

50th UPDATE – PRACTICE DIRECTION AMENDMENTS

The new Practice Directions and the amendments to the existing Practice Directions supplementing the Civil Procedure Rules 1998 are made by the Master of the Rolls under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and are approved by [], Parliamentary Under Secretary of State, by the authority of the Lord Chancellor.

The amendments to the Pre-Action Protocols for Personal Injury Claims, the Resolution of Clinical Disputes and for Possession Claims based on Mortgage or Home Purchase Plan Arrears in respect of Residential Property are approved by the Master of the Rolls as Head of Civil Justice.

The new Practice Directions and amendments to the existing Practice Directions and the Pre-Action Protocols come into force as follows—	
PD2A - Court Offices	1st October 2009
PD2B- Allocation of Cases to Levels of Judiciary	1st October 2009
PD2B - (paragraph 8.1A) —Allocation of Cases to Levels of Judiciary	31st August 2009
PD3 - Striking Out a Statement of Case	1st October 2009
PD4 - Forms	1st October 2009
PD5 - Court documents	1st October 2009
PD6B - Service out of the Jurisdiction	1st October 2009
PD7A - How to Start Proceedings - The Claim Form	1st October 2009
PD7C - Production Centre	1st October 2009
PD7E - Money Claims Online	1st October 2009
PD8 - Alternative Procedure for Claims	1st October 2009
PD16 - Statements of Case	1st October 2009
PD25 - Interim Injunctions	1st October 2009
PD 29 - The Multi-Track	1st October 2009
PD32 - Evidence	1st October 2009

PD34 - Depositions and Court attendance by Witnesses	1st October 2009
PD35 - Experts and Assessors	1st October 2009
Annex to PD 35 (Protocol for the Instruction of Experts to give Evidence in Civil Claims)	1st October 2009
PD37 - Miscellaneous Provisions about Payments into Court	1st October 2009
PD39 - Miscellaneous Provisions Relating to Hearings	1st October 2009
PD40B - Judgments and Orders	1st October 2009
PD43-48 - Practice Direction about Costs	1st October 2009
PD49A - Applications under the Companies Acts and Related Legislation	1st October 2009
PD49B - Order under Section 127 of the Insolvency Act 1986	1st October 2009
PD51B - Automatic Orders Pilot Scheme	1st October 2009
PD54A - Judicial Review	1st October 2009
PD55 - Possession Claims	1st October 2009
PD57 – Probate	1st October 2009
PD61 - Admiralty Claims	1st October 2009
PD63 - Intellectual Property Claims	1st October 2009
PD64A - Estates, Trusts and Charities	1st October 2009
PD64B - Applications to the High Court for directions by Trustees in relation to the administration of the Trust	1st October 2009
PD65 - Anti-Social Behaviour and Harassment	31st August 2009
PD67 - Proceedings relating to Solicitors	1st October 2009
PD68 - References to the European Court	1st October 2009
PD69 - Court's Power to Appoint a Receiver	1st October 2009
PD74 - Enforcement of Judgments in Different Jurisdictions	1st October 2009
PD - Committal Applications supplementing RSC Order 52 and CCR Order 29	1st October 2009
PD - Insolvency Proceedings	1st October 2009
PD - Civil Recovery Proceedings	1st October 2009

PD - Devolution Issues	1st October 2009
PD (Pre-Action Conduct)	1st October 2009
Pre-Action Protocol for Personal Injury Claims	1st October 2009
Pre-Action Protocol for the Resolution of Clinical Disputes	1st October 2009
Pre-Action Protocol for Possession Claims based on Mortgage or Home Purchase Plan Arrears in respect of Residential Property	1st October 2009

The Right Honourable Sir Anthony Clarke
Master of the Rolls and Head of Civil Justice

Signed by authority of the Lord Chancellor:

[]
Parliamentary Under Secretary of State
Ministry of Justice

PRACTICE DIRECTION (COURT OFFICES) SUPPLEMENTING PART 2

For the Practice Direction (Court Offices) supplementing Part 2 substitute the Practice Direction 2A as set out in Annex 1.

PRACTICE DIRECTION (ALLOCATION OF CASES TO LEVELS OF JUDICIARY) SUPPLEMENTING PART 2

(1) For the title to the practice direction substitute—

“PRACTICE DIRECTION 2B — ALLOCATION OF CASES TO LEVELS OF JUDICIARY”.

- (2) In paragraph 3.1(f), for “Supreme Court Act 1981” substitute “Senior Courts Act 1981”.
- (3) In paragraph 5.1 for “In proceedings in the Chancery Division, a Master or a District Judge may not deal with the following without the consent of the Chancellor:” substitute “In proceedings in the Chancery Division, a Master or a district judge may not deal with the following without the consent of the Chancellor of the High Court—“
- (4) For paragraph 5.1(k) substitute—
 - “(k) making orders in proceedings in the Patents Court except—
 - (i) orders by way of settlement, except settlement of procedural disputes;
 - (ii) applications for extension of time;
 - (iii) applications for permission to serve out of the jurisdiction;
 - (iv) applications for security for costs;
 - (v) other matters as directed by a judge of the court; and
 - (vi) enforcement of money judgments.”
- (5) In paragraph 8.1A—
 - (a) in sub-paragraph (1) omit “and”; and
 - (b) in sub-paragraph (2) after “(parenting orders)” for “.” substitute “; and”.
- (6) After sub-paragraph (2) insert—
 - “(3) section 4 or 9 of the Violent Crime Reduction Act 2006 (drinking banning orders).”.

PRACTICE DIRECTION (STRIKING OUT A STATEMENT OF CASE) SUPPLEMENTING PART 3

In paragraph 7.1 for “Supreme Court Act 1981” substitute “Senior Courts Act 1981”.

PRACTICE DIRECTION (FORMS) SUPPLEMENTING PART 4

In Table 1—

- (1) in the heading of—
 - (a) Form No 84, for “(s.37 of Supreme Court Act 1981)” substitute “(section 37 of the Senior Courts Act 1981)”;
 - (b) Form PF67—
 - (i) after “make” insert “an”; and
 - (ii) for “House of Lords” substitute “the Supreme Court”; and
 - (c) Form PF68, for “House of Lords” substitute “Supreme Court”; and
- (2) after the entry to Form N122 insert—

“N123 Mortgage Pre-Action Protocol Checklist”.

PRACTICE DIRECTION (COURT DOCUMENTS) SUPPLEMENTING PART 5

In paragraph 6.1(1) for “Supreme Court” substitute “Senior Courts”.

PRACTICE DIRECTION 6B - SERVICE OUT OF THE JURISDICTION

In paragraph 3.1(18) for “Supreme Court Act 1981” substitute “Senior Courts Act 1981”.

PRACTICE DIRECTION (HOW TO START PROCEEDINGS) SUPPLEMENTING PART 7

- (1) In paragraph 2.5, for “Supreme Court Act 1981” substitute “Senior Courts Act 1981”.
- (2) In paragraph 2.6, for “Supreme Court Act 1981” substitute “Senior Courts Act 1981”.

PRACTICE DIRECTION 7C (PRODUCTION CENTRE) SUPPLEMENTING PART 7

After paragraph 1.4(3), insert—

- “(3A) The requirement in paragraph 7.3 of practice direction 16 (statements of case) for documents to be attached to the particulars of contract claims does not apply to claims to be issued by the Centre, unless the particulars of claim are served separately in accordance with paragraph 5.2 of this practice direction.”

PRACTICE DIRECTION 7E (MONEY CLAIM ONLINE) SUPPLEMENTING PART 7

After paragraph 5.2, insert—

“5.2A The requirement in paragraph 7.3 of practice direction 16 (statements of case) for documents to be attached to the particulars of contract claims does not apply to claims started using an online claim form, unless the particulars of claim are served separately in accordance with paragraph 5.2 of this practice direction.”

PRACTICE DIRECTION (ALTERNATIVE PROCEDURE FOR CLAIMS) SUPPLEMENTING PART 8

- (1) In the table of contents, for “Application under Section 42 of the Supreme Court Act 1981” substitute “Application under section 42 of the Senior Courts Act 1981”.
- (2) In the table in paragraph 9.4, for “Application under section 42 of the Supreme Court Act 1981” substitute “Application under section 42 of the Senior Courts Act 1981”.
- (3) In the heading above paragraph 16.1, for “Section 42 of the Supreme Court Act 1981” substitute “section 42 of the Senior Courts Act 1981”.
- (4) In paragraph 16.1, for “Supreme Court Act 1981” substitute “Senior Courts Act 1981”.

PRACTICE DIRECTION (STATEMENTS OF CASE) SUPPLEMENTING PART 16

In paragraph 4.4(1), for “Supreme Court Act 1981” substitute “Senior Courts Act 1981”.

PRACTICE DIRECTION (INTERIM INJUNCTIONS) SUPPLEMENTING PART 25

In paragraph 7.9—

- (1) for “in:” substitute “in—”; and
- (2) in sub-paragraph (1) for “Supreme Court Act 1981” substitute “Senior Courts Act 1981”.

PRACTICE DIRECTION (THE FAST TRACK) SUPPLEMENTING PART 28

In the Appendix at the end of the section headed “Expert Evidence” insert—

“(see paragraphs 6, 7 and 9 of practice direction 35)”

PRACTICE DIRECTION (THE MULTI-TRACK) SUPPLEMENTING PART 29

After paragraph 4.8 insert—

“(see paragraphs 6, 7 and 9 of practice direction 35)”

PRACTICE DIRECTION (EVIDENCE) SUPPLEMENTING PART 32

- (1) In paragraph 9.1(4), for “Supreme Court” substitute “Senior Courts”.
- (2) In paragraph 28.1—
 - (a) in sub-paragraph (1), for “shall”, substitute “must”; and
 - (b) in sub-paragraph (2), for “the court”, substitute “The court”.
- (3) In paragraph 28.1(2)(c)—
 - (a) for “to him to” substitute “that the Attorney General”; and
 - (b) omit “he wishes”.
- (4) For paragraph 28.2 substitute—

“28.2(1) A request to the Attorney General must be made in writing and sent to the Attorney General’s Office at 20 Victoria Street, London, SW1H 0NF. The request must be accompanied by a copy of the order directing that the matter be referred to the Attorney General and must—

 - (a) identify the statement said to be false;
 - (b) explain—
 - (i) why it is false; and
 - (ii) why the maker knew the statement to be false at the time it was made; and
 - (c) explain why contempt proceedings would be appropriate in the light of the overriding objective in Part 1.

