

CIVIL PROCEDURE NEWS

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SWEET & MAXWELL



PR Focus

Update on CPR Practice Directions

In Practice Direction (Civil Litigation: Procedure) [1999] 1 W.L.R. 1124, practice directions made by the Lord Chief Justice, the Master of the Rolls and the Vice-Chancellor coming into force on April 26, 1999, were listed in a Schedule. In the text of this Practice Direction it was explained that the practice directions listed in the Schedule replaced previous practice directions relating to civil litigation and apply in the Queen's Bench Division and the Chancery Division of the High Court and to litigation in county courts other than family proceedings; some of the practice directions apply to appeals to the Court of Appeal.

It was further explained that the Queen's Bench Masters Practice Directions and the Queen's Bench Practice Directions (set out in *SCP 1999*, Vol. 2, Sections 2A and 2C, pp. 155–183, 258–313) are in the course of revision and will, except to the extent to which they are inconsistent with the Civil Procedure Rules 1998 and the practice directions listed in the Schedule, continue to apply for the time being.

The Schedule to this Practice Direction lists practice directions under three heads: (1) those which supplement the CPR, (2) those which supplement the RSC and CCR rules re-enacted in Schedules 1 and 2 to the CPR (the "Schedule rules"), and (3) other practice directions. The contents of each of these directions is explained below (full texts can be obtained from the Lord Chancellor's website at <http://www.open.gov.uk/lcd/index.htm>).

(1) Practice directions supplementing the CPR

This part of the Schedule contains 57 practice directions and, in relation to 35 of them, gives page references showing where they appear in *Civil Procedure*. Some of these 35 practice directions have been amended. The changes have been noted in successive issues of *Civil Procedure News (CP News)*, including this issue (see Stop Press section).

The remaining 22 practice directions were published after *Civil Procedure* went to press, but some of them have been published with commentary in issues of *CP News*, including this

issue, as they have become available since April 26. These 22 practice directions are listed below together with references to *CP News*, including this issue, as appropriate. Some of these practice directions have been amended since April 26; those that have been amended are marked with an asterisk.

- Court Offices (Pt 2)
- Allocation of Cases to Levels of Judiciary (Pt 2)
- Forms (Pt 4)* (see *CP News* 5/99, June 8, 1999)
- Court Documents (Pt 5) (see *CP News* 5/99, June 8, 1999)
- Production Centre (Pt 7) (see *CP News* 5/99, June 8, 1999)
- Claims for the Recovery of Taxes (Pt 7)
- How to make claims in Schedule rules and other claims (Pt 8)* (see *CP News* 2/99, May 4, 1999)
- Civil Evidence Act 1995 (Pt 33)
- Fees for Examiners (Pt 34)
- Court Sittings (Pt 39)
- Accounts, Inquiries, etc. (Pt 40)
- Judgments and Orders (Pt 40)
- Structured Settlements (Pt 40) (see *CP News* 4/99, May 28, 1999)
- Provisional Damages (Pt 41)
- Change of Solicitor (Pt 42) (see *CP News* 3/99, May 13, 1999)
- Contentious Probate Proceedings (Pt 49) (see *CP News* 1/99, March 29, 1999)
- Applications under the Companies Act 1985 and the Insurance Companies Act 1982
- Technology and Construction Court (Pt 49)* (see *CP News* 3/99, May 13, 1999)
- Commercial Court (Pt 49) (see *CP News* 3/99, May 13, 1999)
- Patents, etc. (Pt 49) (see *CP News* 4/99, May 28, 1999)

- Admiralty*
- Arbitrations (Pt 49) (see *CP News* 4/99, May 28, 1999)
- Mercantile Courts and Business Lists (Pt 49)

(2) Practice directions supplementing Schedules 1 and 2 of the CPR

This part of the Schedule to the Practice Directions lists the following practice directions under this head:

- Service out of the jurisdiction (RSC, O.11) (see *CP News* 5/99, June 8, 1999)
- Sale, etc., of Land by Order of the Court: Conveyancing Counsel of the Court (RSC, O.31)
- Committal Applications (RSC, O.52 and CCR, O.29) (see *CP News* 4/99, May 28, 1999)
- Applications for Judicial Review (RSC, O.53)
- Applications for Writ of Habeas Corpus (RSC, O.5)

(3) Other practice directions

This part of the Schedule to the Practice Directions lists the following practice directions under this head:

