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STATUTORY INSTRUMENTS

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**2012 No. 2208**

**The Civil Procedure (Amendment No.2) Rules 2012**

**Citation, commencement and interpretation**

1. These Rules may be cited as the Civil Procedure (Amendment No.2) Rules 2012 and shall come into force on 1 October 2012.

2. In these Rules—

a reference to a Part or rule by number alone means the Part or rule so numbered in the Civil Procedure Rules 1998<sup>(1)</sup>;

a reference to “Schedule 1” means Schedule 1 to those Rules, and a reference to an Order by number and prefixed by “RSC” means the RSC Order so numbered in that Schedule; and

a reference to “Schedule 2” means Schedule 2 to those Rules, and a reference to an Order by number and prefixed by “CCR” means the CCR Order so numbered in that Schedule.

**Amendments to the Civil Procedure Rules 1998**

3. In Part 26, after rule 26.3(7), before the words in parentheses, insert—

“(8) Where a party does not file an allocation questionnaire by the date specified, the court will make such order as it considers appropriate, including—

- (a) an order for directions;
- (b) an order striking out the claim;
- (c) an order striking out the defence and entering judgment; or
- (d) listing the case for a case management conference.

(9) Where a claim is a designated money claim issued in Northampton County Court, the claim will be transferred to the claimant’s preferred court or the defendant’s home court as appropriate and the court to which it is transferred will make an order pursuant to rule 26.3(8).

(10) Where an order has been made under rule 26.3(8), a party who was in default will not normally be entitled to an order for the costs of any application to set aside or vary that order nor of attending any case management conference and will, unless the court thinks it unjust to do so, be ordered to pay the costs that the default caused to any party who was not in default.”.

4. In Part 27—

(a) in rule 27.5, omit “(Rule 27.14(3)(d) provides for the payment of an expert’s fees.)”; and

(b) in rule 27.14(2)—

- (i) at the end of subparagraph (g), omit “and”;
- (ii) at the end of subparagraph (h)(iv), for “.” substitute “; and”; and

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<sup>(1)</sup> S.I. 1998/3132. There are relevant amendments in S.I. 2000/221, S.I. 2000/2092, S.I. 2001/2792, S.I. 2001/4015, S.I. 2002/3219, S.I. 2004/1306, S.I. 2006/1689, S.I. 2008/2178, S.I. 2009/2092, S.I. 2009/3390, S.I. 2010/621, S.I. 2010/1953 & S.I. 2011/3103.

(iii) after subparagraph (h)(iv), insert—

“(i) in an appeal, the cost of any approved transcript reasonably incurred.”.

5. In Part 31—

(a) after rule 31.23(1), insert—

“(Section 6 of Part 81 contains provisions in relation to committal for making a false disclosure statement.)”; and

(b) omit rule 31.23(2).

6. In Part 32—

(a) after rule 32.14(1) and the words in parentheses following it, insert—

“(Section 6 of Part 81 contains provisions in relation to committal for making a false statement of truth.)”; and

(b) omit rule 32.14(2).

7. In Part 40, after rule 40.2, omit the words in parentheses.

8. In Part 52—

(a) In rule 52.2, in both the heading and the rule itself, for “Practice Direction 52” substitute “Practice Directions 52A to 52E”;

(b) in rule 52.3, for paragraph (4A) substitute—

(a) “(4A) Where a judge of the Court of Appeal or of the High Court, a Designated Civil Judge or a Specialist Circuit Judge refuses permission to appeal without a hearing and considers that the application is totally without merit, the judge may make an order that the person seeking permission may not request the decision to be reconsidered at a hearing.

(b) For the purposes of subparagraph (a) “Specialist Circuit Judge” means a Patents County Court judge and any circuit judge in any county court nominated to hear cases in the Mercantile, Chancery or Technology and Construction Court lists.”; and

(c) in rule 52.15—

(i) after paragraph (1), insert—

“(1A) Where permission to apply for judicial review of a decision of the Upper Tribunal has been refused by the High Court—

(a) the applicant may apply to the Court of Appeal for permission to appeal;

(b) the application will be determined on paper without an oral hearing.”; and

(ii) in paragraph (2), for “paragraph (1)”, insert “paragraphs (1) or (1A)”.