”
- (2) The Attorney General prefers a request that comes from the court to one made direct by a party to the claim in which the alleged contempt occurred without prior consideration by the court. A request to the Attorney General is not a way of appealing against, or reviewing the decision of the judge.”

(5) For paragraph 28.3 substitute—

“Where a party makes an application to the court for permission to commence proceedings for contempt of court, it must be supported by written evidence of the facts and matters specified in paragraph 28.2(1) and the result of the request to the Attorney General made by the applicant.”

PRACTICE DIRECTION (DEPOSITIONS AND COURT ATTENDANCE BY WITNESSES) SUPPLEMENTING PART 34

In Annex A, in the first un-numbered paragraph, for “Supreme Court of England and Wales” substitute “Senior Courts of England and Wales”.

PRACTICE DIRECTION (EXPERTS AND ASSESSORS) SUPPLEMENTING PART 35

For the Practice Direction supplementing Part 35 (Experts and Assessors) substitute the Practice Direction at Annex 2.

ANNEX TO THE PRACTICE DIRECTION (PROTOCOL FOR THE INSTRUCTION OF EXPERTS TO GIVE EVIDENCE IN CIVIL CLAIMS) SUPPLEMENTING PART 35

For paragraph 13.5 substitute—

“13.5 Experts’ reports must contain statements that they—

- (i) understand their duty to the court and have complied and will continue to comply with it; and
- (ii) are aware of the requirements of Part 35 and practice direction 35, this protocol and the practice direction on pre-action conduct.

Experts’ reports must also be verified by a statement of truth. The form of the statement of truth is as follows—

“ I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.”

This wording is mandatory and must not be modified.

PRACTICE DIRECTION (MISCELLANEOUS PROVISIONS ABOUT PAYMENTS INTO COURT) SUPPLEMENTING PART 37

In paragraph 1.1(1)(a), for “Supreme Court” substitute “Senior Courts”.

PRACTICE DIRECTION (MISCELLANEOUS PROVISIONS RELATING TO HEARINGS) SUPPLEMENTING PART 39

(1) For paragraph 1.5(8) substitute—

“(8) an application for security for costs to be provided by a claimant who is a company or a limited liability partnership in the circumstances set out in rule 25.13(2)(c),”

PRACTICE DIRECTION (JUDGMENTS AND ORDERS) SUPPLEMENTING PART 40

- (1) In the table of contents, for “Order to make an order of the House of Lords an order of the High Court” substitute “Order to make an order of the Supreme Court an order of the High Court”.
- (2) In paragraph 2.3(2)(c) for “Supreme Court” substitute “Senior Courts”.
- (3) In the heading above paragraph 13.1, for “House of Lords” substitute “Supreme Court”.
- (4) In paragraph 13.1 for “House of Lords” substitute “Supreme Court”.
- (5) In paragraph 13.2—
 - (a) for “House of Lords” in the three places that it appears, substitute “Supreme Court”; and
 - (b) in sub-paragraph (3) for “Clerk of Parliaments” substitute “Registrar of the Supreme Court”.
- (6) In paragraph 13.3, for “House of Lords” substitute “Supreme Court”.

PRACTICE DIRECTION SUPPLEMENTING PARTS 43 TO 48

- (1) In paragraph 1.3—
 - (a) for “Supreme Court” substitute “Senior Courts”; and
 - (b) for Supreme Court Act 1981 substitute “Senior Courts Act 1981”.
- (2) In paragraph 1.4, for “Supreme Court” substitute “Senior Courts”.
- (3) In paragraph 17.2, for “Supreme Court Costs Office” substitute “Costs Office”.
- (4) In the parenthesis below paragraph 19.2, for “should” substitute “must”.
- (5) For paragraph 19.4(3) substitute—

“(3) Where the funding arrangement is an insurance policy, the party must—

 - (a) state the name and address of the insurer, the policy number and the date of the policy and identify the claim or claims to which it relates (including Part 20 claims if any);
 - (b) state the level of cover provided by the insurance; and
 - (c) state whether the insurance premiums are staged and, if so, the points at which an increased premium is payable”.
- (6) After paragraph 19.5 insert—

“Transitional Provision

19.6 The amendments to the parenthesis below paragraph 19.2 and to paragraph 19.4(3) do not apply where the funding arrangement was entered into before 1st October 2009 and the parenthesis below paragraph 19.2 and paragraph 19.4(3) in force immediately before that date will continue to apply to that funding arrangement as if those amendments had not been made.”
- (7) In paragraph 23.2(2), for “Supreme Court Costs Office” substitute “Costs Office”.
- (8) In paragraph 23.2A—
 - (a) in sub-paragraph (2)(i), in the two places where it occurs, for “Supreme Court Costs Office” substitute “Costs Office”; and

- (b) in sub-paragraph (2)(ii), for “Supreme Court Costs Office” substitute “Costs Office”.
- (9) In paragraph 23A.3, for “rules 44.19 and 44.20(2) must be” substitute “rule 44.19 must be”.
- (10) In paragraph 30.1(1), for “Supreme Court Costs Office” substitute “Costs Office”.
- (11) In paragraph 31.1(2), for “Supreme Court Costs Office” substitute “Costs Office”.
- (12) In paragraph 31.1A—
 - (a) in sub-paragraph (2)(i), in the two places where it occurs, for “Supreme Court Costs Office” substitute “Costs Office”.
 - (b) in sub-paragraph (2)(ii), for “Supreme Court Costs Office” substitute “Costs Office”.
- (13) In paragraph 31.2(3), in the two places where it occurs, for “Supreme Court Costs Office” substitute “Costs Office”.
- (14) In paragraph 37.7, for “Supreme Court Costs Office” substitute “Costs Office”.
- (15) In paragraph 42.12, for “Supreme Court Costs Office” substitute “Costs Office”.
- (16) In paragraph 43.3(g), for “In the Supreme Court Costs Office” substitute “in the Costs Office”.
- (17) In paragraph 49A.4, for “Supreme Court Costs Office” substitute “Costs Office”.
- (18) In paragraph 50.3(1), for “Supreme Court Act 1981” substitute “Senior Courts Act 1981”.

PRACTICE DIRECTION (APPLICATIONS UNDER THE COMPANIES ACTS AND RELATED LEGISLATION) SUPPLEMENTING PART 49

For the Practice Direction (Applications Under the Companies Acts and Related Legislation) Supplementing Part 49 substitute the Practice Direction as set out in Annex 3.

**PRACTICE DIRECTION (ORDER UNDER S.127 THE INSOLVENCY ACT 1986)
SUPPLEMENTING PART 49**

- (1) For the title to the Practice Direction substitute—
“Practice Direction 49B – Order Under Section 127 of the Insolvency Act 1986”.
- (2) In paragraph 1, for “s.459 Companies Act 1985” substitute “section 994 of the Companies Act 2006”.

**PRACTICE DIRECTION 51B (AUTOMATIC ORDERS PILOT SCHEME) SUPPLEMENTING
PART 51**

- (1) For paragraph 1.1 substitute—
“1.1 This Practice Direction is made under rule 51.2. It provides for a pilot scheme (‘the Automatic Orders Pilot Scheme’) to operate in two stages.”.
- (2) After paragraph 1.1 insert—
“1.1A The first stage will—
 - (1) operate from 1st October 2008 to 30th September 2009 in the county courts at Chelmsford, Newcastle, Teesside, Watford and York; and
 - (2) apply to claims started on or after 1st October 2008.
1.1B The second stage will—
 - (1) operate for a further year from 1st October 2009 to 30th September 2010 in all county courts and the High Court; and
 - (2) apply to all claims started on or after 1st October 2009.”.

PRACTICE DIRECTION 54A – JUDICIAL REVIEW

In paragraph 1.1 in the first bullet point, for “Supreme Court Act 1981” substitute “Senior Courts Act 1981”.

PRACTICE DIRECTION (POSSESSION CLAIMS) SUPPLEMENTING PART 55

- (1) In paragraph 2.4, for “Supreme Court Act 1981” substitute “Senior Courts Act 1981”.

(2) After paragraph 5.4 insert—

“5.5 The claimant must bring 2 completed copies of Form N123 to the hearing.”

PRACTICE DIRECTION (PROBATE) SUPPLEMENTING PART 57

(1) In the parenthesis below paragraph 2.4, for “Supreme Court Act 1981” substitute “Senior Courts Act 1981”.

(2) In paragraph 7.1, for “Supreme Court Act 1981” substitute “Senior Courts Act 1981”.

(3) In paragraph 8.1, for “Supreme Court Act 1981” substitute “Senior Courts Act 1981”.

(4) In paragraph 13.1, for “accompanied by:” substitute “accompanied by—”.

(5) For paragraph 13.1(1) substitute—

“(1) either—

(a) a sealed or certified copy of the grant of probate or letters of administration, or

(b) where the claim is to substitute or remove an executor and is made before a grant of probate has been issued, the original or, if the original is not available, a copy of the will; and”

(6) After paragraph 14.2 insert—

“14.3 Where the claim is to substitute or remove an executor and the claim is made before a grant of probate has been issued, paragraphs 14.1 and 14.2 do not apply. Where in such a case an order is made substituting or removing an executor a sealed copy of the order must be sent to the Principal Registry of the Family Division where it will be recorded and retained pending any application for a grant. An order sent to the Principal Registry in accordance with this paragraph must be accompanied by a note of the full name and date of death of the deceased, if it is not apparent on the face of the order.”.

PRACTICE DIRECTION (ADMIRALTY CLAIMS) SUPPLEMENTING PART 61

In paragraph 5.3(2), for “Supreme Court Act 1981” substitute “Senior Courts Act 1981”.

