courts of any other part of the United Kingdom or any other Convention territory; and
- (b) (i) the defendant is domiciled in the United Kingdom or in any Convention territory;
(ii) the proceedings are within article 16 of Schedule 1 or article 16 of Schedule 3C to the 1982 Act ; or
(iii) the defendant is a party to an agreement conferring jurisdiction, within article 17 of Schedule 1 or article 17 of Schedule 3C to the 1982 Act.

(2) The claimant may serve the claim form on a defendant out of the United Kingdom where each claim made against the defendant to be served and included in the claim form is a claim which the court has power to determine under the Judgments Regulation and—

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

(3) The claimant may serve the claim form on a defendant out of the United Kingdom where each claim made against the defendant to be served and included in the claim form is a claim which the court has power to determine other than under the 1982 Act or the Judgments Regulation, notwithstanding that—

- (a) the person against whom the claim is made is not within the jurisdiction; or
- (b) the facts giving rise to the claim did not occur within the jurisdiction.

Notice of statement of grounds where the permission of the court is not required for service

6.34.—(1) Where the claimant intends to serve a claim form on a defendant under rule 6.32 or 6.33, the claimant must—

- (a) file with the claim form a notice containing a statement of the grounds on which the claimant is entitled to serve the claim form out of the jurisdiction; and
- (b) serve a copy of that notice with the claim form.

(2) Where the claimant fails to file with the claim form a copy of the notice referred to in paragraph (1)(a), the claim form may only be served—

- (a) once the claimant files the notice; or
- (b) if the court gives permission.

Period for responding to the claim form where permission was not required for service

6.35.—(1) This rule sets out the period for—

- (a) filing an acknowledgment of service;
- (b) filing an admission; or
- (c) filing a defence,

where a claim form has been served out of the jurisdiction under rule 6.32 or 6.33.

(Part 10 contains rules about acknowledgments of service, Part 14 contains rules about admissions and Part 15 contains rules about defences.)

Service of the claim form on a defendant in Scotland or Northern Ireland

(2) Where the claimant serves on a defendant in Scotland or Northern Ireland under rule 6.32, the period—

- (a) for filing an acknowledgment of service or admission is 21 days after service of the particulars of claim; or
- (b) for filing a defence is—
 - (i) 21 days after service of the particulars of claim; or
 - (ii) where the defendant files an acknowledgment of service, 35 days after service of the particulars of claim.

(Part 7 provides that particulars of claim must be contained in or served with the claim form or served separately on the defendant within 14 days after service of the claim form.)

Service of the claim form on a defendant in a Convention territory within Europe or a Member State

(3) Where the claimant serves the claim form on a defendant in a Convention territory within Europe or a Member State under rule 6.33, the period—

- (a) for filing an acknowledgment of service or admission, is 21 days after service of the particulars of claim; or
- (b) for filing a defence is—
 - (i) 21 days after service of the particulars of claim; or
 - (ii) where the defendant files an acknowledgment of service, 35 days after service of the particulars of claim.

Service of the claim form on a defendant in a Convention territory outside Europe

(4) Where the claimant serves the claim form on a defendant in a Convention territory outside Europe under rule 6.33, the period—

- (a) for filing an acknowledgment of service or admission, is 31 days after service of the particulars of claim; or
- (b) for filing a defence is—
 - (i) 31 days after service of the particulars of claim; or
 - (ii) where the defendant files an acknowledgment of service, 45 days after service of the particulars of claim.

Service on a defendant elsewhere

(5) Where the claimant serves the claim form under rule 6.33 in a country not referred to in paragraph (3) or (4), the period for responding to the claim form is set out in Practice Direction B supplementing this Part.

Service of the claim form where the permission of the court is required

6.36. In any proceedings to which rule 6.32 or 6.33 does not apply, the claimant may serve a claim form out of the jurisdiction with the permission of the court if any of the grounds set out in paragraph 3.1 of Practice Direction B supplementing this Part apply.

