

2008 No. 3327 (L. 29)

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

The Civil Procedure (Amendment No.3) Rules 2008

Made - - - - - *29th December 2008*

Laid before Parliament *7th January 2009*

Coming into force - - - *6th April 2009*

The Civil Procedure Rule Committee, in exercise of the power conferred by 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 No.3) Rules 2008 and come into force on 6th April 2009.

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 “RSC” means the RSC Order so numbered in Schedule 1 to those Rules; and
- (c) a reference to an Order by number and prefixed “CCR” means the CCR Order so numbered in Schedule 2 to those Rules.

Amendments to the Civil Procedure Rules 1998

3. In rule 3.1(4)—

- (a) for “may” substitute “will”; and
- (b) after “complied with” insert “the Practice Direction (Pre-Action Conduct) and”.

4. For rule 7.4(3) substitute—

“(3) Where the claimant serves particulars of claim separately from the claim form in accordance with paragraph (1)(b), the claimant must, within 7 days of service on the defendant, file a copy of the particulars except where—

- (a) paragraph 5.2(4) of the Practice Direction (Production Centre) supplementing Part 7 applies; or

(a) 1997 c. 12.

(b) S.I. 1998/3132. There are relevant amendments in S.I. 1999/1008, 2000/1317, 2001/256, 2001/2792, 2001/4015, 2002/2058, 2003/2113, 2004/3419, 2005/2292, 2005/3515, 2006/3435, 2007/2204, 2007/3543 and 2008/2178.

(b) paragraph 6.4 of the Practice Direction (Money Claim Online) supplementing Part 7 applies.”.

5. In rule 14.1A(2)—

- (a) in sub-paragraph (a)—
 - (i) for “letter of claim” substitute “letter before claim”; and
 - (ii) after “accordance with the” insert “Practice Direction (Pre-Action Conduct) or any”;
and
- (b) in sub-paragraph (b), for “letter of claim” substitute “letter before claim”.

6. In rule 16.3—

- (a) for paragraph (2) substitute—

“(2) The claimant must, in the claim form, state—

 - (a) the amount of money claimed;
 - (b) that the claimant expects to recover—
 - (i) not more than £5,000;
 - (ii) more than £5,000 but not more than £25,000; or
 - (iii) more than £25,000; or
 - (c) that the claimant cannot say how much is likely to be recovered.”;
- (b) in paragraph (3), for “he” substitute “the claimant”;
- (c) in paragraph (4)—
 - (i) for “his” substitute “a”; and
 - (ii) in sub-paragraph (b) omit “financial”;
- (d) in paragraph (5)(a), for “£15,000” substitute “£25,000”; and
- (e) in paragraph (6)—
 - (i) for “how much he” substitute “how much the claimant”;
 - (ii) in sub-paragraph (a), for “he may recover” substitute “the court may make an award of”; and
 - (iii) in sub-paragraph (b) omit “against him”.

7. In rule 26.6—

- (a) in paragraph (1)—
 - (i) in sub-paragraph (a)(i) omit “financial”;
 - (ii) in sub-paragraph (a)(ii) omit “financial”;
 - (iii) in sub-paragraph (b), for “his landlord” substitute “a landlord”; and
 - (iv) in sub-paragraph (b)(iii) omit “financial”;
- (b) in paragraph (3) omit “financial”; and
- (c) for paragraph (4) substitute—

“(4) Subject to paragraph (5), the fast track is the normal track for any claim—

 - (a) for which the small claims track is not the normal track; and
 - (b) which has a value—
 - (i) for proceedings issued on or after 6th April 2009, of not more than £25,000;
and
 - (ii) for proceedings issued before 6th April 2009, of not more than £15,000.”.

8. After rule 30.6 insert the parenthesis—

“(Practice Direction 54D (Administrative Court (Venue)) contains provisions about where hearings may be held in proceedings in the Administrative Court.)”.

9. In Part 44—

- (a) in the table of contents, after the entry “Application of costs rules” insert—

“Costs capping orders – General	Rule 44.18
Application for costs capping order	Rule 44.19
Application to vary a costs capping order	Rule 44.20”;
- (b) in rule 44.3(5)(a), after “the parties followed” insert “the Practice Direction (Pre-Action Conduct) or”; and
- (c) after rule 44.17, insert—

“Costs capping orders – General

44.18.—(1) A costs capping order is an order limiting the amount of future costs (including disbursements) which a party may recover pursuant to an order for costs subsequently made.

(2) In this rule, “future costs” means costs incurred in respect of work done after the date of the costs capping order but excluding the amount of any additional liability.

(3) This rule does not apply to protective costs orders.

(4) A costs capping order may be in respect of—

- (a) the whole litigation; or
- (b) any issues which are ordered to be tried separately.

(5) The court may at any stage of proceedings make a costs capping order against all or any of the parties, if—

- (a) it is in the interests of justice to do so;
- (b) there is a substantial risk that without such an order costs will be disproportionately incurred; and
- (c) it is not satisfied that the risk in sub-paragraph (b) can be adequately controlled by—
 - (i) case management directions or orders made under Part 3; and
 - (ii) detailed assessment of costs.

