

# PRACTICE DIRECTION – ADDITION AND SUBSTITUTION OF PARTIES

## THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 19

*A party applying for an amendment will usually be responsible for the costs of and arising from the amendment.*

### CHANGES OF PARTIES

#### General

- 1.1 Parties may be removed, added or substituted in existing proceedings either on the court's own initiative or on the application of either an existing party or a person who wishes to become a party.
- 1.2 The application may be dealt with without a hearing where all the existing parties and the proposed new party are in agreement.
- 1.3 The application to add or substitute a new party should be supported by evidence setting out the proposed new party's interest in or connection with the claim.
- 1.4 The application notice should be filed in accordance with rule 23.3 and, unless the application is made under rule 19.2(4)<sup>1</sup>, be served in accordance with rule 23.4.
- 1.5 An order giving permission to amend will, unless the court orders otherwise, be drawn up. It will be served by the court unless the parties wish to serve it or the court orders them to do so.

#### Addition or Substitution of Claimant

- 2.1 Where an application is made to the court to add or to substitute a new party to the proceedings as claimant, the party applying must file:
  - (1) the application notice,
  - (2) the proposed amended claim form and particulars of claim, and
  - (3) the signed, written consent of the new claimant to be so added or substituted.
- 2.2 Where the court makes an order adding or substituting a party as claimant but the signed, written consent of the new claimant has not been filed:
  - (1) the order, and

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<sup>1</sup> See rule 19.4(3)(a).

(2) the addition or substitution of the new party as claimant,  
will not take effect until the signed, written consent of the new claimant is filed.

2.3 Where the court has made an order adding or substituting a new claimant, the court may direct:

- (1) a copy of the order to be served on every party to the proceedings and any other person affected by the order,
- (2) copies of the statements of case and of documents referred to in any statement of case to be served on the new party,
- (3) the party who made the application to file within 14 days an amended claim form and particulars of claim.

## Addition or substitution of defendant

3.1 The Civil Procedure Rules apply to a new defendant who has been added or substituted as they apply to any other defendant (see in particular the provisions of Parts 9, 10, 11 and 15).

3.2 Where the court has made an order adding or substituting a defendant whether on its own initiative or on an application, the court may direct:

- (1) the claimant to file with the court within 14 days (or as ordered) an amended claim form and particulars of claim for the court file,
- (2) a copy of the order to be served on all parties to the proceedings and any other person affected by it,
- (3) the amended claim form and particulars of claim, forms for admitting, defending and acknowledging the claim and copies of the statements of case and any other documents referred to in any statement of case to be served on the new defendant.
- (4) unless the court orders otherwise, the amended claim form and particulars of claim to be served on any other defendants.

3.3 A new defendant does not become a party to the proceedings until the amended claim form has been served on him<sup>2</sup>.

## Removal of party

4 Where the court makes an order for the removal of a party from the proceedings:

- (1) the claimant must file with the court an amended claim form and particulars of claim, and

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2 *Kettleman v Hansel Properties Ltd* (1987) AC 189, HL.

- (2) a copy of the order must be served on every party to the proceedings and on any other person affected by the order.

### **Transfer of interest or liability**

- 5.1 Where the interest or liability of an existing party has passed to some other person, application should be made to the court to add or substitute that person<sup>3</sup>.
- 5.2 The application must be supported by evidence showing the stage the proceedings have reached and what change has occurred to cause the transfer of interest or liability.

(For information about making amendments generally, see the practice direction supplementing Part 17.)

### **HUMAN RIGHTS, JOINING THE CROWN**

Section 4 of the Human Rights Act 1998

- 6.1 Where a party has included in his statement of case-
- (1) a claim for a declaration of incompatibility in accordance with section 4 of the Human Rights Act 1998, or
- (2) an issue for the court to decide which may lead to the court considering making a declaration,

then the court may at any time consider whether notice should be given to the Crown as required by that Act and give directions for the content and service of the notice. The rule allows a period of 21 days before the court will make the declaration but the court may vary this period of time.

- 6.2 The court will normally consider the issues and give the directions referred to in paragraph 6.1 at the case management conference.
- 6.3 Where a party amends his statement of case to include any matter referred to in paragraph 6.1, then the court will consider whether notice should be given to the Crown and give directions for the content and service of the notice.

