CIVIL PROCEDURE NEWS

Issue 08/2005
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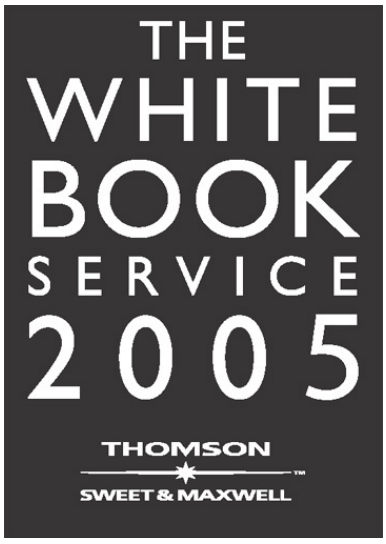

IN BRIEF

Cases

ARKIN v. BORCHARD LINES LTD. (NOS. 2 & 3) [2005] EWCA Civ 655, [2005] 1 W.L.R. 3055, CA (Lord Phillips M.R., Brooke & Dyson L.JJ.)

Non-party providing litigation support—liability for costs

CPR rr.44.3 & 48.2, Supreme Court Act 1981 s.51—impecunious claimant company (C) entering into CFA and bringing claim against another company (D)—C alleging that, by their unlawful activities, D destroyed their business—C retaining company (M) to provide support services for the litigation in return for M's receiving a proportion of the proceeds of the claim in the event of success—M instructing expert witnesses—at trial, judge (1) finding that C had failed to establish causation and giving judgment for D, but (2) refusing D's application for costs order against M ([2003] EWHC 2844 (Comm); [2004] 1 Lloyd's Rep. 88)—held, allowing D's appeal, (1) the judge erred in not giving appropriate weight to the rule that costs should normally follow the event, (2) where a funding agreement is champertous, the funder is likely to render himself liable for the opposing party's costs without limit, should the claim fail, (3) in this case, the agreement was not in that category but facilitated access to justice and left C as the party (a) in control of the conduct of the litigation, and (b) primarily interested in the result, (4) in these circumstances, M should be potentially liable for the costs of D to the extent of the funding provided—***Aiden Shipping Co. Ltd v. Interbulk Ltd*** [1986] A.C. 965, HL, ***Hamilton v. Al Fayed (No. 2)*** [2002] EWCA Civ 665; [2002] 2 W.L.R. 128, CA, ***Dymocks Franchise Systems (NSW) Pty. Ltd. v. Todd*** [2004] 1 W.L.R. 2807, PC, ref'd to (see ***Civil Procedure 2005*** Vol. 1 para. 48.2.1, and Vol. 2 para. 9A-265A)

AUTOLOGIC HOLDINGS PLC v. INLAND REVENUE COMMISSIONERS [2005] UKHL 54; [2005] 3 W.L.R. 339, H.L.; 155 New L.J. 1277 (2005), H.L.

Statutory appeals to Commissioners—jurisdiction of High Court

CPR rr. 19.10 to 19.15, Income and Corporation Taxes Act 1988 ss. 402 to 413, Supreme Court Act 1981 s.19—High Court making GLO order under which substantial number of companies (C) brought claims against Inland Revenue (D)—claims seeking to challenge certain territorial limits of the system of group relief operating in UK tax law—C contending that, insofar as it appears to deny group relief to UK companies, UK law is overridden by articles in the EC Treaty or Double Taxation Agreements—on application of D, judge holding that tax legislation provides for disputes between taxpayer and the Revenue to be resolved by appeals brought in the first instance to the General or Special Commissioners (***In re Claimants under Loss Relief Group Litigation Order*** [2004] EWHC 3588 (Ch); [2004] S.T.C. 594 (Park J.))—on ground that, in these circumstances it was contrary to Community law for a national court, such as the High Court, to refuse to hear the disputed parts of C's claim, Court of Appeal allowing C's appeal ([2004] EWCA Civ 680; [2004] 3 All E.R. 957, CA (Peter Gibson & Longmore L.JJ.))—held, allowing D's appeal in part, (1) by statute Parliament had given exclusive jurisdiction to the Commissioners to hear taxpayers' appeals, (2) that statutory procedure was compliant with Community law and, in particular, did not infringe the principle of effectiveness, (3) there was a distinction to be drawn between (a) those claimants who, as a result of any proceedings before the Commissioners, conceivably could still obtain full group relief (C1), and (b) those whose only remedy (if any) lay in damages for breach of Community law (C2), (4) the claims of C1 in the High Court were an abuse of the court's processes and should be stayed, (4) the claims of C2 were not and should proceed—***Metalgesellschaft Ltd. v. I.R.C., Hoechst A.G. v. I.R.C.***, Joined cases C-397/98 and C-410/98 [2001] Ch. 620, ECJ, ref'd to (see ***Civil Procedure 2005*** Vol. 2 paras. 9A-58 & 9A-62)

CHOUDHURY v. FAHIM AHMED [2005] EWCA Civ 1102, July 27, 2005, CA, unrep. (Clarke & Neuberger L.JJ.)

Late application at trial to call additional witness

CPR rr. 32.1, 32.2 & 32.4, Human Rights Act 1998 Sched. 1 Pt. 1 art. 6—three brothers (C1, C2 & C3) bringing claim against business associate (D) for unpaid rent—witness statement made by C2 (and in effect made on behalf of all claimants) exchanged—at trial, C2 only witness giving oral evidence for claimants—D giving evidence to effect that it had been agreed that payments made by him directly to C1 (allegedly, for purpose of enabling him to meet his gambling debts) were to be set off against rent—after evidence for claimants and D had been given, counsel for claimants applying for permission to call C1 to testify—judge (a) refusing application, and (b) dismissing Cs' claim and ordering them to pay D's costs—single lord justice granting claimants permission to appeal on issue whether judge should have granted application—held, dismissing appeal, (1) although D's case as to the direct payments being set off against rent was not expressly pleaded, it was made quite clear to the claimants during the course of C2's cross-examination, (2) at the outset, the claimants

had made a tactical decision not to call C1 and had had, during the presentation of their case, ample time to reconsider that decision in the light of the way in which the case was developing, (3) in the circumstances, the judge's ruling was a proper exercise of discretion and there was no unfairness (see ***Civil Procedure 2005*** Vol. 1 para. 32.2.5)

■ **HEYWARD v. PLYMOUTH HOSPITAL N.H.S. TRUST** [2005] EWCA Civ 939, June 20, 2005, CA, unrep. (Lord Phillips M.R., Waller & Lloyd L.JJ.)

