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STATUTORY INSTRUMENTS

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**2010 No. 1953 (L. 13)**

**SENIOR COURTS OF ENGLAND AND WALES  
COUNTY COURTS, ENGLAND AND WALES**

**The Civil Procedure (Amendment No.2) Rules 2010**

*Made - - - - 29th July 2010*

*Laid before Parliament 2nd August 2010*

*Coming into force in accordance with rule 1*

The Civil Procedure Rule Committee, in exercise of the power conferred by section 2 of the Civil Procedure Act 1997<sup>(1)</sup> to make rules of court under section 1 of that Act, after consulting in accordance with section 2(6)(a) of that Act, makes the following Rules—

**Citation, commencement and interpretation**

- 1.—(1) These Rules may be cited as the Civil Procedure (Amendment No.2) Rules 2010.
- (2) Except as provided in paragraph (3), these Rules come into force on 1st October 2010.
- (3) Rules 3, 6 and 9 of and Schedule 3 to these Rules come into force on the date on which Part 4 of the Policing and Crime Act 2009<sup>(2)</sup> comes into force.
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<sup>(3)</sup>;
  - (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.

**Amendments to the Civil Procedure Rules 1998**

3. For rule 30.3(2)(f) substitute—

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(1) 1997 c. 12. Section 2 was amended by the Constitutional Reform Act 2005 (c.4), section 15(1) and Schedule 4, Part 1, paragraphs 261, 263(1) and (2).  
(2) 2009 c. 26.  
(3) S.I. 1998/3132. There are relevant amendments in S.I. 2000/2092, 2001/1388, 2007/3543 and 2009/2092.

- “(f) the facilities available to the court at which the claim is being dealt with, particularly in relation to—
  - (i) any disabilities of a party or potential witness;
  - (ii) any special measures needed for potential witnesses; or
  - (iii) security;”.

**4. In Part 31—**

- (a) in the table of contents, at the end of the heading “Subsequent use of disclosed documents” insert “and completed Electronic Documents Questionnaires”;
- (b) in the heading to rule 31.22, after “documents” insert “and completed Electronic Documents Questionnaires”; and
- (c) after rule 31.22(3) insert—
  - “(4) For the purpose of this rule, an Electronic Documents Questionnaire which has been completed and served by another party pursuant to Practice Direction 31B is to be treated as if it is a document which has been disclosed.”.

**5. In Part 45—**

- (a) in the table of contents—
  - (i) after “Alternative percentage increase Rule 45.22” insert—

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“SECTION V FIXED RECOVERABLE SUCCESS FEES IN EMPLOYER’S LIABILITY DISEASE CLAIMS	
Scope and Interpretation	Rule 45.23
Percentage increase of solicitors’ fees	Rule 45.24
Percentage increase of counsel’s fees	Rule 45.25
Alternative percentage increase	Rule 45.26 ; and”

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- (ii) after “Account of payment of Stage 1 fixed costs Rule 45.40” insert—

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“SECTION VII SCALE COSTS FOR CLAIMS IN A PATENTS COUNTY COURT	
Scope and interpretation	Rule 45.41
Amount of scale costs	Rule 45.42
Summary assessment of the costs of an application where a party has behaved unreasonably	Rule 45.43 ; and”

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- (b) after rule 45.40 insert Section VII (Scale costs for claims in a patents county court) as set out in Schedule 1 to these Rules.

**6. In Part 52—**

- (a) in rule 52.4(3), for “Unless” substitute “Subject to paragraph (4) and unless”;
- (b) after rule 52.4(3) insert—
  - “(4) Where an appellant seeks permission to appeal against a decision to refuse to grant an interim injunction under section 41 of the Policing and Crime Act 2009(4) the appellant is not required to serve the appellant’s notice on the respondent.”; and

(c) after rule 52.5(6) insert—

“(7) This rule does not apply where rule 52.4(4) applies.”.

7. After rule 55.10(4) insert—

“(4A) An unauthorised tenant of residential property may apply to the court for the order for possession to be suspended.”.