- Practice Direction (Court of Appeal (Civil Division)) [1999] 1 W.L.R.1027 (see *CP News* 5/99, June 8, 1999)
- Protocols (see *Civil Procedure*, pp. 799-827)
- Insolvency Proceedings
- Directors Disqualification Proceedings
- The Use of the English Language in Cases in the Civil Courts in Wales
- Chancery Division Practice Directions (Sections C and D of the Chancery Guide)

Applications under CPR “Schedule rules”

The two CPR Schedules contain a host of RSC and CCR rules (known within the CPR as “Schedule rules”) which make provision for applications or appeals to be made to the court (either High Court or a county court, or both). In Practice Direction (Sched. 1 and Sched. 2 to the CPR) these many provisions are divided into three categories; the first two

consist of applications of various types and the third of appeals. The Practice Direction then indicates how proceedings for such applications and appeals should be started (which claim form to use) and the procedure then to be followed. If the provision is listed in Table 1, the procedures stated in Section A of the Practice Direction apply, if listed in Table 2, those in Section B apply, and if listed in Table 3, those in Section C apply. (It should be noted that Sections A and B are not limited in their application to the proceedings listed in Tables 1 and 2.)

In the May 4, 1999, issue of *CP News* the full text of the Practice Direction was printed with commentary. This Practice Direction is very difficult to follow and it has created a lot of problems in practice, not merely because it was issued at a very late stage. Section B has now been amended; in particular, para. B.5 has been changed significantly.

Table 2 lists 21 RSC provisions and 29 CCR provisions found, respectively, in Schedules 1 and 2, and which provide for the making of various applications to the High Court or a county court. A number of them deal with applications for possession of land, for example, CCR, O.24 (summary proceedings for possession) and CCR, O.49 (accelerated possession for assured tenancies, etc.).

If a practitioner wants to start proceedings under any of the provisions listed in Table 2, what should he do? As indicated above, he should refer to the paragraphs in Section B of the Practice Direction. What will he find there? Paragraphs B.2, B.3, and B.4 provide as follows. The claimant must first comply with any special provision set out in the Schedule rules, practice direction or any Act relating to the claim (para. B.2); for example, relating to the contents of the claim form, the nature of evidence required in support of the claim, and when it must be filed or served, etc. (see further para. B.3). Where a Schedule rule makes special provision for the contents of particulars of claim, those particulars must be attached to the claim form and served with it (para. B.4).

Then what? Now we come to para. B.5. Originally this paragraph stated as follows: “Subject to any special or contrary provision in an Act or Schedule rule, the claimant *must use the Part 8 procedure* as modified in the remainder of this section” (emphasis added). In this form, para. B.5 was open to the interpretation

that proceedings brought under a provision listed in Table 2 were to be dealt with under the alternative procedure for claims set out in Pt 8, subject to any provisions to the contrary in Section B of the Practice Direction. In its amended form, there is no reference to Pt 8 in para. B.5. The paragraph now reads: "Subject to any special or contrary provision in an Act or Schedule rule, the claimant must use the procedure set out in the remainder of this section." In other words, the practitioner carries on as before, subject to the provisions in Section B of the Practice Direction.

It would seem that court offices have been aware of this change for some time but it has only recently come into the public domain.

Directors Disqualification Proceedings

Practice Direction (Directors Disqualification Proceedings) has been issued. In effect, it constitutes a complete procedural code, with forms attached, for dealing with proceedings for the disqualification of company directors under the Company Directors Disqualification Act 1986. This Practice Direction provides further evidence of the fact that the Woolf reforms have not had the effect of unifying and simplifying English civil procedure but have led to the fragmentation of procedural law into a bewildering array of special procedural regimes.

This Practice Direction is divided into six parts as follows: (1) Application and interpretation (paras 1.1 to 3.1), (2) Disqualification applications (paras 4.1 to 16.1), (3) Applications under sections 7(2) and 7(4) of the Act (paras 17.1 to 19.2), (4) Applications for permission to act (paras 20.1 to 23.1), (5) Applications (paras 24.1 to 26.2), and (6) Disqualification proceedings other than in the Royal Courts of Justice (para. 27.1).