Application for additional expert witness

CPR rr.1.1(2)(a), 29.3, 35.1, 35.4 & 52.13, Practice Direction (The Multi-Track) para. 5.3—employee (C) bringing county court claim against employers (D) for personal injury caused by stress—claim proceeding on the multi-track—parties agreeing that, by way of expert evidence directed at the nature of C's injury and the causes of it, each side should rely on a consultant psychiatrist—at case management conference, C submitting that, in addition, he should be able to rely on an expert occupational psychologist—submission made on basis that C might require such evidence for purpose of countering any non-expert evidence that D may adduce from any of their employees called as witnesses of fact to testify on the issue of steps they took to protect C, whom they knew was vulnerable to stress, from further stress—district judge rejecting submission and circuit judge dismissing C's appeal—order directing exchange of statements of witnesses as to fact then stayed pending discussions between psychiatric experts—in event, neither expert suggesting that there was a need for evidence from a consultant psychologist—on ground that the question whether the parties were on an equal footing raised an important point of principle, Court of Appeal granting C permission to make second appeal—held, dismissing appeal, (1) the claim was a comparatively small stress at work claim in which the issues were clear, (2) in the circumstances, the direction limiting expert evidence was sensible and proportionate, (3) the expert psychiatrists were fully competent to express opinions on the issue whether the steps taken by D when C returned to work after suffering an episode of anxiety and/or depression were appropriate, (4) it was regrettable that the facts (a) that the exchange of statements of witnesses as to fact had been stayed, and (b) that neither of the psychiatric experts suggested that an additional expert should be appointed, were not made known to the Court when the application for permission to appeal was made, (5) the nature and extent of D's evidence as to fact was still a matter for conjecture and there remained a remote possibility that D would rely on "quasi-expert evidence" of a type that needed to be rebutted by an expert occupational psychologist, (6) in that event it would be open to C to seek permission to call that additional evidence—Master of the Rolls (a) stating that when CMC is conducted by telephone (a practice to be commended) it was important that judge should have all relevant documents before him, and (b) lamenting lack of funding for introduction of electronic case files—***E.S. v. Chesterfield and North Derbyshire Royal Hospital N.H.S. Trust*** [2004] EWCA Civ 1284; [2004] Lloyd's Rep. Med. 90, CA, ref'd to (see ***Civil Procedure 2005*** Vol. 1 paras 1.3.6, 1.4.13, 29.3.2, 35.4.1, 35.7.1 & 52.3.9)

■ **KUWAIT AIRWAYS CORPORATION v. IRAQI AIRWAYS COMPANY** [2005] EWCA Civ 934, June 24, 2005, CA, unrep. (Tuckey & Rix L.JJ)

Variation of conditions imposed on appeal

CPR rr.1.1 & 52.9, Access to Justice Act 1999 s.54(4)—in same proceedings, claimants (C) obtaining judgments against defendants (D) (a) without trial, for US$148m, and (b) after trial, for US$166m—D ordered to pay C US$148m by way of an interim payment—D applying for permission to appeal in relation to five particular issues determined at trial, being issues that accounted for US$100m of the trial judgment—judge granting D permission to appeal in relation to two of those issues—permission made subject to conditions that, before filing their appellant's notice, D should comply with certain orders made in favour of C but not satisfied—in particular (a) the interim payment order for US$148m, and (b) two orders for costs on account made previously and totalling £3m—D applying to Court of Appeal for permission to appeal in relation to (a) the three issues as to which the judge refused permission, and (b) the conditions imposed by the judge on the appeal of the two issues for which he gave permission—C submitting that by virtue of r.52.9(3), as D were present at the hearing at which permission to appeal was given, they cannot subsequently apply for a variation of any conditions imposed—held, granting D permission to appeal on the three issues and deleting condition relating to the interim payment order, (1) an appellant must not be denied access to the Court by the imposing of a condition where there is convincing evidence that its effect would be to stifle his appeal, (2) r.52.9(3) should not be read as applying to an appellant on whom a payment condition has been imposed as part of a grant of permission to appeal where the condition would have that effect, (3) in this case, there were compelling reasons for concluding that the condition as to the US$148m interim payment order would have the effect of stifling D's appeal—Court referring to, but not deciding, question whether effect of s.54(4) is to deny Court of Appeal jurisdiction to entertain an appeal against a decision of a court giving permission to appeal, not only where it is given unconditionally, but also where it is given conditionally (see ***Civil Procedure 2005*** Vol. 1 paras 52.7.2, 52.9.2 & 52.9.4, and Vol. 2 para. 9A-872)

■ **LESS v. BENEDICT** [2005] EWHC 1643 (Ch), July 25, 2005, unrep. (Warren J. & assessors)

Late request for detailed assessment

CPR rr.3.4(2)(b), 44.14(1)(a) & 47.8, Human Rights Act 1998 Sched.1 art. 6—several parties (C) bringing claim for return of chattels against trustee in bankruptcy (D) of one of them—Chancery judge dismissing claim and ordering C to pay D's costs—in April 2001, D serving Notice of Commencement of detailed assessment proceedings within time limit imposed by r.47.7—one claimant serving points of dispute within time limit fixed by r.47.9—no further steps taken by any party to the proceedings until July 2004, when D made request for hearing date under r.47.14—because of concerns about whether all claimants had been properly served (arising when it became clear that not all claimants had received notice of the hearing date), in December 2004, costs judge ordering (a) D to re-serve Notice of Commencement on all claimants at their last known addresses, and (b) claimants to serve Points of Defence by particular date—shortly before date fixed for detailed assessment hearing, claimants making application seeking orders striking out the assessment on grounds of delay and/or abuse of process, or the imposing of sanctions on D for delay—costs judge refusing application, but in exercise of his powers under r.47.14(5) disallowing D interest for period between May 2001 and December 2004—held, dismissing claimants' appeal (1) if a receiving party fails to make a timely request under r.47.14 for a detailed assessment hearing, the paying party can apply under r.47.14(3) for an order requiring him to do so, (2) where there are two paying parties, one of whom has been served with a Notice of Commencement and the other has not, the latter (as well as the former) may make an application under r.47.14(3) for the purpose of moving proceedings forward where the receiving party has failed to file a request for a detailed assessment hearing, (3) further, in these circumstances, the right to apply for an order under r.47.8 (Sanction for failure to commence in time) survives in the hands of the paying party who has not been served, (4) accordingly, the rules provided a mechanism by which those claimants contending that they had not been served with Notice of Commencement in April 2001 could have secured for themselves a hearing within a reasonable time, (5) the delay did not infringe the art. 6 rights of the claimants and, as there was no substantial risk that a fair hearing was not possible, the continuation of the proceedings was not an abuse of process, (6) the costs judge had a discretion to order re-service of the Notice of Commencement and in the circumstances of this case he was not, in effect, ordering "a re-run of the assessment" by doing so, (7) in imposing on D a sanction as to interest under r.47.14(5), but refusing to impose any further sanction under r.44.14(1)(a) for any failure of D to comply with rules, the costs judge exercised his discretion correctly—judge observing that authorities on former RSC Ord. 62, r.30(5) must be treated carefully (see ***Civil Procedure 2005*** Vol. 1 paras 3.4.3, 44.14.1, 47.8.1 & 47.14.1, and Vol. 2 para. 3D-30)

■ **MCGLINN v. WALTHAM CONTRACTORS LTD** [2005] EWHC 1419 (TCC); [2005] 3 All E.R. 1126 (Judge Peter Coulson Q.C.)