8. In Part 63—

(a) In the table of contents—

(i) omit “Patents judge Rule 63.4”; and

(ii) after “Appeals from decisions of the Comptroller or the registrar Rule 63.16” insert—

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“V PATENTS COUNTY COURT

Scope of this Section	Rule 63.17
Transfer of proceedings	Rule 63.18
Patents judge	Rule 63.19
Statements of case	Rule 63.20
Statement of truth	Rule 63.21
Defence and reply	Rule 63.22
Case management	Rule 63.23
Disclosure and inspection	Rule 63.24
Applications	Rule 63.25
Costs	Rule 63.26 ;”

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(b) omit rule 63.4; and

(c) after rule 63.16, insert Section V (Patents county court) as set out in Schedule 2 to these Rules.

9. In Part 65—

(a) in the table of contents, after “Evidence Rule 65.41” insert—

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“VIII INJUNCTIONS UNDER THE POLICING AND CRIME ACT 2009

Scope of this Section and interpretation	Rule 65.42
Applications for an injunction	Rule 65.43
Injunction containing provisions to which a power of arrest is attached	Rule 65.44
Application to vary or discharge an injunction	Rule 65.45
Application for warrant of arrest under section 44(2) of the 2009 Act	Rule 65.46

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Proceedings following arrest under the 2009 Act	Rule 65.47
Recognizance	Rule 65.48
Applications for a power of arrest to be attached to any provision of an injunction	Rule ;” 65.49

- (b) in rule 65.1—
- (i) in sub-paragraph (f), after “;” omit “and”; and
  - (ii) at the end of sub-paragraph (g) insert—
    - “; and
    - (h) in Section VIII, about injunctions under the Policing and Crime Act 2009.”; and
- (c) after rule 65.41 insert Section VIII (Injunctions under the Policing and Crime Act 2009) as set out in Schedule 3 to these Rules.

**10. In Part 77—**

- (a) in the table of contents—
- (i) for “Scope and interpretation Rule 77.1” substitute—

“Scope of this Part	Rule 77.1
<b>SECTION 1 – SERIOUS CRIME PREVENTION ORDERS</b>	
Interpretation	Rule 77.1A ; and”

(ii) after “Where to make an application Rule 77.5” insert—

**“SECTION 2 – APPLICATION TO QUASH AN ACQUITTAL**

Scope and interpretation	Rule 77.6
Time limit for making the application	Rule 77.7
Where to make the application	Rule 77.8
How to make the application	Rule 77.9
Notice to defendant (acquitted person)	Rule 77.10
Response to the application	Rule 77.11
Further evidence	Rule 77.12
Determination of the application to quash an acquittal (general provisions)	Rule 77.13
Application for a hearing to determine the application to quash an acquittal	Rule 77.14
Hearing to determine the application to quash an acquittal	Rule 77.15 ;”

- (b) for rule 77.1 substitute—

**“Scope of this Part**

**77.1.** This Part contains rules about—

- (a) in Section 1, applications for a serious crime prevention order under section 8 of the Serious Crime Act 2007<sup>(5)</sup> and related applications under sections 9, 17 and 18 of that Act; and
- (b) in Section 2, applications under section 54(3) of the Criminal Procedure and Investigations Act 1996<sup>(6)</sup> for an order quashing an acquittal.

## SECTION 1 – SERIOUS CRIME PREVENTION ORDERS

### Interpretation

**77.1A.** In this Section—

- (a) “the 2007 Act” means the Serious Crime Act 2007; and
- (b) “SCPO” means a serious crime prevention order under section 1 or section 9 of the 2007 Act.”; and
- (c) after rule 77.5 insert Section 2 (Application to Quash an Acquittal) as set out in Schedule 4 to these Rules.

**11.—**(1) RSC Order 115 is amended as follows.

(2) In rule 24—

- (a) renumber paragraph “(ba)” as paragraph “(c)”;
- (b) renumber paragraph “(c)” as paragraph “(g)”;
- (c) at the end of the paragraph renumbered as “(c)”—
  - (i) omit “and”; and
  - (ii) insert—

“(d) “domestic freezing order certificate” means a certificate made by the High Court under paragraph 11B of Schedule 4 in relation to property in a country other than the United Kingdom;

(e) “overseas freezing order” means an order made in accordance with paragraph 11D of Schedule 4 in relation to property in the United Kingdom;

(f) “British Islands order” means a Scottish order, a Northern Ireland order or an Islands order as defined in paragraph 12 of Schedule 4; and”.

(3) In rule 25, for “paragraph 9” substitute “paragraph 13”.