**PRACTICE DIRECTION (INTELLECTUAL PROPERTY CLAIMS) SUPPLEMENTING PART
63**

For the Practice Direction supplementing Part 63 (Patents and Intellectual Property Claims) substitute the Practice Direction at Annex 4.

**PRACTICE DIRECTION (ESTATES, TRUSTS AND CHARITIES) SUPPLEMENTING PART
64**

- (1) For the title to the Practice Direction substitute—

“PRACTICE DIRECTION 64A – ESTATES, TRUSTS AND CHARITIES”.

- (2) In the table of contents, after the entry “Examples of claims under rule 64.2(a)” insert—

“Determining certain claims under rule 64.2(a) without a hearing Para. 1A.1”.

- (3) In paragraph 1(2)(b), after “trustee”, insert “(whether administrative or dispositive)”.

- (4) After paragraph 1, insert—

“Determining certain claims under rule 64.2(a) without a hearing

1A.1 Where a claim is made by a trustee for a remedy within paragraph 1(2)(b) (including a case where the remedy sought is approval of a transaction affected by conflict of interests or duties), the court may be requested to determine the claim without a hearing.

1A.2 The claim form in such a case may be issued in accordance with rule 8.2A (Issue of claim form without naming defendants), and no separate application for permission under rule 8.2A need be made.

1A.3 The claim form must be accompanied by—

- (a) a witness statement setting out the material facts justifying determination without a hearing and in particular—
 - (i) identifying those affected by the remedy sought and

- (ii) detailing any consultation of those so affected and the result of that consultation;
- (b) the advice of a lawyer having a 10-year High Court qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 on the merits of the claim;
- (c) a draft order for the remedy sought;
- (d) a statement of costs.

1A.4 If the court considers that the case does not require an oral hearing, it will proceed to consider the claim on the papers.

1A.5 If the court considers that an oral hearing is required, it will give appropriate directions.

1A.6 If the court considers it appropriate, it will make the order sought and may direct that the claimant must—

- (a) serve notice of the order on the interested parties in accordance with rule 19.8A, and
- (b) file a certificate of service within 7 days of doing so. “

**PRACTICE DIRECTION (APPLICATIONS TO THE COURT FOR DIRECTIONS BY TRUSTEES IN RELATION TO THE ADMINISTRATION OF THE TRUST)
SUPPLEMENTING PART 64**

For the title to the Practice Direction substitute—

“PRACTICE DIRECTION 64B – APPLICATIONS TO THE COURT FOR DIRECTIONS BY TRUSTEES IN RELATION TO THE ADMINISTRATION OF THE TRUST”.

**PRACTICE DIRECTION (ANTI-SOCIAL BEHAVIOUR AND HARASSMENT)
SUPPLEMENTING PART 65**

- (1) In the table of contents, after the entry “Warrants of arrest on application under section 3(3) of the 1997 Act” insert—

“VI – Drinking Banning Orders under the Violent Crime Reduction Act 2006

Service of an order under section 4(7) or 9 of the 2006 Act	Para. 15.1
Application to join a person to the principal proceedings	Para. 15.2”

(2) For “SECTION VI” substitute “SECTION VI - Drinking Banning Orders under the Violent Crime Reduction Act 2006”.

(3) After the heading to Section VI insert—

“Service of an order under section 4(7) or 9 of the 2006 Act

15.1 An order under section 4(7) or an interim order under section 9 of the 2006 Act must be served personally on the defendant.

Application to join a person to the principal proceedings

15.2 An application by a relevant authority under section 4(5) of the 2006 Act to join a person to the principal proceedings may only be made against a person aged 18 or over.”.

**PRACTICE DIRECTION (PROCEEDINGS RELATING TO SOLICITORS)
SUPPLEMENTING PART 67**

- (1) In the table of contents, for “Supreme Court Costs Office” substitute “Costs Office”.
- (2) In the heading for paragraph 2.1, for “Supreme Court Costs Office” substitute “Costs Office”.
- (3) In paragraph 2.1—
 - (a) in sub-paragraph (1), for “Supreme Court Costs Office” substitute “Costs Office”; and
 - (b) in sub-paragraph (2), for “Supreme Court Costs Office” substitute “Costs Office”.
- (4) In paragraph 2.2, for “Supreme Court Costs Office” substitute “Costs Office”.
- (5) After paragraph 2.2 insert—

“2.3 “Costs Office” has the same meaning as set out in rule 43.1(2)(ba).”

- (6) In paragraph 5, for “Supreme Court Costs Office” substitute “Costs Office”.

PRACTICE DIRECTION (REFERENCES TO THE EUROPEAN COURT) SUPPLEMENTING PART 68

For the Practice Direction supplementing Part 68 (References to the European Court) substitute the Practice Direction set out in Annex 5.

PRACTICE DIRECTION (COURT’S POWER TO APPOINT A RECEIVER) SUPPLEMENTING PART 69

In paragraph 1.1(1), for “Supreme Court Act 1981”, substitute “Senior Courts Act 1981”.

PRACTICE DIRECTION (ENFORCEMENT OF JUDGMENTS IN DIFFERENT JURISDICTIONS) SUPPLEMENTING PART 74

- (1) In paragraph 3, for “Central Office of the Supreme Court” substitute “Central Office of the Senior Courts”.
- (2) In paragraph 7.1, for “Seal of the Supreme court” substitute “Seal of the Senior Courts”.
- (3) In paragraph 8.1, for “Central Office of the Supreme Court” substitute “Central Office of the Senior Courts”.

PRACTICE DIRECTION (COMMITTAL APPLICATIONS) SUPPLEMENTING RSC ORDER 52 AND CCR ORDER 29

In paragraph 11(1) in the footnote to “a person authorised to act as such”, for “Supreme Court Act 1981” substitute “Senior Courts Act 1981”.

PRACTICE DIRECTION – DEVOLUTION ISSUES

- (1) For paragraph 7.5 substitute—
- “The devolution issue notice will specify a date as the date by which the Attorney General or the Assembly must notify the court of any intention to take part as a party

to the proceedings, so far as they relate to a devolution issues. Such date will be 14 days, or such longer period as the court may direct (see below), after the date of the notice.

- (2) In paragraph 7.6—
 - (a) omit “devolution issue”; and
 - (b) for “that he or it wishes”, substitute “of any intention”.
- (3) In paragraph 7.7(1)—
 - (a) for “notice,” substitute “notice—”;
 - (b) in sub-paragraph (a)—
 - (i) omit “devolution issue”; and
 - (ii) for “him” substitute “the Attorney General’s Office”; and
 - (c) in sub-paragraph (b) omit “devolution issue”.
- (4) In paragraph 7.10 for “that he or it wishes” substitute “of any intention”; and
- (5) In paragraph 8.1—
 - (a) for “wishes” substitute “intends”; and
 - (b) for “he or it” substitute “the Attorney General or the Assembly”.
- (6) In paragraph 8.3—
 - (a) for “wishes” substitute “intends”; and
 - (b) for “he or it” substitute “the Attorney General or the Assembly”.
- (7) In paragraph 10.3(5)(b) omit “he is”.
- (8) In Annex 2 paragraph (2), for “Attorney General’s Chambers, 9 Buckingham Gate, London, SW1E 6JP. Fax number 0171 271 2433.” substitute “Attorney General’s Offices at 20 Victoria Street, London, SW1H 0NF. Fax number 020 7271 2432.”.

PRACTICE DIRECTION - INSOLVENCY PROCEEDINGS

In paragraph 15.8, for “Supreme Court Accounts Office” substitute “Senior Courts Accounts Office”.

PRACTICE DIRECTION – CIVIL RECOVERY PROCEEDINGS

In paragraph 7C, for “Central Office of the Supreme Court” substitute “Central Office of the Senior Courts”.

PRACTICE DIRECTION (PRE-ACTION CONDUCT)

- (1) In the table of contents, after the entry “Notifying the court” insert—
“Transitional Provision Paragraph 9.8”.
- (2) In paragraph 9.3—
 - (a) for “should”, substitute “must”; and
 - (b) after “as soon as possible”, insert “and in any event either within 7 days of entering into the funding arrangement concerned or, where a claimant enters into a funding arrangement before sending a letter before claim, in the letter before claim”.
- (3) After paragraph 9.7 insert—
“Transitional Provision
9.8 The amendments to paragraph 9.3 do not apply to a funding arrangement entered into before the 1st October 2009 and paragraph 9.3 in force immediately before that date will continue to apply to that funding arrangement as if paragraph 9.3 had not been amended.”

PRE-ACTION PROTOCOL FOR PERSONAL INJURY CLAIMS

- (1) In paragraph 2.3—
 - (a) for “£15,000” substitute “the fast track limit and”; and
 - (b) for “the fast track” the first time only that it occurs, substitute “that track”.
- (2) In paragraph 2.4, for “worth more than £15,000, with a view to avoiding” substitute “with a value of more than the fast track limit, to avoid”.
- (3) In paragraph 3.9, for “£15,000” substitute “the value of the fast track limit”.
- (4) For the Rehabilitation Code at Annex D substitute the Rehabilitation Code set out in Annex 6.

PRE-ACTION PROTOCOL FOR THE RESOLUTION OF CLINICAL DISPUTES

In Annex B to the Protocol in the paragraph entitled “Use of the Forms”, for “Supreme Court Act 1981” substitute “Senior Courts Act 1981”.

PRE-ACTION PROTOCOL FOR POSSESSION CLAIMS BASED ON MORTGAGE OR HOME PURCHASE PLAN ARREARS IN RESPECT OF RESIDENTIAL PROPERTY

- (1) For paragraph 6.1(1) substitute—
 - “(1) submitted a claim to—
 - (a) the Department for Works and Pensions (DWP) for Support for Mortgage Interest (SMI); or
 - (b) an insurer under a mortgage payment protection policy, and has provided all the evidence required to process a claim;”
- (2) In paragraph 6.1(2), after “for payment” insert “from the DWP or”.
- (3) In paragraph 6.1(3), for “the insurance” substitute “a claim to the DWP or the insurer”.

