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CIVIL PROCEDURE NEWS

A White Book Service

- Effect of Civil Procedure (Amendment) Rules 2000
- Amendments to CPR Practice Directions and Forms
- New CPR Parts
- Set-off in cases of cross judgments

Sweet & Maxwell

In Brief

Cases

■ ALL-IN-ONE DESIGN AND BUILD LTD v. MOTCOMB ESTATES LTD, February 1, 2000, unrep.
CPR r. 36.21(2) — held, rule granting court power to award interest on damages awarded to claimant in case where claimant recovers more that he proposed in his Pt 36 offer is not *ultra vires* the rule-making power (see *Civil Procedure* (2nd ed.), para. 36.21.1)

■ B (A MINOR) (SPLIT HEARINGS: JURISDICTION), RE, *The Times*, January 18, 2000, CA
County Courts Act 1981, s. 77 — in care proceedings, question whether child subject to interim care order had suffered non-accidental injury determined as preliminary issue — in determining issue, judge giving reasoned preliminary judgment in which he rejected expert evidence — judge adjourning proceedings to later date for final disposal but not making any declaration or specific order — held, the Court of Appeal had jurisdiction to entertain an appeal against the judge's findings of fact (see SCP 1999, Vol. 2, para. 20A-750)

■ CLEVELAND STRUCTURAL ENGINEERING (HONG KONG) LTD v. ADVANCED SPECIALIST TREATMENT ENGINEERING LTD, *The Times*, February 7, 2000
CPR r. 5.4, Practice Direction (Arbitrations), para. 5.3 — in arbitration proceedings, X obtaining award against Y — X suspecting that Y had issued an arbitration claim form for purpose of obtaining permission to appeal to the court against the award — X applying under r. 5.4 to be supplied from the records of the court with any documents relating to those proceedings (if any) — held, allowing the application, X would be a "party" to "proceedings" within r. 5.4 if Y had issued an arbitration claim form in accordance with para. 5.3 even though it had not yet been served on X (see *Civil Procedure* (2nd ed.), paras 5.4.1 & 49GPD-003)

■ FARAH v. BRITISH AIRWAYS PLC, *The Times*, January 26, 2000, CA
CPR r. 3.4 — intending immigrant (C) bringing claim against airline (D1) for breach of contract and Home Office (D2) for negligence — county court judge striking out C's statement of case against D2 on ground that D2 owed C no duty of care — held, allowing C's appeal, (1) the law relating to the question whether D2 owed a duty of care in the tripartite situation arising in this case was developing, (2) the particular issue had to be determined in the light of the established facts, (3) in the circumstances, it was not possible to come to the conclusion on an application under r. 5.4 that C's statement of case disclosed no reasonable grounds for bringing the claim (MR says "has no realistic prospect of success" seems to be confusing r. 3.4(2)(a) and r. 24.2(a)(i)) (see *Civil Procedure* (2nd ed.), para. 3.4.1)

■ FIELD v. LEEDS CITY COUNCIL, *The Times*, January 18, 2000, CA
CPR r. 35.4 — tenant (P) bringing claim against local authority landlord (D) for housing disrepair — district judge refusing to allow D to call B, a surveyor employed in its housing claims investigation section, as an expert witness at trial — judge upholding district judge — held, dismissing the appeal, (1) where a court is called upon to determine whether a person should be permitted to give expert evidence it should be provided with material by which it could assess (a) what the issues in the case were likely to be, and (b) the person's ability to deal with those issues, (2) a properly qualified person who understood that his primary duty is to the court is not disqualified from giving evidence by the fact that he is employed by one of the parties — Court observing that in disrepair cases one expert should be appointed and indicating how parties should cooperate to achieve this) (see *Civil Procedure* (2nd ed.), para. 35.4.2)

■ G.K.R. KARATE U.K. LTD v. YORKSHIRE POST NEWSPAPERS LTD, *The Times*, February 9, 2000, CA
CPR r. 1.1, 3.1(1), Pt 32 — in defamation claim, judge ordering trial of issues of privilege and malice as preliminary issues at the outset of the trial — held, dismissing C's appeal, (1) libel cases are especially amendable to active case management for the purpose of ensuring that they were dealt with proportionately, expeditiously and fairly, (2) in the circumstances, the determination of these issues in advance of the issue of justification was fair, sensible and economic, (3) at the trial of these issues it would be for the judge to determine the extent of the evidence to be admitted, exercising his powers under Pt 32 (see *Civil Procedure* (2nd ed.), paras 3.1.1, 32.1.4 & 32.1.5)

■ NAMUSOKE v. NORTHWICK PARK AND ST MARY'S N.H.S. TRUST, November 26, 1999, Buckley J., unrep.
C.P.R. rr. 3.3(1), 24.2(a)(i), Sched. 1 RSC O. 58, r. 1, Sched. 2 CCR O. 13, r. 1 — after considering statements of case in medical negligence claim, in actively managing case master on own initiative ordering that C should show cause why court should not give summary judgment for D of its own initiative — on D's appeal, held, (1) the master had jurisdiction to make the order before exchange of witness statements and experts' reports, but (2) in the circumstances ought to have exercised his discretion differently, (3) the costs of the master's initiative should be reserved and the costs for the appeal to the judge should be costs in the case, (4) an appeal to a judge is not a rehearing and the judge should only interfere if satisfied that an order is wrong in principle (*e.g.* based on

a misconstruction of a rule, or plainly wrong and contrary to the overriding objective) (see *Civil Procedure* (2nd ed.), paras 1.4.1, 3.3.1, 24.2.2 and R58.1.3)