(4) In the heading to rule 26, after “restraint order” insert “and domestic freezing order certificate”.

(5) In rule 26—

- (a) in paragraph (1), for “under paragraph 5” substitute “and, where relevant, a domestic freezing order certificate under paragraphs 5 and 11B”;
- (b) in paragraph (2)(c)—
  - (i) for “the order” substitute “the restraint order and, where relevant, the domestic freezing order certificate”;
  - (ii) for “;” substitute “.”;

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<sup>(5)</sup> 2007 c. 27.  
<sup>(6)</sup> 1996 c. 25.

- (c) after paragraph (2) insert—
  - “(2A) An applicant who seeks a domestic freezing order certificate must—
    - (a) prepare a draft of the certificate in accordance with paragraph 11B of Schedule 4; and
    - (b) attach it to the application for the restraint order under paragraph (1).”; and
  - (d) in paragraph 4, for “Court” substitute “court”.
- (6) In rule 27—
  - (a) in paragraph (2), for “Court” substitute “court”; and
  - (b) after paragraph (3) insert—
    - “(4) Where a domestic freezing order certificate is made it must be served with the copies of the restraint order as provided for in paragraph (3).”.
- (7) In the heading to rule 28, for “order” substitute “a restraint order and a domestic freezing order certificate”.
- (8) In rule 28—
  - (a) in paragraph 3(c), after “affected by the” insert “restraint”; and
  - (b) after paragraph (5) insert—
    - “(6) A reference in this rule to a restraint order also applies, where relevant, to a domestic freezing order certificate.
    - (7) Where an order is made under paragraph (5) which discharges or varies a domestic freezing order certificate the applicant must notify the court or authority in accordance with paragraph 11C of Schedule 4.”.
- (9) In the heading to rule 29, after “Compensation” insert “in relation to a restraint order, domestic freezing order certificate or forfeiture order”.
- (10) In the heading to rule 30, after “registration” insert “of a British Islands order”.
- (11) In rule 30, for “Scottish order, a Northern Ireland order or an Islands order” substitute “British Islands order under paragraph 13(4) of Schedule 4”.
- (12) For the heading to rule 31 substitute “Evidence in support of an application for registration of a British Islands order”.
- (13) In rule 31(1), for “any such order as is mentioned in rule 30” substitute “a British Islands order”.
- (14) For the heading to rule 32 substitute “Register of all orders registered under the Act”.
- (15) In the heading to rule 33, after “Notice of registration” insert “of a British Islands order”.
- (16) In rule 33(1), for “an order” substitute “a British Islands order”.
- (17) In the heading to rule 34, for “set aside registration” substitute “cancel registration of a British Islands order”.
- (18) In rule 34—
  - (a) for “set aside” substitute “cancel”; and
  - (b) for “an order” substitute “a British Islands order”.
- (19) In the heading to rule 35, for “order ” substitute “a British Islands order”.
- (20) In the title to rule 36, after “registration” insert “of a British Islands order”.
- (21) In rule 36, for “Scottish, Northern Ireland or Islands order” substitute “British Islands order”.
- (22) After rule 36 insert—

**“Giving effect to an overseas freezing order – consideration by the court**

**36A.**—(1) Save in exceptional circumstances the court will consider an overseas freezing order the next business day after receipt of a copy of that order from the Secretary of State.

(2) In any event the court will consider the order within 5 business days of receipt of it.

(3) The court will not make an order giving effect to an overseas freezing order unless it is satisfied that the Director of Public Prosecutions has had the opportunity to make representations to the court in writing or at a hearing.

(4) ‘Business day’ has the same meaning as in CPR rule 6.2.

**Giving effect to an overseas freezing order – registration**

**36B.** Where the court makes an order to give effect to an overseas freezing order the court will register that order in accordance with rule 32.

**Notice of registration of an overseas freezing order**

**36C.** Where the court gives effect to an overseas freezing order it will order the Director of Public Prosecutions to serve notice of registration of the order on any persons affected by it.

**Application to cancel the registration of, or vary, an overseas freezing order**

**36D.** An application under paragraph 11G(4) of Schedule 4 by the Director of Public Prosecutions or any person affected by an overseas freezing order must be made to the court in accordance with CPR Part 23.”.