ANNEX 1

PRACTICE DIRECTION 2A – COURT OFFICES

This Practice Direction supplements CPR Part 2

Contents of this Practice Direction

Central Office of the High Court at the Royal Courts of Justice	Paragraph 1
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County courts	Paragraph 3
Court office closures at Christmas and New Year	Annex

Central Office of the High Court at the Royal Courts of Justice

- 1** The Central Office will be divided into such departments, and the business performed in the Central Office shall be distributed among the departments in such manner, as is set out in the Queen's Bench Division Guide.

Business in the Offices of the Senior Courts

2.1

- (1) The offices of the Senior Courts will be open on every day of the year except—
- (a) Saturdays and Sundays;
 - (b) Good Friday;
 - (c) Christmas Day;
 - (d) a further day over the Christmas period determined in accordance with the table annexed to this Practice Direction;
 - (e) Bank Holidays in England and Wales under the Banking and Financial Dealings Act 1971; and
 - (f) such other days as the Lord Chancellor, with the concurrence of the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division, and the Chancellor of the High Court ('the Heads of Division') may direct.
- (2) The hours during which the offices of the Senior Courts at the Royal Courts of Justice and at the Principal Registry of the Family Division at First Avenue House, 42-49 High Holborn, London WC1V 6NP will be open to the public are as follows—

- (a) from 10 am to 4.30 pm;
 - (b) such other hours as the Lord Chancellor, with the concurrence of the Heads of Division, may from time to time direct.
- (3) Every District Registry shall be open on the days and during the hours that the Lord Chancellor from time to time directs and, in the absence of any such directions, shall be open on the same days and during the same hours as the county court offices of which it forms part are open.
- 2.2** One of the Masters of the Queen's Bench Division (the 'Practice Master') shall be present at the Central Office on every day on which the office is open for the purpose of superintending the business performed there and giving any directions which may be required on questions of practice and procedure.

County courts

- 3.1** Every county court shall have an office or, if the Lord Chancellor so directs, two or more offices, situated at such place or places as he may direct, for the transaction of the business of the court.
- 3.2** Every county court office, or if a court has two or more offices at least one of those offices, will be open on every day of the year except—
 - (a) Saturdays and Sundays;
 - (b) Good Friday;
 - (c) Christmas Day;
 - (d) a further day over the Christmas period determined in accordance with the table annexed to this Practice Direction;
 - (e) Bank Holidays in England and Wales under the Banking and Financial Dealings Act 1971; and
 - (f) such other days as the Lord Chancellor may direct.
- 3.3** The hours during which any county court office is open to the public will be those published from time to time by, and available to the public on, the website of Her

Majesty's Courts Service¹, or such other hours as the Lord Chancellor may from time to time direct.

ANNEX TO PRACTICE DIRECTION 2A: COURT OFFICE CLOSURES AT CHRISTMAS AND NEW YEAR

Christmas Day	Bank Holiday	Further day	New Year Bank Holiday
Sunday 25 December	Monday 26 and Tuesday 27 December	Wednesday 28 December	Monday 2 January
Monday 25 December	Tuesday 26 December	Wednesday 27 December	Monday 1 January
Tuesday 25 December	Wednesday 26 December	Monday 24 December	Tuesday 1 January
Wednesday 25 December	Thursday 26 December	Friday 27 December	Wednesday 1 January
Thursday 25 December	Friday 26 December	Wednesday 24 December	Thursday 1 January
Friday 25 December	Monday 28 December	Thursday 24 December	Friday 1 January
Saturday 25 December	Monday 27 and Tuesday 28 December	Friday 24 December	Monday 3 January

¹ The court office opening hours are published for each court in the "Court Finder" section of the website of Her Majesty's Court Service, which can be found at: <http://www.hmcourts-service.gov.uk/HMCSCourtFinder/>

ANNEX 2

PRACTICE DIRECTION 35 – EXPERTS AND ASSESSORS

This Practice Direction supplements CPR Part 35

Contents of this Practice Direction

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Expert Evidence - General Requirements	Paragraph 2.1
Form and Content of an Expert's Report	Paragraph 3.1
Information	Paragraph 4
Instructions	Paragraph 5
Questions to Experts	Paragraph 6.1
Single Joint Expert	Paragraph 7
Orders	Paragraph 8
Discussion between Experts	Paragraph 9.1
Assessors	Paragraph 10.1
Annex	

Introduction

- 1.** Part 35 is intended to limit the use of oral expert evidence to that which is reasonably required. In addition, where possible, matters requiring expert evidence should be dealt with by only one expert. Experts and those instructing them are expected to have regard to the guidance contained in the Protocol for the Instruction of Experts to give Evidence in Civil Claims annexed to this practice direction.
(Further guidance on experts is contained in Annex C to the Practice Direction (Pre-Action Conduct)).

Expert Evidence – General Requirements

- 2.1** Expert evidence should be the independent product of the expert uninfluenced by the pressures of litigation.
- 2.2** Experts should assist the court by providing objective, unbiased opinions on matters within their expertise, and should not assume the role of an advocate.

- 2.3** Experts should consider all material facts, including those which might detract from their opinions.
- 2.4** Experts should make it clear—
- (a) when a question or issue falls outside their expertise; and
 - (b) when they are not able to reach a definite opinion, for example because they have insufficient information.
- 2.5** If, after producing a report, an expert's view changes on any material matter, such change of view should be communicated to all the parties without delay, and when appropriate to the court.

Form and Content of an Expert's Report

- 3.1** An expert's report should be addressed to the court and not to the party from whom the expert has received instructions.
- 3.2** An expert's report must:
- (1) give details of the expert's qualifications;
 - (2) give details of any literature or other material which has been relied on in making the report;
 - (3) contain a statement setting out the substance of all facts and instructions which are material to the opinions expressed in the report or upon which those opinions are based;
 - (4) make clear which of the facts stated in the report are within the expert's own knowledge;
 - (5) say who carried out any examination, measurement, test or experiment which the expert has used for the report, give the qualifications of that person, and say whether or not the test or experiment has been carried out under the expert's supervision;
 - (6) where there is a range of opinion on the matters dealt with in the report—
 - (a) summarise the range of opinions; and
 - (b) give reasons for the expert's own opinion;
 - (7) contain a summary of the conclusions reached;
 - (8) if the expert is not able to give an opinion without qualification, state the qualification; and
 - (9) contain a statement that the expert—

- (a) understands their duty to the court, and has complied with that duty;
and
- (b) is aware of the requirements of Part 35, this practice direction and the Protocol for Instruction of Experts to give Evidence in Civil Claims.

3.3 An expert's report must be verified by a statement of truth in the following form—
“I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.”

(Part 22 deals with statements of truth. Rule 32.14 sets out the consequences of verifying a document containing a false statement without an honest belief in its truth.)

Information

- 4.** Under rule 35.9 the court may direct a party with access to information, which is not reasonably available to another party to serve on that other party a document, which records the information. The document served must include sufficient details of all the facts, tests, experiments and assumptions which underlie any part of the information to enable the party on whom it is served to make, or to obtain, a proper interpretation of the information and an assessment of its significance.

Instructions

- 5.** Cross-examination of experts on the contents of their instructions will not be allowed unless the court permits it (or unless the party who gave the instructions consents). Before it gives permission the court must be satisfied that there are reasonable grounds to consider that the statement in the report of the substance of the instructions is inaccurate or incomplete. If the court is so satisfied, it will allow the cross-examination where it appears to be in the interests of justice.

Questions to Experts

- 6.1** Where a party sends a written question or questions under rule 35.6 direct to an expert, a copy of the questions must, at the same time, be sent to the other party or parties.

- 6.2** The party or parties instructing the expert must pay any fees charged by that expert for answering questions put under rule 35.6. This does not affect any decision of the court as to the party who is ultimately to bear the expert's fees.

Single joint expert

- 7.** When considering whether to give permission for the parties to rely on expert evidence and whether that evidence should be from a single joint expert the court will take into account all the circumstances in particular, whether:
- (a) it is proportionate to have separate experts for each party on a particular issue with reference to—
 - (i) the amount in dispute;
 - (ii) the importance to the parties; and
 - (iii) the complexity of the issue;
 - (b) the instruction of a single joint expert is likely to assist the parties and the court to resolve the issue more speedily and in a more cost-effective way than separately instructed experts;
 - (c) expert evidence is to be given on the issue of liability, causation or quantum;
 - (d) the expert evidence falls within a substantially established area of knowledge which is unlikely to be in dispute or there is likely to be a range of expert opinion;
 - (e) a party has already instructed an expert on the issue in question and whether or not that was done in compliance with any practice direction or relevant pre-action protocol;
 - (f) questions put in accordance with rule 35.6 are likely to remove the need for the other party to instruct an expert if one party has already instructed an expert;
 - (g) questions put to a single joint expert may not conclusively deal with all issues that may require testing prior to trial;
 - (h) a conference may be required with the legal representatives, experts and other witnesses which may make instruction of a single joint expert impractical; and
 - (i) a claim to privilege^{GL} makes the instruction of any expert as a single joint expert inappropriate.

Orders

- 8.** Where an order requires an act to be done by an expert, or otherwise affects an expert, the party instructing that expert must serve a copy of the order on the expert. The claimant must serve the order on a single joint expert.

Discussions between experts

- 9.1** Unless directed by the court discussions between experts are not mandatory. Parties must consider, with their experts, at an early stage, whether there is likely to be any useful purpose in holding an expert's discussion and if so when.
- 9.2** The purpose of discussions between experts is not for experts to settle cases but to agree and narrow issues and in particular to identify:
- (i) the extent of the agreement between them;
 - (ii) the points of and short reasons for any disagreement;
 - (iii) action, if any, which may be taken to resolve any outstanding points of disagreement; and
 - (iv) any further material issues not raised and the extent to which these issues are agreed.
- 9.3** Where the experts are to meet, the parties must discuss and if possible agree whether an agenda is necessary, and if so attempt to agree one that helps the experts to focus on the issues which need to be discussed. The agenda must not be in the form of leading questions or hostile in tone.
- 9.4** Unless ordered by the court, or agreed by all parties, and the experts, neither the parties nor their legal representatives may attend experts discussions.
- 9.5** If the legal representatives do attend—
- (i) they should not normally intervene in the discussion, except to answer questions put to them by the experts or to advise on the law; and
 - (ii) the experts may if they so wish hold part of their discussions in the absence of the legal representatives.
- 9.6** A statement must be prepared by the experts dealing with paragraphs 9.2(i) – (iv) above. Individual copies of the statements must be signed by the experts at the conclusion of the discussion, or as soon thereafter as practicable, and in any event

within 7 days. Copies of the statements must be provided to the parties no later than 14 days after signing.