Recovery of costs incurred during pre-action protocol procedure

CPR r.44.3, Pre-Action Protocol (Construction and Engineering Disputes) para. 3, Supreme Court Act 1981 s.51—property owner (C) bringing substantial building claim against several defendants, including architects (D)—before commencing proceedings, parties adhering to relevant pre-action protocol—during that stage (which concluded with a failed mediation), C making certain claims against D (and which D at that stage resisted) that were not subsequently included amongst the claims made by C against D in his particulars of claim—at case management conference, D applying for interim payment in respect of costs incurred in resisting those claims now not pursued by C—held, dismissing application, (1) in principle, costs incurred during a pre-action protocol procedure may be costs "incidental to" proceedings within the meaning of s.51, (2) however, save in exceptional cases, costs incurred by a defendant during that procedure in dealing with and responding to issues which are subsequently dropped from the action when the proceedings are commenced are not "incidental to" those proceedings (see ***Civil Procedure 2005*** Vol. 1 paras 44.3.4, C1A-009 & C5-006, and Vol. 2 para. 9A-265)

■ **R. (JONES) v. CEREDIGION COUNTY COUNCIL** [2005] EWCA Civ 986, *The Times* September 16, 2005, CA, (Waller & Maurice Kay L.JJ. and Sir Christopher Staughton)

Contingent permission to appeal where direct appeal to House of Lords

CPR r.52.3, Supreme Court Act 1981 s.16(1), Administration of Justice Act 1969 ss.12 & 13—High Court judge determining application for judicial review in favour of claimant (C) and quashing decision made by defendant local authority (D)—judge granting D (a) certificate under s.12(1) to apply for permission to appeal directly to the House of Lords, and (b) permission to appeal to the Court of Appeal if, in the event, the Lords did not grant permission ("contingent" permission)—House of Lords granting D permission to appeal to them in relation to one of three issues on which they sought to appeal—subsequently, D (a) withdrawing that appeal (in effect, abandoning the point), and (b) applying for permission to appeal to the Court of Appeal on one of the two issues on which the House of Lords had refused permission—C contending that, by virtue of s.13(2)(a), D were precluded from bringing an appeal to the Court of Appeal—held, granting D's application, (1) the Court

had jurisdiction to entertain D's appeal, (2) the 1969 Act should be construed so as to allow for the possibility of a partial grant of leave to appeal to the House of Lords, (3) in the circumstances of this case, the expressions "the decision of the judge" in s.13(2)(a) and "the decision" in s.13(2)(b) should be interpreted as not referring only to the quashing order made by the judge (see ***Civil Procedure 2005*** Vol. 1 paras 52.0.13 & 52.3.1, and Vol. 2 paras 9A-50.1, 9B-38 & 9B-41.1)

■ **SIMMS v. THE LAW SOCIETY** [2005] EWCA Civ 849, 154 New L.J. 1124 (2005), CA (Auld, Sedley & Carnwath L.JJ.)

Indemnity costs—reasonableness and proportionality

CPR rr.3.1(2)(f), 24.4, 44.3(8), 44.4 & 44.5, Solicitors Act 1974 Sched.1 para. 6(4)—Law Society (D) serving notice of intervention on solicitor (C) and his partners—by Pt 8 claim, C and his partners applying to High Court under para. 6(4) for order directing withdrawal of notice—subsequently, D instituting proceedings involving C in Solicitors Disciplinary Tribunal—Court making consent order directing that Pt 8 claim should not proceed according to directions already made but should be listed for pre-trial review after the "final conclusion" of the disciplinary proceedings—SDT giving decision upholding most of charges made against C—Divisional Court dismissing C's appeal from the SDT decision ([2002] EWHC 408 (Admin))—following SDT decision, but before hearing of Divisional Court appeal, judge granting D's application for summary judgment on C's Pt 8 claim with costs—judge ordering C to make interim payment of £150,000 towards C's costs—in ordering that D's costs should be assessed on the indemnity basis, judge noting C's contention that the manner in which D defended the claim was not proportionate to the issues raised—Court of Appeal granting C permission to appeal—held, dismissing C's appeal against the summary judgment but allowing his appeal against the costs order (1) there was nothing in the consent order that precluded D from applying for summary judgment before the disposal of the appeal to the Divisional Court (bringing the disciplinary proceedings to a conclusion), as the order did not take the form of a stay of the Pt 8 claim but merely absolved the parties from the duty to take any steps in the proceedings, (2) in the exercise of his discretion the judge could have adjourned D's summary judgment application be he had not erred in not doing so, (3) the judge assumed that C's arguments about "proportionality" in relation to D's costs would be relevant to the assessment of the indemnity costs, (4) in this respect the judge had fallen into error as proportionality (as distinct from reasonableness) is an issue in assessing costs on the standard basis but not on the indemnity basis, (5) the effect of the judge's order was to exclude, or at least to severely limit, the part which that issue could play in the assessment proceedings before the costs judge, (6) the case for awarding D their costs on an indemnity basis was a marginal one, and it was far from clear that the judge would have made such an award had he been aware that this would be the effect of his order, (7) it was impossible to say that the judge's order for an interim payment of costs was not a proper exercise of discretion—***Lownds v. Home Office (Practice Note)*** [2002] EWCA Civ 365; [2002] 1 W.L.R. 2450, CA, ***Dyson Limited v. Hoover Limited (No. 4)*** [2003] EWHC 624 (Ch); [2004] 1 W.L.R. 1264, ref'd to (see ***Civil Procedure 2005*** Vol. 1 paras 3.1.7, 24.4.2, 44.4.3, 44.3.15, 45.5.4, 48.19 & 48.20)

■ **THREE RIVERS DISTRICT COUNCIL v. BANK OF ENGLAND** [2005] EWCA Civ 889, July 14, 2005, CA, unrep. (Pill, Rix L.JJ. and Rimer J.)

Time limit on cross-examination of witness

CPR rr.32.1(3) & 52.11(3)—liquidators of bank (C) bringing claim against regulatory authority (D) for misfeasance in public office—trial commencing in January 2004, and estimated to run for over a year—C proposing to call no witnesses but to prove their case of bad faith entirely from D's disclosed documents and cross-examination of D's witnesses, including a former employee of D (Q)—on May 5, 2005, judge directing that the oral examination of Q (one of only two of 13 witnesses D now intending to call) should begin on June 13, 2005—shortly afterwards, C indicating (and judge not disputing) that they expected cross-examination of Q to take not less than 12 weeks—on June 9, 2005, for first time all parties becoming aware that Q had a deteriorating medical condition, raising prospect that he would require surgery in September 2005, with six month recovery period—on June 22, 2005, D applying for direction that Q's cross-examination should be completed by July 28, 2005, leaving the last day of term before the court adjourned for the Long Vacation for his re-examination—judge granting application, in effect limiting period for Q's cross-examination to seven weeks—judge finding that (a) irrespective of Q's illness and the difficulties created by that, a cross-examination of 12 weeks, crossing over the Long Vacation, would be disproportionate and unreasonable, and (b) although C might suffer some modest prejudice, it was oppressive, unreasonable and inhumane to require Q to live with the prospect of returning for further cross-examination at some time in the future—held, dismissing C's appeal, (1) a judge has express power under r.32.1(3) to limit cross-examination, (2) the exercise of this case management power is peculiarly a matter for the judge's discretion and his decision would not be disturbed on appeal unless it was plainly wrong, (3) the emergence of the fact of Q's deteriorating medical condition was not the only new fact arising making it desirable for the judge to give a direction restricting the time available for Q's cross-examination, (4) the question was not "how

long could C's cross-examination of Q properly last?" but "how long was it necessary for it to last in the interests of justice, for both parties and Q?", (5) it cannot be argued that a judge is not entitled to depart from the professional judgment of counsel as to the time required for cross-examination as it is his duty to take an independent view of the control and conduct of a trial—***Hayes v. Trans*** (see ***Civil Procedure 2005*** Vol. 1 paras 32.1.5 & 52.11.3)

- **TRUSTEES OF STOKES PENSION FUND v. WESTERN POWER DISTRIBUTION (SOUTH WEST) PLC.** [2005] EWCA Civ 854, [2005] 3 All E.R. 775, CA (Auld & Dyson L.JJ.)

