
NOTES TO ACCOMPANY OCTOBER 2005 40th UPDATE

Introduction

The 40th Update to the Civil Procedure Rules introduces changes in a large number of areas.

Rule 3.1 is amended to give the court an explicit power to order a party to file and serve an estimate of costs. In addition, a new **Section 6** is added to the **Costs Practice Direction 43-48**.

Rules 3.3(7), 23.12 and **Practice Direction 3C** have been amended to make clear that when the court dismisses as totally without merit an application for permission to appeal or to seek judicial review, it should at the same time consider whether it is appropriate to make a civil restraint order.

Rules 3.7 and **3.7B** have been amended to extend and clarify the sanction for non-payment of fees.

Rules 3.7A, 27.2, 27.9, 27.14, 28.5 and **29.6** have been created/amended. A large number of amendments to the small claims process, the effects include;

- creation of a rule to deal with non-payment of fees in counterclaims;
- relaxing of the disapplication of Part 18 in Part 27 (to allow the court to order a party to provide further information to enable the other party to understand the nature of the case);
- addition of a requirement for a party to give notice to the other party, as well as to the court, 7 days in advance of the fact that he would not be attending a hearing, and to serve on the other party any documents filed at the court;
- provision that the rejection of an offer to settle does not of itself necessarily constitute unreasonable behaviour, but it could be taken into consideration when applying the unreasonableness test;
- removal of the signpost to rule 36.2(5), which allows the court to order Part 36 costs consequences in a claim proceeding on the small claims track;
- amendment of Rule 27.14(3) to allow a party or witness who attends a hearing to be compensated for a day's loss of leave in the same way as a day's loss of earnings;
- provision that parties should be allowed to opt in to the small claims track costs provisions when a claim has been allocated to that track by consent. In addition, small claims costs should apply unless the parties agreed that fast track costs would apply instead. In cases which would have been allocated to the fast track, the costs will be capped at the fast track limit.
- sanctions for the non-return of allocation questionnaires under Part 26 are also to apply to the non-return of a pre-trial checklist, so, where no pre-trial checklist is filed, the court would make an order that unless the questionnaires are filed within 7 days, the claim/defence would

be struck out, but if one party files a pre-trial checklist, the file is submitted to the judge to give directions.

Practice Direction 27, Practice Direction 28 and Practice Direction 29 have been subsequently amended.

Rule 5.4 is amended to allow a party to proceedings to obtain a copy of a number of additional documents without requiring the permission of the court under rule 5.4(4). As the list has been extended considerably, it has been moved to **Practice Direction 5, paragraph 4.2A**.

Rules 6.5, 6.13, 9.2, 12.4, Practice Direction 7, Practice Direction 12, Practice Direction 16 and Practice Direction 23 have been amended to improve the quality of personal information provided to the courts by parties about themselves and about each other.

Rules 6.7 and 6.11 has been amended to further clarify service provisions in the light of recent judgments.

Rule 6.20, RSC Order 77, Practice Direction 7.9 (Claims for the recovery of taxes), Costs Practice Direction 43–48, Practice Direction 52 and Practice Direction 56 have been amended to take into account the creation of Her Majesty's Revenue and Customs.

Rule 10.3 has been amended to require the court to specify the period within which the defendant may file an acknowledgment of service when it makes an order giving permission to serve a claim form out of the jurisdiction, and refers the Court to the Second Practice Direction to Part 6, for the purpose of calculating such period.

Rule 11(7) has been amended to require the court to give directions as to the time available for filing a defence when an attempt to dispute the jurisdiction of the court has been unsuccessful.

Rules 12.10, 12.11, Practice Direction 5, Practice Direction 12 and Practice Direction 52 have been amended to take account of the Civil Partnerships Act 2004 and subsequent amendments to the Enrolment of Deeds regulations.

Rules 21.11, 48.5, Practice Direction 21 and Costs Practice Direction 43–48 have been amended to allow a litigation friend to recover expenses out of a child's or patient's fund.

Rule 26.4 has been amended to extend the period of time for which the court may stay proceedings to enable the parties to engage in alternative dispute resolution (ADR).

Rule 30.8 has been amended to allow commercial claims which contain a competition element to be tried in the Commercial Court, as well as in the Chancery Division. The amendment is supported by consequential amendment to **Practice Direction 30** and the **Practice Direction on Competition Law**.

Rule 32.20 has been amended to give probative force to notarial acts.

