
NOTES TO ACCOMPANY FEBRUARY 2005 38th UPDATE

Introduction

The Civil Procedure (Amendment No. 4) Rules 2004 and the 38th Practice Direction Update of the Civil Procedure Rules introduce a number of notable changes to procedures including the following:

- A new Section I of Part 45 replaces the existing Section I, and rationalises the provisions on fixed costs by incorporating the provisions of the former Rules of the Supreme Court (RSC Order 62) and County Court Rules (CCR Order 38). The new Section I also extends the fixed costs regime to High Court possession claims under Part 55 which are not currently subject to fixed costs and applies fixed costs to demotion claims under Part 65.
- A new Part and Practice Direction 67, which makes provision about certain types of proceedings against solicitors, including applications for a solicitor to deliver a bill or cash account; applications relating to money or securities held by a solicitor for a client; applications for the assessment of a solicitor's costs; and proceedings relating to intervention by the Law Society in a solicitor's practice. RSC O.106 has consequently been revoked.
- Amendments are made to rule 22.1 to provide that a certificate of service must be verified by a statement of truth, and that such a statement shall verify the belief of the person who signs the certificate. Therefore rule 22.1 has been amended to allow legal representatives (where appropriate) to sign the statements of truth on certificates of service in their own capacity rather than on behalf of their client.
- Rule 25.7 is amended in respect of the categories of defendant against whom an interim payment order may be made. This amendment will remove the prohibition generally so that in all single defendant cases (personal injuries or otherwise) an interim payment order may be made against a defendant who is not insured or a public body. (The question of the defendant's ability to pay will be a factor the court will consider when exercising its discretion).
- Rule 45.7(1) is amended to clarify that the fixed recoverable costs regime comprised in Part 45, Section II should be followed where the court's approval of a settlement in favour of an infant is required. Consequential amendments are made to rules 21.10, 44.12A, 45.7, 45.14 and 48.5.
- Rule 45.18(2)(c) is amended to clarify the circumstances in which a party may apply for an alternative percentage increase where the parties have agreed damages of £500,000 or less.
- Practice Direction 23B is amended to extend the telephone hearings pilot until 31st October 05.
- Practice Direction 35 is amended to require orders concerning experts to be served on those experts by the parties instructing them.
- Practice Direction 52 is amended to clarify the process for appealing against a decision of a Social Security or Child Support Commissioner when the matter is being transferred between

government bodies. It is also changed to apply the amended provisions to appeals under section 6C of the Pensions Appeal Tribunals Act 1943.

- Amendments have been made to Part 63 consequential on further legislation (which is due to be made and come into force at the same time as the Part 63 amendments – 1st April 2004) which will extend the jurisdiction of a patents court and seven selected county courts to hear trademark matters.
- The Personal Injury Pre-Action Protocol has been completely revised, and the Rehabilitation Code has been added as a new annexe (D) to the protocol.

Commencement Dates

All rule changes come into force on 1st April 05.

All Practice Direction changes come into force on 1st April 05, with the exception of Practice Direction 23B, which comes into force on 28th February 05.

The changes to the Personal Injury Pre-Action Protocol come into force on 1st April 05.

A full list of the changes is set out below:

Rules

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| Part 21 | In rule 21.10, a new sub-paragraph (3) inserted. |
| Part 22 | In rule 22.1(1), 'certificate of service' added to the list. In rule 22.1(4), new text (item (c)) added to the list. |
| Part 25 | In rule 25.7, new text replaces paragraph (1), and paragraphs (2) and (3) are omitted. |
| Part 40 | In rule 40.1, reference to practice direction inserted. |
| Part 41 | In rule 41.3, paragraph (6) omitted. |
| Part 44 | In rule 44.12A, text partially omitted in sub-paragraph (1)(c), paragraph (1A) removed and cross-reference to 21.10 omitted from paragraph (1). |
| Part 45 | Section I (including the list of contents) (rules 45.1 to 45.6) replaced with new text. In the heading for Section II, 'in Costs-Only Proceedings' omitted. In rule 45.7, paragraph (1) replaced with new text, and cross reference to 44.12A omitted. In rule 45.14, new text added to the heading. In rule 45.18, paragraph (2)(c) replaced with new text. |
| Part 48 | In rule 48.5, paragraph (2)(b) replaced with new text. |
| Part 63 | In rule 63.13, paragraph (2) is omitted, and in paragraph (3) 'Other Claims' is replaced with 'Claims'. |
| Part 67 | New rule 67 inserted. |

Schedules

Schedule 1

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| RSC Order 62 | Is revoked. |
| RSC Order 106 | Is revoked. |

Schedule 2

CCR Order 38 Is revoked.

Practice Directions

Practice Direction 8B References to RSC O.106 omitted from Table 1.

Practice Direction 23 Cross reference to PD32 (re: video conferencing) inserted after paragraph 7.

Practice Direction 23B New dates entered in the appendix.

Practice Direction 35 New paragraph (6A) inserted on orders to experts.

Practice Direction 43–48

New section 24A inserted.

New text substituted for first two sentences in 56.2.

Practice Direction 52 Paragraph 21.5 replaced with new text.

New paragraph 22.6B inserted after 22.6A.

Practice Direction 57 New paragraph 18.3 inserted.

Practice Direction 63 New items (registered trade marks and Community registered trade marks) inserted at the end of the list in 18.1.

Paragraph 18.3 is omitted.

In paragraph 20.1, 'High Court' substituted for 'court' in all instances.

In Paragraph 24.1, new text substituted to take into account new courts references.

In paragraph 28.1, courts references altered.

Practice Direction 67 New Practice Direction 67 inserted.

Pre-Action Protocols

The Personal Injury pre-action protocol has been completely revised. A new annexe (D) has been added, detailing the Rehabilitation Code.