Effect of offer to settle money claim not made in accordance with Pt 36

CPR rr.36.1(2), 36.5, 36.10 & 44.3(4)(c)—on December 17, 2002, owners of land (C) bringing county court claim in trespass against company (D) claiming damages of £780,000—previously, C not accepting D's "without prejudice as to costs" offer to settle the dispute on terms (including a payment of £27,000) made on February 26, 2002—after proceedings commenced, D (a) rejecting C's offer to settle on terms (including a payment of £42,500), (b) paying £20,000 into court, and (c) advising C that their pre-commencement offer was no longer open for acceptance (as the 21 day time for acceptance stated in it had passed)—at trial, judge awarding C damages of £25,000—on ground that, although C had beaten the payment in, their approach to the litigation had been unreasonable, judge ordering that D should pay half only of C's costs—on ground that judge had not taken into account their pre-commencement offer (which C had not bettered at trial), D appealing against costs order—held, allowing appeal, (1) it is expressly provided by r.36.1(2) and r.44.3(4)(c) that the court has a discretion to order that an offer to settle a money claim not made in accordance with Pt 36 shall nevertheless have the costs consequences specified in r.36.20(2), (2) that discretion extends to the situation where (as here) an offer is made before commencement of proceedings but is not followed, as is required by r.36.10(3)(a), by a payment into court within 14 days of the service of the claim form, (3) in the exercise of that discretion, an offer by a clearly solvent defendant to settle a money claim should usually be treated as having the same effect as the payment into court required by r.36.10(3)(a), provided it satisfied certain conditions, was open for 21 days, and was a genuine not a sham offer, (4) in the circumstances of this case, that discretion should be exercised in D's favour and the costs consequences stated in r.36.20(2) should follow, (5) accordingly, C should pay D's costs incurred after the expiry of 21 days from February 26, 2002, and D should pay C's costs (if any) incurred before that date (see ***Civil Procedure 2005*** Vol. 1 paras 36.1.1, 36.10.3 & 44.3.12)

Practice Directions

- **PRACTICE DIRECTION (CROWN PROCEEDINGS) TSO CPR Update 40 (September 30, 2005)**

CPR Pt. 66—supplements r.6.5(8) (service of documents), r.30.3(2) (transfer of proceedings)—list of government departments published in accordance with Crown Proceedings Act 1947 s.17 annexed—in force October 1, 2005 (see ***Civil Procedure 2005*** Vol. 1 paras 6.5.1, 19PD.7 & 30.3.1, and Vol. 2 para. 9B-333)

- **PRACTICE DIRECTION (RESERVED JUDGMENTS) TSO CPR Update 40 (September 30, 2005)**

CPR Pt 40—contains practice for making available reserved judgments before handing down—corrections—attendance at handing down—agreed orders—in force October 1, 2005 (see ***Civil Procedure 2005*** Vol. 1 para. 40.2.5)

- **PRACTICE DIRECTION (POSSESSION CLAIMS ONLINE) TSO CPR Update 40 (September 30, 2005)**

supplements CPR r.55.10A (Electronic issue of certain possession claims)—provides for "Possession Claims Online" scheme to operate in selected county courts—starting and progressing claims using PCOL website—payment of fees—electronic applications—viewing case record—in force October 1, 2005 (see ***Civil Procedure 2005*** Vol. 1 para. 55.10.1)

Statutory Instruments

- **ACCESS TO JUSTICE (MEMBERSHIP ORGANISATION) REGULATIONS 2005 (S.I. 2005 No. 2306)**

Access to Justice Act 1999 s.30, Access to Justice (Membership Organisation) Regulations 2000—arrangements for recovery of costs where prescribed body undertakes to meet orders for costs—simplifies conditions for such arrangements as prescribed by s.30—revokes 2000 Regulations, but provides that they shall continue to have effect for the purposes of arrangements entered into before November 1, 2005—in force November 1, 2005 (see ***Civil Procedure 2005*** Vol. 2 paras 7A-27 & 9A-869)

- **CIVIL LEGAL AID (GENERAL) (AMENDMENT NO. 2) REGULATIONS 2005 (S.I. 2005 No. 1802)**

Legal Aid Act 1988 ss16, 34 & 43—amend Civil Legal Aid (General) Regulations 1989—insert new regs. 96A & 96B—deferment of enforcement of charge—circumstances in which charge will not be deferred and when decisions to defer will be reviewed—in force July 25, 2005 (see ***Civil Procedure 2005*** Vol. 2, para. 7D-11)

CIVIL PROCEDURE (AMENDMENT NO. 3) RULES 2005 (S.I. 2005 No. 2292)

amends Civil Procedure Rules 1998—adds Sect. V (Fixed Recoverable Success Fees in Employer's Liability Disease Claims) to Pt 45 (Fixed Costs), and Sect. V (European Enforcement Orders) to Pt 74 (Enforcement of Judgments in Different Jurisdictions)—inserts Pt 66 (Crown Proceedings)—makes extensive amendments to many CPR Parts and to provisions in Scheds 1 & 2—in force October 1 & 21, 2005, and April 6, 2006 (see ***Civil Procedure 2005*** seriatim)

CIVIL PROCEDURE (MODIFICATION OF CROWN PROCEEDINGS ACT 1947) ORDER 2005 (S.I. 2005 No. 2712)

Civil Procedure Act 1997 s.4(2)—amends Crown Proceedings Act 1947 ss.15, 16, 19, 22, 27, 28, 35 & 38—enables certain procedural privileges of the Crown to be revoked when new Pt 66 (Crown Proceedings) was added to the CPR—amends certain other legislation bearing on special privileges of the Crown as to the transfer of proceedings from county courts to High Court—in force October 1, 2005 (see ***Civil Procedure 2005*** Vol. 2 paras 9B-329 to 9B-386)

CONDITIONAL FEE AGREEMENTS (REVOCATION) REGULATIONS 2005 (S.I. 2005 No. 2305)

Courts and Legal Services Act 1990 s.58A—revoke Conditional Fee Agreements Regulations 2000 (S.I. 2000 No. 692) and related statutory instruments in respect of CFAs entered into on or after November 1, 2005—CFAs entered into subsequently regulated by s.58A of the 1990 Act, as inserted by Access to Justice Act 1999 s.27—in force November 1, 2005 (see ***Civil Procedure 2005*** Vol. 2 paras 7A-6, 7A-11 & 7A-19)

ENROLMENT OF DEEDS (CHANGE OF NAME) (AMENDMENT) REGULATIONS 2005 (S.I. 2005 No. 2056)

Practice Direction (Court Documents) Appendix, Supreme Court Act 1981 s.1333(1)—amend Enrolment of Deeds (Change of Name) Regulations 1994 regs. 2, 3 & 8 to take account of coming into force of Civil Partnership Act 2004—in force December 5, 2005 (see ***Civil Procedure 2005*** Vol. 1 para. 5PD.9)

Court Guides

TECHNOLOGY AND CONSTRUCTION COURT GUIDE (2ND ED.) October 3, 2005

CPR Pt 60—completely revises first edition of this Guide—provides practical guidance for conduct of pre-trial and trial proceedings in TCC cases—takes account of relevant pre-action protocol, all ADR routes and arbitration—incorporates amendments made to Pt 60 and practice direction supplementing that Part coming into force on October 1, 2005—Appendices include case management information sheet, case management directions form, pre-trial review questionnaire, and draft directions order in adjudication enforcement proceedings (see ***Civil Procedure 2005*** Vol. 1 para. C5-001, Vol. 2 para. 2C-31)

IN DETAIL

CIVIL PROCEDURE (AMENDMENT NO.3) RULES 2005

The Civil Procedure (Amendment No.3) Rules 2005 (S.I. 2005 No. 2292) amend the CPR in a number of respects. The amendments coming into effect on October 1 and 21, 2005, except the addition of Pt 66 (Crown Proceedings) and amendments consequential upon that insertion, are explained below. In some respects, amendments to rules explained below go hand in hand with amended or new CPR supplementing practice directions. In what follows, those provisions are not explained but they are set out in the CPR Update section of this issue of CP News.