Overriding objective of Civil Procedure Rules

Rule 1.1(1) of the CPR states that the new rules have the overriding objective of "enabling the court to deal with cases justly". According to r.1.1(2), this includes, so far as is practicable, (a) ensuring that the parties are on an equal footing, (b) saving expense, (c) dealing with the case in ways which are proportionate, (d) ensuring that it is dealt with

expeditiously and fairly, and (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases. The third of these objectives ("proportionality") is elaborated in r.1.1(2)(c) and is said to include dealing with the case in ways which are proportionate (i) to the amount of money involved, (ii) to the importance of the case, (iii) to the complexity of the issues, and (iv) to the financial position of each party. The court must seek to give effect to the overriding objective when it (a) "exercises any power" given to it by the CPR, or (b) interprets any rule (r.1.2).

The "overriding objective" is analysed at length in paras 1.3.1 *et seq.* of *Civil Procedure* (the "new White Book"). It is said there that the aspects of the overriding objective as particularised in r.1.1(2) are likely to be given operational effect and should not be considered merely as "a set of pious aspirations" (see also *ibid.*, para. 2.3.3). It is further said that there is a risk that the objectives listed in that provision will be used selectively and merely for the purpose of giving added weight to particular exercises of powers and of interpretations of rules. There is also a risk that the terms of r.1.1(2) will be subjected to over-elaborate analysis. The listed objectives are not mutually exclusive and, in a given situation, a course taken by the court to meet one objective may yield a different result to a course taken to meet another.

The CPR came into force on April 26. The effect of the overriding objective was considered in the judgment given on the following day by Neuberger J. in *Maltez v. Lewis*, *The Times*, May 4, 1999. In this case the claimant (M), who was to be represented at trial by a junior counsel of seven years call, acting in person applied for an order debarbing the defendant (L) from instructing leading counsel of considerably greater years and experience. M contended that it was inappropriate that L should have leading counsel to represent him in light of the overriding objective, in particular, the requirement that effort should be made to ensure that the parties were "on an equal footing" and that the case was dealt with "in ways which are proportionate". M argued that the court had jurisdiction under r.1.1(2) to make the order she sought and the judge appears to have been prepared to accept this, at least for the purposes of argument.

His Lordship said the extent of the court's

case management powers had been substantially extended by the CPR and the circumstances in which the court would exercise those powers were far wider than previously. In a variety of ways, the new powers could be applied so that a party was not unfairly visited by excessive costs. For example, by making an appropriate order for costs where the other party had instructed unreasonably expensive advisers. Further, if one party could afford experienced, large and expensive solicitors, whereas the other could only afford small and relatively inexperienced advisers, the court could make orders to ensure that the parties were on an equal footing. For example, by allowing the smaller firm more time to comply with a particular procedural requirement, or by requiring the larger firm to prepare for the court document bundles in those circumstances where the responsibility for doing so would normally fall on the smaller firm.

However, his Lordship held that the court should not, in exercising its powers in a manner which furthered the overriding objective, make orders reducing or removing the right of a party to be represented by solicitors or an advocate of his or her own choice. That right, though in practice not absolute, was fundamental and well established and was an important ingredient of any free society.

It was noted above that r.1.2 states that the court must seek to give effect to the overriding objective when it (a) "exercises any power" given to it by the CPR, or (b) interprets any rule. It may be commented that, although there are circumstances in which a party might properly make an application to the court for an order preventing a legal representative from acting for, or appearing for, an opponent, the court's powers to grant such applications are not derived from any power exercisable by the court

Application for judicial review

RSC, O.53 (Applications for Judicial Review) is included amongst the former RSC provisions re-enacted in Sched. 1 of the CPR (see *Civil Procedure*, pp. 576 *et seq.*). The Order was re-enacted with some minor amendments made for the purpose of bringing its provisions into line with the "core" rules of the CPR. For example, in r. 3, "application for leave" was replaced

with "application for permission", and in rr. 5 and 6 "affidavit" is replaced by "written evidence". Further, internal cross-references to former RSC provisions now superseded by Parts within the CPR were brought up-to-date (e.g. r. 8(1) no longer refers to "Order 24 or 26 or Order 38, r. 2(3)" but to "CPR Part 31 or CPR Part 18").

Further amendments to O. 53 were made by the Civil Procedure (Amendment) Rules 1999 (S.I. 1999 No.1008). Rule 3 was amended for the purpose of making it clear that, although an application for permission to apply for judicial review may be made without notice to any other person (*i.e. ex parte*), it should be assumed that the application will be heard by the court sitting in public unless the court decides otherwise in accordance with CPR, r. 39.2 and Practice Direction (Miscellaneous Provisions Relating to Hearings), paras 1.4 *et seq.* (see *Civil Procedure*, pp. 404 & 408).