**12.** Omit RSC Order 116.

**13.** In CCR Order 26, rule 17—

(a) in paragraph (2)—

(i) for “desiring” substitute “applying for”;

(ii) omit “to be issued”; and

(iii) for “request certifying” substitute “certificate”; and

(b) after paragraph (2) insert—

“(2A) When applying for a warrant of possession of a dwelling-house subject to a mortgage, the claimant must certify that notice has been given in accordance with the Dwelling Houses (Execution of Possession Orders by Mortgagees) Regulations 2010(7).”.

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*Neuberger of Abbotsbury, M.R.  
Martin Moore-Bick, L.J.  
Launcelot Henderson, J.  
Master Barbara Fontaine  
HHJ Stephen Stewart Q.C.  
District Judge Robert Hill  
District Judge Suzanne Burn  
William Featherby Q.C.  
Nicholas Bacon Q.C.  
David di Mambro  
Katy Peters*

I allow these Rules  
Signed by authority of the Lord Chancellor

29th July 2010

*Nick Herbert*  
Minister of State  
Ministry of Justice



SCHEDULE 1

Rule 5(b)

“SECTION VII

*SCALE COSTS FOR CLAIMS IN A PATENTS COUNTY COURT*

**Scope and interpretation**

**45.41.**—(1) Subject to paragraph (2) this Section applies to proceedings in a patents county court.

(2) This Section does not apply where—

- (a) the court considers that a party has behaved in a manner which amounts to an abuse of the court’s process; or
- (b) the claim concerns the infringement or revocation of a patent or registered design the validity of which has been certified by a court in earlier proceedings.

(3) The court will make a summary assessment of the costs of the party in whose favour any order for costs is made. Rules 44.3(8), 44.3A(2)(b) and (c), 44.7(b) and Part 47 do not apply to this Section.

(4) “Scale costs” means costs as defined in rule 43.2(1)(a).

**Amount of scale costs**

**45.42.**—(1) Subject to rule 45.43 the court will not order a party to pay total costs of more than—

- (a) £50,000 on the final determination of a claim in relation to liability; and
- (b) £25,000 on an inquiry as to damages or account of profits.

(2) The amounts in paragraph (1) apply after the court has applied the provision on set off in accordance with rule 44.3(9)(a).

(3) The maximum amount of scale costs that the court will award for each stage of the claim is set out in the Costs Practice Direction.

(4) The amount of the scale costs awarded by the court in accordance with paragraph (3) will depend on the nature and complexity of the claim.

(5) Where appropriate, value added tax (VAT) may be recovered in addition to the amount of the scale costs and any reference in this Section to scale costs is a reference to those costs net of any such VAT.

**Summary assessment of the costs of an application where a party has behaved unreasonably**

**45.43.** Costs awarded to a party under rule 63.26(2) are in addition to the total costs that may be awarded to that party under rule 45.42.”

SCHEDULE 2

Rule 8(c)

*“SECTION V  
PATENTS COUNTY COURT*

**Scope of this Section**

**63.17.** This Part, as modified by this Section, applies to claims started in or transferred to a patents county court.

**Transfer of proceedings**

**63.18.** When considering whether to transfer proceedings to or from a patents county court, the court will have regard to the provisions of Practice Direction 30.

**Patents judge**

**63.19.**—(1) Subject to paragraph (2), proceedings in a patents county court will be dealt with by the patents judge of that court.

(2) When a matter needs to be dealt with urgently and it is not practicable or appropriate for the patents judge to deal with it, the matter may be dealt with by another judge with appropriate specialist experience nominated by the Chancellor of the High Court.

**Statements of case**

**63.20.**—(1) Part 16 applies with the modification that a statement of case must set out concisely all the facts and arguments upon which the party serving it relies.

(2) The particulars of claim must state whether the claimant has complied with paragraph 7.1(1) and Annex A (paragraph 2) of the Practice Direction (Pre-Action Conduct).

**Statement of truth**

**63.21.** Part 22 applies with the modification that the statement of truth verifying a statement of case must be signed by a person with knowledge of the facts alleged, or if no one person has knowledge of all the facts, by persons who between them have knowledge of all the facts alleged.

**Defence and reply**

**63.22.**—(1) Rule 63.7 does not apply and Part 15 applies with the following modifications.

(2) Where the particulars of claim contain a confirmation in accordance with rule 63.20(2), the period for filing a defence is 42 days after service of the particulars of claim unless rule 15.4(2) provides for a longer period to do so.