The detailed amendments made by this statutory instrument, are set out in the CPR Update section of this edition of CP News.

Part 3—Cost estimates

CPR r.3.1 contains a list of some of the court's "general powers of case management". The power to order a party to file and serve an estimate of costs is now added to the list. A party may be required to file and serve such an estimate in various circumstances; see Practice Direction (Costs) Sect. 6 (as recently amended) (***White Book 2005—Supplement No. 2*** Vol. 1, para. 43PD.6, p.62).

Parts 3 & 23—Totally without merit applications

As is explained in para. 3.4.10 of the ***White Book***, when rules concerning the court's powers to make civil restraint orders were introduced, by the Civil Procedure (Amendment No.3) Rules 2004 (S.I. 2004 No. 2072), various additions and amendments were made to the CPR. Among them was the addition of para. (7) to r.3.3. That provision states that, if the court of its own initiative strikes out a statement of case or an application, and it considers that the claim or application is totally without merit, then the court must take certain steps. Words are now added to para. (7) for the purpose of making it clear that "application" in this context includes an application for permission to appeal or for permission to apply for judicial review. A similar addition is also made r.23.12 (Dismissal of totally without merit applications).

Part 3—Automatic strike out

CPR r.3.7 provides sanctions for non-payment of certain court fees. Where paras (4)(i) and (6)(a) apply the sanction is that the claimant's claim "shall be struck out". These paragraphs are now amended so as to state that the claimant's claim "will automatically be struck out without further order of the court". It should be noted that amendments made to Pts 28 and 29 (see below) also refer to the court's power to strike out without further order.

Rule 3.7A is added to Pt 3, and in terms similar to r.3.7 (as amended) provides sanctions where a defendant filing a counterclaim fails to pay requisite court fees.

Fees may be paid by cheque. Cheques may be dishonoured. By the addition of r.3.7B, a party whose cheque is dishonoured may be subject to the same automatic strike out sanction as provided for in r.3.7 and r.3.7A.

Part 5—Court documents

As is explained in para. 5.4.1 of the ***White Book***, in recent times changes have been made to the rules providing for the supply of documents from court records, whether to a party to proceedings or to "any other person". Rule 5.4(3), which applies to parties to proceedings, contains a list of particular documents. That paragraph is now substituted and provides that the documents obtainable are those listed in para. 4.2A of Practice Direction (Court Documents).

Part 6—Deemed service

Rule 6.7(1) states that, where for the purpose of serving a document a party adopts one of the particular methods of service listed in the rule (*e.g.* first class post), the document shall be deemed to be served on a particular day shortly afterwards (*e.g.* the second day after it was posted by first class post). A cross-reference in the rule draws attention to r.2.8 (Time), which (amongst other things) states that certain days (*e.g.* Saturdays and Sundays) are excluded from the calculation of periods of five days or less (r.2.8(4)). That cross-reference lent some weight to

the argument that, accordingly, the certain days referred to in r.2.8(4) should be excluded when deemed days of service were determined under r.6.7(1). As is explained in para. 6.7.2 of the ***White Book***, that argument was rejected by the Court of Appeal in ***Anderton v. Clwyd County Council*** [2002] EWCA Civ 933; [2002] 1 W.L.R. 3174, C.A. The cross-reference is now removed.

Part 6—Notice of non-service

Rule 6.11 states that where a document is to be served by the court and the court is unable to serve it, the court must send a notice of non-service stating the method attempted to the party who requested service. This rule is now substituted by two new rules, r.6.11 and r.6.11A, dealing with, respectively, notification of outcome of postal service by the court when the document is returned to the court, and notice of non-service by the court bailiff.

Part 10—Period for filing an acknowledgment of service

CPR r.10.3(1) states a general rule fixing the period for filing an acknowledgment of service. The general rule has two parts. First, where the defendant is served with a claim form which states that particulars of claim are to follow, the acknowledgment of service must be filed within 14 days after service of the particulars of claim. Secondly, in any other case it must be filed within 14 days after the service of the claim form.

Some other provisions in the CPR appear expressly (and for good reason) to fix (or enable to be fixed) rather more generous periods for the filing of acknowledgments of service than those fixed by the general rule stated in r.10.3(1). An example is provided by r.6.16. That rule deals with applications for service of a claim form on the agent within the jurisdiction of a principal who is overseas. Rule 6.16(4) states that, if the application is granted, the order must state a period within which the defendant must respond to the particulars of claim. Rule 10.3(2) anticipates the potential for conflict between the court's unfettered discretion in r.6.16(4) and the general rule stated in r.10.3(1), and expressly provides that the latter is subject to the former. And in a similar way, r.10.3(2) deals with the potential for conflict with r.6.22, which specifies how the period is to be fixed where the claim form is served out of the jurisdiction under r.6.19 (service out of the jurisdiction where the permission of the court is not required).

Now, by an amendment to r.10.3(2), the general rule stated in r.10.3(1) is expressly made subject to yet another provision; that is to say, to r.6.21(4). That rule specifies how the period is to be fixed where the claim form is served out of the jurisdiction under r. 6.20 (service out of the jurisdiction where the permission of the court is required).

Part 11—Case management where jurisdiction unsuccessfully disputed

Rule 11 provides that a defendant who wishes to dispute the jurisdiction of the court should apply to the court for a declaration to that effect. The defendant must first file an acknowledgment of service. It is expressly provided that, by doing so, the defendant does not submit to the jurisdiction. Para. (7) of the rule states that if the court does not make a declaration, the acknowledgment of service ceases to have effect, leaving the defendant in the same position as he would have been had he not chosen to challenge the court's jurisdiction. The defendant, having considered his position, may decide to file an acknowledgment of service. Sub-para. (b) of para. (7) allows him to do so, provided he acts within 14 days (or such other period as the court may direct). Para. (7) is now amended and enjoins the court to anticipate that the defendant will file an acknowledgment of service and to give certain suspended (as it were) directions.

Part 12—Civil partners

Rule 12.10 states that a claimant wishing to obtain a default judgment must make an application under Pt 23 where, for example, the claim is a claim in tort by one spouse against another. With the coming into effect of the Civil Partnership Act 2004, this rule has been amended for the purpose of extending its application to cases where the claim is a claim in tort by one civil partner against another (see too r.12.10(3)).