9. In Part 54—

(a) in the table of contents—

(i) after the entry for rule 54.1, insert—

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“Who may exercise the powers of the High Court	Rule 54.1A”; and
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(ii) after the entry for rule 54.7, insert—

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“Judicial review of decisions of the Upper Tribunal	Rule 54.7A”; and
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(b) after rule 54.1, insert—

**“Who may exercise the powers of the High Court**

**54.1A.**—(1) A court officer assigned to the Administrative Court office who is—

- (a) a barrister; or
- (b) a solicitor,

may exercise the jurisdiction of the High Court with regard to the matters set out in paragraph (2) with the consent of the President of the Queen’s Bench Division.

(2) The matters referred to in paragraph (1) are—

- (a) any matter incidental to any proceedings in the High Court;
- (b) any other matter where there is no substantial dispute between the parties; and
- (c) the dismissal of an appeal or application where a party has failed to comply with any order, rule or practice direction.

(3) A court officer may not decide an application for—

- (a) permission to bring judicial review proceedings;
- (b) an injunction;
- (c) a stay of any proceedings, other than a temporary stay of any order or decision of the lower court over a period when the High Court is not sitting or cannot conveniently be convened, unless the parties seek a stay by consent.

(4) Decisions of a court officer may be made without a hearing.

(5) A party may request any decision of a court officer to be reviewed by a judge of the High Court.

(6) At the request of a party, a hearing will be held to reconsider a decision of a court officer, made without a hearing.

(7) A request under paragraph (5) or (6) must be filed within 7 days after the party is served with notice of the decision.”.

(c) after rule 54.7 insert—

**“Judicial review of decisions of the Upper Tribunal**

**54.7A.**—(1) This rule applies where an application is made, following refusal by the Upper Tribunal of permission to appeal against a decision of the First Tier Tribunal, for judicial review—

- (a) of the decision of the Upper Tribunal refusing permission to appeal; or
- (b) which relates to the decision of the First Tier Tribunal which was the subject of the application for permission to appeal.

(2) Where this rule applies—

- (a) the application may not include any other claim, whether against the Upper Tribunal or not; and
- (b) any such other claim must be the subject of a separate application.

(3) The claim form and the supporting documents required by paragraph (4) must be filed no later than 16 days after the date on which notice of the Upper Tribunal’s decision was sent to the applicant.

(4) The supporting documents are—

- (a) the decision of the Upper Tribunal to which the application relates, and any document giving reasons for the decision;
- (b) the grounds of appeal to the Upper Tribunal and any documents which were sent with them;
- (c) the decision of the First Tier Tribunal, the application to that Tribunal for permission to appeal and its reasons for refusing permission; and
- (d) any other documents essential to the claim.

(5) The claim form and supporting documents must be served on the Upper Tribunal and any other interested party no later than 7 days after the date of issue.

(6) The Upper Tribunal and any person served with the claim form who wishes to take part in the proceedings for judicial review must, no later than 21 days after service of the claim form, file and serve on the applicant and any other party an acknowledgment of service in the relevant practice form.

(7) The court will give permission to proceed only if it considers—

- (a) that there is an arguable case, which has a reasonable prospect of success, that both the decision of the Upper Tribunal refusing permission to appeal and the decision of the First Tier Tribunal against which permission to appeal was sought are wrong in law; and
- (b) that either—
  - (i) the claim raises an important point of principle or practice; or
  - (ii) there is some other compelling reason to hear it.

(8) If the application for permission is refused on paper without an oral hearing, rule 54.12(3) (request for reconsideration at a hearing) does not apply.

(9) If permission to apply for judicial review is granted—

- (a) if the Upper Tribunal or any interested party wishes there to be a hearing of the substantive application, it must make its request for such a hearing no later than 14 days after service of the order granting permission; and
- (b) if no request for a hearing is made within that period, the court will make a final order quashing the refusal of permission without a further hearing.