9.7 Experts must give their own opinions to assist the court and do not require the authority of the parties to sign a joint statement.

9.8 If an expert significantly alters an opinion, the joint statement must include a note or addendum by that expert explaining the change of opinion.

Assessors

10.1 An assessor may be appointed to assist the court under rule 35.15. Not less than 21 days before making any such appointment, the court will notify each party in writing of the name of the proposed assessor, of the matter in respect of which the assistance of the assessor will be sought and of the qualifications of the assessor to give that assistance.

10.2 Where any person has been proposed for appointment as an assessor, any party may object to that person either personally or in respect of that person's qualification.

10.3 Any such objection must be made in writing and filed with the court within 7 days of receipt of the notification referred to in paragraph 10.1 and will be taken into account by the court in deciding whether or not to make the appointment.

10.4 Copies of any report prepared by the assessor will be sent to each of the parties but the assessor will not give oral evidence or be open to cross-examination or questioning.

ANNEX

PROTOCOL FOR THE INSTRUCTION OF EXPERTS TO GIVE EVIDENCE IN CIVIL CLAIMS

ANNEX 3

PRACTICE DIRECTION 49A – APPLICATIONS UNDER THE COMPANIES ACTS AND RELATED LEGISLATION

This Practice Direction supplements CPR Part 49

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Contents of this Practice Direction

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Section I

General

Definitions

1. In this practice direction—
 - ‘the 1985 Act’ means the Companies Act 1985¹;
 - ‘the 2006 Act’ means the Companies Act 2006²;
 - ‘the CJPA’ means the Criminal Justice and Police Act 2001³;
 - ‘the EC Regulation’ means Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European Company (SE)⁴;
 - ‘Part VII FSMA’ means Part VII of the Financial Services and Markets Act 2000⁵;
 - ‘the Cross-Border Mergers Regulations’ means the Companies (Cross-Border Mergers) Regulations 2007⁶.

Application of this practice direction

2. This practice direction applies to proceedings under—
 - (a) the 1985 Act;
 - (b) the 2006 Act (except proceedings under Chapter 1 of Part 11 or Part 30 of that Act);
 - (c) section 59 of the CJPA;
 - (d) Articles 22, 25 and 26 of the EC Regulation;
 - (e) Part VII FSMA; and
 - (f) the Cross-Border Mergers Regulations.

(Part 19 and the practice direction supplementing Part 19 contain provisions about proceedings under Chapter 1 of Part 11 of the 2006 Act (derivative claims).)

Application of this practice direction to certain proceedings in relation to limited liability partnerships

3. This practice direction applies to proceedings under the 1985 Act and 2006 Act as applied to limited liability partnerships by regulations made under the Limited Liability Partnerships Act 2000.

Title of documents

4.

- (1) The claim form in proceedings under the 1985 Act, the 2006 Act, Part VII FSMA, the EC Regulation or the Cross-Border Mergers Regulations, and any application, affidavit, witness statement, notice or other document in such proceedings, must be entitled 'In the matter of [the name of the company in question] and in the matter of [the relevant law]', where '[the relevant law]' means 'the Companies Act 1985', 'the Companies Act 2006', 'Part VII of the Financial Services and Markets Act 2000', 'Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company (SE)' or 'the Companies (Cross-Border Merger) Regulations 2007', as the case may be.
- (2) Where a company changes its name in the course of proceedings, the title must be altered by—
 - (a) substituting the new name for the old; and
 - (b) inserting the old name in brackets at the end of the title.

Starting proceedings and notification of application made

5.

- (1) Proceedings to which this practice direction applies must be started by a Part 8 claim form—
 - (a) unless a provision of this or another practice direction provides otherwise, but
 - (b) subject to any modification of that procedure by this or any other practice direction.
- (2) The claim form—

- (a) will, where issued in the High Court, be issued out of the Companies Court or a Chancery district registry; or
 - (b) will, where issued in a county court, be issued out of a county court office.
- (3) Where this practice direction requires a party to proceedings to notify another person of an application, such notification must, unless the court orders otherwise, be given by sending to that other person a copy of the claim form as soon as reasonably practicable after the claim form has been issued.

Section II

Particular applications under the 2006 Act

References to provisions of the 2006 Act in this Section

6. In this Section, a reference to a section by number, not otherwise identified, is to the section so numbered in the 2006 Act.

Company generally to be made a party to a claim under the 2006 Act

7.

- (1) Where in a claim under the 2006 Act the company concerned is not the claimant, the company is to be made a defendant to the claim unless—
 - (a) any other enactment, the CPR or this or another practice direction makes a different provision; or
 - (b) the court orders otherwise.
- (2) Where an application is made in the course of proceedings to which the company is or is required to be a defendant, the company must be made a respondent to the application unless—
 - (a) any other enactment, the CPR or this or another practice direction makes a different provision; or
 - (b) the court orders otherwise.

Applications under section 169 (Director's right to protest against removal)

8.

- (1) This paragraph applies to an application for an order under section 169(5).

- (2) The claimant must notify the director concerned of the application.

Applications under section 244 (Disclosure under court order of protected information)

9.

- (1) This paragraph applies to an application for an order under section 244.
- (2) The claimant must notify the director concerned of the application.

Applications under section 295 (Application not to circulate members' statement) or section 317 (Application not to circulate members' statement)

10.

- (1) This paragraph applies to an application for an order under section 295 or 317.
- (2) The claimant must notify each member who requested the circulation of the relevant statement of the application.

Proceedings under section 370 (Unauthorised donations – enforcement of directors' liabilities by shareholder action)

- 11.** Proceedings to enforce a director's liability under section 370 must be started by a Part 7 claim form.

Proceedings under section 456 (Application in respect of defective accounts or directors' report)

12.

- (1) This paragraph applies to an application for a declaration under section 456(1).
- (2) The claimant must notify any former director who was a director at the time of the approval of the annual accounts or directors' report of the application.

Proceedings under section 511, 514, 515 or 518 (Representations or statements made by the auditor)

13.

- (1) This paragraph applies to an application for an order under section 511(6), 514(7), 515(7) or 518(9).

- (2) The claimant must notify the auditor of the application.

Proceedings under section 527 (Members' powers to require website publication of audit concerns)

14.

- (1) This paragraph applies to an application for an order under section 527(5).
- (2) The claimant must, unless the court orders otherwise, notify each member who requested a statement to be placed on the website of the application.

Proceedings under Parts 26 and 27 of the 2006 Act (Applications to sanction a compromise or arrangement)

15.

- (1) This paragraph applies to an application for an order under Parts 26 and 27 of the 2006 Act to sanction a compromise or arrangement.
- (2) Where the application is made by the company concerned, or by a liquidator or administrator of the company, there need be no defendant to the claim unless the court so orders.
- (3) The claim form must be supported by written evidence, including—
- (a) statutory information about the company; and
 - (b) the terms of the proposed compromise or arrangement.
- (4) The claim form must seek—
- (a) directions for convening a meeting of creditors or members or both, as the case requires;
 - (b) the sanction of the court to the compromise or arrangement, if it is approved at the meeting or meetings, and a direction for a further hearing for that purpose; and
 - (c) a direction that the claimant files a copy of a report to the court by the chairman of the meeting or of each meeting.

Proceedings under section 955 (Takeovers – enforcement by the court)

- 16.** Proceedings for an order under section 955 must be started by a Part 7 claim form.

Proceedings under section 968 (Takeovers – effect on contractual restrictions)

- 17.** Proceedings to recover compensation under section 968(6) must be started by a Part 7 claim form.

Applications under section 1132 (Production and inspection of documents where offence suspected)

18.

- (1) This paragraph applies to an application for an order under section 1132.
- (2) No notice need be given to any person against whom the order is sought.

Section III

Other applications

Applications under the EC Regulation – Article 25

19.

- (1) In this paragraph and paragraphs 20 and 21—
 - (a) a reference to an Article by number is a reference to the Article so numbered in the EC Regulation; and
 - (b) ‘SE’ means a European public limited-liability company (Societas Europaea) within the meaning of the EC Regulation.
- (1A) Any document that is filed with the court must, if not in English, be accompanied by a translation of that document into English—
 - (a) certified by a notary public or other qualified person; or
 - (b) accompanied by written evidence confirming that the translation is accurate.
- (2) An application for a certificate under Article 25(2)—
 - (a) must set out the pre-merger acts and formalities applicable to the applicant company;
 - (b) must be accompanied by evidence that those acts and formalities have been completed; and
 - (c) must be accompanied by copies of—
 - (i) the draft terms of merger, as provided for in Article 20;

- (ii) the entry in the London Gazette containing the particulars specified in Article 21;
 - (iii) a directors' report;
 - (iv) an expert's report; and
 - (v) the resolution of the applicant company approving the draft terms of merger in accordance with Article 23.
- (3) In paragraph (2)(c)—
 - 'directors' report' in relation to a company means a report by the directors of the company containing the information required by section 908 of the 2006 Act;
 - 'expert's report' in relation to a company means a report to the members of the company drawn up in accordance with—
 - (a) section 909 of the 2006 Act; or
 - (b) Article 22.
- (4) There need be no defendant to the application.

Applications under the EC Regulation – Article 22 (Appointment of an independent expert)

20.

- (1) An application under Article 22 for the appointment of an independent expert must be made—
 - (a) where the application is made at the same time as or after the application under Article 25(2) for the approval of the pre-merger acts and formalities has been filed with the court, by application notice pursuant to Part 23; or
 - (b) where no application under Article 25(2) has been made, by a Part 8 claim form.
- (2) The application (whether by a claim form or application notice, as the case may be) must be accompanied by evidence in support of the application.