Rule 3(2) states that an application for permission to apply for judicial review is made on application notice in Form 86A (previously Form 86A in Appendix A to the RSC, see *SCP 1999*, Vol. 2, para. 1A-88). This retains the former position. Formerly, r. 5(2) provided that an application for judicial review should be made by originating motion to a judge sitting in open court, unless the court directed that it should be made (a) by originating summons to a judge in chambers, or (b) by originating motion to a Divisional Court. This rule was amended when re-enacted in CPR Schedule 1 and was further amended by the Civil Procedure (Amendment) Rules 1999. Rule 5(2) now states that application shall be made to a judge unless the court directs that it shall be made to a Divisional Court. Again, the question whether the court should sit in private is left to be determined in accordance with CPR, r. 39.2 and the Practice Direction referred to above. And r. 5(2A) states that an application for judicial review, whether made to a judge or to a Divisional Court, "shall be made by claim form". The form to be used is Form 86 (previously Form 86 in Appendix A to the RSC, see *SCP 1999*, Vol. 2, para. 1A-87).

RSC, O.53 is supplemented by Practice Direction (Schedule 1, Order 53 (Application for Judicial Review)). This Practice Direction is printed below, following this commentary. RSC, O.53, r. 6(1) states that, when a party has obtained permission to apply for judicial review, the application for permission under

r. 3 must be served with the claim form. This is supplemented by para. 4.1 of the Practice Direction which states that r. 6(1) is complied with by the applicant attaching to the claim form (Form 86) the application for permission (Form 86A) (see *SCP 1999*, Vol. 1, para. 53/14/71).

The application to institute substantive proceedings must be supported by "written evidence" (see rr. 5 and 6). Paragraph 5.1 of the Practice Direction explains that this may consist of either an affidavit or a witness statement.

Rule 5(5) states that an application for judicial review must be entered within 14 days after the grant of permission (see *SCP 1999*, Vol.1, para. 53/14/17). Paragraph 7.1 of the Practice Direction states that the application must be entered in the Crown Office list in accordance with *Practice Direction (Crown Office List)* [1987] 1 W.L.R. 232, *sub nom. Practice Note (Crown Office List: Arrangement)* [1987] 1 All E.R. 368. This Practice Direction was issued in February 3, 1987, and is printed in *SCP 1999*, Vol. 2, para. 2C-168 as Queen's Bench Practice Direction No. 24 (see also *SCP 1999*, Vol. 1, para. 53/14/77).

Paragraph 8 of the Practice Direction says that certain practice directions, etc., extant before April 26, 1999, shall continue to apply to proceedings under RSC, O.53. These sources are listed in Table 1 to the Practice Direction and include the Practice Direction issued on February 3, 1987, and referred to above. Unfortunately, the list has been compiled in a very slapdash fashion. On its face the list is incomplete and inaccurate. Consequently, one cannot be confident that it includes all of the earlier practice directions, etc., which it is intended should continue to have effect. The proper citations and dates of the sources listed in Table 1 are as shown immediately below (the sources are set out in chronological order, and not in the order in which they are listed in Table 1, and appropriate references to the *SCP 1999* are also given).

