

# PRACTICE DIRECTION - PART 8

## THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 8, AND SCHEDULE 1 AND SCHEDULE 2 TO THE CPR

### TERMINOLOGY

- 1.1 In this practice direction 'Schedule rules' means provisions contained in the Schedules to the CPR, which were previously contained in the Rules of the Supreme Court (1965) or the County Court Rules (1981).

### CONTENTS OF THIS PRACTICE DIRECTION

- 2.1 This practice direction explains-
  - (1) how to start the claims referred to in Sections A and B;
  - (2) which form to use as the claim form; and
  - (3) the procedure which those claims will follow.

(Further guidance about Forms other than claim forms can be found in the practice direction supplementing Part 4.)

(Form 87 (modified as necessary) should be used when making an application for a writ of habeas corpus under RSC Order 54 (Schedule 1). Attention is drawn to the relevant existing Administrative Court practice directions for further guidance)

### HOW TO USE THIS PRACTICE DIRECTION

- 3.1 This Practice direction is divided into Sections A and B. Only one section will be relevant to how to make a particular claim.
- 3.2 If the claim is described in paragraph A.1 - use section A.
- 3.3 If the claim is described in paragraph B.1 - use section B.

## SECTION A

### APPLICATION

- A.1 Section A applies if -
  - (1) the claim is listed in Table 1 below;
  - (2) an Act provides that a claim or application in the High Court is to be brought by originating summons; or

- (3) before 26 April 1999, a claim or application in the High Court would have been brought by originating summons, and

no other method for bringing the claim or application on and after 26 April 1999 is specified in a rule or practice direction.

- A.2 (1) The claimant must use the Part 8 procedure unless an Act, rule, or practice direction, makes any additional or contrary provision.
- (2) Where such additional or contrary provision is made the claimant must comply with it and modify the Part 8 procedure accordingly.

## CLAIM FORM

- A.3 The claimant must use the Part 8 claim form.

**Table 1**

|                     |  |
|---------------------|--|
| RSC O.17, r.3(1)    | Interpleader (Mode of application)   |
| RSC O. 77, r. 11    | Proceedings by and against the Crown (Interpleader: Application for order against Crown)   |
| RSC O. 77, r. 16(2) | Proceedings by and against the Crown (Attachment of debts, etc.)   |
| RSC O. 77, r. 17(1) | Proceedings by and against the Crown (Proceedings relating to postal packets)  |
| RSC O. 77, r. 18(1) | Proceedings by and against the Crown (Applications under sections 17 and 29 of Crown Proceedings Act)  |
| RSC O. 79, r. 8(2)  | Criminal Proceedings (Estreat of recognizances)  |
| RSC O. 79, r. 9(2)  | Criminal Proceedings (Bail)  |
| RSC O. 81, r. 10(1) | Partners (Applications for orders charging partner's interest in partnership property)   |
| RSC O. 93, r. 5(2)  | Applications and Appeals to High Court under Various Acts: Chancery Division (Applications under section 2(3) of the Public Order Act 1936)          |
| RSC O. 93, r. 18(2) | Applications and Appeals to High Court under Various Acts: Chancery Division (Proceedings under section 86 of the Civil Aviation Act 1982)           |
| RSC O. 94, r. 5     | Applications and Appeals to High Court under Various Acts: Queen's Bench Division (Exercise of jurisdiction under Representation of the People Acts) |
| RSC O. 95, r. 2(1)  | Bills of Sale Acts 1878 and 1882 and the Industrial and Provident Societies Act 1967 (Entry of satisfaction)   |
| RSC O. 95, r. 3     | Bills of Sale Acts 1878 and 1882 and the Industrial and Provident Societies Act 1967 (Restraining removal on sale of goods seized)                   |
| RSC O. 96, r. 1     | The Mines (Working Facilities and Support) Act 1966 etc. (Assignment to Chancery Division)   |

**Table 1**

|                     |  |
|---------------------|--|
| RSC O. 96, r. 3     | The Mines (Working Facilities and Support) Act 1966 etc. (Issue of claim form)   |
| RSC O. 106, r. 3(2) | Proceedings Relating to Solicitors: The Solicitors Act 1974 (Power to order solicitor to deliver cash account etc.)    |
| RSC O. 106, r. 6(2) | Proceedings Relating to Solicitors: The Solicitors Act 1974 (Applications under schedule 1 to the Act)                 |
| RSC O. 106 r. 8     | Proceedings Relating to Solicitors: The Solicitors Act 1974 (Interim order restricting payment out of banking account) |
| RSC 0109 r. 1(3)    | Administration Act 1960 (Applications under Act)   |

## SECTION B

### APPLICATION

- B.1 Section B applies if the claim -
- (1) is listed in Table 2;
  - (2) in the county court is for, or includes a claim for damages for harassment under Section 3 of the protection from Harassment Act 1997; or
  - (3) would have been brought before 26 April 1999 -
    - (a) in the High Court, by originating motion;
    - (b) in the county court-
      - (i) by originating application; or
      - (ii) by petition, and

no other procedure is prescribed in an Act, a rule or a practice direction.