■ POWELL v. CHIEF CONSTABLE OF NORTH WALES CONSTABULARY, *The Times*, February 11, 2000, CA
CPR rr. 32.1 & 39.2(3) — C bringing claim against D for wrongful imprisonment, etc. — judge rejecting argument that evidence relating to the identity of an alleged police informer should not be admitted on ground of public interest immunity but ruling that the trial of any sensitive issue should be heard in private — held, allowing D's appeal, (1) the questions whether evidence should be excluded on ground of immunity and whether the court should sit in private are distinct, (2) once it is determined that the immunity attaches the evidence is excluded as a matter of law and the court has no discretion to admit it on terms that it be heard in private (observations on the nature of informer immunity in civil proceedings generally) (see *Civil Procedure* (2nd ed.), paras 32.1.1 & 39.2.7)

■ PURDY v. CAMBRAN, December 17, 1999, CA, unrep.
CPR r. 3.4 — Court of Appeal dismissing P's appeal against judge's order striking out his personal injury claim for want of prosecution as being an abuse of process — May L.J. explaining relevance of former authorities on striking out in light of *Biguzzi v. Rank Leisure Plc* [1999] 1 W.L.R. 1926, CA — see also explanations of this matter in *Snowcrest Ltd v. Thames Water Authority*, November 4, 1999, CA, unrep., *Woodward v. Finch*, December 8, 1999, CA, unrep., *Chapple v. Williams*, December 8, 1999, CA unrep., *Williamson v. Commissioner of Police for the Metropolis*, December 13, 1999, CA, unrep., and *AXA Insurance Company Ltd v. Swire Fraser Ltd, The Times*, January 19, 2000, CA (see *Civil Procedure* (2nd ed.), para. 3.4.1)

■ T & A (CHILDREN), RE, *The Times*, February 1, 2000, CA
Courts and Legal Services Act 1990, s. 27(4) — in care proceedings, judge refusing application by respondent father (A) for order that judge should refuse to hear solicitor advocate (B) for guardian *ad litem* — application made on ground of alleged conflict of interest arising from fact that 15 years previously B's partner had acted for A in juvenile proceedings — held, dismissing A's appeal, whether a conflict of interest existed was a matter of fact for the judge and the Court should not go behind his finding *(Bolkiah v. KPMG* [1999] 2 A.C. 222, HL, ref'd to) (observations on methods for avoiding apparent conflict of interest in family proceedings in face of reduction of number of solicitor firms available for family proceedings)

■ WORSLEY v. TAMBRANDS LTD, *The Times*, February 11, 2000, CA
CPR rr. 1.4(2)(d) & 3.1(2)(i) — at opening of trial on issue of liability (damages having been agreed) in claim brought under the Consumer Protection Act 1987, ss. 2 & 3, on C's application judge directing that issue of adequacy of packaging warnings be tried as a preliminary issue — held, allowing D's appeal, the evidence on the issues of causation and the adequacy of warnings could not be separated and these issues were inextricably bound together (*Ashmore v. Corporation of Lloyd's* [1992] 1 W.L.R. 446, HL, ref'd to) (*Civil Procedure* (2nd ed.), paras 1.4.8 & 3.1.1)

Statutory Instruments

■ CIVIL PROCEDURE (AMENDMENT) RULES 2000
amend Civil Procedure Rules 1998 — insert Pt 52 (Appeals) and Pt 53 (Defamation Claims) — add to Pt 6 (Service of Documents) Section III (Special provisions about service out of the jurisdiction) — add to Pt 19 (Parties and Group Litigation) Section II (Representative parties) and Section III (Group litigation) — add to Pt 25 (Interim Remedies and Security for Costs) Section II (Security for costs) — add to Pt 40 (Judgments and Orders) Section II (Sale of Land, Etc.) — amend various rules including rr. 12.3, 17.1, 20.3, 23.10, 24.4, 26.7, 27.2 and 32.6 — add r. 8.2A (Issue of claim form without naming defendants) and r. 31.23 (False disclosure statements) — in force February 28 and May 5, 2000

Practice Directions

■ PRACTICE DIRECTION (MERCANTILE LISTS: WALES AND CHESTER) [2000] 1 W.L.R. 208
LCJ announcing that QB Mercantile Court lists are established at Cardiff and at Chester and that Practice Direction (Mercantile Courts and Business Lists) as amended shall apply to those lists (see *Civil Procedure* (2nd ed.), para. 49HPD-001)

■ PRACTICE DIRECTION (RCJ: READING LISTS AND TIME ESTIMATES) [2000] 1 W.L.R. 208
in all Chancery and Queen's Bench matters where the lodging of agreed bundles is required a reading list together with (i) an estimated length of reading time and (ii) an estimated length of the hearing, signed by all advocates, must also be lodged at the same time — it is the responsibility of the claimant or applicant to ensure that this is done