Applications under the EC Regulation – Article 26

21.

- (1) Where under Article 26(2) a merging company is required to submit a certificate to the High Court, that company must, if no other merging company has begun proceedings under Article 26, start such proceedings by way of a Part 8 claim form.
- (2) There need be no defendant to the claim.
- (3) The claim form—
 - (a) must name the SE and all of the merging companies;
 - (b) must be accompanied by the documents referred to in sub-paragraph (5); and
 - (c) must be served on each of the other merging companies.
- (4) Where under Article 26(2) a merging company is required to submit a certificate to the High Court, and proceedings under Article 26 have already been begun, the company—
 - (a) must, not more than 14 days after service on it of the claim form, file an acknowledgment of service and serve it on each of the other merging companies; and
 - (b) must file the documents, in relation to each merging company, referred to in sub-paragraph (5) within the time limit specified in Article 26(2), and serve copies of them on each of the other merging companies.
- (5) The documents in relation to each merging company are—
 - (a) the certificate issued under Article 25(2) in respect of the company;
 - (b) a copy of the draft terms of merger approved by the company;
 - (c) evidence that arrangements for employee involvement have been determined by the company pursuant to Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees; and
 - (d) evidence that the SE has been formed in accordance with Article 26(4).

Applications under the Cross-Border Mergers Regulations

22.

- (1) In this paragraph and paragraphs 23 to 25 a reference to a regulation by number is a reference to the regulation so numbered in the Cross-Border Mergers Regulations.
- (2) Any document that is filed with the court must, if not in English, be accompanied by a translation of that document into English—
 - (a) certified by a notary public or other qualified person; or
 - (b) accompanied by written evidence confirming that the translation is accurate.

Application for approval of pre-merger requirements

23.

- (1) This paragraph applies to an application under regulation 6.
- (2) There need be no defendant to the application.
- (3) The application must—
 - (a) set out the pre-merger acts and formalities required by regulations 7 to 10 and 12 to 15 applicable to the applicant company; and
 - (b) be accompanied by evidence that those acts and formalities have been completed properly.
- (4) Where an application under regulation 11 to summon a meeting of creditors has been made, the court will not determine the application under regulation 6 to approve the pre-merger requirements until the result of the meeting is known.
- (5) Where the court makes an order certifying that all pre-merger acts and formalities have been completed properly, the applicant must draw up the order and file it no later than 7 days after the date on which the order was made so that it can be sealed^{GL} by the court. The court will seal^{GL} and return the order to the applicant within 15 days of receipt.

Application for appointment of independent expert or to summon a meeting of members or creditors

24.

- (1) This paragraph applies to—
 - (a) an application for the appointment of an independent expert under regulation 9;
 - (b) an application under regulation 11 for an order to summon a meeting of members or creditors or both.
- (2) The application must be made—
 - (a) where the application is made at the same time as or after the application for approval of the pre-merger acts and formalities under regulation 6 has been filed with the court, by application notice pursuant to Part 23; or
 - (b) where no application under regulation 6 has been made, by a Part 8 claim form.
- (3) The application (whether by claim form or application notice, as the case may be) must be accompanied by evidence in support of the application.

Application for the approval of the completion of the merger

25.

- (1) This paragraph applies to an application under regulation 16.
- (2) The application must be made by a Part 8 claim form.
- (3) There need be no defendant to the application.
- (4) The claim form must be accompanied by –
 - (a) the documents referred to in regulation 16(1)(b), (c) and (e);
 - (b) where appropriate, evidence that regulation 16(1)(f) has been complied with; and
 - (c) such other evidence as may be required to enable the court to decide the application.

- (5) Where the court makes an order under regulation 16 approving the merger, it will fix a date on which the consequences of the merger are to take effect.

Applications under section 59 of the CIPA

26.

- (1) In sub-paragraphs (2) to (8)—
- (a) a reference to a section by number, not otherwise identified, is a reference to the section so numbered in the CIPA; and
 - (b) references to a relevant interest in property have the same meaning as in section 59 of the CIPA.
- (2) This paragraph applies to applications under section 59 in respect of property seized in exercise of the power conferred by section 448(3) of the 1985 Act (including any additional powers of seizure conferred by section 50 that are exercisable by reference to that power).
- (3) The application must be supported by evidence—
- (a) that the claimant has a relevant interest in the property to which the application relates; and
 - (b) in the case of an application under section 59(2), that one or more of the grounds set out in section 59(3) is satisfied in relation to the property.
- (4) Where the claimant has a relevant interest in the property, the defendants to the claim are to be—
- (a) the person in possession of the property; and
 - (b) any other person who appears to have a relevant interest in the property.
- (5) Where the claimant is in possession of the property, the defendants are to be—
- (a) the person from whom the property was seized; and
 - (b) any other person who appears to have a relevant interest in the property.

- (6) In the case of an application for the return of seized property, the claimant must serve a copy of the claim form and the claimant's evidence in support of it on the person specified, by the notice given under section 52 when the property was seized, as the person to whom notice of such an application should be given.
- (7) If the claimant knows the identity of the person who seized the property, the claimant must also notify that person of the application.
- (8) When the court issues the claim form it will fix a date for the hearing.

Section IV

Conduct of proceedings

Reduction of capital – evidence

- 27.** In the case of an application to confirm a reduction in capital, if any shares were issued otherwise than for cash—
- (a) for any shares so issued on or after 1st January 1901, it is sufficient to set out in the application the extent to which the shares are, or are treated as being, paid up; and
 - (b) for any shares so issued between 1st September 1867 and 31st December 1900, the application must also show that the requirement as to the filing of the relevant contract with the Registrar of Joint Stock Companies in section 25 of the Companies Act 1867 was complied with.

Section V

Miscellaneous

Service of documents

- 28.** The parties are responsible for service of documents in proceedings to which this practice direction applies.

Transitional provisions

- 29.** A claim started, or an application made, before 1st October 2007 may be continued in accordance with the practice direction in force on 30th September 2007 as if it had not been revoked.

Footnotes

1. 1985 c. 6
2. 2006 c. 46
3. 2001 c. 16
4. OJ No. L294, 10.11.2001, p.1
5. 2000 c. 8
6. S.I. 2007/2974

ANNEX 4

PRACTICE DIRECTION 63 – INTELLECTUAL PROPERTY CLAIMS

This Practice Direction supplements CPR Part 63

Contents of this Practice Direction

Title	Number
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Scope of Section I	Paragraph 2.1
Starting the claim (rule 63.5)	Paragraph 3.1
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Case management (rule 63.8)	Paragraph 5.1
Disclosure and inspection (rule 63.9)	Paragraph 6.1
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SECTION II PROVISIONS ABOUT REGISTERED TRADE MARKS AND OTHER INTELLECTUAL PROPERTY RIGHTS	
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Claim for additional damages under section 97(2), section 191J(2) or section 229(3) of the 1988 Act	Paragraph 22.1
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SECTION III – PROVISIONS ABOUT APPEALS

Reference to the court by an appointed person	Paragraph 25.1
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SECTION IV – PROVISIONS ABOUT FINAL ORDERS

Costs	Paragraph 26.1
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Contents of this Practice Direction

1.1 This practice direction is divided into four sections—

- Section I – Provisions about patents and those other rights within the scope of Section I of Part 63
- Section II – Provisions about registered trade marks and other intellectual property rights
- Section III – Provisions about appeals
- Section IV – Provisions about final orders

SECTION I - PROVISIONS ABOUT PATENTS AND THOSE OTHER RIGHTS WITHIN THE SCOPE OF SECTION I OF PART 63

Scope of Section I

2.1 This Section applies to claims within the scope of Section 1 of Part 63.

Starting the claim (rule 63.5)

3.1 A claim form to which this Section applies must—

- (a) be marked ‘Chancery Division Patents Court’ or ‘Patents County Court’ as the case may be, in the top right hand corner below the title of the court, and
- (b) state the number of any patent or registered design to which the claim relates.

Claim for infringement or challenge to validity (rule 63.6)

4.1 In a claim for infringement of a patent—

- (1) the statement of case must—
 - (a) show which of the claims in the specification of the patent are alleged to be infringed; and
 - (b) give at least one example of each type of infringement alleged; and

- (2) a copy of each document referred to in the statement of case, and where necessary a translation of the document, must be served with the statement of case.

4.2 Where the validity of a patent or registered design is challenged—

- (1) the statement of case must contain particulars of—
 - (a) the remedy sought; and
 - (b) the issues except those relating to validity of the patent or registered design;
- (2) the statement of case must have a separate document attached to and forming part of it headed ‘Grounds of Invalidity’ which must—
 - (a) specify the grounds on which validity of the patent or registered design is challenged; and
 - (b) include particulars that will clearly define every issue (including any challenge to any claimed priority date) which it is intended to raise; and
- (3) a copy of each document referred to in the Grounds of Invalidity, and where necessary a translation of the document, must be served with the Grounds of Invalidity.

4.3 Where in an application in which the validity of a patent or a registered design is challenged, the Grounds of Invalidity include an allegation—

- (1) that the invention is not a patentable invention because it is not new or does not include an inventive step, the particulars must specify details of the matter in the state of the art relied on, as set out in paragraph 4.4;
- (2) that the specification of the patent does not disclose the invention clearly enough and completely enough for it to be performed by a person skilled in the art, the particulars must state, if appropriate, which examples of the invention cannot be made to work and in which respects they do not work or do not work as described in the specification; or
- (3) that the registered design is not new or lacks individual character, the particulars must specify details of any prior design relied on, as set out in paragraph 4.4.

4.4 The details required under paragraphs 4.3(1) and 4.3(3) are—

- (1) in the case of matter or a design made available to the public by written description, the date on which and the means by which it was so made available, unless this is clear from the fact of the matter; and
- (2) in the case of matter or a design made available to the public by use—
 - (a) the date or dates of such use;
 - (b) the name of all persons making such use;

- (c) the place of such use;
- (d) any written material which identifies such use;
- (e) the existence and location of any apparatus employed in such use;
and
- (f) all facts and matters relied on to establish that such matter was made available to the public.