(6) In considering whether to exercise its discretion under this rule, the court will consider all the circumstances of the case, including—

- (a) whether there is a substantial imbalance between the financial position of the parties;
- (b) whether the costs of determining the amount of the cap are likely to be proportionate to the overall costs of the litigation;
- (c) the stage which the proceedings have reached; and
- (d) the costs which have been incurred to date and the future costs.

(7) A costs capping order, once made, will limit the costs recoverable by the party subject to the order unless a party successfully applies to vary the order. No such variation will be made unless—

- (a) there has been a material and substantial change of circumstances since the date when the order was made; or
- (b) there is some other compelling reason why a variation should be made.

Application for a costs capping order

44.19.—(1) An application for a costs capping order must be made on notice in accordance with Part 23.

(2) The application notice must—

(a) set out—

(i) whether the costs capping order is in respect of the whole of the litigation or a particular issue which is ordered to be tried separately; and

(ii) why a costs capping order should be made; and

(b) be accompanied by an estimate of costs setting out—

(i) the costs (and disbursements) incurred by the applicant to date; and

(ii) the costs (and disbursements) which the applicant is likely to incur in the future conduct of the proceedings.

(3) The court may give directions for the determination of the application and such directions may—

(a) direct any party to the proceedings—

(i) to file a schedule of costs in the form set out in the Practice Direction supplementing this rule;

(ii) to file written submissions on all or any part of the issues arising;

(b) fix the date and time estimate of the hearing of the application;

(c) indicate whether the judge hearing the application will sit with an assessor at the hearing of the application; and

(d) include any further directions as the court sees fit.

Application to vary a costs capping order

44.20. An application to vary a costs capping order must be made by application notice pursuant to Part 23.”.

10. In rule 46.2—

(a) in the table in paragraph (1)—

(i) in the third entry, after “More than £10,000” insert “but not more than £15,000”;

(ii) after the third entry insert the entry—

“For proceedings issued on or after 6th April 2009, £1,650”;
more than £15,000

(b) in paragraph (3)—

(i) in sub-paragraph (b), for “of the quantifying” substitute “of quantifying”; and

(ii) in sub-paragraph (b)(iii)—

(aa) for “£10,000” substitute “£15,000”; and

(bb) for “he expects to recover” substitute “is likely to be recovered”;

(c) in paragraph (6)(c), for “his” substitute “the”; and

(d) omit the parenthesis below paragraph (6).

11. In rule 55.10, for paragraph (2) substitute—

“(2) The claimant must send a notice to the property addressed to the “the occupiers” within 5 days of receiving notification of the date of the hearing by the court.”.

12. In Part 70—

(a) in the table of contents, for the entry—

“Enforcement of awards of bodies other than the High Court and county courts Rule 70.5”

substitute—

“Enforcement of decisions of bodies other than the High Court and county courts and compromises enforceable by enactment Rule 70.5”; and

(b) for rule 70.5 and the heading to that rule, substitute—

“Enforcement of decisions of bodies other than the High Court and county courts and compromises enforceable by enactment

70.5.—(1) This rule applies, subject to paragraph (2), where an enactment provides that—

- (a) a decision of a court, tribunal, body or person other than the High Court or a county court; or
- (b) a compromise,

may be enforced as if it were a court order or that any sum of money payable under that decision or compromise may be recoverable as if payable under a court order.

(2) This rule does not apply to—

- (a) any judgment to which Part 74 applies;
- (b) arbitration awards;
- (c) any order to which RSC Order 115 applies; or
- (d) proceedings to which Part 75 (traffic enforcement) applies.

(2A) Unless paragraph (3) applies, a party may enforce the decision or compromise by applying for a specific method of enforcement under Parts 71 to 73, Schedule 1 RSC Orders 45 to 47 and 52 and Schedule 2 CCR Orders 25 to 29 and must—

- (a) file with the court a copy of the decision or compromise being enforced; and
- (b) provide the court with the information required by the practice direction supplementing this Part.

(3) If an enactment provides that a decision or compromise is enforceable or a sum of money is recoverable if a court so orders, an application for such an order must be made in accordance with paragraphs (4) to (7A) of this rule.

(4) The application—

- (a) may, unless paragraph (4A) applies, be made without notice; and
- (b) must be made to the court for the district where the person against whom the order is sought, resides or carries on business, unless the court otherwise orders.

(4A) Where a compromise requires a person to whom a sum of money is payable under the compromise to do anything in addition to discontinuing or not starting proceedings (“a conditional compromise”), an application under paragraph (4) must be made on notice.

(5) The application notice must—

- (a) be in the form; and
- (b) contain the information

required by the practice direction supplementing this Part.

(6) A copy of the decision or compromise must be filed with the application notice.

(7) An application other than in relation to a conditional compromise may be dealt with by a court officer without a hearing.

(7A) Where an application relates to a conditional compromise, the respondent may oppose it by filing a response within 14 days of service of the application notice and if the respondent—

- (a) does not file a response within the time allowed, the court will make the order; or

- (b) files a response within the time allowed, the court will make such order as appears appropriate.

