

2004 No. 1306 (L. 8)

**SUPREME COURT OF ENGLAND AND WALES
COUNTY COURTS, ENGLAND AND WALES**

The Civil Procedure (Amendment) Rules 2004

Made - - - - - *11th May 2004*
Laid before Parliament *11th May 2004*
Coming into force - - *in accordance with rule 1*

The Civil Procedure Rule Committee, having power under section 2 of the Civil Procedure Act 1997(a) to make rules of court under section 1 of that Act, after consulting in accordance with section 2(6)(a) of that Act, make the following Rules:

Citation, commencement and interpretation

1. These Rules may be cited as the Civil Procedure (Amendment) Rules 2004 and shall come into force—
 - (a) for the purposes of rules 2, 3, 5-9, 15, 16 and 20(1), and this rule, on 1st June 2004; and
 - (b) for all other purposes, on 30th June 2004.
2. In these Rules—
 - (a) a reference to a Part or rule by number alone means the Part or rule so numbered in the Civil Procedure Rules 1998(b);
 - (b) a reference to an Order by number and prefixed by “RSC” means the RSC Order so numbered in Schedule 1 to those Rules; and
 - (c) a reference to an Order by number and prefixed by “CCR” means the CCR Order so numbered in Schedule 2 to those Rules.

Amendments to the Civil Procedure Rules 1998

3. After rule 5.4 insert—

“Supply of documents to Attorney-General from court records

5.4A.—(1) The Attorney-General may search for, inspect and take a copy of any documents within a court file for the purpose of preparing an application or considering whether to make an application under section 42 of the Supreme Court Act 1981(c) or section 33 of the Employment Tribunals Act 1996(d) (restriction of vexatious proceedings).

(a) 1997 c. 12.

(b) S.I. 1998/3132. There are relevant amendments in S.I. 2001/256, S.I. 2001/2792, S.I. 2003/2113 and S.I. 2003/3361.

(c) 1981 c. 54.

(d) 1996 c. 17.

- (2) The Attorney-General must, when exercising the right under paragraph (1)—
 - (a) pay any prescribed fee; and
 - (b) file a written request, which must—
 - (i) confirm that the request is for the purpose of preparing an application or considering whether to make an application mentioned in paragraph (1); and
 - (ii) name the person who would be the subject of the application.”.
4. In rule 6.10, for the words from “state” to “the following table”, substitute “state the details set out in the following table”.
5. For rule 30.8 substitute—

“Transfer of competition law claims

30.8—(1) This rule applies if, in any proceedings in the Queen’s Bench Division, a district registry of the High Court or a county court, a party’s statement of case raises an issue relating to the application of—

 - (a) Article 81 or Article 82 of the Treaty establishing the European Community; or
 - (b) Chapter I or II of Part I of the Competition Act 1998(a).

(2) Rules 30.2 and 30.3 do not apply.

(3) The court must transfer the proceedings to the Chancery Division of the High Court at the Royal Courts of Justice.”.
6. In rule 34.16, in paragraph (1), for “a Regulation State” substitute “another Regulation State”.
7. In rule 34.23, in paragraph (1), for the words from “who is” to the end of the paragraph, substitute “who is in another Regulation State”.
8. In rule 42.2, in paragraph (5), for sub-paragraph (a) substitute—

“(a) notice is filed and served in accordance with paragraph (2); or”.
9. In Part 45—
 - (a) at the end of the table of contents, insert the text set out in Part I of Schedule 1 to these Rules; and
 - (b) after Section II, insert Section III as set out in Part II of Schedule 1 to these Rules.
10. In rule 55.1—
 - (a) at the end of sub-paragraph (c), omit “and”; and
 - (b) for sub-paragraph (d), substitute—
 - “(d) “the 1985 Act” means the Housing Act 1985(b);
 - (e) “the 1988 Act” means the Housing Act 1988(c);
 - (f) “a demotion claim” means a claim made by a landlord for an order under section 82A of the 1985 Act or section 6A of the 1988 Act (“a demotion order”); and
 - (g) “a demoted tenancy” means a tenancy created by virtue of a demotion order.”.
11. In rule 55.2, after paragraph (1), insert the following cross-reference—

“(Where a demotion claim is made in the same claim form in which a possession claim is started, this Section of this Part applies as modified by rule 65.12. Where the claim is a demotion claim only, Section III of Part 65 applies)”.
12. In rule 55.9, in paragraph (1)—
 - (a) at the end of sub-paragraph (c), omit “and”;
 - (b) after sub-paragraph (d) insert—
 - “; and
 - (e) if applicable, the alleged conduct of the defendant”.