■ PRACTICE STATEMENT (COMPANIES COURT: APPLICATIONS) [2000] 1 W.L.R. 209
company matters traditionally listed for hearing on a Monday may now be listed for hearing on any day of the week during term time by the applications judge hearing general Chancery applications — the issue of such company matters and the formulation of the daily lists is undertaken by the Clerk of the Lists General Office in Room W11 (tel. 020 7936 6816) — amends Chancery Division Practice Direction No.5, para. B(iii) (see *Civil Procedure* (2nd ed.), para. D1-337)

IN DETAIL

Civil Procedure (Amendment) Rules 2000

The provisions of this statutory instrument incorporate into the body of the CPR in amended form provisions previously found amongst the CPR "schedule rules", that is to say, the former RSC and CCR rules re-enacted in, respectively, Schedules 1 and 2 of the CPR. (Numerous consequential amendments flow from this.) In some instances, the changes brought about by this process of incorporation are significant. As a result of these changes, a number of amendments will have to be made to CPR practice directions (in particular, to Practice Direction (CPR Pt 8 and Schedules 1 and 2 to the CPR)).

In addition, the statutory instrument makes a number of changes to existing Parts of the CPR which are not merely consequential upon the incorporation of amended schedule rules.

In what follows, under the heading "Additions to CPR" the changes brought about by the replacement of the schedule rules are explained on a topic by topic basis, beginning with appeals. Then, under the heading "Amendments to CPR", the other amendments, changing existing CPR provisions, are noted and linked to the particular pages where those provisions appear in *Civil Procedure* (2nd ed.).

With the exception of the rules relating to defamation claims (see below) the provisions of this statutory instrument come into effect on May 2, 2000.

Additions to CPR

Appeals

The law relating to procedure for appeals is undergoing reform. The legislation necessary to accomplish the recommendations flowing from the Beaumont Inquiry and other sources is contained in the Access to Justice Act 1999, Pt IV. Formerly, rules governing appeals (1) to a judge, (2) to the High Court, (3) to a Divisional Court, and (4) to the Court of Appeal (Civil Division) were found in CPR Sched. 1, RSC Orders 55, 56 and 58 to 61 and in Sched. 2, CCR O. 3, r. 6 and O. 13, r. 1(10) & (11), and in various other provisions scattered amongst the "schedule rules". These Orders and provisions are revoked and replaced by a new Part inserted in the body of the CPR, Pt 52 — Appeals. The text of Pt 52 is contained in Sched. 5 of the statutory instrument. This Part is to be supplemented by a practice direction, replacing (amongst other things) *Practice Direction (Court of Appeal (Civil Division))* [1999] 1 W.L.R. 1027, see *Civil Procedure* (2nd ed.), para. PD-001, pp. 1406 *et seq.*

Services of notices of hearing, applications and orders

When re-enacted in CPR Sched. 2, CCR O. 3, r. 6, which dealt with appeals to a county court and which is now revoked, had added to it paras (6) to (11). These new paragraphs provided for the service of notice of hearing and were added because rules formerly found in CCR O. 7 (Service of Documents), and which previously were incorporated by reference in O. 3, r. 6, were not re-enacted in Sched. 2. Under the CCR, the provisions as to service of notice of hearing formerly found in CCR O. 7 were incorporated by reference in a number of other CCR rules having nothing to do with appeals to county courts, some of which survive in CPR Sched. 2; for example, CCR O. 25 (Enforcement of Judgments and Orders: General), r. 3 (Oral examination of debtor). In these surviving rules, these incorporations were replaced by references to paras (6) to (11). Now that the whole of CCR O. 3, r. 6 is revoked, these incorporations have had to be replaced again. This has been accomplished by adding a number of provisions to CCR O. 25, r. 3 providing for the service of an order for the oral examination of a debtor (*Civil Procedure* (2nd ed.), p.1306) and incorporating them by reference (either wholly or in part and with necessary modifications) in the surviving CCR rules affected. The affected rules are: CCR O. 25, r. 9 (Enforcement of judgment or order against firm) (p. 1310); CCR O. 27 (Attachment of Earnings), r. 5 (Service and reply) (p. 1321) and r. 17 (Maintenance orders) (p. 1325); CCR O. 30 (Garnishee Proceedings), r. 3 (Preparation, service and effect of order to show cause) (p. 1337); CCR O. 33 (Interpleader Proceedings), r. 4 (Issue of interpleader proceedings) (p. 1334); CCR O. 45 (The Representation of the People Act 1983), r. 1 (Application for detailed assessment of returning officer's account) (p. 1374); and CCR O. 49 (Miscellaneous Statutes), r. 6 (Housing Act 1988: assured tenancies) (p. 1390) and r. 6A (Housing Act 1988: assured shorthold tenancies) (p. 1395). This is all rather ungainly. Fortunately, it does not seem that any significant changes in former procedures are intended.

Defamation claims

The law relating to defamation claims has been changed by the Defamation Act 1996. That Act will be fully in force on February 28. Formerly, rules of court relating to defamation claims have been found in CPR Sched. 1, RSC O. 82. This Order is now revoked and replaced by a new Part inserted in the body of the CPR Pt 53 — Defamation Claims. The text of Pt 53 is contained in Sched. 6 to the statutory instrument and is supplemented by Practice Direction (Defamation Claims). Part 53 came into effect on February 28.

