

# NOTES TO ACCOMPANY AUGUST 2004 36<sup>th</sup> UPDATE

## Introduction

The Civil Procedure (Amendment No. 2) Rules 2004 and the 36<sup>th</sup> Practice Direction Update of the Civil Procedure Rules introduce a number of notable changes to procedures including the following:

- new provisions in Parts 3, 23 and 52 and a new Practice Direction supplementing (new) rule 3.11, setting out the requirements, power and procedures for making civil restraint orders. Rule 2.3 is amended to insert a definition of ‘civil restraint order’. These changes arose from the judgement by the Court of Appeal in *Bhamjee v. Forsdick* [2003] EWCA Civ 1113;
- a replacement rule 5.4 and paragraph 4 of the Practice Direction supplementing Part 5, which amend the provisions about the supply of documents from court records;
- amendments to the Practice Direction supplementing Part 37 in relation to payments into court under certain enactments, to replace the requirement to file an application notice with the requirement to file a witness statement or affidavit;
- a replacement Practice Direction B supplementing Part 47, enabling a pilot scheme for detailed assessment by the Supreme Court Costs Office of costs of civil proceedings in specified London county courts;
- a new Section IV is inserted into Part 45 providing for fixed recoverable success fees in personal injury claims against an employer where the claimant is funded by a conditional fee agreement, with some exceptions. The exceptions are that the new section does not apply where the claim relates to disease or arises from a road traffic accident, or where the claim has been allocated, or would normally be allocated, to the small claims track;
- amendments are made to rule 65.3, that affect the evidential requirements when applying for certain anti-social behaviour injunctions;
- new paragraphs 13.2 and 13.3 are inserted into the Practice Direction supplementing Part 65, making provision for a pilot scheme to operate in certain county courts for applications to join a child to principal proceedings and to apply for a certain anti-social behaviour order against that child;
- amendments to CCR Order 49, rule 17, to reflect recent changes to disability legislation.

**A full list of the changes is set out below:**

## Rules

<b>Part 2</b>	In rule 2.3 new wording to insert definition of ‘civil restraint order’.
<b>Part 3</b>	In rule 3.3 new paragraph (7) inserted. In rule 3.4 new paragraph (6) inserted. New paragraph 3.11 ‘Power of the court to make civil restraint orders’ inserted.
<b>Part 5</b>	In rule 5.4 existing text replaced by new text.
<b>Part 6</b>	In rule 6.20, new text inserted after ‘will be served’.
<b>Part 23</b>	New paragraph 23.12 inserted.
<b>Part 45</b>	New text added to the table of contents. In rule 45.10(2) sub paragraph (b) ‘body of a prescribed description within the meaning of section 30(1) of the Access to Justice Act 1999’ replaced by ‘membership organisation’. New cross-reference inserted after rule 45.10(2) sub-paragraph (b).

New section IV ‘Fixed Percentage Increase In Employers Liability Claims’ inserted.

**Part 52**

In rule 52.10 new paragraphs (5) and (6) inserted.

**Part 65**

In rule 65.3(1) ‘section 153A, 153B or 153D’ replaced by ‘Chapter III of Part V’.

In rule 65.3 where ‘affidavit evidence’ or ‘affidavit’ occurs, it is replaced by ‘witness statement’.

**Schedules**

**Schedule 1**

**CCR Order 49**

In rule 17 paragraph (4) ‘section 25’ replaced by ‘section 17B or 25’.

In paragraph (6) ‘section 66’ replaced by ‘section 65’.

In paragraph (8) ‘or Schedule 3A to’ inserted after ‘section 26’.

**Practice Directions**

**Practice Direction 3**

In paragraph 7.6 existing sub-paragraphs (3) and (4) are replaced with new text.

**Practice Direction 3C**

A new Practice Direction is inserted, setting out:  
the circumstances in which the court has power to make civil restraint orders;  
the requirements and procedures in relation to civil restraint orders; and  
the consequences of making such an order.

**Practice Direction 4**

This Practice Direction has been amended to reflect the form changes set out below.

**Practice Direction 5**

Existing paragraph 4 replaced by new paragraphs 4.1 – 4.4.

**Practice Direction 7B**

In paragraph 3.1, sub-paragraph (5) ‘section 139(a)’ replaced by ‘section 139(1) (a)’.

**Practice Direction 22**

In paragraph 5 ‘paragraph 27’ replaced by ‘paragraph 28’.

**Practice Direction 32**

In paragraph 28.3 the words ‘paragraph 27.2(1)’ is replaced by ‘paragraph 28.2(1)’.

**Practice Direction 37**

In paragraph 7.1 the words ‘an application notice’ are replaced by ‘a witness statement or an affidavit’. In sub-paragraph (6) ‘application notice’ is replaced by ‘witness statement or affidavit’.

In paragraph 7.2 the words ‘or affidavit’ are inserted after ‘witness statement’.

In paragraph 9.1 ‘an application notice’ is replaced by ‘a witness statement or an affidavit’.

In paragraph 9.2 ‘application notice’ is replaced by ‘witness statement or affidavit’.

In paragraph 11.2 ‘an application notice’ is replaced by ‘a witness statement or an affidavit’.

In paragraph 11.3 ‘application notice’ is replaced by ‘witness statement or affidavit’.

In paragraph 11.4 ‘application notice’ is replaced by ‘witness statement or affidavit’.

**Practice Direction 47B**

Existing Practice Direction replaced by new Practice Direction.

**Practice Direction 52**

In paragraph 21.5, words ‘section 24 of the Social Security Administration Act 1992 and’ deleted.

After ‘Act 1998’ words ‘and paragraph 9 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000’ inserted.

In paragraph 21.10A(14), new text inserted at end of paragraph.

**Practice Direction 65**      In paragraph 1.1 ‘section 153A, 153B or 153D’ is replaced with new text.  
After paragraph 13.1 new paragraphs 13.2 and 13.3 inserted.

### **Other Practice Directions**

**EU Competition Law**      New text inserted at the end of paragraph 6.

### **Forms**

**New Forms are introduced as follows:**

<b>N19</b>	Limited Civil Restraint Order
<b>N19a</b>	Extended Civil Restraint Order
<b>N19b</b>	General Civil Restraint Order

### **Coming into force**

**All changes come into force on 1<sup>st</sup> October 2004 with the following exceptions:**

**6<sup>th</sup> July 2004**

PD 47B

**With immediate effect on publication**

PD52 (para.21.10A)

EU Competition Law PD

**1<sup>st</sup> September 2004**

Rule 65.3

PD 65 (para.1.1)