**Table 2**

| <b>Schedule Rule</b>            | <b>Claim Form</b>   |
|---------------------------------|---|
| RSC O. 77, r. 8(2) <sup>3</sup> | Proceedings by and against the Crown (Summary applications to the court in certain revenue matters)   |
| RSC O. 93, r. 19(1)             | Applications and Appeals to High Court under Various Acts: (Proceedings under section 85(7) of the Fair Trading Act 1973 and the Control of Misleading Advertisements Regulations 1988) |
| RSC O. 93, r. 22(3)             | Applications and Appeals to High Court under Various Acts: Chancery Division (Proceedings under the Financial Services and Markets Act 2000)  |
| RSC O. 94, r. 1(2)              | Applications and Appeals to High Court under Various Acts: Queens Bench Division (Jurisdiction of High Court to Quash Certain Orders, Schemes etc.)                                     |
| RSC O. 94, r. 7(2)              | Applications and Appeals to High Court under Various Acts: Queens Bench Division (Reference of Question of Law by Agricultural Land Tribunal)   |
| RSC O. 94, r. 11(4)             | Applications and Appeals to High Court under Various Acts: Queens Bench Division (Case stated by Mental Health Review Tribunal)   |

<sup>3</sup> This type of claim may also be brought by the Part 8 procedure.

Table 2

| Schedule Rule          | Claim Form   |
|------------------------|--|
| RSC O. 94, r. 12(5)(c) | Applications and Appeals to High Court under Various Acts: Queens Bench Division Applications for permission under section 289(6) of the Town and Country Planning Act 1990 and section 65(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 |
| RSC O. 94, r. 13(5)    | Applications and Appeals to High Court under Various Acts: Queens Bench Division Proceedings under sections 289 and 290 of the Town and Country Planning Act 1990 and under section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990        |
| RSC O. 94, r. 14(2)    | Applications and Appeals to High Court under Various Acts: Queens Bench Division Applications under section 13 of the Coroners Act 1988  |
| RSC O. 94, r. 15(2)    | Applications and Appeals to High Court under Various Acts: Queens Bench Division Applications under section 42 of the Supreme Court Act 1981   |
| RSC O. 98, r. 2(1)     | Local Government Finance Act 1982, Part III (Application by auditor for declaration)   |
| RSC O.109, r. 2(4)     | Administration of Justice Act 1960 (Appeals under section 13 of Act)   |
| RSC O. 115, r. 2B(1)   | Confiscation and Forfeiture in Connection with Criminal Proceedings (I. Drug Trafficking Act 1994 and Criminal Justice (International Co-operation) Act 1990 - Application for confiscation Order)   |

Table 2

| Schedule Rule         | Claim Form  |      |
|-----------------------|---|------|
| RSC O. 115, r. 3(1)   | Confiscation and Forfeiture in Connection with Criminal Proceedings (I. Drug Trafficking Act 1994 and Criminal Justice (International Co-operation) Act 1990 - Application for restraint order or charging order) |      |
| RSC O. 115, r. 7(1)   | Confiscation and Forfeiture in Connection with Criminal Proceedings (I. Drug Trafficking Act 1994 and Criminal Justice (International Co-operation) Act 1990 - Realisation of property)                           |      |
| RSC O. 115, r. 26 (1) | Confiscation and Forfeiture in Connection with Criminal Proceedings (III. Terrorism Act 2000 - Application for restraint order)   |      |
| RSC O.116, r 5(1)     | The Criminal Procedure and Investigations Act 1996 (Application under section 54(3)).   |      |
| CCR O.44, r 1(1)      | The Agricultural Holdings Act 1986 (Special case stated by arbitrator)  |      |
| CCR O.44, r 3(1)      | The Agricultural Holdings Act 1986 (Removal of arbitrator or setting aside award)   |      |
| CCR O. 45, r. 1(1)    | The Representation of the People Act 1983 (Application for detailed assessment of returning officer's account)  | N408 |
| CCR O. 46, r. 1(1)    | The Legitimacy Act 1976 (Manner of application)   |      |
| CCR O. 49, r. 5(1)    | Miscellaneous Statutes: Fair Trading Act 1973 (Proceedings under section 35, 38 or 40)  |      |
| CCR O. 49, r. 6B(1)   | Miscellaneous Statutes: Housing Act 1996: Injunctions and Powers of Arrest (Application for injunction under section 152)   | N16A |

