

ALTERNATIVE PROCEDURE FOR CLAIMS

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8.1 Types of claim in which Part 8 procedure may be followed

- (1) The Part 8 procedure is the procedure set out in this Part.
- (2) A claimant may use the Part 8 procedure where –
 - (a) he seeks the court's decision on a question which is unlikely to involve a substantial dispute of fact; or
 - (b) paragraph (6) applies.
- (3) The court may at any stage order the claim to continue as if the claimant had not used the Part 8 procedure and, if it does so, the court may give any directions it considers appropriate.
- (4) Paragraph (2) does not apply if a practice direction provides that the Part 8 procedure may not be used in relation to the type of claim in question.
- (5) Where the claimant uses the Part 8 procedure he may not obtain default judgment under Part 12.
- (6) A rule or practice direction may, in relation to a specified type of proceedings –
 - (a) require or permit the use of the Part 8 procedure; and
 - (b) disapply or modify any of the rules set out in this Part as they apply to those proceedings.

(Rule 8.9 provides for other modifications to the general rules where the Part 8 procedure is being used)

(Part 78 provides procedures for European orders for payment and for the European small claims procedure. It also provides procedures for applications for mediation settlement enforcement orders in relation to certain cross-border disputes.)

8.2 Contents of the claim form

Where the claimant uses the Part 8 procedure the claim form must state –

- (a) that this Part applies;
- (b) (i) the question which the claimant wants the court to decide; or
(ii) the remedy which the claimant is seeking and the legal basis for the claim to that remedy;
- (c) if the claim is being made under an enactment, what that enactment is;
- (d) if the claimant is claiming in a representative capacity, what that capacity is; and
- (e) if the defendant is sued in a representative capacity, what that capacity is.

(Part 22 provides for the claim form to be verified by a statement of truth)

(Rule 7.5 provides for service of the claim form)

(The Costs Practice Direction sets out the information about a funding arrangement to be provided with the claim form where the claimant intends to seek to recover an additional liability)

(‘Funding arrangement’ and ‘additional liability’ are defined in rule 43.2)

8.2A Issue of claim form without naming defendants

- (1) A practice direction may set out circumstances in which a claim form may be issued under this Part without naming a defendant.
- (2) The practice direction may set out those cases in which an application for permission must be made by application notice before the claim form is issued.
- (3) The application notice for permission –
 - (a) need not be served on any other person; and
 - (b) must be accompanied by a copy of the claim form that the applicant proposes to issue.
- (4) Where the court gives permission it will give directions about the future management of the claim.

8.3 Acknowledgment of service

- (1) The defendant must –
 - (a) file an acknowledgment of service in the relevant practice form not more than 14 days after service of the claim form; and
 - (b) serve the acknowledgment of service on the claimant and any other party.
- (2) The acknowledgment of service must state –
 - (a) whether the defendant contests the claim; and
 - (b) if the defendant seeks a different remedy from that set out in the claim form, what that remedy is.
- (3) The following rules of Part 10 (acknowledgment of service) apply –
 - (a) rule 10.3(2) (exceptions to the period for filing an acknowledgment of service); and
 - (b) rule 10.5 (contents of acknowledgment of service).
- (4) Omitted

(The Costs Practice Direction sets out the information about a funding arrangement to be provided with the acknowledgment of service where the defendant intends to seek to recover an additional liability)

(‘Funding arrangement’ and ‘additional liability’ are defined in rule 43.2)

8.4 Consequence of not filing an acknowledgment of service

- (1) This rule applies where –
 - (a) the defendant has failed to file an acknowledgment of service; and
 - (b) the time period for doing so has expired.
- (2) The defendant may attend the hearing of the claim but may not take part in the hearing unless the court gives permission.

8.5 Filing and serving written evidence

- (1) The claimant must file any written evidence on which he intends to rely when he files his claim form.
- (2) The claimant’s evidence must be served on the defendant with the claim form.
- (3) A defendant who wishes to rely on written evidence must file it when he files his acknowledgment of service.
- (4) If he does so, he must also, at the same time, serve a copy of his evidence on the other parties.
- (5) The claimant may, within 14 days of service of the defendant’s evidence on him, file further written evidence in reply.
- (6) If he does so, he must also, within the same time limit, serve a copy of his evidence on the other parties.
- (7) The claimant may rely on the matters set out in his claim form as evidence under this rule if the claim form is verified by a statement of truth.

8.6 Evidence – general

- (1) No written evidence may be relied on at the hearing of the claim unless –
 - (a) it has been served in accordance with rule 8.5; or
 - (b) the court gives permission.
- (2) The court may require or permit a party to give oral evidence at the hearing.
- (3) The court may give directions requiring the attendance for cross-examination^(GL) of a witness who has given written evidence.

(Rule 32.1 contains a general power for the court to control evidence)

8.7 Part 20 claims

Where the Part 8 procedure is used, Part 20 (counterclaims and other additional claims) applies except that a party may not make a Part 20 claim (as defined by rule 20.2) without the court’s permission.

8.8 Procedure where defendant objects to use of the Part 8 procedure

- (1) Where the defendant contends that the Part 8 procedure should not be used because –
- (a) there is a substantial dispute of fact; and
 - (b) the use of the Part 8 procedure is not required or permitted by a rule or practice direction, he must state his reasons when he files his acknowledgment of service.

(Rule 8.5 requires a defendant who wishes to rely on written evidence to file it when he files his acknowledgment of service)

- (2) When the court receives the acknowledgment of service and any written evidence it will give directions as to the future management of the case.

(Rule 8.1(3) allows the court to make an order that the claim continue as if the claimant had not used the Part 8 procedure)

8.9 Modifications to the general rules

Where the Part 8 procedure is followed –

- (a) provision is made in this Part for the matters which must be stated in the claim form and the defendant is not required to file a defence and therefore –
 - (i) Part 16 (statements of case) does not apply;
 - (ii) Part 15 (defence and reply) does not apply;
 - (iii) any time limit in these Rules which prevents the parties from taking a step before a defence is filed does not apply;
 - (iv) the requirement under rule 7.8 to serve on the defendant a form for defending the claim does not apply;
- (b) the claimant may not obtain judgment by request on an admission and therefore –
 - (i) rules 14.4 to 14.7 do not apply; and
 - (ii) the requirement under rule 7.8 to serve on the defendant a form for admitting the claim does not apply; and
- (c) the claim shall be treated as allocated to the multi-track and therefore Part 26 does not apply.