- *Practice Direction (Crown Office List)* [1987] 1 W.L.R. 232; *sub nom. Practice Note (Crown Office List : Arrangement)* [1987] 1 All E.R. 368 (February 3, 1987) (see Queen's Bench Practice Direction No. 24, *SCP 1999*, Vol. 2, para. 2C-168)
- *Practice Note (Crown Office List: Estimated Length of Hearing)* [1987] 1 All E.R. 1184 (April 3, 1987) (see *SCP 1999*, Vol. 1, para. 2C-168)
- *Practice Direction (Crown Office List) (No. 2)* [1991] 1 W.L.R. 280; *sub nom. Practice Note (Crown Office List : Striking Out for Want of Prosecution)* [1991] 1 All E.R. 1055 (March 18, 1991) (see Queen's Bench Practice Direction No. 25, *SCP 1999*, Vol. 1, para. 53/14/79 and Vol. 2, para. 2C-172)
- *Practice Direction (Crown Office List: Preparation for Hearings)* [1994] 1 W.L.R. 1551; *sub nom. Practice Note (Crown Office List: Penalties for Late Papers)* [1994] 4 All E.R. 671 (October 25, 1994) (see Queen's Bench Practice Direction No. 26, *SCP 1999*, Vol. 1, para. 53/14/81 and Vol. 2, paras 2C-173 to 2C-175)
- *Practice Direction (Crown Office List: Legislation Bundle)* [1997] 1 W.L.R. 52; *sub nom. Practice Note (Judicial Review: Documents to be Lodged)* [1997] 1 All E.R. 128 (December 6, 1996)
- *Practice Direction (Crown Office List: Consent Orders)* [1997] 1 W.L.R. 825; *sub nom. Practice Note (Crown Office List: Uncontested Proceedings)* [1997] 2 All E.R. 799 (May 12, 1997) (see Queen's Bench Practice Direction No. 27, *SCP 1999*, Vol. 2, paras 2C-176 to 2C-179)
- *Practice Statement (Supreme Court: Judgments)* [1998] 1 W.L.R. 825; *sub nom. Practice Statement (Royal Courts of Justice: Judgments)* [1998] 2 All E.R. 667 (April 22, 1998); as modified by *Practice Statement (Supreme Court: Judgments) (No. 2)* [1999] 1 W.L.R. 1; *sub nom. Practice Note (Royal Courts of Justice: Judgments)* [1999] 1 All E.R. 125 (November 25, 1998)
- *Practice Direction (Crown Office List : Criminal Proceedings)* [1983] 1 W.L.R. 925; *sub nom. Practice Note (Crown Office List : Uncontested Proceedings : Applications Outside London : Delay)* [1983] 2 All E.R. 1020 (July 21, 1983) (see Queen's Bench Practice Direction No. 23 (part), *SCP 1999*, Vol. 2, paras 2C-164 to 2C-167)

**PRACTICE DIRECTION—SCHEDULE 1,
ORDER 53
(APPLICATION FOR JUDICIAL REVIEW)**

*This Practice Direction supplements CPR Part 50, and
Schedule 1 to the CPR*

Terminology

- 1.1** In this practice direction -
- (1) 'Order 53' means those provisions contained in Schedule 1, RSC Order 53, which were previously contained in the Rules of the Supreme Court (1965);
 - (2) a reference to a rule or Part prefixed with CPR is a reference to a rule or Part contained in the CPR rules; and
 - (3) a reference to a rule number alone is a reference to the rule so numbered in Order 53.

Scope

- 2.1** This practice direction supplements Order 53 (which sets out the procedure for applying for judicial review) by providing further detail about the application.
- 2.2** This practice direction must be read together with Order 53.
- 2.3** It also lists at paragraph 8 other practice directions which governed procedure relating to Order 53 before 26 April 1999 and which will continue to do so.

Claim Form

- 3.1** Rule 5 (2A) specifies that an application for judicial review must be made by claim form. The claim form to be used is Form 86, modified in accordance with the guidance contained in the Forms practice direction.
- 3.2** The claimant must also use a modified Form 86 where he is making an application under rule 11(1) (Proceedings for disqualification of a member of a local authority).

Application for judicial review

- 4.1** In order to comply with the requirement in rule 6 (1) (copy of the statement in support of the application for permission to be served), Form 86A must be attached to Form 86 (the claim form) and served with it.

Meaning of written evidence

- 5.1** The written evidence required by—
- (1) rule 5.6 (written evidence to be filed before the application is entered for hearing);
 - (2) rule 6 (statements and evidence); and
 - (3) rule 11 (proceedings for disqualification of member of a local authority, may be either an affidavit or a witness statement.)

(CPR rule 32.16 provides for the form of an affidavit, CPR rule 32.8 provides for the form of a witness statement, and CPR rule 22.1 requires a witness statement to be verified by a statement of truth).

Service

- 6.1** The Crown Office will prepare and serve all orders of the court.
- (CPR rule 6.3 provides that the court will normally serve a document which it has issued or prepared).
- 6.2** All other documents (and copies) must be prepared and served by the parties.

Cases entered in the Crown Office List

- 7.1** When an application is entered in accordance with rule 5(5)—
- (a) for judicial review; or
 - (b) under rule 11(1) (Proceedings for disqualification of member of local authority), the application must be entered in the Crown Office List in accordance with Practice Direction (Crown Office List) 1987 1 W.L.R. 232 [1987] 1 All E.R. 368.

