

36B

THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 36

From 6th April 2007, new rules came into force concerning offers to settle, and Part 36, as it was in force immediately before 6th April 2007, was substituted by a new Part 36.

Rule 7 of the Civil Procedure (Amendment No.3) Rules 2006 that brought those new rules into force and replaced the previous rules contained some provisions that dealt with how the rules are to apply to offers and payments into court made before 6th April 2007.

This Practice Direction explains how those provisions will operate.

Offers and Payments made before 6th April 2007

- 1.1** Paragraph (2) of rule 7 provides that where a Part 36 offer or Part 36 payment was made before 6th April 2007, if it would have had the consequences set out in the rules of court contained in Part 36 as it was in force immediately before 6th April 2007, it will have the consequences set out in rules 36.10, 36.11 and 36.14 after that date.
- 1.2** This provision makes clear that a Part 36 offer or Part 36 payment that was valid before 6th April 2007, will continue to be a valid Part 36 offer under the rules in force from 6th April 2007, and will have the consequences set out in those rules, specifically in relation to costs and the effect of acceptance.

Permission of the court

- 2.1** Paragraph (3) of rule 7 provides that where a Part 36 offer or Part 36 payment was made before 6th April 2007, the permission of the court is required to accept that offer or payment, if permission would have been required under the rules of court contained in Part 36 as it was in force immediately before 6th April 2007.
- 2.2** This provision preserves the requirement to obtain the permission of the court to accept an offer as it existed under the rules in force immediately before 6th April 2007. Therefore, if permission would have been required before 6th April 2007, it will be required after that date. But, if permission would not have been required because the parties have been able to agree liability for costs, or if a further offer has been made triggering a new period for acceptance, permission will not be required after 6th April 2007.

Payments into court made before 6th April 2007

- 3.1** Paragraph (4) of rule 7 provides that rule 37.3 will apply to a Part 36 payment made before 6th April 2007 as if that payment into court had been made under a court order.
- 3.2** Rule 37.3 applies to all payments under Part 37, including payments into court under order, and permission is required to take the money out of court.

- 3.3** By applying rule 37.3 to payments into court made before 6th April 2007, this provision preserves in particular the requirement that permission be obtained to withdraw such payment.
- 3.4** But, rule 37.3 also provides that money may be taken out of court without the court's permission where a Part 36 offer (including an offer underlying a Part 36 payment) is accepted without needing the permission of the court and the defendant agrees that the sum may be paid out in satisfaction of the offer. Paragraph 3.4 of the Practice Direction to Part 37 makes provision about how to take money out of court.
- 3.5** This exception to the permission requirement preserves the right under rule 37.2, as it was in force immediately before 6th April 2007, to treat a payment into court made under order or by way of a defence of tender before claim as a Part 36 payment.
- 3.6** This provision has the effect that a Part 36 payment made before 6th April 2007 may be taken out of court simply by filing a request for payment if the offer underlying the Part 36 payment is accepted without needing permission. In those circumstances, it may be assumed that the defendant agrees to the money being used in satisfaction of the sum offered, and the requirement in paragraph 3.4 of the Practice Direction to Part 37 to file a Form 202 will not apply.

Offers remaining open for acceptance

- 4.1** Paragraph (5) of rule 7 provides that the rules of court contained in Part 36 as it was in force immediately before 6th April 2007 shall continue to apply to a Part 36 offer or Part 36 payment made less than 21 days before 6th April 2007.
- 4.2** This provision preserves those rules in their entirety in relation to offers and payments made less than 21 days before 6th April 2007 for the period that they are expressed to remain open for acceptance.
- 4.3** Paragraph (6) of rule 7 provides that paragraph (5) ceases to apply at the expiry of 21 days from the date that the offer or payment was made, unless the trial has started within that period.
- 4.4** This provision has the effect that once the 21 day period has expired, the new regime (including the modifications at paragraphs (2), (3) and (4) of rule 7) will apply to the offer or payment.
- 4.5** If the trial has started within the 21 day period, the rules that were in force before 6th April 2007 will continue to apply to the offer or payment.

Offers made before commencement of proceedings

- 5.1** Paragraph (7) of rule 7 deals with the position where, before 6th April 2007, a person made an offer to settle before commencement of proceedings which complied with the provisions of rule 36.10 as it was in force immediately before 6th April 2007.
- 5.2** The court will take that offer into account when making any order as to costs. This preserves the discretion of the court to take into account an offer made before commencement of proceedings as it existed before 6th April 2007.
- 5.3** The permission of the court will be required to accept such an offer after proceedings have been commenced. This preserves the position under rule 36.10(4) as it was in force immediately before 6th April 2007.

- 5.4** If proceedings are commenced after 6th April 2007, the requirement to pay money into court in respect of a defendant's money offer under rule 36.10(3)(a) (as it was in force before 6th April 2007) will not apply to a defendant's money offer made before the proceedings were commenced.

