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# Notes to Accompany 1<sup>st</sup> October 2009 50<sup>th</sup> Update

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## **Coming into force**

**All the amendments in this update come into force on 1 October 2009 with the following exceptions:**

The Electronic Working Pilot PD51C which came into force on 1 April 2009 and amendments to

Part 65 Anti Social Behaviour Orders which come into force on 31 August 2009.

## **Introduction**

The 50<sup>th</sup> Update to the Civil Procedure Rules introduces changes in a large number of areas:

### **PD2A – Court Offices**

Amendments are made to the practice direction supporting Part 2A of the CPR, to rationalise court office opening times throughout the court system. A formula is created which will establish the days on which court offices will open before and after Christmas, including the designated privilege day.

### **PD7C Production Centre and PD7E Money Claim Online**

A paragraph is re-inserted to disapply rules in respect of additional documentation in contract claims issued through the Court Production Centre.

### **PD32 Attorney General's Address and PD Devolution Issues**

Amendments are made to amend the address of the Attorney General's office. A consequential amendment is made to the PD – Devolution Issues.

### **Part 35 and PD35 Experts and Protocol for the Instruction of Experts to give Evidence in Civil Claims**

Amendments are made to: clarify the definition of an expert and provide guidance to reduce any inconsistency in the appointment of single joint experts; revise the expert's statement of truth; and ensure that the questions posed to experts are proportionate and appropriate. Consequential amendments are made to PD28 and PD29

### **Part 44 and PD supplementing Parts 43 to 48**

Measures are introduced requiring parties to notify other parties of the existence of, and information about an After the Event insurance premium. Penalties can be applied where the existence of a premium is not disclosed. Provision is made for a specified period after notification of an ATE premium when a defendant, who admits liability and offers to settle, will not incur liability for payment of the claimant's ATE insurance policy if the matter settles without court proceedings. Publication proceedings are defined. Consequential amendments are

made to the PD on Pre Action Conduct. Transitional provisions are set out at paragraph 19.6 of the practice direction.

#### **Part 49 Companies Act 2006**

Minor amendments are made consequential on the implementation of the remaining sections of the Companies Act 2006. Consequential amendments are made to Part 6, Part 74 and PD39.

#### **PD51B Automatic Orders Pilot Scheme**

Amendments are made to extend a pilot that allows some orders to be made automatically without judicial intervention, to all county courts and the High Court. The pilot will run for one year. Consequential amendments are made to PD28 and PD29.

#### **PD 51C Electronic working pilot**

A pilot scheme designed to allow the introduction of IT systems to the Admiralty, Commercial and London Mercantile Courts is introduced. This scheme commenced on 1 April 2009.

#### **Costs: PD51D – Pilot cost budgeting scheme**

A pilot scheme to be run in the RCJ and HC at Manchester in relation to defamation, libel and malicious falsehood cases only. Consequential amendments are made to PD29.

#### **Part 55 and PD55 Possession Claims**

##### **Pre Action Protocol for Possession Claims based on Mortgage or Home Purchase Plan Arrears in respect of Residential Property**

Rules are amended to ensure that all occupiers including tenants of any mortgaged property subject to possession proceedings are notified of the proceedings and hearing date. A new requirement is introduced obliging lenders to notify local authorities when possession proceedings are commenced. The steps, set out in the Mortgage Pre-Action Protocol, that a lender should take before starting a possession claim for mortgage arrears are expanded. The Protocol has also been amended to include a checklist for lenders to complete and file to show compliance with the Protocol. PD4 is amended as a consequence.

#### **PD57 Probate**

Amendments are made to clarify the provisions in relation to removal of an executor before a grant of probate (section 50 of the Administration of Justice Act 1985).

#### **Part 63 and PD63 Intellectual Property Claims**

Amendments are made to update references to legislation and reflect substantive changes including product description and process description. Allocation of claims on specific issues such as plant varieties between the Patent Court and the patents county court are set out. Part 63 of the CPR has been renamed as "Intellectual Property Claims" to reflect these changes and consequential amendments to PD2B are made.

#### **PD64A Estates, Trusts and Charities**

The practice direction in respect of Estates, Trusts and Charities has been reviewed and amended. Amendments provide for claims seeking approval of transactions by trustees affected by conflicts of interest to be determined without a hearing in specified circumstances. These circumstances would be where the merits of the case are plain for transactions which are believed to be beneficial to the beneficiaries and oral argument would not assist the court.