(The practice direction to CPR Part 16 requires a party to include issues under the Human Rights Act 1998 in his statement of case)

- 6.4 (1) The notice given under rule 19.4A must be served on the person named in the list published under section 17 of the Crown Proceedings Act 1947.

(The list, made by the Minister for the Civil Service, is annexed to this practice direction)

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3 See rule 19.2(4).

- (2) The notice will be in the form directed by the court but will normally include the directions given by the court and all the statements of case in the claim. The notice will also be served on all the parties.
- (3) The court may require the parties to assist in the preparation of the notice.
- (4) In the circumstances described in the National Assembly for Wales (Transfer of Functions)(No. 2) Order 2000 the notice must also be served on the National Assembly for Wales.

(Section 5(3) of the Human Rights Act 1998 provides that the Crown may give notice that it intends to become a party at any stage in the proceedings once notice has been given)

- 6.5 Unless the court orders otherwise, the Minister or other person permitted by the Human Rights Act 1998 to be joined as a party must, if he wishes to be joined, give notice of his intention to be joined as a party to the court and every other party. Where the Minister has nominated a person to be joined as a party the notice must be accompanied by the written nomination.

(Section 5(2)(a) of the Human Rights Act 1998 permits a person nominated by a Minister of the Crown to be joined as a party. The nomination may be signed on behalf of the Minister)

#### Section 9 of the Human Rights Act 1998

- 6.6 (1) The procedure in paragraphs 6.1 to 6.5 also applies where a claim is made under sections 7(1)(a) and 9(3) of the Human Rights Act 1998 for damages in respect of a judicial act.
- (2) Notice must be given to the Lord Chancellor and should be served on the Treasury Solicitor on his behalf, except where the judicial act is of a Court-Martial when the appropriate person is the Secretary of State for Defence and the notice must be served on the Treasury Solicitor on his behalf.
- (3) The notice will also give details of the judicial act, which is the subject of the claim for damages, and of the court or tribunal that made it.

(Section 9(4) of the Human Rights Act 1998 provides that no award of damages may be made against the Crown as provided for in section 9(3) unless the appropriate person is joined in the proceedings. The appropriate person is the Minister responsible for the court concerned or a person or department nominated by him (section 9(5) of the Act))

# ANNEX



CABINET OFFICE

## CROWN PROCEEDINGS ACT 1947

List of Authorised Government Departments and the names and addresses for service of the person who is, or is acting for the purposes of the Act as, Solicitor for such Departments, published by the Minister for the Civil Service in pursuance of Section 17 of the Crown Proceedings Act 1947.

*This list supersedes the list published on 10 July 1998*

(2) The above-mentioned provisions do not apply to Scotland, where in accordance with the Crown Suits (Scotland) Act 1857, as amended by the Scotland Act 1998, civil proceedings against the Crown (other than the Scottish Administration) or any Government Department (other than the Scottish Executive) may be directed against the Advocate General for Scotland. The Advocate General's address for service is the Office of the Solicitor to the Advocate General for Scotland, Victoria Quay, Edinburgh EH6 6QQ. Civil proceedings against the Scottish Administration may be directed against the Scottish Ministers at St Andrew's House, Edinburgh EH1 3DG, or against the Lord Advocate for and on behalf of the Scottish Executive. The Lord Advocate's address for service is 25 Chambers Street, Edinburgh, EH1 1LA.

(3) The Solicitor and address for service for the purpose of or in connection with any civil proceedings brought by or against the Crown which relate to those matters for which the Secretary of State for Wales is responsible in Wales and for which the Minister for Agriculture, Fisheries and Food is responsible in England is the Solicitor to the Ministry of Agriculture, Fisheries and Food, 55 Whitehall, London, SW1A 2EY

The Treasury Solicitor is the Solicitor acting for the Wales Office (Office of the Secretary of State for Wales) in all other civil proceedings affecting that Office.

CABINET OFFICE  
WHITEHALL  
LONDON SW1

*Richard Wilson*

(Signed) SIR RICHARD WILSON  
2000

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