(8) If an enactment provides that a decision or compromise may be enforced in the same manner as an order of the High Court if it is registered, any application to the High Court for registration must be made in accordance with the practice direction supplementing this Part.”.

13. In Part 75—

- (a) in the table of contents, after the entry relating to rule 75.5, insert the entry—

“Rule 75.5A Review of decision of court officer”;

- (b) for rule 75.5 and the heading to that rule, substitute—

“Functions of court officer

75.5. The practice direction supplementing this Part sets out the circumstances in which a court officer may exercise the functions of the court.”;

- (c) after rule 75.5, insert—

“Review of decision of court officer

75.5A.—(1) Any party may request any decision of a court officer to be reviewed by a district judge.

(2) Such a request must be made within 14 days of service of the decision.

(3) Unless—

- (a) the party requesting the review requests an oral hearing; or
- (b) the court orders an oral hearing,

a request for a review under paragraph (2) will be dealt with without an oral hearing.”; and

- (d) in rule 75.7—

(i) for paragraph (6) substitute—

“(6) An authority may not renew a warrant issued in accordance with this Part beyond the 12 month validity period but, subject to paragraph (7), an authority may request the reissue of a warrant during the 12 month validity period.”; and

(ii) after paragraph (6) insert—

“(7) Where the address of the respondent has changed since the issue of the warrant, the authority may request the reissue of the warrant by filing a request—

- (a) specifying the new address of the respondent;
- (b) providing evidence that the new address for the respondent does relate to the respondent named in the order and against whom enforcement is sought; and
- (c) certifying that the amount due under the order remains unpaid.

(8) Where the court is satisfied that the new address of the respondent given in the request for the reissue of the warrant relates to the respondent named in the order, it will seal the request and return it to the authority.

(9) The authority must prepare the reissued warrant in the appropriate form within 7 days of the sealing of the request to reissue.

(10) A reissued warrant will only be valid for the remainder of the 12 month period beginning with the date it was originally issued.”.

14. In RSC Order 115—

- (a) in rule 16(1)—

(i) for “shall” substitute “will”;

- (ii) after “Central Office” insert “at the Royal Courts of Justice in London”; and
 - (iii) for “Crown Office” substitute “Administrative Court”; and
- (b) in rule 32(1)—
- (i) for “shall” substitute “will”; and
 - (ii) after “Central Office” insert “at the Royal Courts of Justice in London”.

15. In CCR Order 26, for rule 17(2) substitute—

“(2) Without prejudice to paragraph (3A), the person desiring a warrant of possession to be issued must file a request certifying that the land which is subject of the judgment or order has not been vacated.”.

Sir Anthony Clarke, M.R.
Martin Moore-Bick, L.J.
Michael Briggs, J.
Master Barbara Fontaine
HHJ Steven Stewart Q.C.
District Judge Robert Hill
District Judge Suzanne Burn
William Featherby QC
David di Mambro
Richard Walford
Andrew Parker
Peter Candon
David Grant

I allow these Rules
Signed by authority of the Lord Chancellor

29th December 2008

Bridget Prentice
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Civil Procedure Rules 1998 in that they—

- amend rule 7.4(3) as a consequence of amendments being made to two Practice Directions supplementing Part 7;
- amend rule 16.3 as a consequence of the increase in the financial limit of the fast track procedure from £15,000 to £25,000 for claims issued on or after 6th April 2009;
- amend rule 26.6 to increase the financial limit of the fast track procedure for claims issued on or after 6th April 2009 from £15,000 to £25,000;
- insert new rules 44.18 to 44.20 to provide for applications for costs capping orders;
- amend rule 46.2 as a consequence of the increase in the financial limit of the fast track procedure from £15,000 to £25,000 for claims issued on or after 6th April 2009. For claims issued after this date which are worth more than £15,000 the amount of fast track trial costs which the court may award is £1,650;
- amend rule 55.10 to extend the period of notice about a possession claim that must be given by the claimant to an occupier of the relevant property;
- amend rule 70.5 to clarify the procedure for the enforcement of sums payable under compromises following the amendment of the Employment Tribunal Act 1996 by section 142 of the Tribunals, Courts and Enforcement Act 2007;
- amend rule 75.5 and insert a new rule 75.5A to enable requests for a review of a court officer’s decision to be determined without an oral hearing unless the person making the request asks for a hearing or the court orders a hearing;
- amend rule 75.7 to enable an authority to request the reissue of a warrant during its 12 month validity period where the respondent’s address has changed since the warrant was originally issued;
- in relation to the new Practice Direction on Pre-Action Conduct, make minor amendments to rules 3.1(4), 14.1A(2) and 44.3(5) concerning parties’ compliance with this new Practice Direction;
- in relation to regionalisation of the Administrative Court, insert a parenthesis or “signpost” below rule 30.6 to alert the reader to the existence of a new Practice Direction concerning where hearings in the Administrative Court may be held, and make minor amendments to RSC Order 115, rules 16(1) and 32(1); and
- amend CCR Order 26, rule 17(2) following amendments to the Housing Acts of 1985, 1988 and 1996 by section 299 of, and paragraph 1 to 26 of Schedule 11 to the Housing and Regeneration Act 2008.

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