(3) Where the particulars of claim do not contain a confirmation in accordance with rule 63.20(2), the period for filing a defence is 70 days after service of the particulars of claim.

(4) Where the claimant files a reply to a defence it must be filed and served on all other parties within 28 days of service of the defence.

(5) Where the defendant files a reply to a defence to a counterclaim it must be filed and served on all other parties within 14 days of service of the defence to the counterclaim.

(6) The periods in this rule may only be extended by order of the court and for good reason.

### **Case management**

**63.23.**—(1) At the first case management conference after those defendants who intend to file and serve a defence have done so, the court will identify the issues and decide whether to make an order in accordance with paragraph 29.1 of Practice Direction 63.

(2) Save in exceptional circumstances the court will not consider an application by a party to submit material in addition to that ordered under paragraph (1).

(3) The court may determine the claim on the papers where all parties consent.

### **Disclosure and inspection**

**63.24.**—(1) Rule 63.9 does not apply.

(2) Part 31 applies save that the provisions on standard disclosure do not apply.

### **Applications**

**63.25.**—(1) Part 23 applies with the modifications set out in this rule.

(2) Except at the case management conference provided for in rule 63.23(1), a respondent to an application must file and serve on all relevant parties a response within 5 days of the service of the application notice.

(3) The court will deal with an application without a hearing unless the court considers it necessary to hold a hearing.

(4) An application to transfer the claim to the High Court or to stay proceedings must be made before or at the case management conference provided for in rule 63.23(1).

(5) The court will consider an application to transfer the claim later in the proceedings only where there are exceptional circumstances.

### **Costs**

**63.26.**—(1) Subject to paragraph (2), the court will reserve the costs of an application to the conclusion of the trial when they will be subject to summary assessment.

(2) Where a party has behaved unreasonably the court will make an order for costs at the conclusion of the hearing.

(3) Where the court makes a summary assessment of costs, it will do so in accordance with Section VII of Part 45.”

## SCHEDULE 3

Rule 9(c)

### *“SECTION VIII*

### *INJUNCTIONS UNDER THE POLICING AND CRIME ACT 2009*

### **Scope of this Section and interpretation**

**65.42.**—(1) This Section applies to applications for an injunction and other related proceedings under Part 4 of the Policing and Crime Act 2009<sup>(8)</sup> (Injunctions: gang-related violence).

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(8) 2009 c. 26.

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- (2) In this Section “the 2009 Act” means the Policing and Crime Act 2009.

### **Applications for an injunction**

**65.43.**—(1) An application for an injunction under Part 4 of the 2009 Act is subject to the Part 8 procedure as modified by this rule and Practice Direction 65.

- (2) The application must be—
- (a) made by a claim form in accordance with Practice Direction 65;
  - (b) commenced in the court for the district in which the defendant resides or the conduct complained of occurred; and
  - (c) supported by a witness statement which must be filed with the claim form.
- (3) The claim form must state—
- (a) the matters required by rule 8.2; and
  - (b) the terms of the injunction applied for.
- (4) An application under this rule may be made without notice and where such an application without notice is made—
- (a) the witness statement in support of the application must state the reasons why notice has not been given; and
  - (b) the following rules do not apply—
    - (i) 8.3;
    - (ii) 8.4;
    - (iii) 8.5(2) to (6);
    - (iv) 8.6(1);
    - (v) 8.7; and
    - (vi) 8.8.
- (5) In every application made on notice, the application notice must be served, together with a copy of the witness statement, by the claimant on the defendant personally.
- (6) An application made on notice may be listed for hearing before the expiry of the time for the defendant to file an acknowledgement of service under rule 8.3, and in such a case—
- (a) the claimant must serve the application notice and witness statement on the defendant not less than 2 days before the hearing; and
  - (b) the defendant may take part in the hearing whether or not the defendant has filed an acknowledgment of service.

### **Injunction containing provisions to which a power of arrest is attached**

**65.44.**—(1) In this rule ‘relevant provision’ means a provision of an injunction to which a power of arrest is attached.

(Section 36(6) and (7) and section 40(3) and 41(4) of the 2009 Act confer powers to attach a power of arrest to an injunction.)