Application for permission to serve the claim form out of the jurisdiction

6.37.—(1) An application for permission under rule 6.36 must set out—

- (a) which ground in paragraph 3.1 of Practice Direction B supplementing this Part is relied on;
- (b) that the claimant believes that the claim has a reasonable prospect of success; and
- (c) the defendant's address or, if not known, in what place the defendant is, or is likely, to be found.

(2) Where the application is made in respect of a claim referred to in paragraph 3.1(3) of Practice Direction B supplementing this Part, the application must also state the grounds on which the claimant believes that there is between the claimant and the defendant a real issue which it is reasonable for the court to try.

(3) The court will not give permission unless satisfied that England and Wales is the proper place in which to bring the claim.

(4) In particular, where—

- (a) the application is for permission to serve a claim form in Scotland or Northern Ireland; and
- (b) it appears to the court that the claimant may also be entitled to a remedy in Scotland or Northern Ireland, the court, in deciding whether to give permission, will—
 - (i) compare the cost and convenience of proceeding there or in the jurisdiction; and
 - (ii) (where relevant) have regard to the powers and jurisdiction of the Sheriff court in Scotland or the county courts or courts of summary jurisdiction in Northern Ireland.

(5) Where the court gives permission to serve a claim form out of the jurisdiction—

- (a) it will specify the periods within which the defendant may—
 - (i) file an acknowledgment of service;
 - (ii) file or serve an admission;

- (iii) file a defence; or
- (iv) file any other response or document required by a rule in another Part, any other enactment or a practice direction; and
- (b) it may—
 - (i) give directions about the method of service; and
 - (ii) give permission for other documents in the proceedings to be served out of the jurisdiction.

(The periods referred to in paragraphs (5)(a)(i), (ii) and (iii) are those specified in the Table in Practice Direction B supplementing this Part.)

Service of documents other than the claim form - permission

6.38.—(1) Unless paragraph (2) or (3) applies, where the permission of the court is required for the claimant to serve the claim form out of the jurisdiction, the claimant must obtain permission to serve any other document in the proceedings out of the jurisdiction.

(2) Where—

- (a) the court gives permission for a claim form to be served on a defendant out of the jurisdiction; and
- (b) the claim form states that particulars of claim are to follow,

the permission of the court is not required to serve the particulars of claim.

(3) The permission of the court is not required if a party has given an address for service in Scotland or Northern Ireland.

Service of application notice on a non-party to the proceedings

6.39.—(1) Where an application notice is to be served out of the jurisdiction on a person who is not a party to the proceedings rules 6.35 and 6.37(5)(a)(i), (ii) and (iii) do not apply.

(2) Where an application is served out of the jurisdiction on a person who is not a party to the proceedings, that person may make an application to the court under Part 11 as if that person were a defendant, but rule 11(2) does not apply.

(Part 11 contains provisions about disputing the court’s jurisdiction.)

Methods of service - general provisions

6.40.—(1) This rule contains general provisions about the method of service of a claim form or other document on a party out of the jurisdiction.

Where service is to be effected on a party in Scotland or Northern Ireland

(2) Where a party serves any document on a party in Scotland or Northern Ireland, it must be served by a method permitted by Section II (and references to “jurisdiction” in that Section are modified accordingly) or Section III of this Part and rule 6.23(4) applies.

Where service is to be effected on a defendant out of the United Kingdom

(3) Where the claimant wishes to serve a claim form or any other document on a defendant out of the United Kingdom, it may be served—

- (a) by any method provided for by—
 - (i) rule 6.41 (service in accordance with the Service Regulation);
 - (ii) rule 6.42 (service through foreign governments, judicial authorities and British Consular authorities); or
 - (iii) rule 6.44 (service of claim form or other document on a State);

- (b) by any method permitted by a Civil Procedure Convention; or
- (c) by any other method permitted by the law of the country in which it is to be served.

(4) Nothing in paragraph (3) or in any court order authorises or requires any person to do anything which is contrary to the law of the country where the claim form or other document is to be served.

(A list of the countries with whom the United Kingdom has entered into a Civil Procedure Convention, and a link to the relevant Convention, may be found on the Foreign and Commonwealth Office website at—

<http://www.fco.gov.uk/en/about-the-fco/publications/treaties/lists-treaties/bilateral-civil-procedure.>)

Service in accordance with the Service Regulation

6.41.—(1) This rule applies where the claimant wishes to serve the claim form or other document in accordance with the Service Regulation.