#### **Part 65 Anti-Social Behaviour and Harassment**

This part is amended to provide rules to allow for applications for Drink Banning Orders (as set out in the Violent Crime Reduction Act 2006). Orders including clauses to prohibit the individual from entering premises selling alcohol, or from premises which supply alcohol to members or guests can be made. Consequential amendments are made to PD2B and the measures come into force on 31 August 2009.

#### **Part 68 and PD68 References to the European Court**

The rules are clarified as to the length and content of references sent to the European Court of Justice. Further amendments are made to assist in processing requests for urgent preliminary rulings by providing a streamlined procedure for courts.

#### **Part 76 Proceedings under the Prevention of Terrorism Act 2005**

The time within which an individual, who is subject to a non-derogation control order, can make representations is extended. Individuals will have more time to make representations about the directions already given by the court and any further directions made. Amendments are made to allow an application for anonymity of individuals subject to control orders when permission for an order is sought by the Secretary of State.

#### **Part 79 Financial Restrictions Proceedings Under the Counter-Terrorism Act 2008**

Rules are introduced to allow the application, by the police, for notification orders under the Counter-Terrorism Act 2008. Rules are made to provide that a special advocate may adduce evidence and cross-examine witnesses.

#### **Pre-Action Protocol for Personal Injury Claims**

The PAP is amended to reflect the changes to the Fast Track Limit changed in the 49th Update. The Rehabilitation Code set out at Annex D of the Protocol is updated.

#### **Supreme Court.**

Consequential amendments are made in relation to implementation of the Constitutional Reform Act 2005 relating to creation of the Supreme Court. Amendments are made to: Parts 2, 5, 6, 12, 14, 25, 26, 34, 35, 40, 41, 38, 39, 43, 47, 50, 52, 54, 57, 60, 61, 62, 72, 74; D2A ,PD4, PD supplementing rule 3.4 , PD 5 , PD6 PD7 How to start proceedings PD8 , PD16, PD25, PD34, PD40 Judgements and orders , PD37 PD43-48, PD54A, PD57, PD61, PD67, PD69, PD74; RSC Order 46, 52, 79 108, 109 and CCR Order 1, 29; and PD Insolvency Directions and PD Civil Recovery Proceedings and Pre-Action Protocol for Resolution of Clinical Disputes.

Amendments are made to form N260 and new form N123 is introduced.

#### **Rules**

##### **Part 6**

New text substituted in Rule 6.3(2)(b) and (3)(b)  
New text substituted in Rule 6.20(2)(b) and (3)(b)  
New text substituted in Rule 6.52(2)(a)

##### **Part 34**

New text substituted in Rule 34.19(2)(a)

##### **Part 35**

New text inserted in table of contents  
New text substituted for Rule 35.2  
New text substituted for Rule 35.3(1)  
New text substituted for Rule 35.3(2)  
New text substituted for Rule 35.4(2)

	Text omitted in Rule 35.4(3)
	New text inserted after Rule 35.4(3)
	New text substituted in Rule 35.4(4)
	New text inserted in Rule 35.5(2)
	New text substituted for Rule 35.6(1)
	Text omitted in Rule 35.6(4)(a)
	New text substituted for Rule 35.7
	New text substituted for Rule 35.8(1), (2), 35.8(4)(b), 35.8(5)
	New text substituted for Rule 35.9
	New text substituted for Rule 35.10(1) and (2)
	New text substituted for Rule 35.12(3)
	New text substituted in Rule 35.14 (1) and (2)
	New text substituted for Rule 35.15 (whole Rule substituted)
<b>Part 43</b>	New text substituted for Rule 43.2(1)(b)
	New text inserted after Rule 43.2(1)(b)
	New text substituted in Rule 43.2(1)(d)(iv)
	Text omitted in Rule 43.2(1)(e)
<b>Part 44</b>	New text inserted in table of contents
	New text substituted in Rule 44.3B(1)
	Text omitted and New text substituted in Rule 44.3B(1)(c)
	New text substituted in Rule 44.3B(1)(d)
	New text inserted after Rule 44.3B(1)(d)
	New text inserted in Rule 44.12A(4)
	New text inserted after Rule 44.12A
<b>Part 47</b>	New text substituted in Rule 47.4(2)
<b>Part 49</b>	New text substituted in Rule 49
<b>Part 52</b>	New text substituted in second parentheses below Rule 52.16(7)
<b>Part 55</b>	New text substituted in Rule 55.10(2) and 55.10(3)
	New text inserted after 55.10(3)
	New text substituted in Rule 55.10(4)(a) and 55.10(4)(b)
<b>Part 63</b>	Complete part substituted
<b>Part 65</b>	New text inserted in table of contents
	Text omitted in Rule 65.1(e)
	New text inserted after Rule 65.1(e)
	New text inserted after Rule 65.30
<b>Part 68</b>	New text substituted in table of contents
	New text substituted in Rule 68.1( c)(v)
	New text inserted after Rule 68.1(c )
	Text omitted in heading to Rule 68.2
	New text substituted in Rule 68.2(3)
	New text inserted after Rule 68.2
	New text substituted in Rule 68.3(1) and (2)
<b>Part 74</b>	New text substituted in Rule 74.6(1)(b)
	New text substituted in Rule 74.15(2)
	New text substituted in Rule 74.25(1)
<b>Part 76</b>	New text substituted in Rule 76.10(2)(b)
	New text substituted in Rule 76.19(4)
	New text inserted in Rule 76.24(b)
	New text inserted after Rule 76.26(5)