Parts 21 & 48—Expenses incurred by litigation friend

Pt 21 contains special provisions which apply in proceedings involving children and patients, and sets out how a person becomes a litigation friend. Where in any proceedings money is recovered by or on behalf of a child or patient it is to be dealt with in accordance with directions given by the court under r.21.11. Rule 21.11A is now added to this Part for the purpose of enabling the court to direct in these circumstances that the child's or patient's litigation friend should be paid, out of the money recovered, his reasonable expenses. Rule 21.11A(3)

states that no application may be made under this rule for expenses that (a) are of a type that may be recoverable on an assessment of costs payable by or out of money belonging to a child or patient, but (b) are disallowed in whole or in part on such an assessment. The general rule that costs payable by a child or patient to his solicitor should be subject to detailed assessment is extended to include costs (as distinct from expenses) payable to a litigation friend (r.48.5).

Part 26—Stay to allow for settlement

Rule 3.1(2)(f) refers to the court's power to "stay the whole or any part of any proceedings" and may be exercised "except where these Rule 26.4 states that, in certain circumstances, the court may direct that proceedings should be stayed "while the parties try to settle the case by alternative dispute resolution or other means". Rule 26.4 is now amended for the purpose of making it clear that a stay directed under that rule may relate to the proceedings "either in whole or in part". Heretofore it has been provided that a stay directed under r.26.4 is to be for one month initially (r.26.4(2), but may be extended subsequently (r.26.4(3)). For the purpose of introducing greater flexibility, the rule is now amended and provides that the initial stay directed by the court is to be for one month "or for such specified period as it considers appropriate".

Part 27—Small claims

Providing further information

Rule 18.1 states that the court may at any time order a party to clarify any matter which is in dispute in the proceedings, or give additional information in relation to any such matter, whether or not the matter is contained in or referred to in a statement of case. Rule 27.2 provides expressly that Pt 18 does not apply to small claims. This exclusion is now qualified by the addition of para. (3) which states that the court of its own initiative may order a party to provide further information if it considers it appropriate to do so.

Non-attendance at final hearing

Rule 27.9(1) states that if a party who does not attend a final hearing (a) has given the court written notice at least 7 days before the date of the hearing that he will not attend; and (b) has, in that notice, requested the court to decide the claim in his absence, the court will take into account that party's statement of case and any other documents he has filed when it decided the claim. Certain additional requirements are now imposed on a party proposing not to attend the final hearing but wishing to take advantage of r.27.9(1). First, he must serve the written notice on the other party. Secondly, he must serve on the other party at least 7 days before the hearing date "any other documents which he has filed with the court". The written notice must contain, not only contain the party's request that the court to decide the claim in his absence, but also confirm that he has complied with these additional requirements.

Costs

Rule 27.14(2A) is added for the purpose of providing that a party's rejection of an offer to settle does not itself constitute unreasonable behaviour within r.27.14(2), but may be taken into account when the court considers the reasonableness of the party's conduct generally.

Para. (5) of r.27.14 is substituted by paras (5) and (6) for the purpose of providing that, when a claim with a financial value exceeding the small claims track is allocated to that track by consent, the small claims costs provisions will apply unless the parties agree that the fast track costs provisions are to apply. Where the parties so agree, the claim will be treated for the purposes of costs as if it were proceeding on the fast track, except that trial costs will be in the discretion of the court and will not exceed the amount set out for the value of the claim in r.46.2 (amount of fast track trial costs).

Rule 27.14(3)(c) provides that a party may be ordered to pay a sum for "any loss of earnings" suffered by a party or witness attending a hearing. This provision now states that he may be ordered to pay a sum for "loss of leave".

Parts 28 & 29—Failure to file pre-trial checklist

Rule 28.5 and r.29.6 contains contain provisions about the filing of pre-trial checklists in cases proceeding on, respectively, the fast track and the multi-track. In particular, r.28(3) and r.29.6(3) state that where, by the date specified, (a) a party fails to file the completed checklist, or (b) files a checklist but fails to give all the information requested, "the court may give such directions as it thinks appropriate". Now the powers of the court are

strengthened in the first of these two situations. If no party files the completed pre-trial checklist by the date specified, the court will order that unless a completed pre-trial checklist is filed within 7 days from service of that order, the claim, defence and any counterclaim will be struck out without further order of the court. It was noted above that CPR r.3.7 now also refers to the court's power to strike out without further order. (Note also the recent amendment to Practice Direction (Case Management etc) para. 2.5(1).)

Part 30—Transfer of competition law claims

Rule 30.8 was added to the CPR in 2004. Its effect is explained in para. 30.8.1 of the ***White Book.*** It provides that proceedings raising a competition law issue, including proceedings in the Queen's Bench Division, must be transferred to the Chancery Division at the RCJ. A "commercial claim", as defined in r.58.1(2), may be started in the Commercial Court (strictly speaking, a court within the Queen's Bench Division) and, if not, may be transferred there (see rr.30.5(3) and 58.4(2)). A competition law issue may be raised in a commercial claim.

On its face, r.30.8 requires a commercial claim proceeding in the Commercial Court, but raising a competition law issue, to be transferred to the Chancery Division. This rule is now amended so as to provide that the transfer requirement does not apply to proceedings "in the Commercial or Admiralty Courts". And it is further provided that, where proceedings have been commenced in the Queen's Bench Division or a Mercantile Court, and those proceedings (a) fall within the scope of r.58.1(2), and (b) raise a competition law issue, then any party may apply for the transfer of those proceedings to the Commercial Court in accordance with r.58.4(2) and r.30.5(3). If such an application is refused, then the normal rule applies and the proceedings should be transferred to the Chancery Division at the RCJ.

Part 32—Notarial acts and instruments

The rule making power includes power to "modify the rules of evidence as they apply to proceedings in any court within the scope of the rules" (Civil Procedure Act 1997 s.1(2), and Sched.1, para. 4). CPR Pt 32 contains rules as to evidence and most, but not all of them, are derived from former RSC and CCR provisions. Rule 32.20 (headed "Notarial acts and instruments) is now added to Pt 32 and gives probative force to notarial acts. It states that a notarial act or instrument may be received in evidence without further proof as duly authenticated in accordance with the requirements of law unless the contrary is proved. Increasingly, English civil procedure has to interact with procedures used by foreign legal systems, where the common law does not prevail and where attitudes towards proof of the authenticity of documents differ. (The giving effect (by amendment to CPR Pt 74) of Council Regulation (EC) No. 805/2004, creating a European Enforcement Order for uncontested claims is a recent example.) The rebuttable presumption relating to notarial acts and instruments generally, introduced by r.32.20, will facilitate proof in various procedural contexts, particularly those with a foreign dimension.

Parts 40 & 60—Drawing up of judgments and orders

It is sometimes a matter for doubt whether a judgment or order of the court should be drawn up by the court or by a party (perhaps with the collaboration of other parties). The old general county court rule was that it was the court's responsibility, and that is the rule stated in r.40.3(1). Exceptions abound (e.g. consent orders). Two further particular exceptions are clarified (if not created). It is now provided that, except for orders made by the court of its own initiative and unless the court otherwise orders, every judgment or order made in claims proceeding (a) in the Queen's Bench Division at the Royal Courts of Justice, other than in the Administrative Court (r.40.3(4)), or (b) in the Technology and Construction Court (r.60.7(1)), will be drawn up by the parties. In addition, it is now stated in r.40.3(1) that exceptions to the general may be created by practice direction.