- (2) The claimant must file—
 - (a) the claim form or other document;
 - (b) any translation; and
 - (c) any other documents required by the Service Regulation.

(3) When the claimant files the documents referred to in paragraph (2), the court officer will—

- (a) seal (GL) the copy of the claim form; and
- (b) forward the documents to the Senior Master.

(4) Rule 6.47 does not apply to this rule.

(The Service Regulation is annexed to Practice Direction B supplementing this Part.)

(Article 20(1) of the Service Regulation provides that the Regulation prevails over other provisions contained in any other agreement or arrangement concluded by Member States.)

Service through foreign governments, judicial authorities and British Consular authorities

6.42.—(1) Where the claimant wishes to serve a claim form or any other document on a defendant in any country which is a party to a Civil Procedure Convention providing for service in that country, it may be served—

- (a) through the authority designated under the Hague Convention (where relevant) in respect of that country; or
- (b) if the law of that country permits—
 - (i) through the judicial authorities of that country, or
 - (ii) through a British Consular authority in that country (subject to any provisions of the applicable convention about the nationality of persons who may be served by such a method).

(2) Where the claimant wishes to serve a claim form or any other document on a defendant in any country with respect to which there is no Civil Procedure Convention providing for service in that country, the claim form or other document may be served, if the law of that country so permits—

- (a) through the government of that country, where that government is willing to serve it; or
- (b) through a British Consular authority in that country.

- (3) Where the claimant wishes to serve the claim form or other document in—
- (a) any Commonwealth State which is not a party to the Hague Convention;
 - (b) the Isle of Man or the Channel Islands; or
 - (c) any British overseas territory,

the methods of service permitted by paragraphs (1)(b) and (2) are not available and the claimant or the claimant's agent must effect service direct, unless Practice Direction B supplementing this Part provides otherwise.

(A list of British overseas territories is reproduced in paragraph 5.2 of Practice Direction B supplementing this Part.)

Procedure where service is to be through foreign governments, judicial authorities and British Consular authorities

6.43.—(1) This rule applies where the claimant wishes to serve a claim form or any other document under rule 6.42(1) or 6.42(2).

(2) Where this rule applies, the claimant must file—

- (a) a request for service of the claim form or other document specifying one or more of the methods in rule 6.42(1) or 6.42(2);
- (b) a copy of the claim form or other document;
- (c) any other documents or copies of documents required by Practice Direction B supplementing this Part; and
- (d) any translation required under rule 6.45.

(3) Where the claimant files the documents specified in paragraph (2), the court officer will—

- (a) seal (GL) the copy of the claim form or other document; and
- (b) forward the documents to the Senior Master.

(4) The Senior Master will send documents forwarded under this rule—

- (a) where the claim form or other document is being served through the authority designated under the Hague Convention, to that authority; or
- (b) in any other case, to the Foreign and Commonwealth Office with a request that it arranges for the claim form or other document to be served.

(5) An official certificate which—

- (a) states that the method requested under paragraph (2)(a) has been performed and the date of such performance;
- (b) states, where more than one method is requested under paragraph (2)(a), which method was used; and
- (c) is made by—
 - (i) a British Consular authority in the country where the method requested under paragraph (2)(a) was performed;
 - (ii) the government or judicial authorities in that country; or
 - (iii) the authority designated in respect of that country under the Hague Convention,

is evidence of the facts stated in the certificate.

(6) A document purporting to be an official certificate under paragraph (5) is to be treated as such a certificate, unless it is proved not to be.

Service of claim form or other document on a State

6.44.—(1) This rule applies where a claimant wishes to serve the claim form or other document on a State.

(2) In this rule, “State” has the meaning given by section 14 of the State Immunity Act 1978(a).

(3) The claimant must file in the Central Office of the Royal Courts of Justice—

- (a) a request for service to be arranged by the Foreign and Commonwealth Office;
- (b) a copy of the claim form or other document; and
- (c) any translation required under rule 6.45.