Service out of the jurisdiction

CPR Sched. 1, RSC O. 11, which contains the well-known provisions for service out of the jurisdiction,

have been brought into the body of the CPR by the addition of a third section to Pt 6 (Service of Documents). Section III of Pt 6 is entitled "Special provisions about service out of the jurisdiction" and includes rr. 6.17 to 6.31. The text of these rules is contained in Sched. 1, Pt II to the statutory instrument.

Security for costs

CPR Sched. 1, O. 23 (Security for costs) is revoked and replaced by provisions in a second section added to CPR Pt 25 (Interim Remedies). Section II is entitled "Security for costs" and contains rr. 25.12 to 25.15. The text of these provisions is contained in Sched. 3, Pt II to the statutory instrument.

Parties and group litigation

Some of the rules in former RSC O. 15 (Causes of Action, Counterclaims and Parties) were re-enacted in CPR Sched. 1; including, in particular, r. 12 (Representative proceedings), r. 12A (Derivative claims), r. 13 (Representation of interested persons who cannot be ascertained) and r. 15 (Representation of deceased persons interested in proceedings). Comparable provisions were found in former CCR O. 5 (Causes of Action and Parties) re-enacted in CPR Sched. 1. These and some of the other provisions in O. 15 and O. 5 are revoked. (The rules that still survive are, in O. 15, rr. 9, 13A, 14 and 16, and in O. 5, rr. 9 and 12 and rr. 12 to 14, see *Civil Procedure* (2nd ed.), pp. 947 and 850 to 851 and pp. 1285 to 1287). CPR Pt 19 has been re-cast with additions. This Part is now titled "Parties and Group Litigation" and is divided into three sections: I.Addition and substitution of parties, II.Representative parties, III.Group litigation. Section I contains the provisions contained in CPR rr. 19.1 to 19.4 (with some amendments). Section II replaces with amendments the RSC O. 15 provisions now revoked, and Section III contains new rules of court designed principally for cases in which many claimants bring proceedings against a single defendant (*e.g.* claims against a pharmaceutical company brought by persons injured by a drug, or claims against a financial institution by investors) and which were not well-catered for by the former RSC O. 15 provisions. The text of the rules in Section II (rr. 19.6 to 19.9) and in Section III (rr. r. 19.10 to 19.15) are found in Sched. 2 to the statutory instrument.

Sales of land

Former RSC O. 31 (Sales of Land by Order of Court, Etc.) was re-enacted in CPR Sched. 1 and made applicable in county court as well as High Court proceedings. This Order is now revoked. CPR Pt 40 (Judgments and Orders) has been re-cast with additions. This Part is now titled "Judgments, Orders, Sale of Land, Etc." and is divided into two sections: I. Judgments and orders (rr. 40.1 to 40.14), and II. Sale of land, etc., and conveyancing counsel (rr. 40.15 to 40.19). Presumably, the effect of the practice direction supplementing CPR Sched. 1, RSC O. 31 (see *Civil Procedure* (2nd ed.), p. 878) will be retained.

Amendments to CPR

The following amendments to the CPR have been made by the *Civil Procedure* (Amendment) Rules 2000. These changes come into force on May 2, 2000. Page references are to *Civil Procedure* (2nd ed.).

Page 38 — Rule 3.5 (Judgment without trial after striking out)

Re-number para. (3) as (4) and para. (4) as (5), and after (2) insert:

(3) Where judgment is obtained under this rule in a case to which paragraph (2)(b)(iii) applies, it will be judgment requiring the defendant to deliver the goods, or (if he does not do so) pay the value of the goods as decided by the court (less any payments made).

This makes it clear that, if the claim is for delivery of goods and the claim form gives the defendant the alternative of paying their value, then a judgment without trial after striking out obtained by request under r. 3.5 will accord with the claim form. If it was necessary to do so, this re-instates the former law and accords with the relevant High Court and county court forms.

Page 85 — Rule 6.1 (Part 6 rules about service apply generally)

Insert at end the following cross-reference:

(Other rules which deal with service include the following —

(a) service on the Crown — see RSC Order 77, r. 4 and CCR Order 42, r. 7;

(b) service in proceedings for the recovery of land and mortgage possession actions — see RSC Order 10, r. 4 and CCR Order 7, rr. 15 and 15A.)

Page 91 — Rule 6.7 (Deemed service)

After para. (1) insert the following cross-reference:

(Rule 2.8 excludes a Saturday, Sunday, a Bank Holiday, Christmas Day or Good Friday from calculations of periods of 5 days or less)"

For para. (2) substitute:

(2) If a document is served personally —

(a) after 5 p.m., on a business day; or

(b) at any time on a Saturday, Sunday, a Bank Holiday,

it will be treated as being served on the next business day.

By this amendment, in terms para. (2) is no longer confined to a document "other than a claim form".

Page 124

Before r. 8.3 (Acknowledgement of service) insert the following new rule:

Issue of claim form without naming defendants

8.2A — (1) A practice direction may set out circumstances in which the court may give permission for a claim form to be issued under this Part without naming a defendant.

(2) An application for permission must be made by application notice before the claim form is issued.

(3) The application notice for permission —

(a) need not be served on any other person; and

(b) must be accompanied by a copy of the claim form that the applicant proposes to issue.