Table 2

| Schedule Rule       | Claim Form  |
|---------------------|---|
| CCR O. 49, r. 7(2)  | Miscellaneous Statutes: Injunctions to Prevent Environmental Harm: Town and Country Planning Act 1990 etc. (Application for injunction) |
| CCR O. 49, r. 10(3) | Miscellaneous Statutes: Local Government Finance Act 1982   |
| CCR O. 49, r. 12(2) | Miscellaneous Statutes: Mental Health Act 1983 (Application)  |
| CCR O. 49, r. 15(1) | Miscellaneous Statutes: Postal Services Act 2000 (Application under section 92)   |

The Local Government Act 1972 (claims under section 92 – proceedings for disqualification)

## SPECIAL PROVISIONS TAKE PRECEDENCE

### B.2

The claimant must first comply with any special provision set out in the Schedule rules, practice direction or any Act relating to the claim.

(In Schedule 2, CCR O.6 makes special provisions about particulars of claim for certain types of claim.)

### B.3 Special provisions contained in Schedule rules or an Act may set out-

- (1) where the claim may be started;
- (2) the contents of the claim form;
- (3) whether a hearing is required;
- (4) the nature of evidence required in support of the claim, and when it must be filed or served;
- (5) the method of service of the claim form and evidence;
- (6) persons on whom service must or may be effected;
- (7) the form and content of Notices, and when they must or may be filed, and on whom served;
- (8) the form and content of any affidavit, answer, or reply and when they must or may be filed or served;
- (9) persons who may apply to be joined as parties to the claim;
- (10) minimum periods of notice before the hearing date.

- B.4 Where a Schedule rule makes special provision for the contents of particulars of claim, those particulars must be attached to the claim form and served with it.
- B.5 Subject to any special or contrary provision in an Act or Schedule rule, the claimant must use the procedure set out in the remainder of this section.

## RESTRICTIONS ON WHERE TO START THE CLAIM

- B.6 Where the claimant is bringing a claim in a county court that claim may only be started-
  - (1) in the county court for the district in which-
    - (a) the defendants or one of the defendants lives or carries on business; or
    - (b) the subject matter of the claim is situated; or
  - (2) if there is no defendant named in the claim form, in the county court for the district in which the claimant or one of the claimants lives or carries on business.
- B.7 Where the claimant is making a claim in the county court for -
  - (1) enforcing any charge or lien on land;
  - (2) the recovery of moneys secured by a mortgage or charge on land, the claim must be started in the court for the district in which the land, or any part of it, is situated.

## CLAIM FORM

- B.8 This paragraph sets out which Form is to be used as the claim form-
  - (1) where a claim form number is listed against a particular claim in Table 2, the claimant must use that numbered form as the claim form;
  - (2) in every other claim, the claimant must use the Part 8 claim form.

## COURT WILL FIX A DATE

- B.9 When the court issues the claim form it will-
  - (1) fix a date for the hearing; and
  - (2) prepare a notice of the hearing date for each party.

## SERVICE OF THE CLAIM FORM

- B.10 The claim form must be served not less than 21 days before the hearing date.

- B.11 Where the claimant serves the claim form, he must serve notice of the hearing date at the same time, unless the hearing date is specified in the claim form.  
(CPR Rule 3.1(2) (a) and (b) provide for the court to extend or shorten the time for compliance with any rule or practice direction, and to adjourn or bring forward a hearing)

## **DEFENDANT IS NOT REQUIRED TO RESPOND**

- B.12 The defendant is not required to serve an acknowledgment of service.

## **AT THE HEARING**

- B.13 The court may on the hearing date -
- (1) proceed to hear the case and dispose of the claim; or
  - (2) give case management directions.
- B.14 Case management directions given under paragraph B.13 will, if the defendant has filed a defence, include the allocation of a case to a track, or directions to enable the case to be allocated.
- B.15 CPR rule 26.5(3) to (5) and CPR rules 26.6 to 26.10 apply to the allocation of a claim under paragraph B.14.