

# PRACTICE DIRECTION – TRANSITIONAL ARRANGEMENTS

## THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 51

### CONTENTS OF THIS PRACTICE DIRECTION

- 1 (1) This Practice Direction deals with the application of the Civil Procedure Rules ('CPR') to proceedings issued before 26 April 1999 ('existing proceedings').
- (2) In this Practice Direction 'the previous rules' means, as appropriate the Rules of the Supreme Court 1965 ('RSC') or County Court Rules 1981 ('CCR') in force immediately before 26 April 1999.

### GENERAL SCHEME OF TRANSITIONAL ARRANGEMENTS

- 2 The general scheme is:
  - (a) to apply the previous rules to undefended cases, allowing them to progress to their disposal, but
  - (b) to apply the CPR to defended cases so far as is practicable.

### WHERE THE PREVIOUS RULES WILL NORMALLY APPLY

#### General principle

- 3 Where an initiating step has been taken in a case before 26 April 1999, in particular one that uses forms or other documentation required by the previous rules, the case will proceed in the first instance under the previous rules. Any step which a party must take in response to something done by another party in accordance with the previous rules must also be in accordance with those rules.

#### Responding to old process

- 4 A party who is served with an old type of originating process (writ, summons etc.) on or after 26 April 1999 is required to respond in accordance with the previous rules and the instructions on any forms received with the originating process.

#### Filing and service of pleadings where old process served

- 5 Where a case has been begun by an old type of originating process (whether served before or after 26 April 1999), filing and service of pleadings will continue according to the previous rules.

## **AUTOMATIC DIRECTIONS/DISCOVERY**

### **High court**

- 6 (1) Where the timetable for automatic directions under RSC Order 25, rule 8 or automatic discovery under RSC Order 24 has begun to apply to proceedings before 26 April 1999, those directions will continue to have effect on or after 26 April 1999.

### **County Court**

- (2) Where automatic directions under CCR Order 17, rule 11 have begun to apply to existing proceedings before 26 April 1999 or the court has sent out notice that automatic directions under CCR Order 17, rule 11 (Form N.450) will apply (even if the timetable will not begin until 26 April 1999 or after), those directions will continue to have effect on or after 26 April 1999.
- (3) However CCR Order 17, rule 11(9) will not apply and therefore proceedings will not be struck out where there has been no request for a hearing to be fixed within 15 months of the date when pleadings were deemed to close. (But see paragraph 19.)

### **High Court and County Court**

- (4) However, if the case comes before the court on or after 26 April 1999, the new rules may apply. (See paragraph 15.)

### **Default judgment**

- 7 (1) If a party wishes default judgment to be entered in existing proceedings, he must do so in accordance with the previous rules.
- (2) Where default judgment has been entered and there are outstanding issues to be resolved (e.g. damages to be assessed), the court officer may refer the proceedings to the judge, so that case management decisions about the proceedings and the conduct of the hearing can be made in accordance with the practice set out in paragraph 15.
- (3) If a party needs to apply for permission to enter default judgment, he must make that application under CPR Part 23 (general rules about applications for court orders).
- (4) An application to set aside judgment entered in default must be made under CPR Part 23 (general rules about applications for court orders) and CPR Part 13 (setting aside or varying default judgment) will apply to the proceedings as it would apply to default judgment entered under the CPR.
- (5) CPR rule 15.11 (claims stayed if it is not defended or admitted) applies to these proceedings.

## **Judgment on admission in the county court**

- 8 (1) If a party to existing proceedings in the county court wishes to request judgment to be entered on an admission, he must do so in accordance with the previous rules.
- (2) Where judgment has been entered and there are outstanding issues to be resolved (e.g. damages to be assessed), the court officer may refer the proceedings to the judge, so that case management decisions about the proceedings and the conduct of the hearing can be made in accordance with the practice set out in paragraph 15.
- (3) If a party needs to apply for permission to enter judgment, he must make that application under CPR Part 23 (general rules about applications for court orders).

## **Order inconsistent with CPR**

- 9 Where a court order has been made before 26 April 1999, that order must still be complied with on or after 26 April 1999.

## **Steps taken before 26 April 1999**

- 10 (1) Where a party has taken any step in the proceedings in accordance with the previous rules that step will remain valid on or after 26 April 1999.
- (2) A party will not normally be required to take any action that would amount to taking that step again under the CPR. For example if discovery has been given, a party will not normally be required to provide disclosure under CPR Part 31.

## **WHERE THE CPR WILL NORMALLY APPLY**

### **General principle**

- 11 Where a new step is to be taken in any existing proceedings on or after 26 April 1999, it is to be taken under the CPR.

### **Part 1 (overriding objective) to apply**

- 12 Part 1 (overriding objective) will apply to all existing proceedings from 26 April 1999 onwards.

### **Originating process**

- 13 (1) Only claim forms under the CPR will be issued by the court on or after 26 April 1999.

- (2) If a request to issue an old type of originating process (writ, summons etc.) is received at the court on or after 26 April 1999 it will be returned unissued.
- (3) An application made on or after 26 April 1999 to extend the validity of originating process issued before 26 April 1999 must be made in accordance with CPR Part 23 (general rules about applications for court orders), but the court will decide whether to allow the application in accordance with the previous law.