(a) 1998 c. 41.
 (b) 1985 c. 68.
 (c) 1988 c. 50.

13. In rule 55.11—

- (a) in sub-paragraph (1)(b)—
 - (i) at the beginning, insert “subject to rule 55.12(2),”; and
 - (ii) for “rule 55.12”, substitute “rule 55.12(1)”;
- (b) after paragraph (2) insert—

“(3) In this Section of this Part, a “demoted assured shorthold tenancy” means a demoted tenancy where the landlord is a registered social landlord.

(By virtue of section 20B of the 1988 Act, a demoted assured shorthold tenancy is an assured shorthold tenancy)”.

14. In rule 55.12—

- (a) at the beginning, insert “(1)”; and
- (b) at the end, insert—

“(2) If the tenancy is a demoted assured shorthold tenancy, only the conditions in paragraph (1)(b) and (f) need be satisfied.”.

15. In rule 56.2—

- (a) in paragraph (1), for “paragraphs (2) or (4) apply”, substitute “paragraph (2) applies”; and
- (b) omit paragraph (4).

16. For rule 56.3 substitute—

“Claims for a new tenancy under section 24 and for the termination of a tenancy under section 29(2) of the Landlord and Tenant Act 1954(a)

56.3—(1) This rule applies to a claim for a new tenancy under section 24 and to a claim for the termination of a tenancy under section 29(2) of the 1954 Act.

(2) In this rule—

- (a) “the 1954 Act” means the Landlord and Tenant Act 1954;
- (b) “an unopposed claim” means a claim for a new tenancy under section 24 of the 1954 Act in circumstances where the grant of a new tenancy is not opposed;
- (c) “an opposed claim” means a claim for—
 - (i) a new tenancy under section 24 of the 1954 Act in circumstances where the grant of a new tenancy is opposed; or
 - (ii) the termination of a tenancy under section 29(2) of the 1954 Act.

(3) Where the claim is an unopposed claim—

- (a) the claimant must use the Part 8 procedure, but the following rules do not apply—
 - (i) rule 8.5; and
 - (ii) rule 8.6;
- (b) the claim form must be served within 2 months after the date of issue and rules 7.5 and 7.6 are modified accordingly; and
- (c) the court will give directions about the future management of the claim following receipt of the acknowledgment of service.

(4) Where the claim is an opposed claim—

- (a) the claimant must use the Part 7 procedure; but
- (b) the claim form must be served within 2 months after the date of issue, and rules 7.5 and 7.6 are modified accordingly.

(The practice direction to this Part contains provisions about evidence, including expert evidence in opposed claims)”.

(a) 1954 c. 56. Section 24 was amended by article 3 of S.I. 2003/3096. Section 29(2) was substituted by article 5 of S.I. 2003/3096.

17. In rule 57.16—

(a) in paragraph (4), for “The time”, substitute “Subject to paragraph (4A), the time”;
and

(b) after paragraph (4) insert—

“(4A) If the claim form is served out of the jurisdiction under rule 6.19, the period for filing an acknowledgment of service and any written evidence is 7 days longer than the relevant period specified in rule 6.22 or the practice direction supplementing Section III of Part 6.”.

18. After Part 64, insert Part 65 (proceedings relating to anti-social behaviour and harassment) as set out in Schedule 2 to these Rules.

19. In rule 69.10—

(a) at the beginning, insert “(1)”; and

(b) after paragraph (1) insert—

“(2) The application notice must be served on the persons who were required under rule 69.4 to be served with the order appointing the receiver.”.

Transitional provisions

20.—(1) In the circumstances where article 29(1) or (4) of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003(a) applies—

(a) the amendments to Part 56 made by rules 15 and 16 of these Rules shall not apply; and

(b) Part 56 shall continue to apply on and after 1st June 2004 as if those amendments had not been made.