(In Schedule 1, RSC Order 57 rule 2 provides for the entry of claims in the appropriate office and for the filing of copy documents for the use of the court)

Practice Directions, etc., which apply to proceedings under Order 53**8.** The Practice directions, Statements

and Practice Notes set out in Table 1 continue to apply to proceedings under Order 53 on and after 26 April 1999.

Table 1	
Practice Direction etc.	Content
Practice Note [1983] 2 All E.R. 1020	Urgent matters outside London—consultation of Crown Office and continuation in London; Delay in applying for permission to apply for judicial review
Practice Note (Crown Office List) [1987] 1 All E.R. 1184	Need for accuracy in time estimates
Practice Direction (Crown Office List) [1987] 1 W.L.R. 232 [1987] 1 All E.R. 368.	Parts of the List.
Practice Note [1991] 1 All E.R. 1055	Permission to apply for judicial review and time allowed for such applications
Practice Direction (Crown Office List: Preparation for hearings) [1994] 4 All E.R. 671, [1994] 1 W.L.R. 1551 (18th November 1994)	Preparation for hearings; Documentation; Time limits; Skeleton arguments: amendment of grounds.
Practice Direction (Crown Office List: Consent Orders) [1997] 1 W.L.R. 825	Consent orders
Practice Note [1997] 1 All E.R. 128 (6th December 1997)	Permission to apply for judicial review—Documents to be lodged—relevant legislative provisions and statutory instruments
Practice Statement (Supreme Court: Judgments) [1998] 1 W.L.R.825, [1998] 2 All E.R. 638.	Judgments

Stop Press

This stop press details further alterations and additions made (1) to CPR Practice Directions and Protocols as published in *Civil Procedure* and (2) to CPR Practice Directions becoming available after *Civil Procedure* was published and printed in previous issues of *Civil Procedure News*.

CPR Pt 21) add the following new paragraph:

- 2.4** A The litigation friend is not required to serve the documents referred to in paragraph 2.3(2)(c) when he serves a certificate of suitability on the person to be served under paragraph 2.4.

PRACTICE DIRECTION (DEFAULT JUDGMENT)

■ Page 97—Default judgment by request

In para. 3(2) of this Practice Direction (supplementing CPR Pt 12) delete “N225” and substitute “N227” (this re-instates para. 3(2) to its original form).

PRACTICE DIRECTION (STATEMENTS OF CASE)

■ Page 134—Recovery of land

Paragraph 6(3) of this Practice Direction (supplementing CPR Pt 16) now reads:

(3) if the claim relates to residential premises, and the tenancy is one which otherwise would be a protected tenancy within the meaning of the Rent Act 1977, state whether the rateable value of the premises on every day specified by section 4(2) of the Rent Act 1977 in relation to the premises exceeds the sum so specified or whether the rent for the time being payable in respect of the premises exceeds the sum specified in section 4(4)(b) of the Act.

PRACTICE DIRECTION (CHILDREN AND PATIENTS)

■ Page 169 —The litigation friend

After para. 2 of this Practice Direction (supplementing

PRACTICE DIRECTION (DEPOSITIONS AND COURT ATTENDANCE BY WITNESSES)

■ Page 359—Depositions to be taken abroad, etc.

Paragraph 5.2 of this Practice Direction (supplementing CPR Pt 34) now reads (amending sub-para. (1) and deleting sub-para. (2)):

An application for an order referred to in paragraph (1) should be made by application notice in accordance with Part 23.

By a consequential amendment, in para. 5.3 the words “or claim form” are deleted.

Insert after para. 5.5 the following new para. 5.6 and re-number existing paras 5.6 and 5.7 as, respectively, paras 5.8 and 5.9:

- 5.6** Attention is drawn to the provisions of r. 23.10 (application to vary or discharge an order made without notice).

In para. 5.8 (formerly para. 5.7), add at the end after “where the evidence is to be taken if” (the following was inadvertently omitted in Civil Procedure):

(1) there is in respect of that country a Civil Procedure Convention providing for the taking of evidence in that country for the assistance of proceedings in the High Court or other court in this country, or

(2) with the consent of the Secretary of State.

■ Page 359—Depositions to be taken in England and Wales, etc.