Rules 40.3 and 60.7 have been amended to alter the default position concerning drawing orders in the Queen's Bench Division at the Royal Courts of Justice, to confirm that the practice there is that parties draw up the orders unless the court orders otherwise.

Rule 44.13 has been amended to regularise the position regarding costs in instances where it is common practice for an order to be silent on the subject of costs, i.e. when an order grants permission to appeal or apply for judicial review.

A new **Section V** is inserted in **rule 45** and **rule 45.20** is amended to make provision for fixed percentage increases to apply to a legal representatives' fees in respect of success fees, where the claimant has entered into a conditional fee agreement or collective conditional fee agreement which provides for a success fee in personal injury claims against an employer relating to a disease. This is accompanied by a new section 25B in the **Costs Practice Direction 43–48**.

Rule 55.10 has been amended to make provision for a new **Practice Direction 55B**, which establishes a scheme for possession claims (based on arrears of rent or mortgage payments) to be made online.

Rules 63.1 and **63.4A** have been amended to make provision to secure that so far as it is practicable and appropriate the patents judge should hear proceedings that fall within the specialist jurisdiction of the patents county court; and to ensure that in his absence, the matter is dealt with by a judge with appropriate specialist experience.

Part 65 has been amended to accommodate the new section 121A of the Housing Act 1985, which allows a landlord under a secure tenancy to apply for an order suspending the right to buy. This is supported by amendments to **Practice Direction 65**.

A new **Part 66** and **Practice Direction 66** have been created to deal with Crown Proceedings, and **rules 6.1, 6.4, 6.5, 12.4, 12.10, 16.2, 19.4, 19.7B, 24.4, 30.3** and **Practice Direction 24** have been amended as a consequence. The result of these amendments is that the Crown will lose a number of its traditional privileges in civil litigation, including the right to dictate venue. It will also now be subject to summary and default judgments.

Rule 74.1 has been amended and a new **Section V to Part 74** has been created to make provision for the certification of English judgments as European Enforcement Orders and for the enforcement of European Enforcement Orders certified in other member states in England and Wales, pursuant to Council Regulation (EC) No 805/2004 creating a European Enforcement Order for uncontested claims. This is supported by a new **Practice Direction 74B**.

CCR Order 49 has been amended to take into account changes to the Disability Discrimination Act 1995.

Practice Direction 3, paragraph 1.9 is amended to clarify the status of orders which state that a claim 'shall be struck out or dismissed' or 'will be struck out or dismissed'.

Practice Direction 5 is amended to make provision for a register of claims to be kept at the Admiralty and Commercial Court Registry.

Practice Direction 5B has been amended to enable the PREMA scheme and a similar arrangement at the Civil Appeals Office. A further amendment has been made to clarify the position surrounding documents which are required to be filed at court are sent to the judge via email.

Practice Direction 6B has been amended to take into account service requirements of Commonwealth countries, and also to add further acts to the list at Practice Direction 6B.5.2(11).

Practice Direction 7C has been amended to make provision for claims issued at the bulk centre to be transferred to the defendant's home court for oral examination or enforcement.

The **Annex to Practice Direction 19** (list of addresses for service on government departments) is transferred to the new Practice Direction to Part 66.

Practice Direction 23B has been amended to extend the period of the telephone hearings pilot.

Practice Direction 25 has been extensively revised.

Practice Direction 26 has been amended to set out sanctions for use in situations where allocation questionnaires are not filed.

Practice Direction 29 is amended to encourage the court to give directions requiring parties to consider ADR.

Practice Direction 31 is amended to include information on disclosure of electronic documents.

The title of **Practice Direction 32** is changed to 'Evidence'. The Practice Direction has also been subject to minor amendment to give directions about sites for video conferencing.

Practice Direction 35 is amended to give effect to the new **Experts Protocol** now annexed to the Practice Direction.

A fifth Practice Direction, **Practice Direction 40E** is added, dealing with embargoed judgments in the Court of Appeal (Civil Division).

The **Costs Practice Direction 43–48** is amended consequential upon the amendment to the Community Legal Service (costs) Regulations 2000.

Practice Direction 47 (Detailed Assessment Pilot) has been revoked, and new material 23.2A has been added to the Costs Practice Direction 43-48 to permanently establish the piloted provisions.

Practice Direction 52 is amended to allow a Presiding Judge to release to a Designated Civil Judge an appeal from a Recorder's decision in the county court.

Practice Direction 60 has been amended to clarify certain aspects of proceedings in the Technology and Construction Court.