(Curiously, at the end of r.40.3(4) and of r.60.7(1) it is stated that "rule 40.3 is modified accordingly". In relation to r.40.3(4) at least, this surplusage would appear to be an inadvertent inclusion taken from a narrative account of the rule.)

44—Deemed order for costs

Rule 44.13(1) states the general rule that, where the court makes an order which does not mention costs, no party is entitled to costs in relation to that order. By the addition to this provision of para. (1A), important exceptions to this general rule are created. Para. (1A) states that, where the court makes (a) an order granting permission to appeal, (b) an order granting permission to apply for judicial review, or (c) any other order or direction sought by a party on an application without notice, and its order does not mention costs, it will be deemed to include an order for applicant's costs in the case. Any party affected by such a deemed order for costs under paragraph (1A) may apply at any time to vary the order (r.44.13(1B)).

Part 45—Success fees

In recent times, Sections have been added to Pt 45 (Fixed Costs) making special provision in relation to particular types of claim as to the percentage by which the amount of a legal representative's fee can be increased in accordance with a conditional fee agreement that provides for a success fee ("percentage increase"). For example, Sect. IV fixes percentage increases in employer's liability claims (see rr.45.20 to 45.22). A further Section (Sect. V) (rr.45.23 to 45.26) is now added, fixing success fees in a particular type of employer's liability claims, that is to say, in disease claims. A consequential amendment is made to r.45.20 for the purpose of differentiating employer's liability claims falling under Sect. IV from those falling under Sect. V.

Part 55—Communicating electronically with court in possession claims

Rule 55.10A is added to Pt 55 (Possession Claims) and is supplemented by a practice direction dedicated to this rule. The new rule is headed "Electronic issue of certain possession claims", giving the impression that it is enacted for the sole purpose of providing, by supplementing practice direction, for the making of requests, by electronic means, for the issue of certain types of possession claim in certain courts. The heading is misleading. In addition the rule states that provision may be made by practice direction enabling parties (a) to make certain applications or take further steps "in relation to the claim electronically", and (b) to correspond electronically with the court about the claim (r.55.10A(2)). Indeed, r.55.10A(3) goes so far as to say that the practice direction "may disapply or modify these Rules as appropriate in relation to possession claims started electronically".

Parts 55 & 65—Suspension claims

Sect. III of Pt. 65 (Anti-social Behaviour and Harassment) deals with the procedures for demotion claims and proceedings related to demoted tenancies. Where a demotion claim is made in the same claim form in which a possession claim is started, the general rules in Sect. I of Pt 55 (Possession Claims) apply as modified by the special rules as to venue stated in r.65.12.

A number of amendments are now added to Sect. III of Pt 65 to make provision for suspension claims made by landlords under the Housing Act 1985 s.121A. Consequential amendments are made to Sect. I of Pt 55.

Part 63—Judge of a patents county court

The Copyright, Designs and Patents Act 1988 s.291(1) provides for the nomination of the patents judge of a patents county court. That definition is now inserted in r.63.1(2), and in r.63.4A, now added to Pt 63, it is stated that proceedings in the patents county court shall be dealt with by the patents judge (r.63.4A(1)). However, when a matter needs to be dealt with urgently and it is not practicable or appropriate for the patents judge to deal with such matter, the matter may be dealt with by another judge with appropriate specialist experience who shall be nominated by the Vice-Chancellor (r.63.4A(2)).

Part 74—European Enforcement Orders

Part 74 is divided into four Sections and contains rules dealing with the enforcement by English courts of the judgments of foreign courts or the courts of other parts of the United Kingdom, and vice versa. With effect from October 21, 2005 (when the Council Regulation referred to below came into effect), a fifth Section (rr.74.27 to 74.33) is added for the purpose of providing (a) for the certification of judgments of English courts as "European Enforcement Orders" (EEO), and (b) for the recognition and enforcement in England of judgments of other Contracting States that have been certified as EEOs. This addition to the CPR gives effect to Council Regulation (EC) No. 805/2004, creating an EEO for uncontested claims. Consequential amendments are made to r.74.1. A supplementing practice direction is dedicated to this new Section.

CPR UPDATE—Rules

AMENDMENTS TO RULES

A number of changes to the CPR have been brought about by the Civil Procedure (Amendment No. 3) Rules 2005 (S.I. 2005 No. 2292). These include the addition of Pt 66 (Crown Proceedings), and of new Sections to Pt 45 (Fixed Costs) and to Pt 74 (Enforcement in Different Jurisdictions). In certain respects, these amendments are accompanied by changes to supplementing practice directions (see further below).

The other amendments to the CPR brought about by this statutory instrument are set out below. (For narrative accounts of the additions relating to fixed costs and foreign enforcement, see the ***In Detail*** section of this issue of ***CP News***.) Paragraph and page references are to Volume 1 of the 2005 edition of the White Book. References to Volume 2 are expressly indicated.

Except where otherwise indicated, these amendments took effect on October 1, 2005.

para. 3.1, p.75

In para. (2) of r.3.1, after sub-para. (l), insert:

"(ll) order any party to file and serve an estimate of costs;"

para. 3.3, p.87

In para. (7) of r.3.3, after "an application", insert:

"(including an application for permission to appeal or for permission to apply for judicial review)"

para. 3.7, p.98

In sub-paras (4)(i) and (6)(a) of r.3.7, for "the claim shall be struck out", substitute "the claim will automatically be struck out without further order of the court"

para. 3.7.3, p.99

After this commentary paragraph, insert new rr.3.7A and 3.7B as follows:

"3.7A —(1) This rule applies where a defendant files a counterclaim without—

(a) payment of the fee specified by the relevant Fees Order; or
(b) making an application for an exemption from or remission of the fee.

(2) The court will serve a notice on the defendant requiring payment of the fee specified in the relevant Fees Order if, at the time the fee is due, the defendant has not paid it or made an application for exemption or remission.

(3) The notice will specify the date by which the defendant must pay the fee.

(4) If the defendant does not—

(a) pay the fee; or
(b) make an application for an exemption from or remission of the fee,

by the date specified in the notice, the counterclaim will automatically be struck out without further order of the court.

(5) Where an application for exemption from or remission of a fee is refused, the court will serve notice on the defendant requiring payment of the fee by the date specified in the notice.

(6) If the defendant does not pay the fee by the date specified in the notice, the counterclaim will automatically be struck out without further order of the court.

(7) If—

(a) the defendant applies to have the counterclaim reinstated; and
(b) the court grants relief,

the relief will be conditional on the defendant either paying the fee or filing evidence of exemption from payment or remission of the fee within the period specified in paragraph (8).

(8) The period referred to in paragraph (7) is—

(a) if the order granting relief is made at a hearing at which the defendant is present or represented, 2 days from the date of the order;
(b) in any other case, 7 days from the date of service of the order on the defendant.

Sanctions for dishonouring cheque

3.7B—(1) This rule applies where any fee is paid by cheque and that cheque is subsequently dishonoured.

(2) The court will serve a notice on the paying party requiring payment of the fee which will specify the date by which the fee must be paid.