(4) The Senior Master will send the documents filed under this rule to the Foreign and Commonwealth Office with a request that it arranges for them to be served.

(5) An official certificate by the Foreign and Commonwealth Office stating that a claim form has been duly served on a specified date in accordance with a request made under this rule is evidence of that fact.

(6) A document purporting to be such a certificate is to be treated as such a certificate, unless it is proved not to be.

(7) Where—

- (a) section 12(6) of the State Immunity Act 1978 applies; and
- (b) the State has agreed to a method of service other than through the Foreign and Commonwealth Office,

the claim form or other document may be served either by the method agreed or in accordance with this rule.

(Section 12(6) of the State Immunity Act 1978 provides that section 12(1) enables the service of a claim form or other document in a manner to which the State has agreed.)

Translation of claim form or other document

6.45.—(1) Except where paragraph (4) or (5) applies, every copy of the claim form or other document filed under rule 6.43 (service through foreign governments, judicial authorities etc.) or 6.44 (service of claim form or other document on a State) must be accompanied by a translation of the claim form or other document.

(2) The translation must be—

- (a) in the official language of the country in which it is to be served; or
- (b) if there is more than one official language of that country, in any official language which is appropriate to the place in the country where the claim form or other document is to be served.

(3) Every translation filed under this rule must be accompanied by a statement by the person making it that it is a correct translation, and the statement must include that person’s name, address and qualifications for making the translation.

(4) The claimant is not required to file a translation of a claim form or other document filed under rule 6.43 (service through foreign governments, judicial authorities etc.) where the claim form or other document is to be served—

- (a) in a country of which English is an official language; or
- (b) on a British citizen (within the meaning of the British Nationality Act 1981(b)), unless a Civil Procedure Convention requires a translation.

(a) 1978 c. 33.
(b) 1981 c. 61.

(5) The claimant is not required to file a translation of a claim form or other document filed under rule 6.44 (service of claim form or other document on a State) where English is an official language of the State in which the claim form or other document is to be served.

(The Service Regulation contains provisions about the translation of documents.)

Undertaking to be responsible for expenses

6.46. Every request for service filed under rule 6.43 (service through foreign governments, judicial authorities etc.) or rule 6.44 (service of claim form or other document on a State) must contain an undertaking by the person making the request—

- (a) to be responsible for all expenses incurred by the Foreign and Commonwealth Office or foreign judicial authority; and
- (b) to pay those expenses to the Foreign and Commonwealth Office or foreign judicial authority on being informed of the amount.

Proof of service before obtaining judgment

6.47. Where—

- (a) a hearing is fixed when the claim form is issued;
- (b) the claim form is served on a defendant out of the jurisdiction; and
- (c) that defendant does not appear at the hearing,

the claimant may not obtain judgment against the defendant until the claimant files written evidence that the claim form has been duly served in accordance with this Part.

V SERVICE OF DOCUMENTS FROM FOREIGN COURTS OR TRIBUNALS

Scope of this Section

6.48. This Section—

- (a) applies to the service in England and Wales of any document in connection with civil or commercial proceedings in a foreign court or tribunal; but
- (b) does not apply where the Service Regulation (which has the same meaning as in rule 6.31(e)) applies.

Interpretation

6.49. In this Section—

- (a) “convention country” means a country in relation to which there is a Civil Procedure Convention (which has the same meaning as in rule 6.31(c));
- (b) “foreign court or tribunal” means a court or tribunal in a country outside of the United Kingdom; and
- (c) “process server” means—
 - (i) a process server appointed by the Lord Chancellor to serve documents to which this Section applies, or
 - (ii) the process server’s agent.

Request for service

6.50. The Senior Master will serve a document to which this Section applies upon receipt of—

- (a) a written request for service—

- (i) where the foreign court or tribunal is in a convention country, from a consular or other authority of that country; or
- (ii) from the Secretary of State for Foreign and Commonwealth Affairs, with a recommendation that service should be effected;
- (b) a translation of that request into English;
- (c) two copies of the document to be served; and
- (d) unless the foreign court or tribunal certifies that the person to be served understands the language of the document, two copies of a translation of it into English.