Practice Direction 62 has been amended to clarify the appeal procedure in the case of an appeal from a judge-arbitrator.

Disqualification of Directors Practice Direction has been amended extensively to reflect amendments to the Company Directors Disqualification Act made by the Enterprise Act 2002.

The **Protocols Practice Direction** has been amended to encourage ADR where possible.

Coming into Force

All of the amendments included in this update come into force on 1st October 2005, with the following exceptions.

Amendments concerning implementation of European Enforcement Orders (Part 74) come into force on 21st October 2005.

Amendments to rules 6.5(2), 6.13, 9.2 and 12.4(2) come into force on 6th April 2006.

Amendments to Practice Direction 35 concerning the Expert's Protocol come into force on 5th September.

Amendments to Practice Direction 7C come into force on 19th September 2005.

Amendments to Practice Direction 74B concerning European Enforcement Orders come into force on 21st October 2005.

Amendments to Practice Direction 7 (cross-reference to Practice Direction 16), Practice Direction 12 (paragraph 3), Practice Direction 16 (paragraphs 2 and 10) and Practice Direction 23 (all amendments referring to data quality) come into force on 6th April 2005.

A full list of the changes is set out below:

Rules

Part 3

Rule 3.1, new text (ll) inserted after sub-paragraph (l).

Rule 3.3(7), new text inserted.

Rule 3.7, new text substituted for (4)(i) and (6)(a).

Rules 3.7A and 3.7B added.

Part 5

Rule 5.4(3) new text substituted, new text added to (5)(a)(i).

Part 6

Rule 6.1, cross-reference replaced.

Rule 6.4(1), reference to paragraph (2) altered, new text (2A) inserted.

Rule 6.5, new text inserted in (2), new text (8) inserted after (7).

Rule 6.7(1), text omitted.

Rule 6.11, new text substituted.

Rule 6.11A, new text added.

Rule 6.13, new text inserted.

Rule 6.20, new text substituted.

Part 10

Rule 10.3(2), new text (c) added.

Part 11

Rule 11(7), new text (c) added.

Part 12

Rule 12.4, new text inserted after (2), new text (4) inserted.

Rule 12.10(a), replaced.

Rule 12.11(3), new text inserted.

Part 16

Rule 16.2, new text (1A) added.

Part 19

Rule 19.4, new text(4A) added.

Rule 19.7, new text 19.7B added.

Part 21

Rule 21.11, new text 21.11A added.

Part 23

Rule 23.12, new text inserted.

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| Part 24 | Rule 24.4, new text (1A) inserted. |
| Part 26 | Rule 26.4(2), new text inserted. |
| Part 27 | Rule 27.2, new text inserted. Rule 27.9, new text substituted for (1). Rule 27.14, new text (2A) inserted. |
| Part 28 | Rule 28.5, new text substituted for (3), (4) added. |
| Part 29 | Rule 29.6, new text substituted for (3), (4) added. |
| Part 30 | Rule 30.3, new text (h) added. Rule 30.8, new text inserted in (1), new text (4) added. |
| Part 32 | Rule 32.20, new text added. |
| Part 40 | Rule 40.3, new text substituted in (1), new text (4) added. |
| Part 44 | Rule 44.13(1)(a) amended, new text (1A) inserted. |
| Part 45 | Rule 45.20(2), new text (iv) added. New Section V added. |
| Part 48 | Rule 48.5(2)(a) amended, (4)(b) amended. |
| Part 55 | Rule 55.1, new text (h) added. Rule 55.2, cross reference substituted. Rule 55.10A, new section inserted. |
| Part 60 | Rule 60.7, new section added. |
| Part 63 | Rule 63.1, new text (gg) added. Rule 63.4A, new text added. |
| Part 65 | Heading to Section III altered. Rules 65.11, 65.12, 65.13, 65.14 amended. Rules 65.17, 65.18, 65.19 amended. |
| Part 66 | New part 66 created. |
| Part 74 | Rule 74.1, new text (4A) inserted, (5)(e) new text inserted, new signpost added. New Section V added. |
| Part 76 | New part 76 created. |
| Schedules | |
| Schedule 1 | |
| RSC 0.77 | Revoked |
| Schedule 2 | |
| CCR O.42 | Revoked. |
| CCR O.49 | Rule 15, revoked. Rule 17(6), amended. |
| Practice Directions | |
| Practice Direction 3 | New text 1.9 inserted. |
| Practice Direction 3C | New text substituted for 4.1. |
| Practice Direction 4 | New text 4.1(3) added, 4.2A added, 6.3 amended at (1) and (3). |
| Practice Direction 5B | New text substituted for 3.2. New text substituted for 3.3. Paragraph 8.9 added. |
| Practice Direction 6 | Paragraph 8.2 omitted. |
| Practice Direction 6B | New text substituted for 3.1. New text added after 5.2(11). |