(2) Where an application for an injunction under Chapter III of Part V of the Housing Act 1996(b) has been issued before 30th June 2004—

(a) Section I of Part 65 shall not apply in relation to that application; and

(b) CCR Order 49, rule 6B shall continue to apply on and after 30th June 2004 as if it had not been revoked.

Revocations

21. The following provisions are revoked—

(a) rule 13.5;

(b) RSC Order 94, rule 16;

(c) RSC Order 98;

(d) CCR Order 49, rule 6B.

Phillips of Worth Matravers, M.R.

John Dyson, L.J.

Rupert Jackson, J.

Terence Etherton, J.

Stephen Oliver-Jones

Steven Whitaker

Carlos Dabezies

Michael Black

Philip Rainey

Richard Walford

Andrew Parker

Ahmad Butt

Peter Candon

I allow these Rules.

Dated 11th May 2004

Falconer of Thoroton, C.

(a) S.I. 2003/3096.

(b) 1996 c. 52.

PART I

III—FIXED PERCENTAGE INCREASE IN ROAD TRAFFIC ACCIDENT CLAIMS

Scope and interpretation	Rule 45.15
Percentage increase of solicitors' fees	Rule 45.16
Percentage increase of counsel's fees	Rule 45.17
Application for an alternative percentage increase where the fixed increase is 12.5%	Rule 45.18
Assessment of alternative percentage increase	Rule 45.19

PART II

III—FIXED PERCENTAGE INCREASE IN ROAD TRAFFIC ACCIDENT CLAIMS

Scope and interpretation

45.15.—(1) This Section sets out the percentage increase which is to be allowed in the cases to which this Section applies.

(Rule 43.2(1)(l) defines 'percentage increase' as the percentage by which the amount of a legal representative's fee can be increased in accordance with a conditional fee agreement which provides for a success fee)

(2) This Section applies where—

- (a) the dispute arises from a road traffic accident; and
- (b) the claimant has entered into a funding arrangement of a type specified in rule 43.2(k)(i).

(Rule 43.2(k)(i) defines a funding arrangement as including an arrangement where a person has entered into a conditional fee agreement or collective conditional fee agreement which provides for a success fee)

(3) This Section does not apply if the proceedings are costs only proceedings to which Section II of this Part applies.

(4) This Section does not apply—

- (a) to a claim which has been allocated to the small claims track;
- (b) to a claim not allocated to a track, but for which the small claims track is the normal track; or
- (c) where the road traffic accident which gave rise to the dispute occurred before 6th October 2003.

(5) The definitions in rule 45.7(4) apply to this Section as they apply to Section II.

(6) In this Section—

- (a) a reference to 'fees' is a reference to fees for work done under a conditional fee agreement or collective conditional fee agreement;
- (b) a reference to 'trial' is a reference to the final contested hearing or to the contested hearing of any issue ordered to be tried separately;
- (c) a reference to a claim concluding at trial is a reference to a claim concluding by settlement after the trial has commenced or by judgment; and
- (d) 'trial period' means a period of time fixed by the court within which the trial is to take place and where the court fixes more than one such period in relation to a claim, means the most recent period to be fixed.

Percentage increase of solicitors' fees

45.16. Subject to rule 45.18, the percentage increase which is to be allowed in relation to solicitors' fees is—

- (a) 100% where the claim concludes at trial; or
- (b) 12.5% where—
 - (i) the claim concludes before a trial has commenced; or
 - (ii) the dispute is settled before a claim is issued.

Percentage increase of counsel's fees

45.17.—(1) Subject to rule 45.18, the percentage increase which is to be allowed in relation to counsel's fees is—

- (a) 100% where the claim concludes at trial;
- (b) if the claim has been allocated to the fast track—
 - (i) 50% if the claim concludes 14 days or less before the date fixed for the commencement of the trial; or