- (2) Where an injunction contains one or more relevant provisions—
- (a) each relevant provision must be set out in a separate paragraph of the injunction; and
  - (b) subject to paragraph (3), the claimant must deliver a copy of the relevant provisions to any police station for the area where the conduct occurred.

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(3) Where the injunction has been granted without notice, the claimant must not deliver a copy of the relevant provisions to any police station for the area where the conduct occurred before the defendant has been served with the injunction containing the relevant provisions.

(4) Where an order is made varying or discharging any relevant provision, the claimant must—

- (a) immediately inform the police station to which a copy of the relevant provisions was delivered under paragraph (2)(b); and
- (b) deliver a copy of the order to any police station so informed.

#### **Application to vary or discharge an injunction**

**65.45.**—(1) An application to vary or discharge an injunction under section 42(1)(b) of the 2009 Act must be made in accordance with Part 23.

(2) An application by the claimant to vary or discharge the injunction under section 42(1)(b) of the 2009 Act may be made without notice.

(3) If an application under this rule is made without giving notice, the application notice must state the reasons why notice has not been given.

#### **Application for warrant of arrest under section 44(2) of the 2009 Act**

**65.46.**—(1) An application for a warrant of arrest under section 44(2) of the 2009 Act must be made in accordance with Part 23 and may be made without notice.

(2) An applicant for a warrant of arrest under section 44(2) of the 2009 Act must—

- (a) file an affidavit setting out grounds for the application with the application notice; or
- (b) give oral evidence of the grounds for the application at the hearing.

(3) Where in accordance with sub-paragraph (2)(b), oral evidence is given, the applicant must produce a written record of that evidence which must be served on the person arrested at the time of the arrest.

#### **Proceedings following arrest under the 2009 Act**

**65.47.**—(1) This rule applies where a person is arrested pursuant to—

- (a) a power of arrest attached to a provision of an injunction; or
- (b) a warrant of arrest.

(2) The judge before whom a person is brought following his arrest may—

- (a) deal with the matter; or
- (b) adjourn the proceedings.

(3) If proceedings under section 43 or 44 of the 2009 Act are adjourned and the arrested person is released—

- (a) the matter must be dealt with (whether by the same or another judge) within 28 days of the date on which the arrested person appears in court; and
- (b) the arrested person must be given not less than 2 days' notice of the hearing.

(4) An application notice seeking the committal for contempt of court of the arrested person may be issued even if the arrested person is not dealt with within the period in sub-paragraph (3)(a).

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(5) CCR Order 29, rule 1 applies where an application is made in a county court to commit a person for breach of an injunction as if references in that rule to the judge include references to a district judge.

(For applications in the High Court for the discharge of a person committed to prison for contempt of court see RSC Order 52, rule 8. For such applications in the county court see CCR Order 29, rule 3.)

### **Recognizance**

**65.48.**—(1) Where, in accordance with paragraph 2(2)(b) of Schedule 5 to the 2009 Act, the court fixes the amount of any recognizance with a view to it being taken subsequently, the recognizance may be taken by—

- (a) a judge;
- (b) a justice of the peace;
- (c) a justices' clerk;
- (d) a police officer of the rank of inspector or above, or in charge of a police station; or
- (e) where the arrested person is in custody, the governor or keeper of a prison,

with the same consequences as if it had been entered into before the court.

(2) The person having custody of an applicant for bail must release that person if satisfied that the required recognizances have been taken.

### **Applications for a power of arrest to be attached to any provision of an injunction**

**65.49.**—(1) An application under section 34 or 39 of the 2009 Act which includes an application for a power of arrest to be attached to any provision of an injunction must be made in the proceedings seeking the injunction by—

- (a) the claim form; or
- (b) an application under Part 23.

(2) Every application must be supported by written evidence.

(3) Every application made on notice must be served personally, together with a copy of the written evidence, by the applicant on the person against whom the injunction is sought not less than 2 days before the hearing.

(Attention is drawn to rule 25.3(3) – applications without notice.)”

## SCHEDULE 4

Rule 10(c)

### “SECTION 2

#### *APPLICATION TO QUASH AN ACQUITTAL*

### **Scope and interpretation**

**77.6.**—(1) This Section contains rules about applications to quash an acquittal under section 54(3) of the Criminal Procedure and Investigations Act 1996<sup>(9)</sup> and applies in relation to acquittals in respect of offences alleged to have been committed on or after 15th April 1997.

