

MISCELLANEOUS PROVISIONS ABOUT PAYMENTS INTO COURT

Contents of this Part

- Rule 37.1 Money paid into court under a court order – general
- Rule 37.2 Money paid into court may be treated as a Part 36 payment
- Rule 37.3 Money paid into court where defendant wishes to rely on defence of tender before claim
- Rule 37.4 Proceedings under Fatal Accidents Act 1976 and Law Reform (Miscellaneous Provisions) Act 1934 – apportionment by court
- Rule 37.5 Payment into court under enactments

37.1 Money paid into court under a court order – general

- (1) A party who makes a payment into court under a court order must –
 - (a) serve notice of the payment on every other party; and
 - (b) in relation to each such notice, file a certificate of service.
- (2) Money paid into court under a court order may not be paid out without the court's permission except where –
 - (a) the defendant treats the money as a Part 36 payment under rule 37.2; and
 - (b) the claimant accepts the Part 36 payment without needing the permission of the court.

(Rule 36.11 sets out when the claimant can accept a Part 36 payment without needing the permission of the court)

37.2 Money paid into court may be treated as a Part 36 payment

- (1) Where a defendant makes a payment into court following an order made under rule 3.1(3) or 3.1(5) he may choose to treat the whole or any part of the money paid into court as a Part 36 payment.

(Rule 36.2 defines a Part 36 payment)

- (2) To do this he must file a Part 36 payment notice.

(Rule 36.6 sets out what a Part 36 payment notice must contain and provides for the court to serve it on the other parties)

- (3) If he does so Part 36 applies to the money as if he had paid it into court as a Part 36 payment.

37.3 Money paid into court where defendant wishes to rely on defence of tender before claim

- (1) Where a defendant wishes to rely on a defence of tender before claim^(GL) he must make a payment into court of the amount he says was tendered.

- (2) If the defendant does not make a payment in accordance with paragraph (1) the defence of tender before claim^(GL) will not be available to him until he does so.
- (3) Where the defendant makes such payment into court –
 - (a) he may choose to treat the whole or any part of the money paid into court as a Part 36 payment; and
 - (b) if he does so, he must file a Part 36 payment notice.

37.4 Proceedings under Fatal Accidents Act 1976¹ and Law Reform (Miscellaneous Provisions) Act 1934² – apportionment by court

- (1) Where –
 - (a) a claim includes claims arising under –
 - (i) the Fatal Accidents Act 1976; and
 - (ii) the Law Reform (Miscellaneous Provisions) Act 1934;
 - (b) a single sum of money is paid into court in satisfaction of those claims; and
 - (c) the money is accepted,
the court shall apportion the money between the different claims.
- (2) The court shall apportion money under paragraph (1) –
 - (a) when it gives directions under rule 21.11 (control of money received by a child or patient); or
 - (b) if rule 21.11 does not apply, when it gives permission for the money to be paid out of court.
- (3) Where, in an action in which a claim under the Fatal Accidents Act 1976 is made by or on behalf of more than one person –
 - (a) a sum in respect of damages is ordered or agreed to be paid in satisfaction of the claim; or
 - (b) a sum of money is accepted in satisfaction of the claim,
the court shall apportion it between the persons entitled to it unless it has already been apportioned by the court, a jury, or agreement between the parties.

37.5 Payment into court under enactments

A practice direction may set out special provisions with regard to payments into court under various enactments.

¹ 1976 c.30.

² 1934 c.41.