Method of service

6.51. The Senior Master will determine the method of service.

After service

6.52.—(1) Where service of a document has been effected by a process server, the process server must—

- (a) send to the Senior Master a copy of the document, and
 - (i) proof of service; or
 - (ii) a statement why the document could not be served; and
- (b) if the Senior Master directs, specify the costs incurred in serving or attempting to serve the document.

(2) The Senior Master will send to the person who requested service—

- (a) a certificate, sealed with the seal of the Supreme Court for use out of the jurisdiction, stating—
 - (i) when and how the document was served or the reason why it has not been served; and
 - (ii) where appropriate, an amount certified by a costs judge to be the costs of serving or attempting to serve the document; and
- (b) a copy of the document.”

SCHEDULE 2

Rule 38

“PART 78

EUROPEAN ORDER FOR PAYMENT AND EUROPEAN SMALL CLAIMS PROCEDURES

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Scope of this Part and interpretation

78.1—(1) Section I contains rules about European orders for payment made under Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure^(a).

(2) Section II contains rules about the European small claims procedure under Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure^(b).

(3) In this Part—

- (a) unless otherwise stated, a reference to an Annex is to an Annex to the Practice Direction supplementing this Part; and
- (b) “Service Regulation” means Regulation (EC) 1393/2007 on service, within the same meaning as rule 6.31(e).

(4) Except where—

- (a) the EOP Regulation (which has the same meaning as in rule 78.2(2)(a));
- (b) the ESCP Regulation (which has the same meaning as in rule 78.12(2)(a)); or
- (c) the Service Regulation

makes different provisions about the certification or verification of translations, every translation required by this Part or such Regulation must be accompanied by a statement by the person making it that it is a correct translation. The statement must include that person’s name, address and qualifications for making the translation.

^(a) OJ No L399, 30.12.2006, p.1.
^(b) OJ No L199, 31.7.2007, p.1.

SECTION I - EUROPEAN ORDER FOR PAYMENT PROCEDURE

Scope of this Section and interpretation

78.2—(1) This Section applies to applications for European orders for payment and other related proceedings under Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.

(2) In this Section—

- (a) “EOP Regulation” means Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure. A copy of the EOP Regulation can be found at Annex 1;
- (b) “court of origin” has the meaning given by article 5(4) of the EOP Regulation;
- (c) “EOP” means a European order for payment;
- (d) “EOP application” means an application for an EOP;
- (e) “EOP application form A” means the Application for a European order for payment form A, annexed to the EOP Regulation at Annex I to that Regulation;
- (f) “European order for payment” means an order for payment made by a court under article 12(1) of the EOP Regulation;
- (g) “Member State” has the meaning given by article 2(3) of the EOP Regulation;
- (h) “Member State of origin” has the meaning given by article 5(1) of the EOP Regulation;
- (i) “statement of opposition” means a statement of opposition filed in accordance with article 16 of the EOP Regulation.

EOP applications made to a court in England and Wales

Application for a European Order for Payment

78.3. Where a declaration provided by the claimant under article 7(3) of the EOP Regulation contains any deliberate false statement, rule 32.14 applies as if the EOP application form A were verified by a statement of truth.

(An EOP application is made in accordance with the EOP Regulation and in particular article 7 of that Regulation.)

Withdrawal of EOP application

78.4—(1) At any stage before a statement of opposition is filed, the claimant may notify the court that the claimant no longer wishes to proceed with the claim.

(2) Where the claimant notifies the court in accordance with paragraph (1)—

- (a) the court will notify the defendant that the application has been withdrawn; and
- (b) no order as to costs will be made.

Transfer of proceedings where an EOP application has been opposed

78.5—(1) Where a statement of opposition is filed in accordance with article 16 of the EOP Regulation and the claimant has not opposed the transfer of the matter—

- (a) the EOP application will be treated as if it had been started as a claim under Part 7 and the EOP application form A will be treated as a Part 7 claim form including particulars of claim; and
- (b) thereafter, these Rules apply with necessary modifications and subject to this rule and rules 78.6 and 78.7.