(4) Where the court gives permission it will give directions about the future management of the claim.

The alternative procedure for claims applies to a wide range of proceedings formerly dealt with by forms of process now defunct and, in many such proceedings, it was not necessary to name a defendant in the originating process. Note also, CPR Sched. 1, RSC O. 113 (Summary Proceedings for Possession of Land).

Page 154 — Rule 12.3 (Conditions to be satisfied)

Amend para. (2) so as to read as follows:

(2) Judgment in default of defence may be obtained only—

(a) where an acknowledgment of service has been filed but a defence has not been filed;

(b) in a counterclaim made under rule 20.4, where a defence has not been filed,

and, in either case, the relevant time limit for doing so has expired.

(Rules 10.3 and 15.4 deal respectively with the period for filing an acknowledgment of service and the period for filing a defence)

(Rule 20.4 makes general provision for a defendant's counterclaim against a claimant, and rule 20.4(3) provides that Part 10 (acknowledgement of service) does not apply to a counterclaim made under that rule)

Amend para. (3)(a) so as to read as follows:

(a) the defendant has applied—

(i) to have the claimant's statement of case struck out under rule 3.4; or

(ii) for summary judgment under Part 24,

and, in either case, that application has not been disposed of.

These amendments make it clear (1) that judgment in default of defence may be obtained where a claimant fails to file a defence to a defendant's counterclaim made under r. 20.4, and (2) that default judgment may not be obtained by a claimant where the defendant has applied to have the claimant's statement of case struck out under r. 3.4 (Power to strike out statement of case) and that application has not been disposed of.

Page 203 — Rule 17.1 (Amendments to statement of case)

Delete cross-reference to Part 19 and after para. (2) insert:

(3) If a statement of case has been served, an application to amend it by removing, adding or substituting a party must be made in accordance with rule 19.4

As a result of the amendments to Pt 19, r. 19.4 (formerly r. 19.3) states that the court's permission is required to remove, add or substitute a party, unless the claim form has not been served. Such amendment made without permission before the claim form was served may be disallowed by the court under r. 17.2.

Page 222 — Rule 20.3 (Part 29 claim to be treated as a claim for the purposes of the Rules)

For para. (3) substitute:

(3) Part 12 (default judgment) applies to a Part 20 claim only if it is a counterclaim.

After para. (3) add:

(4) With the exception of —

(a) rules 14.1(1) and 14.1(2) (which provide that a party may admit the truth of another party's case in writing); and

(b) rule 14.3(1) (admission by notice in writing - application for judgment),

which apply to all Part 20 claims, Part 14 (admissions) applies to a Part 20 claim only if it is a counterclaim.

For the cross-reference at the end of r. 20.3 substitute:

(Rule 12.3(2) sets out how to obtain judgment in default of defence where the Part 20 claim is a counterclaim against the claimant, and rule 20.11 makes special provision for default judgment in some categories of Part 20 claims)

Part 20 applies, not only to counterclaims, but also to claims by a defendant for a contribution, an indemnity, or any other remedy against any other person, whether or not that person is already a party. Rule 20.3(2) now makes it clear that Pt 12 (Default Judgments), as amended, in so far as it applies to Pt 20 claims, applies only to counterclaims. As the cross-referencing note explains, r. 20.11 makes special provision for default judgment in some other categories of Pt 20 claims. The addition of para. (3) to r. 20.3, subject to some exceptions, restricts the application of the terms of Pt 14 (Admissions), in so far as they may apply to Pt 20 claims, to counterclaims. It would seem that all of these amendments to Pt 20 do no more than make clear what was originally intended.

Page 259 — Rule 23.10 (Application to set aside or vary order made without notice)

For para. (1) substitute:

(1) A person who was not served with a copy of the application notice before an order was made under rule 23.9, may apply to have the order set aside(GL) or varied.

This amendment deals with the problem explained in para. 23.10.1 on p. 259 of Civil Procedure (2nd ed.).

Page 269 — Rule 24.4 (Procedure)

After para. (3) add:

(4) A practice direction may provide for a different period of notice to be given.

Rule 24.4(3) states that, where a summary judgment hearing is fixed, the respondent (or the parties where the hearing is fixed on the court's own initiative) must be given at least 14 days' notice of the date fixed for the hearing. This amendment enables that period of notice to be varied by practice direction.

Page 335 — Rule 26.7 (General rule for allocation)

Amend para. (3) so as to read as follows:

(3) The court will not allocate proceedings to a track if the financial value of the claim, assessed by the court under rule 26.8, exceeds the limit for that track unless all the parties consent to the allocation of the claim to that track.

Rule 26.7(3) stated that the court will not allocate "proceedings" to a track if the financial value "of any claim in those proceedings" as assessed exceeds the limit for that track unless all the parties consent to the allocation of the claim to that track. As amended this provision speaks, not of the value "of any claim in those proceedings", but simply of the value "of the claim". It may be noted that r. 26.7(3) is concerned with the allocation of "proceedings" and not, as erroneously stated on p. 335, of the allocation of "a claim".

Page 348 — Rule 27.2 (Extent to which other Parts apply)

In para. (1)(e), before "and 35.8", insert:

, 35.7 (court's power to direct that evidence is to be given by single joint expert)

Rule 27.2(1) lists certain CPR provisions that are disapplied in cases allocated to the small claims track. Rule 35.7 is added to the list.