<sup>(9)</sup> 1996 c. 25.

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(2) An application made under this Section may be made only by the individual or body which acted as prosecutor in the proceedings which led to the acquittal.

(3) In this Section—

- (a) “the 1996 Act” means the Criminal Procedure and Investigations Act 1996;
- (b) “acquitted person” means a person whose acquittal of an offence is the subject of a certification under section 54(2) of the 1996 Act, and “acquittal” means the acquittal of that person of that offence;
- (c) “magistrates’ court” has the same meaning as in section 148 of the Magistrates’ Courts Act 1980<sup>(10)</sup>; and
- (d) “record of court proceedings” means—
  - (i) where the proceedings took place in the Crown Court, a transcript of the evidence; or
  - (ii) where the proceedings took place in a magistrates’ court, a transcript of the evidence if there is one and if not a note of the evidence made by the justices’ clerk,

in the proceedings which led to the conviction for the administration of justice offence referred to in section 54(1)(b) of the 1996 Act or, as the case may be, the proceedings which led to the acquittal.

#### **Time limit for making the application**

**77.7.**—(1) An application for an order quashing an acquittal under section 54(3) of the 1996 Act shall not be made later than 28 days after—

- (a) the expiry of the period allowed for—
  - (i) appealing (whether by case stated or otherwise); or
  - (ii) making an application for permission to appeal,against the conviction referred to in section 54(1)(b) of the 1996 Act; or
- (b) where an appeal notice is filed or an application for permission to appeal against that conviction is made, the determination of the appeal or application for permission to appeal.

(2) For the purpose of sub-paragraph (1)(b), “determination” includes abandonment within the meaning of rules 63.8 and 65.13 of the Criminal Procedure Rules 2010<sup>(11)</sup> or, as the case may be, rule 11 of the Crown Court Rules 1982<sup>(12)</sup>.

#### **Where to make the application**

**77.8.**—(1) The jurisdiction of the High Court under section 54(3) of the 1996 Act may be exercised by a Divisional Court or a single judge of the High Court.

(2) The application must be made to the Administrative Court which will direct whether the application should be dealt with by a Divisional Court or a single judge of the High Court.

#### **How to make the application**

**77.9.**—(1) The application must be made by filing a claim form pursuant to Part 8.

(2) The claimant must file with the claim form—

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<sup>(10)</sup> 1980 c. 43.

<sup>(11)</sup> S.I. 2010/60.

<sup>(12)</sup> S.I. 1982/1109.

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- (a) a witness statement which deals with the conditions in section 55(1), (2) and (4) of the 1996 Act and which exhibits any relevant documents (which may include a copy of any record of court proceedings); and
- (b) a copy of the certification under section 54(2) of the 1996 Act.

**Notice to defendant (acquitted person)**

**77.10.**—(1) Within 7 days of the claim form being issued by the court, the claimant must serve on the defendant (the acquitted person) a copy of the claim form and the documents which accompanied it.

(2) The documents referred to in paragraph (1) must be accompanied by a notice informing the defendant that—

- (a) the result of the application may be the making of an order by the High Court quashing the acquittal; and
- (b) the defendant must, if wishing to respond to the application, file—
  - (i) within 14 days of service of the claim form an acknowledgment of service; and
  - (ii) within 28 days of service of the claim form any witness statement on which the defendant wishes to rely.

(3) The claimant must file as soon as practicable after service of the notice on the defendant a certificate of service together with a copy of the notice.

**Response to the application**

**77.11.**—(1) The defendant must, if wishing to respond to the application, file—

- (a) an acknowledgment of service within 14 days of service of the claim form under rule 77.10; and
- (b) a witness statement which—
  - (i) deals with the conditions in section 55(1), (2) and (4) of the 1996 Act; and
  - (ii) exhibits any relevant documents (which may include a copy of any record of court proceedings),within 28 days of service of the claim form under rule 77.10.

(2) The defendant must serve the documents in paragraph (1) on the claimant within 7 days of filing them with the court.

(3) Rule 8.5(3) does not apply.

**Further evidence**

**77.12.**—(1) The claimant may, not later than 10 days after the expiry of the period allowed in rule 77.11(1), apply without notice for permission to file further evidence.