4.5 In any proceedings in which the validity of a patent is challenged, where a party alleges that machinery or apparatus was used before the priority date of the claim the court may order inspection of that machinery or apparatus.

4.6 If the validity of a patent is challenged on the ground that the invention did not involve an inventive step, a party who wishes to rely on the commercial success of the patent must state in the statement of case the grounds on which that party so relies.

Case management (rule 63.8)

5.1 The following paragraphs only of the practice direction supplementing Part 29 apply—

- (1) paragraph 5 (case management conferences)—
 - (a) excluding paragraph 5.9; and
 - (b) modified so far as is made necessary by other specific provisions of this practice direction; and
- (2) paragraph 7 (failure to comply with case management directions).

5.2 Case management will be dealt with by—

- (1) a judge of the Patents Court, a patents judge or a Master, but
- (2) a Master may only deal with the following matters—
 - (a) orders by way of settlement, except settlement of procedural disputes;
 - (b) applications for extension of time;
 - (c) applications for permission to serve out of the jurisdiction;
 - (d) applications for security for costs;
 - (e) other matters as directed by a judge of the court; and
 - (f) enforcement of money judgments.

5.3 The claimant must apply for a case management conference within 14 days of the date when all defendants who intend to file and serve a defence have done so.

5.4 Where the claim has been transferred, the claimant must apply for a case management conference within 14 days of the date of the order transferring the claim, unless the court held or gave directions for a case management conference when it made the order transferring the claim.

- 5.5** Any party may, at a time earlier than that provided in paragraphs 5.3 and 5.4, apply in writing to the court to fix a case management conference.
- 5.6** If the claimant does not make an application in accordance with paragraphs 5.3 and 5.4, any other party may apply for a case management conference.
- 5.7** The court may fix a case management conference at any time on its own initiative.
- 5.8** Not less than 4 days before a case management conference, each party must file and serve an application notice for any order which that party intends to seek at the case management conference.
- 5.9** Unless the court orders otherwise, the claimant, or the party who makes an application under paragraph 5.6, in consultation with the other parties, must prepare a case management bundle containing—
- (1) the claim form;
 - (2) all other statements of case (excluding schedules), except that, if a summary of a statement of case has been filed, the bundle must contain the summary, and not the full statement of case;
 - (3) a pre-trial timetable, if one has been agreed or ordered;
 - (4) the principal orders of the court; and
 - (5) any agreement in writing made by the parties as to disclosure,
- and provide copies of the case management bundle for the court and the other parties at least 4 days before the first case management conference or any earlier hearing at which the court may give case management directions.
- 5.10** At the case management conference the court may direct that—
- (1) a scientific adviser under section 70(3) of the Senior Courts Act 1981 or under section 63(1) of the County Courts Act 1984 be appointed; and
 - (2) a document setting out basic undisputed technology should be prepared.
- (Rule 35.15 applies to scientific advisers.)
- 5.11** Where a trial date has not been fixed by the court, a party may apply for a trial date by filing a certificate which must—
- (1) state the estimated length of the trial, agreed if possible by all parties;
 - (2) detail the time required for the judge to consider the documents;
 - (3) identify the area of technology; and

- (4) assess the complexity of the technical issues involved by indicating the complexity on a scale of 1 to 5 (with 1 being the least and 5 the most complex).

5.12 The claimant, in consultation with the other parties, must revise and update the documents, referred to in paragraph 5.9 appropriately as the case proceeds. This must include making all necessary revisions and additions at least 7 days before any subsequent hearing at which the court may give case management directions.

Disclosure and inspection (rule 63.9)

6.1 Standard disclosure does not require the disclosure of documents that relate to—

- (1) the infringement of a patent by a product or process where—
 - (a) not less than 21 days before the date for service of a list of documents the defendant notifies the claimant and any other party of the defendant's intention to serve—
 - (i) full particulars of the product or process alleged to infringe; and
 - (ii) any necessary drawings or other illustrations; and
 - (b) on or before the date for service the defendant serves on the claimant and any other party the documents referred to in paragraph 6.1(1)(a);
- (2) any ground on which the validity of a patent is put in issue, except documents which came into existence within the period—
 - (a) beginning two years before the earliest claimed priority date; and
 - (b) ending two years after that date; and
- (3) the issue of commercial success.

6.2 The particulars served under paragraph 6.1(1)(b) must be accompanied by a signed written statement which must state that the person making the statement—

- (1) is personally acquainted with the facts to which the particulars relate;
- (2) verifies that the particulars are a true and complete description of the product or process alleged to infringe; and
- (3) understands that he or she may be required to attend court in order to be cross-examined on the contents of the particulars.

6.3 Where the issue of commercial success arises, the patentee must, within such time limit as the court may direct, serve a schedule containing—

- (1) where the commercial success relates to an article or product—
 - (a) an identification of the article or product (for example by product code number) which the patentee asserts has been made in accordance with the claims of the patent;

- (b) a summary by convenient periods of sales of any such article or product;
 - (c) a summary for the equivalent periods of sales, if any, of any equivalent prior article or product marketed before the article or product in sub-paragraph (a); and
 - (d) a summary by convenient periods of any expenditure on advertising and promotion which supported the marketing of the articles or products in sub-paragraphs (a) and (c); or
- (2) where the commercial success relates to the use of a process—
- (a) an identification of the process which the patentee asserts has been used in accordance with the claims of the patent;
 - (b) a summary by convenient periods of the revenue received from the use of such process;
 - (c) a summary for the equivalent periods of the revenues, if any, received from the use of any equivalent prior art process; and
 - (d) a summary by convenient periods of any expenditure which supported the use of the process in sub-paragraphs (a) and (c).

Experiments

7.1 A party seeking to establish any fact by experimental proof conducted for the purpose of litigation must, at least 21 days before service of the application notice for directions under paragraph 7.3, or within such other time as the court may direct, serve on all parties a notice—

- (1) stating the facts which the party seeks to establish; and
- (2) giving full particulars of the experiments proposed to establish them.

7.2 A party served with a notice under paragraph 7.1—

- (1) must within 21 days after such service, serve on the other party a notice stating whether or not each fact is admitted; and
- (2) may request the opportunity to inspect a repetition of all or a number of the experiments identified in the notice served under paragraph 7.1.

7.3 Where any fact which a party seeks to establish by experimental proof is not admitted, that party must apply to the court for permission and directions by application notice.

Use of models or apparatus

8.1 A party that intends to rely on any model or apparatus must apply to the court for

directions at the first case management conference.

Time estimates for trial, trial bundle, reading guide and detailed trial timetable

9.1 Not less than one week before the beginning of the trial, each party must inform the court in writing of the estimated length of its—

- (1) oral submissions;
- (2) examination in chief, if any, of its own witnesses; and
- (3) cross-examination of witnesses of any other party.

9.2 At least four days before the date fixed for the trial, the claimant must file—

- (1) the trial bundle;
- (2) a reading guide for the judge; and
- (3) a detailed trial timetable which should be agreed, if possible.

9.3 The reading guide filed under paragraph 9.2 must—

- (1) be short and, if possible, agreed;
- (2) set out the issues, the parts of the documents that need to be read on each issue and the most convenient order in which they should be read;
- (3) identify the relevant passages in text books and cases, if appropriate; and
- (4) not contain argument.

Application to amend a patent specification in existing proceedings (rule 63.10)

10.1 Where the application notice is served on the Comptroller electronically under rule 63.10(3), the applicant must comply with any requirements for the sending of electronic communications to the Comptroller.

10.2 Not later than two days before the first hearing date the applicant, the Comptroller if wishing to be heard, the parties to the proceedings and any other opponent, must file and serve a document stating the directions sought.

Request to limit a European patent (UK) under the European Patent Convention

11.1 Paragraphs 11.2 to 11.4 apply where there are proceedings before the court in which the validity of a European patent (UK) may be put in issue.

11.2 Where the proprietor of the European patent (UK) intends to file a request under Article 105a of the European Patent Convention to limit the European patent (UK) by amendment of the claims, the proprietor must serve on all the parties to the proceedings a copy of the intended request (including a copy of the intended

complete version of the amended claims and, as the case may be, of the amended description and drawings) at least 28 days prior to filing the request with the European Patent Office.

- 11.3** Where a copy of an intended request is served on the party in accordance with paragraph 11.2, any party may apply to the court for such directions or other order as may be appropriate.
- 11.4** Reference to “European Patent Convention” means the Convention on the Grant of European Patents of 5th October 1973 as amended from time to time.

Application by employee for compensation (rule 63.12)

- 12.1** Where an employee applies for compensation under section 40(1) or (2) of the 1977 Act, the court will at the case management conference give directions as to—
- (1) the manner in which the evidence, including any accounts of expenditure and receipts relating to the claim, is to be given at the hearing of the claim and if written evidence is to be given, specify the period within which witness statements must be filed; and
 - (2) the provision to the claimant by the defendant or a person deputed by the defendant, of reasonable facilities for inspecting and taking extracts from the accounts by which the defendant proposes to verify the accounts in subparagraph (1) or from which those accounts have been derived.

Communication of information to the European Patent Office

- 13.1** The court may authorise the communication of any such information in the court files as the court thinks fit to—
- (1) the European Patent Office; or
 - (2) the competent authority of any country which is a party to the European Patent Convention.
- 13.2** Before authorising the communication of information under paragraph 13.1, the court will permit any party who may be affected by the disclosure to make representations, in writing or otherwise, on the question of whether the information should be disclosed.

Order affecting entry in the register of patents or designs

- 14.1** Where any order of the court affects the validity of an entry in the register, the party in whose favour the order is made, must serve a copy of such order on the Comptroller within 14 days.

- 14.2** Where the order is in favour of more than one party, a copy of the order must be served by such party as the court directs.