<b>Part 79</b>	Text omitted from heading to Part 79 New text inserted in table of contents Text omitted in Rule 79.1(1)(a) New text substituted in Rule 79.1(1)(b) New text inserted after Rule 79.1(1)(b) New text substituted in Rule 79.15 New text inserted in Rule 79.17(1) New text inserted in Rule 79.18 (1) and (3) New text inserted in Rule 79.22(1) and (2) New text inserted after Rule 79.22(4) New text inserted in Rule 79.23(1)(a), (3), (4) New text inserted in Rule 79.28(1) New text inserted in Rule 79.29(1) New text inserted in Rule 79.30 New text inserted after Rule 79.30
<b>Practice Directions</b>	
<b>Practice Direction 2A</b>	New practice direction substituted
<b>Practice Direction 2B</b>	New text substituted in title New text substituted in paragraph 3.1(f) New text substituted in paragraph 5.1, 5.1(k) Text omitted in paragraph 8.1A(1) New text substituted in paragraph 8.1A(2) New text inserted after paragraph 8.1A(2)
<b>Practice Direction 3</b>	New text substituted in paragraph 7.1
<b>Practice Direction 4</b>	Forms No 84, PF67 and PF 68 in Table 1 amended New text inserted in Table 1
<b>Practice Direction 5</b>	New text substituted in paragraph 6.1(1)
<b>Practice Direction 6B</b>	New text substituted in paragraph 3.1(18)
<b>Practice Direction 7A</b>	New text substituted in paragraph 2.5 New text substituted in paragraph 2.6
<b>Practice Direction 7C</b>	New text inserted after paragraph 1.4(3)
<b>Practice Direction 7E</b>	New text inserted after paragraph 5.2
<b>Practice Direction 8</b>	New text substituted in table of contents New text substituted in table in paragraph 9.4 New text substituted in heading above paragraph 16.1 New text substituted in paragraph 16.1
<b>Practice Direction 16</b>	New text substituted in paragraph 4.4(1)
<b>Practice Direction 25</b>	New text substituted in paragraph 7.9 New text substituted in paragraph 7.9(1)
<b>Practice Direction 28</b>	New text inserted in the Appendix
<b>Practice Direction 29</b>	New text inserted after paragraph 4.8
<b>Practice Direction 32</b>	New text substituted in paragraph 9.1(4) New text substituted in paragraph 28.1(1) and 28.1(2) New text substituted in paragraph 28.1(2)( c ) Text omitted in paragraph 28.1(2)(c ) New text substituted in paragraph 28.2 and 28.3
<b>Practice Direction 34A</b>	New text substituted in Annex A first paragraph
<b>Practice Direction 35</b>	Substitute whole of practice direction 35 New text substituted in paragraph 13.5 of annex