- (ii) 12.5% if the claim concludes more than 14 days before the date fixed for the commencement of the trial or before any such date has been fixed;
 - (c) if the claim has been allocated to the multi-track—
 - (i) 75% if the claim concludes 21 days or less before the date fixed for the commencement of the trial; or
 - (ii) 12.5% if the claim concludes more than 21 days before the date fixed for the commencement of the trial or before any such date has been fixed;
 - (d) 12.5% where—
 - (i) the claim has been issued but concludes before it has been allocated to a track; or
 - (ii) in relation to costs-only proceedings, the dispute is settled before a claim is issued.
- (2) Where a trial period has been fixed, if—
- (a) the claim concludes before the first day of that period; and
 - (b) no trial date has been fixed within that period before the claim concludes,
- the first day of that period is treated as the date fixed for the commencement of the trial for the purposes of paragraph (1).
- (3) Where a trial period has been fixed, if—
- (a) the claim concludes before the first day of that period; but
 - (b) before the claim concludes, a trial date had been fixed within that period,
- the trial date is the date fixed for the commencement of the trial for the purposes of paragraph (1).
- (4) Where a trial period has been fixed and the claim concludes—
- (a) on or after the first day of that period; but
 - (b) before commencement of the trial,
- the percentage increase in paragraph (1)(b)(i) or (1)(c)(i) shall apply as appropriate, whether or not a trial date has been fixed within that period.
- (5) For the purposes of this rule, in calculating the periods of time, the day fixed for the commencement of the trial (or the first day of the trial period, where appropriate) is not included.

Application for an alternative percentage increase where the fixed increase is 12.5%

- 45.18.**—(1) This rule applies where the percentage increase to be allowed—
- (a) in relation to solicitors’ fees under the provisions of rule 45.16; or
 - (b) in relation to counsel’s fees under rule 45.17,
- is 12.5%.
- (2) A party may apply for a percentage increase greater or less than that amount if—
- (a) the parties agree damages of an amount greater than £500,000 or the court awards damages of an amount greater than £500,000; or
 - (b) the court awards damages of £500,000 or less but would have awarded damages greater than £500,000 if it had not made a finding of contributory negligence; or
 - (c) the parties agree damages of £500,000 or less and it is reasonable to expect that, but for any finding of contributory negligence, the court would have awarded damages greater than £500,000.
- (3) In paragraph (2), a reference to a lump sum of damages includes a reference to periodical payments of equivalent value.
- (4) If the court is satisfied that the circumstances set out in paragraph (2) apply it must—
- (a) assess the percentage increase; or
 - (b) make an order for the percentage increase to be assessed.

Assessment of alternative percentage increase

- 45.19.**—(1) This rule applies where the percentage increase of fees is assessed under rule 45.18(4).
- (2) If the percentage increase is assessed as greater than 20% or less than 7.5%, the percentage increase to be allowed shall be that assessed by the court.
- (3) If the percentage increase is assessed as no greater than 20% and no less than 7.5%—
- (a) the percentage increase to be allowed shall be 12.5%; and
 - (b) the costs of the application and assessment shall be paid by the applicant.

PART 65

PROCEEDINGS RELATING TO ANTI-SOCIAL BEHAVIOUR AND HARASSMENT

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Scope of this Part

65.1 This Part contains rules—

- (a) in Section I, about injunctions under the Housing Act 1996(a);
- (b) in Section II, about applications by local authorities under section 91(3) of the Anti-social Behaviour Act 2003(b) for a power of arrest to be attached to an injunction;
- (c) in Section III, about claims for demotion orders under the Housing Act 1985(c) and Housing Act 1988(d) and proceedings relating to demoted tenancies;
- (d) in Section IV, about anti-social behaviour orders under the Crime and Disorder Act 1998(e);
- (e) in Section V, about claims under section 3 of the Protection from Harassment Act 1997(f).

(a) 1996 c. 52.
 (b) 2003 c. 38.
 (c) 1985 c. 68.
 (d) 1988 c. 50.
 (e) 1998 c. 37.
 (f) 1997 c. 40.

SECTION I

Housing Act 1996 injunctions

Scope of this Section and interpretation

65.2—(1) This Section applies to applications for an injunction and other related proceedings under Chapter III of Part V of the Housing Act 1996 (injunctions against anti-social behaviour).

(2) In this Section “the 1996 Act” means the Housing Act 1996.

Applications for an injunction

65.3—(1) An application for an injunction under section 153A, 153B or 153D of the 1996 Act^(a) shall be subject to the Part 8 procedure as modified by this rule and the relevant practice direction.

(2) The application must be—

- (a) made by a claim form in accordance with the relevant practice direction;
- (b) commenced in the court for the district in which the defendant resides or the conduct complained of occurred; and
- (c) supported by affidavit evidence which must be filed with the claim form.