European Community designs

- 15.1** The Patents Court and the patents county court at the Central London County Court are the designated Community design courts under Article 80(5) of Council Regulation (EC) 6/2002.
- 15.2** Where a counterclaim is filed at the Community design court, for a declaration of invalidity of a registered Community design, the Community design court will inform the Office for Harmonisation in the Internal Market of the date on which the counterclaim was filed, in accordance with Article 86(2) of Council Regulation (EC) 6/2002.
- 15.3** On filing a counterclaim under paragraph 15.2, the party filing it must inform the Community design court in writing that it is a counterclaim to which paragraph 15.2 applies and that the Office for Harmonisation in the Internal Market needs to be informed of the date on which the counterclaim was filed.
- 15.4** Where a Community design court has given a judgment which has become final on a counterclaim for a declaration of invalidity of a registered Community design, the Community design court will send a copy of the judgment to the Office for Harmonisation in the Internal Market, in accordance with Article 86(4) of Council Regulation (EC) 6/2002.
- 15.5** The party in whose favour judgment is given under paragraph 15.4 must inform the Community design court at the time of judgment that paragraph 15.4 applies and that the Office for Harmonisation in the Internal Market needs to be sent a copy of the judgment.

SECTION II - PROVISIONS ABOUT REGISTERED TRADE MARKS AND OTHER INTELLECTUAL PROPERTY RIGHTS

Allocation (rule 63.13)

- 16.1** The other intellectual property rights referred to in rule 63.13 are—
- (1) copyright;
 - (2) rights in performances;
 - (3) rights conferred under Part VII of the 1988 Act;
 - (4) design right;

- (5) Community design right;
- (6) association rights;
- (7) moral rights;
- (8) database rights;
- (9) unauthorised decryption rights;
- (10) hallmarks;
- (11) technical trade secrets litigation;
- (12) passing off;
- (13) protected designations of origin, protected geographical indications and traditional speciality guarantees;
- (14) registered trade marks; and
- (15) Community trade marks.

16.2 There are Chancery district registries at Birmingham, Bristol, Caernarfon, Cardiff, Leeds, Liverpool, Manchester, Mold, Newcastle upon Tyne and Preston.

16.3 The county courts at Caernarfon, Mold and Preston do not have jurisdiction in relation to registered trade marks and Community trade marks.

Starting the claim

17.1 A claim form to which Section II of Part 63 applies must be marked in the top right hand corner “Intellectual Property” below the title of the court in which it is issued.

17.2 In the case of claims concerning registered trade marks and Community trade marks, the claim form must state the registration number of any trade mark to which the claim relates.

Reference to the court by the registrar or the Comptroller

18.1 This paragraph applies where—

- (1) an application is made to the registrar under the 1994 Act and the registrar refers the application to the court; or
- (2) a reference is made to the Comptroller under section 246 of the 1988 Act and the Comptroller refers the whole proceedings or a particular question or issue to the court under section 251(1) of that Act.

18.2 Where paragraph 18.1 applies, the applicant under the 1994 Act or the person making the reference under section 246 of the 1988 Act, as the case may be, must start a claim seeking the court’s determination of the reference within 14 days of receiving notification of the decision to refer.

18.3 If the person referred to in paragraph 18.2 does not start a claim within the period prescribed by that paragraph, that person will be deemed to have abandoned the reference.

18.4 The period prescribed under paragraph 18.2 may be extended by—

(1) the registrar or the Comptroller as the case may be; or

(2) the court

where a party so applies, even if the application is not made until after the expiration of that period.

Application to the court under section 19 of the 1994 Act

19.1 Where an application is made under section 19 of the 1994 Act, the applicant must serve the claim form or application notice on all identifiable persons having an interest in the goods, materials or articles within the meaning of section 19 of the 1994 Act.

Order affecting entry in the register of trade marks

20.1 Where any order of the court affects the validity of an entry in the register, the provisions of paragraphs 14.1 and 14.2 apply.

European Community trade marks

21.1 The Chancery Division, the patents county court at the Central London County Court and the county courts where there is also a Chancery district registry, except Caernarfon, Mold and Preston, are designated Community trade mark courts for the purposes of Article 91(1) of Council Regulation (EC) 40/94.

21.2 Where a counterclaim is filed at the Community trade mark court, for revocation or for a declaration of invalidity of a Community trade mark, the Community trade mark court will inform the Office for Harmonisation in the Internal Market of the date on which the counterclaim was filed, in accordance with Article 96(4) of Council Regulation (EC) 40/94.

21.3 On filing a counterclaim under paragraph 21.2, the party filing it must inform the Community trade mark court in writing that it is a counterclaim to which paragraph 21.2 applies and that the Office for Harmonisation in the Internal Market needs to be informed of the date on which the counterclaim was filed.

21.4 Where the Community trade mark court has given a judgment which has become final on a counterclaim for revocation or for a declaration of invalidity of a Community trade mark, the Community trade mark court will send a copy of the judgment to the Office for Harmonisation in the Internal Market, in accordance with Article 96(6) of

Council Regulation (EC) 40/94.

- 21.5** The party in whose favour judgment is given under paragraph 21.4 must inform the Community trade mark court at the time of judgment that paragraph 21.4 applies and that the Office for Harmonisation in the Internal Market needs to be sent a copy of the judgment.

Claim for additional damages under section 97(2), section 191J(2) or section 229(3) of the 1988 Act

- 22.1** Where a claimant seeks to recover additional damages under section 97(2), section 191J(2) or section 229(3) of the 1988 Act, the particulars of claim must include—

- (1) a statement to that effect; and
- (2) the grounds for claiming them.

Application for delivery up or forfeiture under the 1988 Act

- 23.1** An applicant who applies under section 99, 114, 195, 204, 230 or 231 of the 1988 Act for delivery up or forfeiture must serve—

- (1) the claim form; or
- (2) application notice, where appropriate,
on all identifiable persons who have an interest in the goods, material or articles within the meaning of section 114, 204 or 231 of the 1988 Act.

Association rights

- 24.1** Where an application is made under regulations made under section 7 of the Olympic Symbol etc (Protection) Act 1995, the applicant must serve the claim form or application notice on all identifiable persons having an interest in the goods, materials or articles within the meaning of the regulations.

SECTION III - PROVISIONS ABOUT APPEALS

Reference to the court by an appointed person

- 25.1** This paragraph applies where a person appointed by the Lord Chancellor to hear and decide appeals under section 77 of the 1994 Act, refers an appeal to the Chancery Division under section 76(3) of the 1994 Act.
- 25.2** The appellant must file a claim form seeking the court's determination of the appeal within 14 days of receiving notification of the decision to refer.
- 25.3** The appeal will be deemed to have been abandoned if the appellant does not file a

claim form within the period prescribed by paragraph 25.2.

25.4 The period prescribed under paragraph 25.2 may be extended by—

- (1) the person appointed by the Lord Chancellor; or
- (2) the court

where the appellant so applies, even if such application is not made until after the expiration of that period.

SECTION IV - PROVISIONS ABOUT FINAL ORDERS

Costs

26.1 Where the court makes an order for delivery up or destruction of infringing goods, or articles designed or adapted to make such goods, the person against whom the order is made must pay the costs of complying with that order unless the court orders otherwise.

26.2 Where the court finds that an intellectual property right has been infringed, the court may, at the request of the applicant, order appropriate measures for the dissemination and publication of the judgment to be taken at the expense of the infringer.

ANNEX 5

PRACTICE DIRECTION 68 – REFERENCES TO THE EUROPEAN COURT

This Practice Direction supplements CPR Part 68

Wording of references

- 1.1** Where the court intends to refer a question to the European Court it may direct the parties to produce a draft of the reference but responsibility for the terms of the reference lies with the court making the reference and not with the parties.
- 1.2** The reference should identify as clearly and succinctly as possible the question on which the court seeks the ruling of the European Court. In choosing the wording of the reference, it should be remembered that it will need to be translated into many other languages.
- 1.3** The court will incorporate the reference as a schedule to its order. The schedule must—
- (1) give the full name of the referring court;
 - (2) identify the parties;
 - (3) summarise the nature and history of the proceedings, including the salient facts, indicating whether these are proved or admitted or assumed;
 - (4) set out the relevant rules of national law;
 - (5) summarise the relevant contentions of the parties;
 - (6) explain why a ruling of the European Court is sought;
 - (7) identify the provisions of Community law which the European Court is being requested to interpret;
 - (8) state the question on which a ruling of the European Court is sought; and
 - (9) state any opinion on the answer to the question that may have been expressed by the court in the course of delivering judgment.
- 1.4** If some of these matters are conveniently set out in a judgment, the relevant passages should be summarised succinctly. If it is not possible to produce such a summary, only those passages that contain information of the kind referred to in paragraph 1.3 should be cited.

1.5 The reference should not exceed 20 pages in length.

Request to apply the urgent preliminary ruling procedure

1A.1 The request to the European Court to apply its urgent preliminary ruling procedure must set out—

- (1) the matters of fact and law which establish the urgency;
- (2) the reasons why the urgent preliminary ruling procedure applies; and
- (3) in so far as possible, the court's view on the answer to the question referred to the European Court for a preliminary ruling.

Transmission to the European Court

2.1 The order containing the reference, and where relevant any request to the European Court to apply its urgent preliminary ruling procedure, must be sent to the Senior Master, Room E101, Queen's Bench Division, Royal Courts of Justice, Strand, London, WC2A 2LL, for onward transmission to the European Court.

2.2 The relevant court file must also be sent to the Senior Master at the above address.

European Court Information Note

3. There are annexed to this Practice Direction—

- (1) an Information Note issued by the European Court; and
- (2) a supplement to the Information Note following the implementation of the urgent ruling procedure applicable to references concerning the area of freedom, security and justice.

ANNEX 1

INFORMATION NOTE: REFERENCES FROM NATIONAL COURTS FOR A PRELIMINARY RULING

ANNEX 2

INFORMATION NOTE SUPPLEMENT: URGENT PRELIMINARY RULING PROCEDURE

ANNEX 6

PRE-ACTION PROTOCOL FOR PERSONAL INJURY CLAIMS

ANNEX D

REHABILITATION CODE 2007