(2) When the court notifies the claimant in accordance with article 17(3) of the EOP Regulation the court will also—

- (a) notify the claimant—
 - (i) that the EOP application form A is now treated as a Part 7 claim form including particulars of claim; and
 - (ii) of the time within which the defendant must respond under rule 78.6; and
- (b) notify the defendant—
 - (i) that a statement of opposition has been received;
 - (ii) that the application will not continue under Part 78;
 - (iii) that the application has been transferred under article 17 of the EOP Regulation;
 - (iv) that the EOP application form A is now treated as a Part 7 claim form including particulars of claim; and
 - (v) of the time within which the defendant must respond under rule 78.6.

Filing of acknowledgment of service and defence where an EOP application is transferred under article 17 of the EOP Regulation

78.6.—(1) The defendant must file a defence within 30 days of the date of the notice issued by the court under rule 78.5(2)(b).

(2) If the defendant wishes to dispute the court’s jurisdiction, the defendant must instead—

- (a) file an acknowledgment of service within the period specified in paragraph (1); and
- (b) make an application under Part 11 within the period specified in that Part.

(3) Where this rule applies, the following rules do not apply—

- (a) rule 10.1(3);
- (b) rule 10.3; and
- (c) rule 15.4(1).

Default judgment

78.7.—(1) If—

- (a) the defendant fails to file an acknowledgment of service within the period specified in rule 78.6(2)(a); and
- (b) does not within that period—
 - (i) file a defence in accordance with Part 15 (except rule 15.4(1)) and rule 78.6(1); or
 - (ii) file an admission in accordance with Part 14,

the claimant may obtain default judgment if Part 12 allows it.

(2) Where this rule applies, rule 10.2 does not apply.

Review in exceptional cases

78.8. An application for a review under article 20 of the EOP Regulation must be made in accordance with Part 23.

Enforcement of European orders for payment

78.9.—(1) A person seeking to enforce an EOP in England and Wales must file at the court in which enforcement proceedings are to be brought the documents required by article 21 of the EOP Regulation.

(2) Where a person applies to enforce an EOP 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 the application.

(Parts 70 to 74 contain further rules about enforcement.)

Refusal of enforcement

78.10.—(1) An application under article 22 of the EOP Regulation that the court should refuse to enforce an EOP must be made in accordance with Part 23 to the court in which the EOP is being enforced.

(2) The judgment debtor must, as soon as practicable, serve copies of any order made under article 22 on—

- (a) all other parties to the proceedings and any other person affected by the order (“the affected persons”); and
- (b) any court in which enforcement proceedings of the EOP are pending in England and Wales (“the relevant courts”).

(3) Upon service of the order on the affected persons, all enforcement proceedings of the EOP in the relevant courts will cease.

Stay of or limitation on enforcement

78.11.—(1) Where the defendant has sought a review and also applies for a stay of or limitation on enforcement in accordance with article 23 of the EOP Regulation, such application must be made in accordance with Part 23 to the court in which the EOP is being enforced.

(2) The defendant must, as soon as practicable, serve a copy of any order made under article 23 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.

SECTION II - EUROPEAN SMALL CLAIMS PROCEDURE

Scope of this Section and interpretation

78.12.—(1) This Section applies to the European small claims procedure under Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure.

(2) In this Section—

- (a) “ESCP Regulation” means Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure. A copy of the ESCP Regulation can be found at Annex 2;
- (b) “defendant’s response” means the response to the ESCP claim form;

- (c) “ESCP” means the European small claims procedure established by the ESCP Regulation;
- (d) “ESCP claim form” means the claim form completed and filed in the ESCP;
- (e) “ESCP counterclaim” has the meaning given to counterclaim by recital 16 of the ESCP Regulation;
- (f) “ESCP judgment” means a judgment given in the ESCP;
- (g) “Member State” has the meaning given by article 2(3) of the ESCP Regulation;
- (h) “Member State of enforcement” is the Member State in which the ESCP judgment is to be enforced;
- (i) “Member State of judgment” is the Member State in which the ESCP judgment is given.