(3) The claim form must state—

- (a) the matters required by rule 8.2; and
- (b) the terms of the injunction applied for.

(4) An application under this rule may be made without notice and where such an application without notice is made—

- (a) the affidavit in support of the application must state the reasons why notice has not been given; and
- (b) the following rules do not apply—
 - (i) 8.3;
 - (ii) 8.4;
 - (iii) 8.5(2) to (6);
 - (iv) 8.6(1);
 - (v) 8.7; and
 - (vi) 8.8.

(5) In every application made on notice, the application notice must be served, together with a copy of the affidavit, by the claimant on the defendant personally.

(6) An application made on notice may be listed for hearing before the expiry of the time for the defendant to file an acknowledgement of service under rule 8.3, and in such a case—

- (a) the claimant must serve the application notice and affidavit on the defendant not less than two days before the hearing; and
- (b) the defendant may take part in the hearing whether or not he has filed an acknowledgment of service.

Injunction containing provisions to which a power of arrest is attached

65.4—(1) In this rule “relevant provision” means a provision of an injunction to which a power of arrest is attached.

(Sections 153C(3) and 153D(4) of the 1996 Act^(b) confer powers to attach a power of arrest to an injunction)

(2) Where an injunction contains one or more relevant provisions—

- (a) each relevant provision must be set out in a separate paragraph of the injunction; and
- (b) subject to paragraph (3), the claimant must deliver a copy of the relevant provisions to any police station for the area where the conduct occurred.

(3) Where the injunction has been granted without notice, the claimant must not deliver a copy of the relevant provisions to any police station for the area where the conduct occurred before the defendant has been served with the injunction containing the relevant provisions.

(a) 1996 c. 52. These sections were inserted by section 13 of the Anti-social Behaviour Act 2003.

(b) 1996 c. 52. These sections were inserted by section 13 of the Anti-social Behaviour Act 2003.

- (4) Where an order is made varying or discharging any relevant provision, the claimant must—
- (a) immediately inform the police station to which a copy of the relevant provisions was delivered under paragraph (2)(b); and
 - (b) deliver a copy of the order to any police station so informed.

Application for warrant of arrest under section 155(3) of the 1996 Act(a)

65.5—(1) An application for a warrant of arrest under section 155(3) of the 1996 Act must be made in accordance with Part 23 and may be made without notice.

- (2) An applicant for a warrant of arrest under section 155(3) of the 1996 Act must—
- (a) file an affidavit setting out grounds for the application with the application notice; or
 - (b) give oral evidence as to the grounds for the application at the hearing.

Proceedings following arrest

65.6—(1) This rule applies where a person is arrested pursuant to—

- (a) a power of arrest attached to a provision of an injunction; or
- (b) a warrant of arrest.

(2) The judge before whom a person is brought following his arrest may—

- (a) deal with the matter; or
- (b) adjourn the proceedings.

(3) Where the proceedings are adjourned the judge may remand the arrested person in accordance with section 155(2)(b) or (5) of the 1996 Act.

(4) Where the proceedings are adjourned and the arrested person is released—

- (a) the matter must be dealt with (whether by the same or another judge) within 28 days of the date on which the arrested person appears in court; and
- (b) the arrested person must be given not less than 2 days' notice of the hearing.

(5) An application notice seeking the committal for contempt of court of the arrested person may be issued even if the arrested person is not dealt with within the period mentioned in paragraph (4)(a).

(6) CCR Order 29, rule 1 shall apply where an application is made in a county court to commit a person for breach of an injunction, as if references in that rule to the judge included references to a district judge.

(For applications in the High Court for the discharge of a person committed to prison for contempt of court see RSC Order 52, rule 8. For such applications in the county court see CCR Order 29, rule 3)

Recognizance

65.7—(1) Where, in accordance with paragraph 2(2)(b) of Schedule 15 to the 1996 Act, the court fixes the amount of any recognizance with a view to it being taken subsequently, the recognizance may be taken by—

- (a) a judge;
- (b) a justice of the peace;
- (c) a justices' clerk;
- (d) a police officer of the rank of inspector or above or in charge of a police station; or
- (e) where the arrested person is in his custody, the governor or keeper of a prison,

with the same consequences as if it had been entered into before the court.