(10) The power to make a final order under paragraph (9)(b) may be exercised by the Master of the Crown Office or a Master of the Administrative Court.”; and

**10. In Part 63—**

- (a) In the table of contents, after the entry for rule 63.26, insert—

“Allocation to the small claims track	Rule 63.27
Extent to which rules in this Part apply to small claims	Rule 63.28”;

- (b) in rule 63.1(3), for “Claims”, substitute “Save as provided in rule 63.27, claims”; and
- (c) after rule 63.26, insert—

**“Allocation to the small claims track**

**63.27.—(1)** A claim started in or transferred to a patents county court will be allocated to the small claims track if—

- (a) rule 63.13, but not rule 63.2, applies to the claim;

- (b) the value of the claim is not more than £5,000;
  - (c) it is stated in the particulars of claim that the claimant wishes the claim to be allocated to the small claims track; and
  - (d) no objection to the claim being allocated to the small claims track is raised by the defendant in the defence.
- (2) Where rule 63.27(1) applies, the parties do not need to file an allocation questionnaire.
- (3) If either—
- (a) the requirements of rule 63.27(1)(a), (b) and (c) are satisfied, but in the defence the defendant objects to the claim being allocated to the small claims track; or
  - (b) the requirements of rule 63.27(1)(a) and (b) are satisfied, but not (c), and in the defence the defendant requests that the claim be allocated to the small claims track,

the court will allocate the claim to the small claims track or the multi-track in accordance with Part 26 (case management – preliminary stage).

(4) Part 27 (small claims track) shall apply to claims allocated to the small claims track in a patents county court with the modification to rule 27.2(1)(a) that Part 25 (interim remedies) shall not apply to such claims at all. Section VII of Part 45 (scale costs for claims in a patents county court) shall not apply to claims allocated to the small claims track in a patents county court.

#### **Extent to which rules in this Part apply to small claims**

**63.28.**—(1) To the extent provided by this rule, this Part shall apply to a claim allocated to, or requested to be allocated to, the small claims track in a patents county court.

(2) Rules 63.1, 63.13, 63.18, 63.20, 63.21, 63.22, 63.25, 63.26(1) and (2), and 63.27 shall apply to the claim.

(3) No other rules in this Part shall apply.”.

#### **11. In Part 65—**

- (a) in rule 65.6, for paragraph (6) and the words in parentheses following it, substitute—

“(6) Sections 2 and 8 of Part 81 apply where an application is made in a county court to commit a person for breach of an injunction, as if references in those Sections to the judge included references to a district judge.

(For applications for the discharge of a person committed to prison for contempt of court see rules 81.31 and 81.32.)”;

- (b) in rule 65.47, for paragraph (5) and the words in parentheses following it, substitute—

“(5) Sections 2 and 8 of Part 81 apply where an application is made in a county court to commit a person for breach of an injunction as if references in those Sections to the judge include references to a district judge.

(For applications for the discharge of a person committed to prison for contempt of court see rules 81.31 and 81.32.)”.

#### **12. In Part 71—**

- (a) in rule 71.2(7)—

(i) after “terms”, insert “, or in terms to substantially the same effect”; and

(ii) for “You must obey this order. If you do not, you may be sent to prison for contempt of court.”, substitute—

“If you the within-named [ ] do not comply with this order you may be held to be in contempt of court and imprisoned or fined, or your assets may be seized.”; and

(b) after rule 71.8, insert—

“(Part 81 contains provisions in relation to committal.)”.

**13. In Part 76—**

(a) in rule 76.12(3)—

(i) for “Practice Direction 52 applies”, substitute “Practice Directions 52A to 52E apply”; and

(ii) for “paragraphs 5.6, 5.6A, 5.7, 5.9 and 5.10 of that Practice Direction” substitute “paragraphs 5.1 to 5.3 of Practice Direction 52A and paragraphs 6.3 to 6.6 of Practice Direction 52B”; and

(b) in rule 76.16(3)—

(i) for “Practice Direction 52 applies”, substitute “Practice Directions 52A to 52E apply”; and

(ii) for “paragraphs 5.6, 5.6A, 5.7, 6.3A 15.2, 15.3, 15.4 and 15.6 of that Practice Direction” substitute “paragraphs 6.3 to 6.6 of Practice Direction 52B and paragraph 28 of Practice Direction 52C”.