Page 424

After notes to CPR r. 31.22 (Subsequent use of disclosed documents) add the following new rule:

False disclosure statements

31.23 — (1) Proceedings for contempt of court may be brought against a person if he makes or causes to be made, a false disclosure statement, without an honest belief in its truth.

(2) Proceedings under this rule may be brought only—

(a) by the Attorney General; or

(b) with the permission of the court.

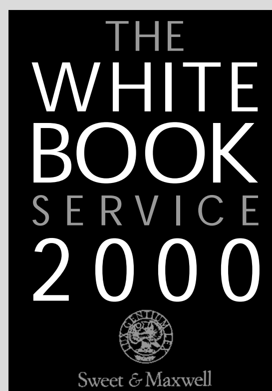
Former RSC O. 24, r. 16 stated that, where a party against whom an order for discovery or production of documents was made failed to comply with it, he was liable to committal. This rule was not included in Pt 31 (Disclosure and Inspection of Documents), doubtless because the powers of the court to impose sanctions for procedural default generally, which include the power to commit, are sufficient to deal with this type of default. Rule 31.23 is narrower and is similar to r. 32.14 (false statement in document verified by statement of truth).

Page 434 — Rule 32.6 (Evidence in proceedings other than at trial)

In para. (2) omit ", in support of his application,". *This amendment removes an unnecessary (and probably inadvertent) restriction on the use that may be made of a statement of case or application notice as evidence in proceedings other than trial.*

IMPORTANT SERVICE NEWS

To ensure you always have access to the most recent version of the Rules and Practice Directions, go to www.sweetandmaxwell.co.uk/whitebook. This new Rules and Practice Directions Updating Service is free to White Book subscribers and is updated according to amendments issued by the Lord Chancellors Department.



CPR Focus

Amendments to CPR Practice Directions and Forms

Amendments have been made to the following four CPR Practice Directions (refs are to *Civil Procedure* (2nd ed.)): Practice Direction (How to Start Proceedings — The Claim Form)) (para. 7PD-001, p. 109), Practice Direction (Statements of Case) (para. 16PD-001, p. 196), Practice Direction (Case Management — Preliminary Stage: Allocation and Re-Allocation) (para. 26PD-001, p. 337), and Practice Direction About Costs (Directions Relating to Part 48 — Costs — Special Cases) (para. 48PD-001, - p. 638).

Amendments have also been made to the following Forms: Costs Forms 1(N260), 5(N252), 8(N258) (which becomes 8A) and 15(NEX80A), and Forms N9C, N242A, N243 and ADM1. In addition, a new Costs Form, 8B(N258A) is introduced.

The amendments came into effect on February 14, 2000, with the exception of amendments made to Practice Direction (Statements of Case) which come into effect on February 28.

The amendments to the practice directions, followed by the amendments to the forms, are set out below. The page references are to *Civil Procedure* (2nd ed.).

Amendments to Practice Directions

PRACTICE DIRECTION (HOW TO START PROCEEDINGS — THE CLAIM FORM))

Page 112 (para. 7PD-002)

In para. 6.1(2), for "4 months from the date of issue" *substitute* "4 months after the date of issue".

PRACTICE DIRECTION (STATEMENTS OF CASE)

Page 199 (para. 16PD-003)

As is explained on the "In Detail" page of this issue of CP News, with effect from February 28 onwards, the Civil Procedure (Amendment) Rules 2000, r. 40 revokes CPR Sched. 1, O. 82 (Defamation) (see Civil Procedure (2nd ed.), p. 1170, para. R82.0.1), and by r. 20 and Sched. 6 the provisions therein are replaced with a new CPR Part, Pt 53 — Defamation Claims. Practice Direction (Defamation Claims) supplements this Part. As a consequence, paras 8.1 to 8.7 (on pp. 199 to 200) and para. 15 (on p. 202) of Practice Direction (Statements of Case), all of which refer to defamation claims, are removed and the paragraphs formerly numbered as paras 9.1 to 14.2 and 16.1 to 16.3, are re-numbered as, respectively, paras 8.1 to 13.2 and 14.1 to 14.3. The former procedures in the paragraphs to be removed and the provisions in CPR Sched. 1, RSC O. 82 continue to apply until Pt 53 and the practice direction supplementing that Part come into effect on February 28.

PRACTICE DIRECTION (CASE MANAGEMENT — PRELIMINARY STAGE: ALLOCATION AND RE-ALLOCATION)

Page 337 (para. 26PD-001)

In para. 2.1 of this practice direction, for "Costs Practice Direction, paragraph 4.5(1)" *substitute* "Costs Practice Direction 43, paragraph 4.5(1)". *This amendment is intended to make it clear that the para. 4.5(1) referred to in para. 2.1 is para. 4.5(1) of the Practice Direction (Scope of Costs Rules and Definitions) as amended, that is to say, the practice direction supplementing Pt 43 (see para. 43BPD-004, p. 565).*

PRACTICE DIRECTION ABOUT COSTS (DIRECTIONS RELATING TO PART 48 — COSTS — SPECIAL CASES)

Pages 639 to 640 (para. 48PD-001)

Section II of this practice direction is headed "Costs Relating to Solicitors and Other Legal Representatives" and supplements r. 48.7 which is based on the Supreme Court Act 1981, s. 51(6) and is concerned with "wasted costs" orders against legal representatives. Amendments have been made to the provisions of Section II, with the result that, whereas there were seven paragraphs previously, now there are nine (paras 2.1 to 2.9). The result is that the provisions in Section II spell out in greater detail than heretofore (and in line with the views expressed in recent cases) the procedure to be followed.