(2) The person having custody of an applicant for bail must release him if satisfied that the required recognizances have been taken.

(a) 1996 c. 52. This section was amended by section 13 of the Anti-social Behaviour Act 2003.

SECTION II

Applications by local authorities for power of arrest to be attached to an injunction

Scope of this Section and interpretation

65.8—(1) This Section applies to applications by local authorities under section 91(3) of the Anti-social Behaviour Act 2003(a) for a power of arrest to be attached to an injunction.

(Section 91 of the 2003 Act applies to proceedings in which a local authority is a party by virtue of section 222 of the Local Government Act 1972(b) (power of local authority to bring, defend or appear in proceedings for the promotion or protection of the interests of inhabitants in their area)

(2) In this Section “the 2003 Act” means the Anti-social Behaviour Act 2003.

Applications under section 91(3) of the 2003 Act for a power of arrest to be attached to any provision of an injunction

65.9—(1) An application under section 91(3) of the 2003 Act for a power of arrest to be attached to any provision of an injunction must be made in the proceedings seeking the injunction by—

- (a) the claim form;
- (b) the acknowledgment of service;
- (c) the defence or counterclaim in a Part 7 claim; or
- (d) application under Part 23.

(2) Every application must be supported by written evidence.

(3) Every application made on notice must be served personally, together with a copy of the written evidence, by the local authority on the person against whom the injunction is sought not less than 2 days before the hearing.

(Attention is drawn to rule 25.3(3)—applications without notice)

Injunction containing provisions to which a power of arrest is attached

65.10—(1) Where a power of arrest is attached to a provision of an injunction on the application of a local authority under section 91(3) of the 2003 Act, the following rules in Section I of this Part shall apply—

- (a) rule 65.4; and
- (b) paragraphs (1), (2), (4) and (5) of rule 65.6.

(2) CCR Order 29, rule 1 shall apply where an application is made in a county court to commit a person for breach of an injunction.

SECTION III

Demotion claims and proceedings relating to demoted tenancies

Scope of this Section and interpretation

65.11—(1) This Section applies to—

- (a) claims by a landlord for an order under section 82A of the Housing Act 1985(c) or under section 6A of the Housing Act 1988(d) (“a demotion order”); and
- (b) proceedings relating to a tenancy created by virtue of a demotion order.

(2) In this Section—

- (a) “a demotion claim” means a claim made by a landlord for a demotion order; and
- (b) “a demoted tenancy” means a tenancy created by virtue of a demotion order.

Demotion claims made in the alternative to possession claims

65.12 Where a demotion order is claimed in the alternative to a possession order, the claimant must use the Part 55 procedure and Section I of Part 55 applies, except that the claim must be made in the county court for the district in which the property to which the claim relates is situated.

Other demotion claims

65.13 Where a demotion claim is made other than in a possession claim, rules 65.14 to 65.19 apply.

(a) 2003 c. 38.

(b) 1972 c. 70.

(c) 1985 c. 68. This section was inserted by section 14 of the Anti-social Behaviour Act 2003.

(d) 1988 c. 50. This section was inserted by section 14 of the Anti-social Behaviour Act 2003.

Starting a demotion claim

65.14—(1) The demotion claim must be made in the county court for the district in which the property to which the claim relates is situated.

(2) The claim form and form of defence sent with it must be in the forms set out in the relevant practice direction.

(The relevant practice direction and Part 16 provide details about the contents of the particulars of claim)

Particulars of claim

65.15 The particulars of claim must be filed and served with the claim form.

Hearing date

65.16—(1) The court will fix a date for the hearing when it issues the claim form.

(2) The hearing date will be not less than 28 days from the date of issue of the claim form.

(3) The standard period between the issue of the claim form and the hearing will be not more than 8 weeks.

(4) The defendant must be served with the claim form and the particulars of claim not less than 21 days before the hearing date.

(Rule 3.1(2)(a) provides that the court may extend or shorten the time for compliance with any rule and rule 3.1(2)(b) provides that the court may adjourn or bring forward a hearing)

Defendant's response

65.17—(1) An acknowledgement of service is not required and Part 10 does not apply.

(2) Where the defendant does not file a defence within the time specified in rule 15.4 he may take part in any hearing but the court may take his failure to do so into account when deciding what order to make about costs.

