

# COUNTERCLAIMS AND OTHER ADDITIONAL CLAIMS

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## 20.1 Purpose of Part 20

The purpose of Part 20 is to enable Part 20 claims to be managed in the most convenient and effective manner.

## 20.2 Meaning of 'Part 20 claim'

- (1) A Part 20 claim is any claim other than a claim by a claimant against a defendant and includes –
  - (a) a counterclaim by a defendant against the claimant or against the claimant and some other person;
  - (b) a claim by a defendant against any person (whether or not already a party) for contribution<sup>(GL)</sup> or indemnity<sup>(GL)</sup> or some other remedy; and
  - (c) where a Part 20 claim has been made against a person who is not already a party, any claim made by that person against any other person (whether or not already a party).
- (2) In this Part 'Part 20 claimant' means a person who makes a Part 20 claim.

## 20.3 Part 20 claim to be treated as a claim for the purposes of the Rules

- (1) A Part 20 claim shall be treated as if it were a claim for the purposes of these Rules, except as provided by this Part.
- (2) The following rules do not apply to Part 20 claims –

- (a) rules 7.5 and 7.6 (time within which a claim form may be served);
  - (b) rule 16.3(5) (statement of value where claim to be issued in the High Court); and
  - (c) Part 26 (case management – preliminary stage).
- (3) Part 12 (default judgment) applies to a Part 20 claim only if it is a counterclaim.
- (4) With the exception of –
- (a) rules 14.1(1) and 14.1(2) (which provide that a party may admit the truth of another party's case in writing); and
  - (b) rule 14.(3) (admission by notice in writing – application for judgment),
- which apply to all Part 20 claims, Part 14 (admissions) applies to a Part 20 claim only if it is a counterclaim.
- (Rule 12.3(2) sets out how to obtain judgment in default of defence where the Part 20 claim is a counterclaim against the claimant, and rule 20.11 makes special provision for default judgment in some categories of Part 20 claims)

#### **20.4 Defendant's counterclaim against the claimant**

- (1) A defendant may make a counterclaim against a claimant by filing particulars of the counterclaim.
- (2) A defendant may make a counterclaim against a claimant –
  - (a) without the court's permission if he files it with his defence; or
  - (b) at any other time with the court's permission.

(Part 15 makes provision for a defence to a claim and applies to a defence to a counterclaim by virtue of rule 20.3)

- (3) Part 10 (acknowledgment of service) does not apply to a claimant who wishes to defend a counterclaim.

#### **20.5 Counterclaim against a person other than the claimant**

- (1) A defendant who wishes to counterclaim against a person other than the claimant must apply to the court for an order that that person be added as defendant to the counterclaim.
- (2) An application for an order under paragraph (1) may be made without notice unless the court directs otherwise.
- (3) Where the court makes an order under paragraph (1), it will give directions as to the management of the case.

#### **20.6 Defendant's claim for contribution or indemnity from co-defendant**

- (1) A defendant who has filed an acknowledgment of service or a defence may make a Part 20 claim for contribution<sup>(GL)</sup> or indemnity<sup>(GL)</sup> against another defendant by –
  - (a) filing a notice containing a statement of the nature and grounds of his claim; and
  - (b) serving that notice on the other defendant.
- (2) A defendant may file and serve a notice under this rule –
  - (a) without the court's permission, if he files and serves it –
    - (i) with his defence; or

- (ii) if his claim for contribution or indemnity is against a defendant added to the claim later, within 28 days after that defendant files his defence; or
- (b) at any other time with the court's permission.

## **20.7 Procedure for making any other Part 20 claim**

- (1) This rule applies to any Part 20 claim except –
  - (a) a counterclaim; and
  - (b) a claim for contribution<sup>(GL)</sup> or indemnity<sup>(GL)</sup> made in accordance with rule 20.6.
- (2) A Part 20 claim is made when the court issues a Part 20 claim form.

(Rule 7.2(2) provides that a claim form is issued on the date entered on the form by the court)

- (3) A defendant may make a Part 20 claim –
  - (a) without the court's permission if the Part 20 claim is issued before or at the same time as he files his defence;
  - (b) at any other time with the court's permission.

(Rule 15.4 sets out the period for filing a defence)

- (4) Particulars of a Part 20 claim must be contained in or served with the Part 20 claim.
- (5) An application for permission to make a Part 20 claim may be made without notice, unless the court directs otherwise.