In terms, paras 2.1, 2.3, 2.4, 2.5 and para. 2.7, which now appears as para. 2.9, are the same as heretofore. Amendments are made to paras 2.2 and 2.6 and the provisions in paras 2.7 and 2.8 (which relate to applications for wasted costs orders made by application notice under Pt 23) are new.

In their entirety, paras 2.1 to 2.9 read as follows (it would seem that, in para. 2.7, "paragraph 2.5" should read "paragraph 2.6"):

2.1 Rule 48.7 deals with wasted costs orders against legal representatives. Such orders can be made at any stage in the proceedings up to and including the proceedings relating to the detailed assessment of costs. In general, applications for wasted costs are best left until after the end of the trial.

2.2 The court may make a wasted costs order against a legal representative on its own initiative.

2.3 A party may apply for a wasted costs order —

(1) by filing an application notice in accordance with Part 23; or

(2) by making an application orally in the course of any hearing.

2.4 It is appropriate for the court to make a wasted costs order against a legal representative, only if –

(1) the legal representative has acted improperly, unreasonably or negligently;

(2) his conduct has caused a party to incur unnecessary costs, and

(3) it is just in all the circumstances to order him to compensate that party for the whole or part of those costs.

2.5 The court will give directions about the procedure that will be followed in each case in order to ensure that the issues are dealt with in a way which is fair and as simple and summary as the circumstances permit.

2.6 As a general rule the court will consider whether to make a wasted costs order in two stages—

(1) in the first stage, the court must be satisfied—

(a) that it has before it evidence or other material which, if unanswered, would be likely to lead to a wasted costs order being made; and

(b) the wasted costs proceedings are justified notwithstanding the likely costs involved.

(2) at the second stage (even if the court is satisfied under paragraph (1)) the court will consider, after giving the legal representative an opportunity to give reasons why the court should not make a wasted costs order, whether it is appropriate to make a wasted costs order in accordance with paragraph 2.4 above.

2.7 On an application for a wasted costs order under Part 23 the court may proceed to the second stage described in paragraph 2.5 without first adjourning the hearing if it is satisfied that the legal representative has already had a reasonable opportunity to give reasons why the court should not make a wasted costs order. In other cases the court will adjourn the hearing before proceeding to the second stage.

2.8 On an application for a wasted costs order under Part 23 the application notice and any evidence in support must identify–

(1) what the legal representative is alleged to have done or failed to do; and

(2) the costs that he may be ordered to pay or which are sought against him.

2.9 A wasted costs order is an order—

(1) that the legal representative pay a specified sum in respect of costs to a party; or

(2) for costs relating to a specified sum or items of work to be disallowed.

Pages 640 to 643 (paras 48PD-002 to 48PD-003)

As a consequence of the amendments made to Section II of the Practice Direction About Costs (Directions Relating to Part 48 — Costs — Special Cases) explained immediately above, paras 2.9 to 2.36 of this practice direction (see pp. 640 to 643) are re-numbered as paras 2.10 to 2.37. (The explanation for the apparent omission of para. 2.8 from this practice direction as printed in Civil Procedure (2nd ed.), p. 640, is that paras 2.1 to 2.8 were re-numbered as paras 2.1 to 2.7 when the original para. 2.7 was revoked, having been found ultra vires in General Mediterranean Holdings S.A. v. Patel [1999] 3 All E.R. 673.)

Amendments to Forms

Page 645 (para. 48PD-006)

The box at the foot of Form N260 (Statement of costs (summary assessment)) (i.e. Costs Form 1) is amended to reflect the amendment to Practice Direction about Costs (Directions Relating to Pt 43), para. 2.4(2), clarifying that "legal executive" means a Fellow of the Institute of Legal Executives. (This Form is referred to in Practice Direction (Scope of Costs and Definitions), para. 1.2 (see p. 560, para. 43BPD-001).)

Page 659 (para. 48PD-011)

In Form EX80A (Legal Aid Assessment Certificate), "C. Total Claimed" *is changed to* "D. Total Claimed".

Page 759 (para. 49FPD-011)

In Form ADM1 (Claim form (Admiralty action in rem)), within Practice Direction (Admiralty), at the foot of the first page the reference to the opening times of District Registries with Admiralty jurisdiction having previously been changed from "between 10am and 4pm" *to* "between 10am and 4.30pm" *are changed back to* "between 10am and 4pm".

Page 1545 (para. C7-001)

In Form N9C (Admission (unspecified amount and non-money and return of goods claims)), for "(complete section B and 12)" *substitute* "(complete section B and sections 1-11)".