ESCP claims made in a court in England and Wales

Filing an ESCP claim form

78.13. Where a declaration provided by the claimant in the ESCP claim form contains any deliberate false statement, rule 32.14 applies as if the ESCP claim form were verified by a statement of truth.

(An ESCP claim form is completed and filed in accordance with the ESCP Regulation, in particular article 4(1), and in accordance with this paragraph.)

Allocation of ESCP claims

78.14.—(1) ESCP claims are treated as if they were allocated to the small claims track.

(2) Part 27 applies, except rule 27.14.

Transfer of proceedings where the claim is outside the scope of the ESCP Regulation – article 4(3) of the ESCP Regulation

78.15.—(1) Where the court identifies that the claim is outside the scope of the ESCP Regulation, the court will notify the claimant of this in a transfer of proceedings notice.

(2) If the claimant wishes to withdraw the claim, the claimant must notify the court of this within 21 days of the date of the transfer of proceedings notice.

(3) Where the claimant has notified the court in accordance with paragraph (2), the claim is automatically withdrawn.

(4) Where the claimant has not notified the court in accordance with paragraph (2) and the claim is instead to be transferred under article 4(3) of the ESCP Regulation—

(a) the claim will be treated as if it had been started as a claim under Part 7 and the ESCP claim form will be treated as a Part 7 claim form including particulars of claim; and

(b) thereafter, these Rules apply with necessary modifications and subject to this rule, and the court will notify the claimant of the transfer and its effect.

Defendant’s response

78.16. Where a declaration provided by the defendant in the defendant’s response contains any deliberate false statement, rule 32.14 applies as if the defendant’s response were verified by a statement of truth.

(The defendant’s response is made in accordance with the ESCP Regulation and in particular article 5(3) of the ESCP Regulation.)

Transfer of proceedings where the defendant claims that the non-monetary claim exceeds the limit set in article 2(1) of the ESCP Regulation – article 5(5) of the ESCP Regulation

78.17.—(1) This rule applies where, under article 5(5) of the ESCP Regulation, the defendant claims that the value of a non-monetary claim exceeds the limit in article 2(1) of the ESCP Regulation.

(2) When the court dispatches the defendant’s response to the claimant, it will—

- (a) notify the claimant that the court is considering whether the claim is outside the scope of the ESCP Regulation in a consideration of transfer notice; and
- (b) send a copy of the notice to the defendant.

(3) If the claimant wishes to withdraw the claim in the event that the court decides that the claim is outside the scope of the ESCP Regulation the claimant must notify the court and the defendant of this within 21 days of the date of the consideration of transfer notice.

(4) The court will notify the defendant as well as the claimant of its decision whether the claim is outside the scope of the ESCP Regulation.

(Article 5(5) of the ESCP Regulation provides that the court shall decide within 30 days of dispatching the defendant’s response to the claimant, whether the claim is within the scope of the ESCP Regulation.)

(5) If the court decides that the claim is outside the scope of the ESCP Regulation and the claimant has notified the court and defendant in accordance with paragraph (3), the claim is automatically withdrawn.

(6) If the court decides that the claim is outside the scope of the ESCP Regulation and the claimant has not notified the court and defendant in accordance with paragraph (3)—

- (a) the claim will be treated as if it had been started as a claim under Part 7 and the ESCP claim form will be treated as a Part 7 claim form including particulars of claim;
- (b) the defendant’s response will be treated as a defence; and
- (c) thereafter, these Rules apply with necessary modifications and subject to this rule,

and the court will notify the parties.

(7) This rule applies to an ESCP counterclaim as if the counterclaim were an ESCP claim.

Transfer of proceedings where the ESCP counterclaim exceeds the limit set in article 2(1) of the ESCP Regulation – article 5(7) of the ESCP Regulation

78.18.—(1) Where the ESCP counterclaim exceeds the limit set in article 2(1) of the ESCP Regulation, the court will—

- (a) notify the defendant of this in a transfer of proceedings notice; and
- (b) send a copy of the notice to the claimant,

when the court dispatches the defendant’s response to the claimant.

(2) If the defendant wishes to withdraw the ESCP counterclaim, the defendant must notify the court and the claimant of this within 21 days of the date of the transfer of proceedings notice.