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| Practice Direction 7 | Cross-reference added after 4.1. |
| Practice Direction 7C | New text substituted for (f). |
| Practice Direction 7D | Paragraph 1.1 amended. Paragraph 3.1 amended |
| Practice Direction 12 | Paragraph 2.3 amended. New text 3.2 added. |
| Practice Direction 16 | New text added after 2.3. New text added after 10.5. Paragraph 14 amended. |
| Practice Direction 19 | Cross reference following 6.4(1) amended. Annex transferred to Practice Direction 66. |
| Practice Direction 21 | New text 8A inserted. |
| Practice Direction 23 | Paragraph 2.1(4) amended. |
| Practice Direction 23B | Dates amended. |
| Practice Direction 24 | New text 2(6) inserted. |
| Practice Direction 25 | Paragraph 7 amended. New text 8.1 and 8.2 added. New text 9.1 and 9.2 added. Example form orders amended. |
| Practice Direction 26 | New text substituted for 2.5(1). Paragraph 2.5(2) amended. |
| Practice Direction 27 | New text substituted for 2.2. Appendix replaced with new appendices. Paragraph 7.3(1) amended. Paragraph 8A inserted. |
| Practice Direction 28 | Paragraph 6 amended. |
| Practice Direction 29 | New text 4.10(9) added. Paragraph 8 amended. |
| Practice Direction 30 | Paragraph 8 amended. |
| Practice Direction 31 | New text 2A and annex inserted. |
| Practice Direction 32 | Renamed. Reference inserted after 29.1. |
| Practice Direction 35 | Introduction amended. |
| Practice Direction 40E | New Practice Direction inserted. |
| Practice Direction 43–48 | Sections 5, 5.2, 5.3, 5.5 and 5.6 amended. New section 6 inserted. Paragraph 11.8(2) omitted. Paragraph 21.15(2) replaced. Paragraph 21.18 amended. Section 22, 22.2, 22.3, 22.4, 22.9 amended. New text inserted after 23.1(3). New section 23.2A inserted. Paragraph 23.4 replaced. Paragraph 23.8 amended. New text 23.18 added. New section 25B added. |
| Practice Direction 47 Supplement | Omitted. |

- Practice Direction 52** New text 5.8(1A) added.
Paragraph 8.13(1) replaced.
Table following 20.3 amended.
Paragraphs 21.1, 21.5, 22.4, 23 amended.
- Practice Direction 55** Paragraph 2.3(2) replaced.
New text 2.3A added.
Paragraph 2.5(3)(a) replaced.
- Practice Direction 55B** New Practice Direction inserted.
- Practice Direction 56** Paragraph 4.2 amended.
- Practice Direction 60** Paragraphs 9.1, 9.2, 9.3, 9.4 amended.
Appendix B replaced.
Appendix D omitted.
- Practice Direction 62** New text 2.3A added.
- Practice Direction 65** Paragraph 5 amended.
New text 5A inserted.
Paragraph 6 amended.
Paragraph 7 amended.
New text 7.2 added.
Paragraph 9.2 amended.
- Practice Direction 66** New Practice Direction created.
- Practice Direction 74B** New Practice Direction inserted.

Other Practice Directions

Competition Law Paragraphs 2.1, 2.2, 2.3 inserted.

Directors Disqualification

Paragraphs 1.1, 1.3, 4.1, 4.2, 5.1, 6.1, 7.2, 7.3, 8.2, 8.3, 9.2, 10.5, 11.5, 17.1, 18.1, 19.2, 20.1, 20.2, 23, 26.2, 28.1, 30.1, 30.5, 30.6, 30.7, 31.1, 31.2, 32.1, 33.9, 33.10, 34.6 amended.

Protocols Practice Direction

New text inserted in 4.7.

Forms

A new form N164 (Small Claims Appellant's Notice) has been created for use in small claims appeals. Its use is supported by amendments to PD27.

All of the forms annexed to the Disqualification of Directors Practice Direction have been amended, and now have the numbers N500, N500A, N500B, N501, N501A, N501B, N502, N503 and N504.

N265 (List of Documents) has been amended in line with the electronic disclosure amendments.