Page 1617 (para. C63-001)

In Form N242A (Notice of payment into court (in settlement – Part 36)), for "already paid into court on ... ..." *substitute* "already paid into court on ... ... and the total amount in court now offered in settlement is £ ... *(give total of all payments in courts to date)". See further CPR r. 36.6(2).*

Page 1619 (para. C64-001)

In Form N243 (Notice of acceptance of Payment into court (Part 36)), for "name and address of bank" *substitute* "name of bank". *See further, Practice Direction (Offers to Settle and Payments into Court), para. 7.7 (see p. 503, para. 36PD-002).*

Page 1621 (para. C66-001)

Form N252 (Notice of commencement of assessment of bill of costs) (i.e. Costs Form 5) is amended so as (1) to require the person issuing the notice (a) to stipulate an address for service of any points of dispute and (b) to indicate the total amount recoverable (including fixed costs and court fees) in the event of a default costs certificate being issued, and (2) to indicate that points of dispute need not be served on the court. (This Form is referred to in Practice Direction (Procedure for Detailed Assessment of Costs and Default Provisions,) para. 2.3 (see p. 614, para. 47PD-002).)

Page 1629 (para. C74-001)

Form N258 is re-titled "Request for detailed assessment hearing (non-legal aid)" *and is re-numbered as Costs Form 8A (previously Costs Form 8). As the Form is now restricted to non-legal aid cases, those parts of the text of the Form relevant to legal aid assessments are deleted. (This Form is referred to in Practice Direction (Procedure for Detailed Assessment of Costs and Default Provisions), para. 4.3 (see p. 617, para. 47PD-004).)*

Form N258A titled "Request for detailed assessment (legal aid only)" *is introduced as Costs Form 8B. Its terms are similar to former Costs Form 8 (as applied to legal aid cases), but there are some significant changes.*

Set-off in cases of cross judgments

A set-off is a monetary cross-claim which is also a defence to the claim made in the action. The right of a party to plead set-off avoids the need to commence a separate action for the purpose of asserting the claim. A party may plead a previous judgment as a set-off. (In these circumstances, unless the previous judgment is a foreign judgment, the alternative course of commencing a separate action does not exist.) Section 72 is concerned, not with setting off a previous judgment as a defence to a claim (see CPR r. 16.6), but with such set-off against a judgment debt.

Section 72 of the County Courts Act 1984 states that where, in the High Court or a county court, X has obtained judgment against Y and Y has obtained judgment against X in other proceedings, either in the same or a different county court or in the High Court, for a lesser sum, Y may apply for permission to set-off his judgment against X's judgment. The section requires Y to make application "to the court or any of the said courts in accordance with rules of court". It is necessary to be clear as to what these rules of court might be.

Where the several judgments have been obtained in a county court, or several county courts, CPR Sched. 2, CCR O. 22, r. 11 applies and Y should make application to one of the relevant county courts in accordance with the provisions of that rule. That rule states that where X's judgment was obtained in one county court and Y's in another, Y may make application to either county court on notice (with notice also being given to the proper officer of the other county court) (r. 11(3)). Where the several judgments were obtained in the same county court application should be made on notice to that court. However, if the application is made "on the day when the last judgment or order is obtained" notice is not required provided both parties are present (r. 11(2)).

Where the several judgments have been obtained in the High Court it would seem that application must be made to the High Court but no rules of court expressly dedicated to such applications are contained in the CPR. Accordingly, it seems that an application on notice pursuant to CPR Pt 23 is required (though by analogy with CPR Sched. 2, CCR O. 22, r. 11(2), perhaps an application could be made without notice to the court "on the day when the last judgment or order is obtained" if both parties are present).

An anomaly still remains. Where X has obtained judgment against Y in a county court and Y has obtained judgment against X in the High Court for a lesser sum and Y wishes to apply for permission to set-off his High Court judgment against X's county court judgment, the provisions of CPR Sched. 2, CCR O. 22, r. 11 do not apply. Prior to the CPR such applications were made to the High Court and were governed by RSC O. 107, r. 4. Order 107 is not replicated in the CPR. Consequently, the proper procedure is now a matter for doubt. As CPR Sched. 2, CCR O. 22, r. 11 clearly does not apply it is submitted that application should be made to the High Court on notice pursuant to CPR Pt 23. CPR Sched. 2, CCR O. 22, r. 11(8) clearly such order being made in the High Court and directs the county court officer as to how he should proceed.

The section does not give a right to set-off (the application is for "leave" to do so). Section 72(2) expressly requires a county court to approach the application in accordance with the practice for the time being in force in the High Court and "in particular in relation to any solicitor's lien for costs".

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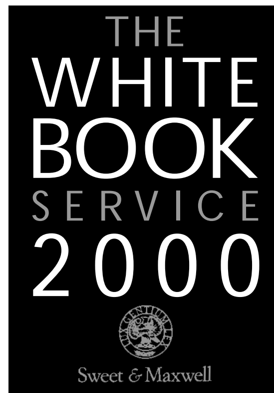

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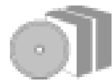

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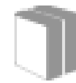

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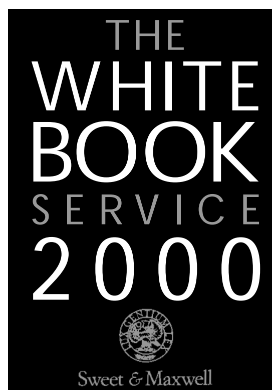

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