

PRACTICE DIRECTION – ALTERNATIVE PROCEDURE FOR CLAIMS

THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 8

TYPES OF CLAIM IN WHICH PART 8 PROCEDURE MAY BE USED

- 1.1 A claimant may use the Part 8 procedure where he seeks the court's decision on a question which is unlikely to involve a substantial dispute of fact.
- 1.2 A claimant may also use the Part 8 procedure if a practice direction permits or requires its use for the type of proceedings in question.
- 1.3 The practice directions referred to in paragraph 1.2 above may in some respects modify or disapply the Part 8 procedure and, where that is so, it is those practice directions that must be complied with.
- 1.4 The types of claim for which the Part 8 procedure may be used include:
 - (1) a claim by or against a child or patient which has been settled before the commencement of proceedings and the sole purpose of the claim is to obtain the approval of the court to the settlement,
 - (2) a claim for provisional damages which has been settled before the commencement of proceedings and the sole purpose of the claim is to obtain a consent judgment,
 - (3) an application for a deposition to be taken abroad under Part 34, made other than in existing proceedings,
 - (4) an application for a deposition to be taken in England and Wales for use before courts abroad¹, and
 - (5) provided there is unlikely to be a substantial dispute of fact, a claim for a summary order for possession against named or unnamed defendants occupying land or premises without the licence or consent of the person claiming possession.
- 1.5 Where it appears to a court officer that a claimant is using the Part 8 procedure inappropriately, he may refer the claim to a judge for the judge to consider the point.
- 1.6 The court may at any stage order the claim to continue as if the claimant had not used the Part 8 procedure and, if it does so, the court will allocate the claim to a track and give such directions as it considers appropriate².

¹ See the practice direction supplementing Part 34.

² Rule 8.1(3).

ISSUING THE CLAIM

- 2.1 Part 7 and the practice direction which supplements it contain a number of rules and directions applicable to all claims, including those to which Part 8 applies. Those rules and directions should be applied where appropriate.
- 2.2 Where a claimant uses the Part 8 procedure, the claim form (practice form N208) should be used and must state the matters set out in rule 8.2 and, if paragraphs 1.2 or 1.3 apply, must comply with the requirements of the practice direction in question. In particular, the claim form must state that Part 8 applies; a Part 8 claim form means a claim form which so states.

RESPONDING TO THE CLAIM

- 3.1 The provisions of Part 15 (defence and reply) do not apply where the claim form is a Part 8 claim form.
- 3.2 Where a defendant who wishes to respond to a Part 8 claim form is required to file an acknowledgment of service, that acknowledgment of service should be in practice form N210³ but can, alternatively, be given in an informal document such as a letter.
- 3.3 Rule 8.3 sets out provisions relating to an acknowledgment of service of a Part 8 claim form.
- 3.4 Rule 8.4 sets out the consequence of failing to file an acknowledgment of service.
- 3.5 The provisions of Part 12 (obtaining default judgment) do not apply where the claim form is a Part 8 claim form.
- 3.6 Where a defendant believes that the Part 8 procedure should not be used because there is a substantial dispute of fact or, as the case may be, because its use is not authorised by any rule or practice direction, he must state his reasons in writing when he files his acknowledgment of service⁴. If the statement of reasons includes matters of evidence it should be verified by a statement of truth.

MANAGING THE CLAIM

- 4.1 The court may give directions immediately a Part 8 claim form is issued either on the application of a party or on its own initiative. The directions may include fixing a hearing date where:
 - (1) there is no dispute, such as in child and patient settlements, or
 - (2) where there may be a dispute, such as in claims for mortgage possession or appointment of trustees, but a hearing date could conveniently be given.

³ Rule 8.3(1)(a).

⁴ Rule 8.8(1).

- 4.2 Where the court does not fix a hearing date when the claim form is issued, it will give directions for the disposal of the claim as soon as practicable after the defendant has acknowledged service of the claim form or, as the case may be, after the period for acknowledging service has expired.
- 4.3 Certain applications, such as a consent application under section 38 of the Landlord and Tenant Act 1954, may not require a hearing.
- 4.4 The court may convene a directions hearing before giving directions.

EVIDENCE

- 5.1 A claimant wishing to rely on written evidence should file it when his Part 8 claim form is issued⁵ (unless the evidence is contained in the claim form itself).
- 5.2 Evidence will normally be in the form of a witness statement or an affidavit but a claimant may rely on the matters set out in his claim form provided that it has been verified by a statement of truth.

(For information about (1) statements of truth see Part 22 and the practice direction that supplements it, and (2) written evidence see Part 32 and the practice direction that supplements it.)
- 5.3 A defendant wishing to rely on written evidence, should file it with his acknowledgment of service⁶.
- 5.4 Rule 8.5 sets out the times and provisions for filing and serving written evidence.
- 5.5 A party may apply to the court for an extension of time to serve and file evidence under Rule 8.5 or for permission to serve and file additional evidence under Rule 8.6(1).

(For information about applications see Part 23 and the practice direction that supplements it)
- 5.6 (1) The parties may, subject to the following provisions, agree in writing on an extension of time for serving and filing evidence under Rule 8.5(3) or Rule 8.5(5).

(2) An agreement extending time for a defendant to file evidence under Rule 8.5(3) –
 - (a) must be filed by the defendant at the same time as he files his acknowledgement of service; and
 - (b) must not extend time by more than 14 days after the defendant files his acknowledgement of service.

5 Rule 8.5.
6 Rule 8.5(3).

- (3) An agreement extending time for a claimant to file evidence in reply under Rule 8.5(5) must not extend time to more than 28 days after service of the defendant's evidence on the claimant.