<b>Practice Direction 37</b>	New text substituted in paragraph 1.1(1)(a)
<b>Practice Direction 39</b>	New text substituted in paragraph 1.5(8)
<b>Practice Direction 40B</b>	New text substituted in table of contents
	New text substituted in paragraph 2.3(2)( c)
	New text substituted in heading above paragraph 13.1
	New text substituted in paragraph 13.1
	New text substituted in paragraph 13.2
	New text substituted in paragraph 13.2(3)
	New text substituted in paragraph 13.3
<b>Practice Direction 43–48</b>	
	New text substituted in paragraph 1.3
	New text substituted in paragraph 1.4
	New text substituted in paragraph 17.2
	New text substituted in text in parenthesis following paragraph 19.2
	New text substituted in paragraph 19.4(3)
	Text deleted in paragraph 19.4(3)
	New text inserted after of paragraph 19.5
	New text substituted in paragraph 23.2(2)
	New text substituted in paragraph 23.2A(2)(i) and (ii)
	New text substituted in paragraph 23A.3
	New text substituted in paragraph 30.1(1)
	New text substituted in paragraph 31.1(2)
	New text substituted in paragraph 31.1A(2)(i) and (ii)
	New text substituted in paragraph 31.2(3)
	New text substituted in paragraph 37.7
	New text substituted in paragraph 42.12
	New text substituted in paragraph 43.3(g)
	New text substituted in paragraph 49A.4
	New text substituted in paragraph 50.3(1)
<b>Practice Direction 49A</b>	New practice direction substituted
<b>Practice Direction 49B</b>	New text substituted in title to practice direction
	New text substituted in paragraph 1
<b>Practice Direction 51B</b>	New text substituted in paragraph 1.1
	New text inserted after paragraph 1.1
<b>Practice Direction 51C</b>	New practice direction inserted
<b>Practice Direction 51D</b>	New practice direction inserted
<b>Practice Direction 54A</b>	New text substituted in paragraph 1.1
<b>Practice Direction 55</b>	New text substituted in paragraph 2.4New text inserted after paragraph 5.4
<b>Practice Direction 57</b>	New text substituted in parenthesis below paragraph 2.4
	New text substituted in paragraph 7.1
	New text substituted in paragraph 8.1
	New text substituted in paragraph 13.1
	New text substituted in paragraph 13.1(1)
	New text inserted after paragraph 14.2
<b>Practice Direction 61</b>	New text substituted in paragraph 5.3(2)
<b>Practice Direction 63</b>	New practice direction substituted
<b>Practice Direction 64</b>	New title substituted
	New text inserted in table of contents

	New text inserted in paragraph 1(2)(b)
	New text inserted after paragraph 1
<b>Practice Direction 64B</b>	New title substituted
<b>Practice Direction 65</b>	New text inserted in table of contents
	New text substituted in Section VI heading
	New text inserted in Section VI
<b>Practice Direction 67</b>	New text substituted in table of contents
	New text substituted in heading to paragraph 2.1
	New text substituted in paragraph 2.1(1) and 2.1(2)
	New text substituted in paragraph 2.2
	New text inserted after paragraph 2.2
	New text substituted in paragraph 5
<b>Practice Direction 68</b>	New practice direction substituted
<b>Practice Direction 69</b>	New text substituted in paragraph 1.1(1)
<b>Practice Direction 74</b>	New text substituted in paragraph 3
	New text substituted in paragraph 7.1
	New text substituted in paragraph 8.1

#### **Schedule 1**

<b>RSC Order 46</b>	New text substituted in Rule 6(6)(d)
<b>RSC Order 79</b>	New text substituted in Rule 9(11)
<b>RSC Order 109</b>	New text substituted in Rule 1(1)(a) and (b)
	New text substituted in Rule 3(1)
	New text substituted in Rule 4(1) and 4(2)

#### **Schedule 2**

<b>CCR Order 1</b>	New text substituted in Rule 6(d)
<b>Practice Direction RSC 0.52</b>	New text substituted in footnote to paragraph 11(1)

#### **Other Practice Directions**

<b>Devolution Issues</b>	New text substituted in paragraph 7.5
	Text omitted in paragraph 7.6
	New text substituted in paragraph 7.6
	New text substituted in paragraph 7.7(1)
	Text omitted and substituted in paragraph 7.7(1)(a)
	Text omitted in paragraph 7.7(1)(b)
	New text substituted in paragraph 7.10
	New text substituted in paragraph 8.1
	New text substituted in paragraph 8.3
	Text omitted in paragraph 10.3(5)(b)
	New text substituted in Annex 2, paragraph (2)
<b>Insolvency Proceedings</b>	New text substituted in paragraph 15.8
<b>Civil Recovery Proceedings</b>	
	New text substituted in paragraph 7C

#### **Pre Action Protocols**

##### **Pre-Action Conduct Practice Direction**

	New text inserted in table of contents
	New text substituted in paragraph 9.3

New text inserted at end of paragraph 9.3

New text inserted after paragraph 9.7

**Pre-Action Protocol for Personal Injury Claims**

New text substituted in paragraph 2.3

New text substituted in paragraph 2.4

New text substituted in paragraph 3.9

New annex substituted at Annex D

**Pre-Action protocol for the Resolution of Clinical Disputes**

New text substituted in Annex B in paragraph entitled 'use of the forms'

**Pre-Action Protocol for Possession Claims based on Mortgage or Home Purchase Plan Arrears in Respect of Residential Property**

New text substituted at paragraph 6.1(1)

New text inserted in paragraph 6.1(2)

New text substituted in paragraph 6.1(3)

**Forms**

New versions of N260 are made available.

New forms N123 are made available.