

COUNTERCLAIMS AND OTHER ADDITIONAL CLAIMS

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20.1 Purpose of this Part

The purpose of this Part is to enable counterclaims and other additional claims to be managed in the most convenient and effective manner.

20.2 Scope and interpretation

- (1) This Part applies to –
 - (a) a counterclaim by a defendant against the claimant or against the claimant and some other person;
 - (b) an additional claim by a defendant against any person (whether or not already a party) for contribution or indemnity or some other remedy; and
 - (c) where an additional claim has been made against a person who is not already a party, any additional claim made by that person against any other person (whether or not already a party).
- (2) In these Rules –
 - (a) 'additional claim' means any claim other than the claim by the claimant against the defendant; and
 - (b) unless the context requires otherwise, references to a claimant or defendant include a party bringing or defending an additional claim.

20.3 Application of these Rules to additional claims

- (1) An additional 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 additional 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 counterclaim but not to other additional claims.
- (4) Part 14 (admissions) applies to a counterclaim, but only –
 - (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),apply to other additional claims.

(Rule 12.3(2) sets out how to obtain judgment in default of defence for a counterclaim against the claimant, and rule 20.11 makes special provision for default judgment for some additional 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 an additional party.
- (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 additional claim for contribution or indemnity from another party

- (1) A defendant who has filed an acknowledgment of service or a defence may make an additional claim for contribution or indemnity against a person who is already a party to the proceedings by –
 - (a) filing a notice containing a statement of the nature and grounds of his additional claim; and

- (b) serving the notice on that party.
- (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 additional claim for contribution or indemnity is against a party added to the claim later, within 28 days after that party files his defence; or
 - (b) at any other time with the court’s permission.

20.7 Procedure for making any other additional claim

- (1) This rule applies to any additional claim except –
 - (a) a counterclaim only against an existing party; and
 - (b) a claim for contribution or indemnity made in accordance with rule 20.6.
- (2) An additional claim is made when the court issues the appropriate 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 an additional claim –
 - (a) without the court’s permission if the additional 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 an additional claim must be contained in or served with the additional claim.
- (5) An application for permission to make an additional claim may be made without notice, unless the court directs otherwise.

20.8 Service of claim form

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

20.9 Matters relevant to question of whether an additional claim should be separate from the claim

- (1) This rule applies where the court is considering whether to –
 - (a) permit an additional claim to be made;
 - (b) dismiss an additional claim; or
 - (c) require an additional 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 additional claim and the claim made by the claimant against the defendant;
 - (b) whether the additional claimant is seeking substantially the same remedy which some other party is claiming from him; and
 - (c) whether the additional 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 an additional claim

- (1) A person on whom an additional claim is served becomes a party to the proceedings if he is not a party already.
- (2) When an additional 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 additional claim.

20.11 Special provisions relating to default judgment on an additional claim other than a counterclaim or a contribution or indemnity notice

- (1) This rule applies if –
 - (a) the additional claim is not –
 - (i) a counterclaim; or
 - (ii) a claim by a defendant for contribution or indemnity against another defendant under rule 20.6; and
 - (b) the party against whom an additional claim is made fails to file an acknowledgment of service or defence in respect of the additional claim.
- (2) The party against whom the additional claim is made –
 - (a) is deemed to admit the additional claim, and is bound by any judgment or decision in the proceedings in so far as it is relevant to any matter arising in the additional claim;
 - (b) subject to paragraph (3), if default judgment under Part 12 is given against the additional claimant, the additional claimant may obtain judgment in respect of the additional claim by filing a request in the relevant practice form.
- (3) An additional 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 or indemnity.
- (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 or vary a judgment entered under paragraph (2)(b).

20.12 Procedural steps on service of an additional claim form on a non-party

- (1)** Where an additional 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 additional claim form must be served on every existing party.

20.13 Case management where a defence to an additional claim is filed

- (1)** Where a defence is filed to an additional 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 original claim and all additional claims are managed together.

(CCR Order 42, in Schedule 2, makes provision for an additional claim against the Crown where the Crown is not a party).