## **20.8 Service of a Part 20 claim form**

- (1) Where a Part 20 claim may be made without the court's permission, the Part 20 claim form must –
  - (a) in the case of a counterclaim against an existing party only, be served on every other party when a copy of the defence is served;
  - (b) in the case of any other Part 20 claim, be served on the person against whom it is made within 14 days after the date on which the Part 20 claim is issued by the court.
- (2) Paragraph (1) does not apply to a claim for contribution<sup>(GL)</sup> or indemnity<sup>(GL)</sup> made in accordance with rule 20.6.
- (3) Where the court gives permission to make a Part 20 claim it will at the same time give directions as to the service of the Part 20 claim.

## **20.9 Matters relevant to question of whether a Part 20 claim should be separate from main claim**

- (1) This rule applies where the court is considering whether to –
  - (a) permit a Part 20 claim to be made;
  - (b) dismiss a Part 20 claim; or
  - (c) require a Part 20 claim to be dealt with separately from the claim by the claimant against the defendant.

(Rule 3.1(2)(e) and (j) deal respectively with the court's power to order that part of proceedings be dealt with as separate proceedings and to decide the order in which issues are to be tried)

- (2) The matters to which the court may have regard include –
- (a) the connection between the Part 20 claim and the claim made by the claimant against the defendant;
  - (b) whether the Part 20 claimant is seeking substantially the same remedy which some other party is claiming from him; and
  - (c) whether the Part 20 claimant wants the court to decide any question connected with the subject matter of the proceedings –
    - (i) not only between existing parties but also between existing parties and a person not already a party; or
    - (ii) against an existing party not only in a capacity in which he is already a party but also in some further capacity.

#### **20.10 Effect of service of a Part 20 claim**

- (1) A person on whom a Part 20 claim is served becomes a party to the proceedings if he is not a party already.
- (2) When a Part 20 claim is served on an existing party for the purpose of requiring the court to decide a question against that party in a further capacity, that party also becomes a party in the further capacity specified in the Part 20 claim.

#### **20.11 Special provisions relating to default judgment on a Part 20 claim other than a counterclaim or a contribution or indemnity notice**

- (1) This rule applies if –
  - (a) the Part 20 claim is not –
    - (i) a counterclaim; or
    - (ii) a claim by a defendant for contribution<sup>(GL)</sup> or indemnity<sup>(GL)</sup> against another defendant under rule 20.6; and
  - (b) the party against whom a Part 20 claim is made fails to file an acknowledgment of service or defence in respect of the Part 20 claim.
- (2) The party against whom the Part 20 claim is made –
  - (a) is deemed to admit the Part 20 claim, and is bound by any judgment or decision in the main proceedings in so far as it is relevant to any matter arising in the Part 20 claim;
  - (b) subject to paragraph (3), if default judgment under Part 12 is given against the Part 20 claimant, the Part 20 claimant may obtain judgment in respect of the Part 20 claim by filing a request in the relevant practice form.
- (3) A Part 20 claimant may not enter judgment under paragraph (2)(b) without the court's permission if –
  - (a) he has not satisfied the default judgment which has been given against him; or
  - (b) he wishes to obtain judgment for any remedy other than a contribution<sup>(GL)</sup> or indemnity<sup>(GL)</sup>.
- (4) An application for the court's permission under paragraph (3) may be made without notice unless the court directs otherwise.
- (5) The court may at any time set aside<sup>(GL)</sup> or vary a judgment entered under paragraph (2)(b).

## **20.12 Procedural steps on service of a Part 20 claim form on a non-party**

- (1)** Where a Part 20 claim form is served on a person who is not already a party it must be accompanied by –
  - (a) a form for defending the claim;
  - (b) a form for admitting the claim;
  - (c) a form for acknowledging service; and
  - (d) a copy of –
    - (i) every statement of case which has already been served in the proceedings; and
    - (ii) such other documents as the court may direct.
- (2)** A copy of the Part 20 claim form must be served on every existing party.

## **20.13 Case management where there is a defence to a Part 20 claim form**

- (1)** Where a defence is filed to a Part 20 claim the court must consider the future conduct of the proceedings and give appropriate directions.
- (2)** In giving directions under paragraph (1) the court must ensure that, so far as practicable, the Part 20 claim and the main claim are managed together.