(2) Any order granting permission to file further evidence will specify the period within which that further evidence is to be filed.

(3) The claimant must serve a copy of the further evidence on the defendant within 4 days of filing that further evidence.

(4) Rule 8.5(5) and 8.5(6) do not apply.



**Determination of the application to quash an acquittal (general provisions)**

**77.13.**—(1) The application to quash an acquittal will be determined without a hearing unless the court, of its own initiative or on the application by a party, orders otherwise.

(2) The determination of the application to quash an acquittal will not be made, and any hearing of the application (if ordered) will not take place, before the expiry of—

- (a) 10 days after the expiry of the period allowed under rule 77.11(1); or
- (b) 10 days after the expiry of the period allowed by any order made under rule 77.12(2).

(3) The court will serve notice of any order made on the application to quash an acquittal on the parties and where the court before which the acquittal or conviction occurred was—

- (a) a magistrates' court, on the designated officer; or
- (b) the Crown Court, on the appropriate officer of the Crown Court sitting at the place where the acquittal or conviction occurred.

**Application for a hearing to determine the application to quash an acquittal**

**77.14.**—(1) An application for a hearing under rule 77.13(1) must—

- (a) be made no later than 7 days after the expiry of the period allowed—
  - (i) under rule 77.11(1); or
  - (ii) by any order made under rule 77.12(2); and
- (b) state whether a hearing is requested in order for a witness for the other party to attend to be cross-examined<sup>(GL)</sup> and, if so, the reasons for wishing the witness to attend.

(2) The party applying for a hearing must—

- (a) serve a copy of the application notice on the other party within 4 days of filing it with the court; and
- (b) file a certificate of service.

(3) The party served with an application for a hearing must file any representations within 5 days of service of the application notice.

(4) Subject to paragraph (5), the court will not determine an application for a hearing unless a certificate of service has been filed pursuant to sub-paragraph (2)(b) and—

- (a) representations have been filed under paragraph (3); or
- (b) the period for filing representations under paragraph (3) has expired.

(5) Where—

- (a) no certificate of service has been filed; and
- (b) no representations under paragraph (3) have been received after the expiry of 7 days from the date of filing the application,

the court may dismiss the application for a hearing.

**Hearing to determine the application to quash an acquittal**

**77.15.** Where a hearing is ordered, the court—

- (a) may order a witness to attend to be cross-examined<sup>(GL)</sup>—
  - (i) of its own initiative; or
  - (ii) on a without notice application by a party; and
- (b) will serve a notice on all parties setting out—

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- (i) the date, time and place of the hearing; and
  - (ii) the details of any witness ordered to attend for cross-examination<sup>(GL)</sup>.”
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## EXPLANATORY NOTE

*(This note is not part of these Rules)*

These Rules amend the Civil Procedure Rules 1998 in that they—

- amend rule 31.22, by inserting a new paragraph (4), to provide that an Electronic Documents Questionnaire which has been served by another party is to be treated as if it is a document which has been disclosed;
- amend rule 55.10 and CCR Order 26, rule 17 in Schedule 2 to the Civil Procedure Rules to reflect the requirement of the Dwelling Houses (Execution of Possession Orders by Mortgagees) Regulations 2010 (S.I. 2010/1809) for notice to have been given to any occupiers of a dwelling-house before a warrant of possession can be applied for;
- insert a new Section V in Part 63 to include provisions about the procedure for claims in a patents county court. Consequential amendments are also made to Part 45;
- insert a new Section VIII in Part 65 to include provisions for injunctions under Part 4 of the Policing and Crime Act 2009. Consequential amendments are also made to Part 30 and Part 52;
- insert a new Section 2 in Part 77 in order to transfer from Schedule 1 to the Civil Procedure Rules into the main body of the Civil Procedure Rules the provisions contained in RSC Order 116. The provisions transferred relate to applications under the Criminal Procedure and Investigations Act 1996 for an order to quash a tainted acquittal; and
- amend Part III of RSC Order 115 in Schedule 1 to the Civil Procedure Rules by inserting provisions relating to domestic freezing order certificates and overseas freezing orders following amendments to Schedule 4 to the Terrorism Act 2000 by Schedule 4 to the Crime (International Co-operation) Act 2003.