Paragraphs 6.1 to 6.6 have been replaced by the following paras:

- 6.1** Schedule 1 to Part 50 (RSC O. 70) relating

to obtaining evidence for foreign courts applies to letters of request and should be read in conjunction with this part of the practice direction.

- 6.2** The Evidence (Proceedings in Other Jurisdictions) Act 1975 applies to these depositions.
- 6.3** Where a foreign court sends a letter of request under which it is proposed that an application to give effect to the request be made by an agent in England or Wales of a party to the foreign proceedings, the application should be made by an application notice (see CPR Part 23) and should be supported by a witness statement or affidavit exhibiting:
- (1) the letter of request;
 - (2) a statement of the issues relevant to the proceedings;
 - (3) a list of questions or the subject matter of questions to be put to the proposed deponent;
 - (4) a translation of the documents in (1), (2) and (3) above if necessary; and
 - (5) a draft order.
- 6.4** Where the application to give effect to the request is made by the Treasury Solicitor (see RSC O. 70, r. 3), he must provide to the court:
- (1) a statement of the issues relevant to the proceedings;
 - (2) a list of questions or the subject matter of questions to be put to the proposed deponent;
 - (3) a translation of
 - (a) the documents in (1) and (2) above and
 - (b) the letter of request, if necessary; and
 - (4) a draft order.
- 6.5** The order for the deponent to attend and be examined together with the evidence upon which the order was made must be served on the deponent.
- 6.6** Attention is drawn to the provisions of r. 23.10 (application to vary or discharge an order made without notice).
- 6.7** Arrangements for the examination to take place at a specified time and place before an examiner of the court or such other person as the court may appoint shall be made by the applicant for the order (*i.e.* the agent referred to in paragraph 6.3 or the Treasury Solicitor) and approved by the Senior Master.
- 6.8** The provisions of paragraph 4.2 to 4.12 apply to the depositions referred to in this paragraph, except that the examiner must send the deposition to the Senior Master. (For further information about evidence see Part 32 and the practice direction which supplements it.)

PRACTICE DIRECTION (MISCELLANEOUS PROVISIONS RELATING TO HEARINGS)

■ Page 411—Representation at hearings

Paragraph 5.2 of this Practice Direction (supplementing CPR Pt 39) was added in May (see CP News, 4/99, May 28, 1999) and para. 5 was re-numbered as para. 5.1. Paragraph 5.2 is now amended and paras 5.3 to 5.5 added. Paragraphs 5.2 to 5.5. are as follows:

- 5.2** Where a party is a company or other corporation and is to be represented at a hearing by an employee the written statement should contain the following additional information:
- (1) The full name of the company or corporation as stated in its certificate of registration.
 - (2) The registered number of the company or corporation.
 - (3) The position or office in the company or corporation held by the representative.
 - (4) The date on which and manner in which the representative was authorised to act for the company or corporation, *e.g.* _____ 19____: written authority from managing director; or _____ 19____ : Board resolution dated _____ 19____.
- 5.3** Rule 39.6 is intended to enable a company or other corporation to represent itself as a litigant in person. Permission under r. 39.6(b) should therefore be given by the court unless there is some particular and sufficient reason why it should be withheld.
- 5.4** Permission under r. 39.6(b) should be obtained in advance of the hearing from, preferably, the judge who is to hear the case, but may, if it is for any reason impracticable or inconvenient to do so, be obtained from any judge by whom the case could be heard.
- 5.5** The permission may be obtained infor-

mally and without notice to the other parties. The judge who gives the permission should record in writing that he has done so and supply a copy to the company or corporation in question and to any other party who asks for one.

PRE-ACTION PROTOCOL FOR PERSONAL INJURY CLAIMS

■ Page 803—Letter of Claim

Paragraphs 3.2 and 3.4 of this Protocol are amended as explained below and, as a consequence, changes are

made to the draft Letter of Claim set out in Annex A of the Protocol (pp. 803–804). The following sentence is now added at the end of para. 3.2:

In cases of road traffic accidents, the letter should provide the name and address of the hospital where treatment has been obtained and the claimant's hospital reference number.

The following two sentences are now added at the end of para. 3.4:

Details of the claimant's National Insurance number and date of birth should be supplied to the defendant's insurer once the defendant has responded to the letter of claim and confirmed the identity of the insurer. This information should not be supplied in the letter of claim.

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