## **Application to the court**

- 14
  - (1) Any application to the court made on or after 26 April 1999 must be made in accordance with CPR Part 23 (general rules about applications for court orders).
  - (2) Any other relevant CPR will apply to the substance of the application, unless this practice direction provides otherwise. (See paragraphs 13(3) (application to extend the validity of originating process) and 18(2) (costs)).
  - (3) For example, a party wishing to apply for summary judgment must do so having regard to the test in CPR Part 24. A party wishing to apply for an interim remedy must do so under CPR Part 25 etc.
  - (4) Any other CPR will apply as necessary. For example, CPR Part 4 will apply as to forms and CPR Part 6 will apply to service of documents.
  - (5) If the pleadings have not been filed at court, the applicant must file all pleadings served when he files his application notice.

## **First time before a judge on or after 26 April 1999**

- 15
  - (1) When proceedings come before a judge (whether at a hearing or on paper) for the first time on or after 26 April 1999, he may direct how the CPR are to apply to the proceedings and may disapply certain provisions of the CPR. He may also give case management directions (which may include allocating the proceedings to a case management track).
  - (2) The general presumption will be that the CPR will apply to the proceedings from then on unless the judge directs or this practice direction provides otherwise. (See paragraphs 13(3) (application to extend the validity of originating process) and 18(2) (costs).)
  - (3) If an application has been issued before 26 April 1999 and the hearing of the application has been set for a date on or after 26 April 1999, the general presumption is that the application will be decided having regard to the CPR. (For example an application for summary judgment issued before 26 April 1999, with a hearing date set for 1 May 1999, will be decided having regard to the test in CPR Part 24 (summary Judgment).)
  - (4) When the first occasion on which existing proceedings are before a judge on or after 26 April 1999 is a trial or hearing of a substantive issue, the

general presumption is that the trial or hearing will be conducted having regard to the CPR.

### Where pleadings deemed to close on or after 26 April 1999

- 16 (1) This paragraph applies to existing proceedings where pleadings are deemed to close on or after 26 April 1999. However, this paragraph does not apply to those county court proceedings where notice that automatic directions apply (Form N.450) has been sent (in which case the automatic directions will apply – see paragraph 6).
- (2) CPR Part 26 (case management – preliminary stage) applies to these proceedings.
- (3) If a defence is filed at court on or after 26 April 1999, the court will serve an allocation questionnaire where CPR rule 26.3 would apply, unless it dispenses with the need for one.
- (4) If pleadings have not been filed at court (this will normally be the case in the Queen's Bench Division) the claimant must file copies of all the pleadings served within 14 days of the date that pleadings are deemed to close.
- (5) Unless it dispenses with the need for one, the court will then serve an allocation questionnaire.
- (6) In the previous rules pleadings are deemed to close:
  - (a) High court –
    - (i) 14 days after service of any reply, or
    - (ii) if there is no reply, 14 days after service of the defence to counterclaim, or
    - (iii) if there is no reply or defence to counterclaim, 14 days after the service of the defence.
  - (b) County court –
 

14 days after the delivery of a defence or, where a counterclaim is served with the defence, 28 days after the delivery of the defence.
- (7) Where there are 2 or more defendants the court will normally wait until the claimant has filed copies of all the pleadings before serving an allocation questionnaire. However, the court may (in cases where there is a delay) serve allocation questionnaires despite the fact that pleadings have not closed in respect of any other defendant.
- (8) The court will then allocate the proceedings in accordance with CPR rule 26.5.
- (9) The CPR will then apply generally to the proceedings.

## Agreement to apply the CPR

- 17 The parties may agree in writing that the CPR will apply to any proceedings from the date of the agreement. When they do so:
- (a) all those who are parties at that time must agree,
  - (b) the CPR must apply in their entirety,
  - (c) the agreement is irrevocable,
  - (d) the claimant must file a copy of the agreement at court.

## Costs

- 18
- (1) Any assessment of costs that takes place on or after 26 April 1999 will be in accordance with CPR Parts 43 to 48.
  - (2) However, the general presumption is that no costs for work undertaken before 26 April 1999 will be disallowed if those costs would have been allowed in a costs taxation before 26 April 1999.
  - (3) The decision as to whether to allow costs for work undertaken on or after 26 April will generally be taken in accordance with CPR Parts 43 to 48.

(The costs practice direction contains more information on the operation of the transitional arrangements in relation to costs.)

## Existing proceedings after one year

- 19
- (1) If any existing proceedings have not come before a judge, at a hearing or on paper, between 26 April 1999 and 25 April 2000, those proceedings shall be stayed.
  - (2) Any party to those proceedings may apply for the stay to be lifted.
  - (3) Proceedings of the following types will not be stayed as a result of this provision:
    - (a) where the case has been given a fixed trial date which is after 25 April 2000,
    - (b) personal injury cases where there is no issue on liability but the proceedings have been adjourned by court order to determine the prognosis,
    - (c) where the court is dealing with the continuing administration of an estate or a trust or a receivership.