(3) If the defendant notifies the court and claimant under paragraph (2), the ESCP counterclaim is automatically withdrawn.

(4) If the defendant does not notify the court and claimant in accordance with paragraph (2)—

- (a) the claim will be treated as if it had been started as a claim under Part 7 and the ESCP claim form will be treated as a Part 7 claim form including particulars of claim;

- (b) the defendant's response and ESCP counterclaim are to be treated as the defence and counterclaim; and
- (c) thereafter, these Rules apply with necessary modifications and subject to this rule, and the court will notify the parties.

Review of judgment

78.19. An application for a review under article 18 of the ESCP Regulation must be made in accordance with Part 23.

Enforcement of ESCP judgments in England and Wales

Enforcement of an ESCP judgment

78.20.—(1) A person seeking to enforce an ESCP judgment in England and Wales must file at the court in which enforcement proceedings are to be brought the documents required by article 21 of the ESCP Regulation.

(2) Where a person applies to enforce an ESCP judgment 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 the application.

(Parts 70 to 74 contain further rules about enforcement.)

Refusal of enforcement

78.21.—(1) An application under article 22 of the ESCP Regulation that the court should refuse to enforce an ESCP judgment must be made in accordance with Part 23 to the court in which the ESCP judgment is being enforced.

(2) The judgment debtor must, as soon as practicable, serve copies of any order made under article 22 on—

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

(3) Upon service of the order on the affected persons, all enforcement proceedings of the ESCP judgment in the relevant courts will cease.

Stay of or limitation on enforcement

78.22.—(1) An application by the defendant under article 23 of the ESCP Regulation must be made in accordance with Part 23 to the court in which the ESCP judgment is being enforced.

(2) The defendant must, as soon as practicable, serve a copy of any order made under article 23 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—

- amend rules 3.7, 36.10, 38.6, 38.8, 43.2, 44.1, 44.12, 44.13, 47.5, 47.11, 47.12, 47.15, 47.16 and 47.18 and insert a new rule 44.3C to provide for applications for orders in respect of pro bono representation under section 194 of the Legal Services Act 2007;
- substitute a new Part 6 (service of documents) and make consequential amendments to rules 2.3(1), 7.4(3), 7.5, 7.6, 10.3(2), 10.5, 12.3(3), 12.4(4), 12.10, 12.11, 13.3, 14.2, 15.4(2), 16.5, 20.13, 21.1, 21.5, 21.8, 26.3, 40.4, 42.2, 45.5, 54.28B, 55.8, 55.23, 56.3, 57.4, 57.16, 58.6, 58.10, 59.5, 59.9, 61.4, 61.11, 62.5, 62.16, 62.18, 62.20, 63.16, 65.18, 74.6, RSC Order 115 rules 17 and 33, CCR Order 27 rules 5 and 17, CCR Order 28 rules 2 and 3, CCR Order 29 rule 1 and CCR Order 33 rule 4;
- amend rules 36.9 and 36.15 to provide for the recovery of lump sum payments under the Social Security (Recovery of Benefits) Act 1997 (as modified by the Social Security (Recovery of Benefits)(Lump Sum Payments) Regulations 2008) where there is an offer to settle under Part 36;
- amend rule 52.3(4A) to enable the Court of Appeal where it refuses permission to appeal without a hearing in family proceedings (as defined by section 32 of the Matrimonial and Family Proceedings Act 1984) to order, if it considers that application to be totally without merit, that the person seeking permission may not request the decision to be reconsidered at a hearing. Previously family proceedings had been excluded from this provision;
- amend Part 56 to provide for applications under section 214 of the Housing Act 2004 (tenancy deposit schemes);
- amend Part 65 to remove the provisions relating to drinking banning orders as the relevant provisions of the Violent Crime Reduction Act 2006 have not been implemented;
- insert a new Part 78. Section I of Part 78 contains rules about European orders for payment made under Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure. Section II of Part 78 contains rules about the European small claims procedure under Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure; and
- amend rules 7.2, 8.1, 74.31, 74.32 and 74.33 as a consequence of the new Part 78.

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