(3) Part 12 (default judgment) does not apply in a demotion claim.

The hearing

65.18—(1) At the hearing fixed in accordance with rule 65.16(1) or at any adjournment of that hearing the court may—

- (a) decide the demotion claim; or
- (b) give case management directions.

(2) Where the demotion claim is genuinely disputed on grounds which appear to be substantial, case management directions given under paragraph (1)(b) will include the allocation of the demotion claim to a track or directions to enable it to be allocated.

(3) Except where—

- (a) the demotion claim is allocated to the fast track or the multi-track; or
- (b) the court directs otherwise,

any fact that needs to be proved by the evidence of witnesses at a hearing referred to in paragraph (1) may be proved by evidence in writing.

(Rule 32.2(1) sets out the general rule about evidence. Rule 32.2(2) provides that rule 32.2(1) is subject to any provision to the contrary)

(4) All witness statements must be filed and served at least two days before the hearing.

(5) Where the claimant serves the claim form and particulars of claim, he must produce at the hearing a certificate of service of those documents and rule 6.14(2)(a) does not apply.

Allocation

65.19 When the court decides the track for a demotion claim, the matters to which it shall have regard include—

- (a) the matters set out in rule 26.8; and
- (b) the nature and extent of the conduct alleged.

Proceedings relating to demoted tenancies

65.20 A practice direction may make provision about proceedings relating to demoted tenancies.

SECTION IV

Anti-social behaviour orders under the Crime and Disorder Act 1998

Scope of this Section and interpretation

65.21—(1) This Section applies to applications in proceedings in a county court under sub-sections (2), (3) or (3B) of section 1B of the Crime and Disorder Act 1998(a) by a relevant authority, and to applications for interim orders under section 1D of that Act.

(2) In this Section—

- (a) “the 1998 Act” means the Crime and Disorder Act 1998;
- (b) “relevant authority” has the same meaning as in section 1(1A) of the 1998 Act; and
- (c) “the principal proceedings” means any proceedings in a county court.

Application where the relevant authority is a party in principal proceedings

65.22—(1) Subject to paragraph (2)—

- (a) where the relevant authority is the claimant in the principal proceedings, an application under section 1B(2) of the 1998 Act for an order under section 1B(4) of the 1998 Act must be made in the claim form; and
- (b) where the relevant authority is a defendant in the principal proceedings, an application for an order must be made by application notice which must be filed with the defence.

(2) Where the relevant authority becomes aware of the circumstances that lead it to apply for an order after its claim is issued or its defence filed, the application must be made by application notice as soon as possible thereafter.

(3) Where the application is made by application notice, it should normally be made on notice to the person against whom the order is sought.

Application by a relevant authority to join a person to the principal proceedings

65.23—(1) An application under section 1B(3B) of the 1998 Act by a relevant authority which is a party to the principal proceedings to join a person to the principal proceedings must be made—

- (a) in accordance with Section I of Part 19;
- (b) in the same application notice as the application for an order under section 1B(4) of the 1998 Act against the person; and
- (c) as soon as possible after the relevant authority considers that the criteria in section 1B(3A) of the 1998 Act are met.

(2) The application notice must contain—

- (a) the relevant authority’s reasons for claiming that the person’s anti-social acts are material in relation to the principal proceedings; and
- (b) details of the anti-social acts alleged.

(3) The application should normally be made on notice to the person against whom the order is sought.

Application where the relevant authority is not party in principal proceedings

65.24—(1) Where the relevant authority is not a party to the principal proceedings—

- (a) an application under section 1B(3) of the 1998 Act to be made a party must be made in accordance with Section I of Part 19; and
- (b) the application to be made a party and the application for an order under section 1B(4) of the 1998 Act must be made in the same application notice.

(2) The applications—

- (a) must be made as soon as possible after the authority becomes aware of the principal proceedings; and
- (b) should normally be made on notice to the person against whom the order is sought.

(a) 1998 c. 37. Sections 1(1A) and 1B were amended by section 85 of the Anti-social Behaviour Act 2003 (c. 38).

Evidence

65.25 An application for an order under section 1B(4) of the 1998 Act must be accompanied by written evidence, which must include evidence that section 1E of the 1998 Act has been complied with.