**14. In Part 79, in rule 79.14B(2)—**

(a) for “Practice Direction 52 applies”, substitute “Practice Directions 52A to 52E apply”; and

(b) for “paragraphs 5.6, 5.6A, 5.7, 5.9 and 5.10 of that Practice Direction” substitute “paragraphs 5.1 to 5.3 of Practice Direction 52A and paragraphs 6.3 to 6.6 of Practice Direction 52B”.

**15. In Part 80—**

(a) in rule 80.8(3)—

(i) for “Practice Direction 52 applies”, substitute “Practice Directions 52A to 52E apply”; and

(ii) for “paragraphs 5.6, 5.6A, 5.7, 5.9 and 5.10 of that Practice Direction” substitute “paragraphs 5.1 to 5.3 of Practice Direction 52A and paragraphs 6.3 to 6.6 of Practice Direction 52B”; and

(b) in rule 80.12(3)—

(i) for “Practice Direction 52 applies”, substitute “Practice Directions 52A to 52E apply”; and

(ii) for “paragraphs 5.6, 5.6A, 5.7, 6.3A 15.2, 15.3, 15.4 and 15.6 of that Practice Direction” substitute “paragraphs 6.3 to 6.6 of Practice Direction 52B and paragraph 28 of Practice Direction 52C”.

**16.** After Part 80, insert Part 81 (applications and proceedings in relation to contempt of court) as set out in the Schedule to these Rules.

**17.** In the glossary to the Civil Procedure Rules 1998, after the entry for “Defence of tender before claim”, insert—

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“Divisional Court	With or without capital letters, means a divisional court constituted under section 66 of the Senior Courts Act 1981(2).”.
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**18.** In Schedule 1—

- (a) in RSC Order 45—
  - (i) in rule 3(1)—
    - (aa) in subparagraph (b), for “rule 5” substitute “rule 81.4”; and
    - (bb) in subparagraph (c), for “in such a case” substitute “in a case in which rule 81.20 applies”;
  - (ii) in rule 4(1)—
    - (aa) in subparagraph (b), for “rule 5” substitute “rule 81.4”; and
    - (bb) in subparagraph (c), for “in such a case” substitute “in a case in which rule 81.20 applies”;
  - (iii) in rule 4(2)(c), for “rule 5” substitute “rule 81.20”; and
  - (iv) omit—
    - (aa) rule 5;
    - (bb) rule 6;
    - (cc) rule 7; and
    - (dd) rule 12(4);
- (b) in RSC Order 46, for rule 5 substitute—

“Rule 5 Notwithstanding anything in rules 2 and 4, an application for permission to issue a writ of sequestration must be made in accordance with Part 81 and in particular Section 7 of that Part.”;
- (c) omit RSC Order 52 (committal); and
- (d) omit RSC Order 64 (sittings, vacations and office hours).

**19.** In Schedule 2—

- (a) omit CCR Order 29 (committal for breach of order or undertaking); and
- (b) omit CCR Order 34 (penal and disciplinary provisions).

**Transitional provisions**

**20.** The amendments made by Rules 5, 6, 11, 12, 16, 18 and 19 and the Schedule to these Rules shall apply—

- (a) to all applications in relation to contempt of court that are made on or after the date that these Rules come into force, subject to subparagraph (b); and
- (b) in relation to contempt to which Section 5 of Part 81 of the Civil Procedure Rules 1998 applies (contempt in the face of the court), to all acts or omissions alleged to constitute contempt in the face of the court that are alleged to have occurred on or after that date.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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*Neuberger of Abbotsbury, M.R.  
Martin Moore-Bick, L.J.  
Launcelot Henderson, J.  
Peter Coulson, J.  
HHJ Stephen P. Stewart Q.C.  
District Judge Robert Hill  
William Featherby Q.C.  
Edward Pepperall  
Katy Peters*

I allow these Rules  
Signed by authority of the Lord Chancellor

7th August 2012

*Nick Herbert*  
Minister of State  
Ministry of Justice