Application for an interim order

65.26—(1) An application for an interim order under section 1D of the 1998 Act must be made in accordance with Part 25.

- (2) The application should normally be made—
- (a) in the claim form or application notice seeking the order; and
 - (b) on notice to the person against whom the order is sought.

SECTION V

Proceedings under the Protection from Harassment Act 1997

Scope of this Section

65.27 This Section applies to proceedings under section 3 of the Protection from Harassment Act 1997(a) (“the 1997 Act”).

Claims under section 3 of the 1997 Act

- 65.28** A claim under section 3 of the 1997 Act—
- (a) shall be subject to the Part 8 procedure; and
 - (b) must be commenced—
 - (i) if in the High Court, in the Queen’s Bench Division;
 - (ii) if in the county court, in the court for the district in which the defendant resides or carries on business or the court for the district in which the claimant resides or carries on business.

Applications for issue of a warrant of arrest under section 3(3) of the 1997 Act

- 65.29**—(1) An application for a warrant of arrest under section 3(3) of the 1997 Act—
- (a) must be made in accordance with Part 23; and
 - (b) may be made without notice.
- (2) The application notice must be supported by affidavit evidence which must—
- (a) set out the grounds for the application;
 - (b) state whether the claimant has informed the police of the conduct of the defendant as described in the affidavit; and
 - (c) state whether, to the claimant’s knowledge, criminal proceedings are being pursued.

Proceedings following arrest

- 65.30**—(1) The judge before whom a person is brought following his arrest may—
- (a) deal with the matter; or
 - (b) adjourn the proceedings.
- (2) Where the proceedings are adjourned and the arrested person is released—
- (a) the matter must be dealt with (whether by the same or another judge) within 28 days of the date on which the arrested person appears in court; and
 - (b) the arrested person must be given not less than 2 days’ notice of the hearing.

(a) 1997 c. 40.

EXPLANATORY NOTE

(This note is not part of the Rules)

The primary purpose of these Rules is to add to the Civil Procedure Rules 1998 (“the Rules”) a new Part 65, which will govern proceedings under various enactments relating to anti-social behaviour and harassment, including:

- injunctions under Chapter III of Part V of the Housing Act 1996, as amended by the Anti-social Behaviour Act 2003 (“the 2003 Act”);
- demotion of tenancies under section 82A of the Housing Act 1985 or section 6A of the Housing Act 1988, as inserted by the 2003 Act;
- anti-social behaviour orders under the Crime and Disorder Act 1998, as amended by the 2003 Act; and
- proceedings under section 3 of the Protection from Harassment Act 1997.

The following new provisions are also added to the Rules:

- a new rule 5.4A, which allows the Attorney-General access to documents from court records when making applications to restrain vexatious litigants; and
- a new Section III of Part 45, which makes provision in road traffic accident claims for fixed percentage increases to apply to legal representatives’ fees in respect of success fees, where the claimant has entered into a conditional fee agreement or collective conditional fee agreement which provides for a success fee.

In addition amendments are made to existing rules, including the following:

- rule 6.10 (certificate of service) is amended so that a certificate of service is no longer required to state that the document has not been returned undelivered;
- rule 30.8 (transfer of competition law claims) is amended so that it applies to claims raising an issue under Chapter I or II of Part I of the Competition Act 1998, as well as to claims raising an issue under Article 81 or 82 of the EC Treaty;
- various rules in Part 55 (possession claims) are amended in consequence of new Part 65, to provide for the Part 55 procedure to apply where a demotion order is claimed in the alternative to a possession order, and where a possession claim is made in respect of a demoted tenancy; and
- rule 56.2 is amended and rule 56.3 is substituted by a new rule in consequence of amendments made to the Landlord and Tenant Act 1954 by the Regulatory Reform (Business Tenancies)(England and Wales) Order 2003. The substituted rule 56.3 contains provisions governing claims brought by a landlord or tenant for a new tenancy under section 24 of the 1954 Act, or claims by a landlord to terminate a tenancy under section 29 of the 1954 Act, as amended by the 2003 Order.

The opportunity has also been taken to make a number of other minor amendments to the rules currently in force, and to revoke some of the remaining provisions from the former Rules of the Supreme Court and County Court Rules in Schedules I and II to the Rules.

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COUNTY COURTS, ENGLAND AND WALES**

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