(3) If the fee is not paid by the date specified in the notice—

(a) where the fee is payable by the claimant, the claim will automatically be struck out without further order of the court;
(b) where the fee is payable by the defendant, the defence will automatically be struck out without further order of the court,

and the paying party shall be liable for the costs which

any other party has incurred unless the court orders otherwise.

(Rule 44.12 provides for the basis of assessment where a right to costs arises under this rule)

(4) If—

(a) the paying party applies to have the claim or defence reinstated; and
(b) the court grants relief,

the relief shall be conditional on that party paying the fee within the period specified in paragraph (5).

(5) The period referred to in paragraph (4) is—

(a) if the order granting relief is made at a hearing at which the paying party is present or represented, 2 days from the date of the order;
(b) in any other case, 7 days from the date of service of the order on the paying party.

(6) For the purposes of this rule, "claimant" includes a Part 20 claimant and "claim form" includes a Part 20 claim."

para. 5.4, p.128

For para. (3) of r. 5.4 substitute:

"(3) A party to proceedings may, unless the court orders otherwise, obtain from the records of the court a copy of any document listed in paragraph 4.2A of the Practice Direction."

In sub-para. (5)(a)(i), after "a claim form", insert "but not any documents filed with or attached to or intended by the claimant to be served with such claim form,"

para. 6.1, p.151

For the cross-reference at the end of r. 6.1, substitute:

"(For service in possession claims, see Part 55)."

para. 6.4, pp.154 & 155

In para. (1) of r. 6.4, for "paragraph (2)" substitute "paragraphs (2) and (2A)"

After para. (2) of r. 6.4, insert:

"(2A) In civil proceedings by or against the Crown, as defined in rule 66.1(2), documents required to be served on the Crown may not be served personally."

para. 6.5, p.157

After para. (7) of r. 6.5, insert:

"(8) In civil proceedings by or against the Crown, as defined in rule 66.1(2) —

(a) service on the Attorney General must be effected on the Treasury Solicitor;
(b) service on a government department must be effected on the solicitor acting for that department as required by section 18 of the Crown Proceedings Act 1947.

(The practice direction to Part 66 gives the list published under section 17 of that Act of the solicitors acting for the different government departments on whom service is the be effected, and of their addresses)."

para. 6.7, p.160

In para. (1) of r. 6.7, omit"(Rule 2.8 excludes a Saturday, Sunday, a Bank Holiday, Christmas Day or Good Friday from calculations of periods of 5 days or less)"

para. 6.11, pp.163 & 164

For r. 6.11, and for the heading "Notice of non-service", substitute rr. 6.11 and 6.11A:

"Notification of outcome of postal service by the court

6.11 Where —

(a) a document to be served by the court is served by post; and
(b) such document is returned to the court,

the court must send notification to the party who requested service stating that the document has been returned.

Notice of non-service by bailiff

6.11A Where —

(a) the court bailiff is to serve a document; and
(b) the bailiff is unable to serve it,

the court must send notification to the party who requested service."

para. 6.20, p.185

In para. (16) of r. 6.20, for the heading "Claims by the Inland Revenue", substitute "Claims by HM Revenue and Customs", and in the text of para. (16) for "Commissioners of the Inland Revenue", substitute "Commissioners for HM Revenue and Customs"

para. 10.3, p.307

In r. 10.3(2), at the end of sub-para. (a) omit "and", and at the end of sub-para. (b) insert:

"; and

(c) rule 6.21(4) (which requires the court to specify the period within which the defendant may file an acknowledgment of service calculated by reference to Practice Direction 6B when it make an order giving permission to serve a claim form out of the jurisdiction)."

para. 11.1, p.312

In r. 11(7), at the end of sub-para. (a) omit "and", and at the end of sub-para. (b) insert:

"; and

(c) the court shall give directions as to the filing and service of the defence in a claim under Part 7 of the filing of evidence in a claim under Part 8 in the event that a further acknowledgment of service is filed."

para. 12.4, p.317

After para. (3) of r. 12.4, insert:

"(4) In civil proceedings against the Crown, as defined in rule 66.1(2), a request for a default judgment must be considered by a Master or district judge, who must in particular be satisfied that the claim form and particulars of claim have been properly served on the Crown in accordance with section 18 of the Crown Proceedings Act 1947 and rule 6.5(8)."

para. 12.10, pp.322 & 323

In r. 12.10, for para. (a), substitute:

"(a) the claim is -

(i) a claim against a child or patient; or
(ii) a claim in tort by one spouse or civil partner against the other."

para. 12.11, p.324

In para. (3) of r. 12.11, after "a claim in tort between spouses", insert "or civil partners"

para. 16.2, p.362

After para. (1) of r. 16.2, insert:

"(1A) In civil proceedings against the Crown, as defined in rule 66.1(2), the claim form must also contain -

(a) the names of the governments and officers of the Crown concerned; and
(b) brief details of the circumstances in which it is alleged that the liability of the Crown arose."

para. 19.4, p.406

After para. (4) of r. 19.4, insert:

"(4A) The Commissioners for HM Revenue and Customs may be added as a party to proceedings only if they consent in writing."

para. 19.7A.1, p.422

After this commentary paragraph, insert the following new rule:

"Postal Services Act 2000 (c. 26)

19.7B— (1) An application under section 92 of the Postal Services Act 2000 for permission to bring proceedings in the name of the sender or addressee of a postal packet or his personal representative is made in accordance with Part 8.

(2) A copy of the application notice must be served on the universal service provider and on the person in whose name the applicant seeks to bring the proceedings."

para. 21.11.1, p.470

After this commentary paragraph, insert new r. 21.11A:

"Expenses incurred by a litigation friend

21.11A. —(1) In proceedings to which rule 21.11 applies, a litigation friend who incurs expenses on behalf of a child or patient in any proceedings is entitled to recover the amount paid or payable out of any money recovered or paid into court to the extent that it—

(a) has been reasonably incurred; and
(b) is reasonable in amount.

(2) Expenses may include all or part of—

(a) an insurance premium, as defined by rule 43.2(1)(m); or
(b) interest on a loan taken out to pay an insurance premium or other recoverable disbursement.

(3) No application may be made under this rule for expenses that—

(a) are of a type that may be recoverable on an assessment of costs payable by or out of money belonging to a child or patient; but
(b) are disallowed in whole or in part on such an assessment.

(Expenses which are also "costs" as defined in rule 43.2(1)(a) are dealt with under rule 48.5(2)).

(4) In deciding whether the expense was reasonably incurred and reasonable in amount, the court must have regard to all the circumstances of the case including the factors set out in rule 44.5(3).

(5) When the court is considering the factors to be taken into account in assessing the reasonableness of expenses incurred by the litigation friend on behalf of a child or patient, it will have regard to the facts and circumstances as they reasonably appeared to the litigation friend or child's or patient's legal representative when the expense was incurred.

(6) Where the claim is settled or compromised, or judgment is given, on terms that an amount not exceeding £5,000 is paid to the child or patient, the total amount the litigation friend may recover under paragraph (1) of this rule shall not exceed 25% of the sum so agreed or awarded, unless the Court directs otherwise. Such total amount shall not exceed 50% of the sum so agreed or awarded."

para. 23.12, p.512

In r. 23.12, after "dismisses an application", insert "(including an application for permission to appeal or for permission to apply for judicial review)"

para. 24.4, p.529

In r. 24.4, after para. (1) insert:

"(1A) In civil proceedings against the Crown, as defined in rule 66.1(2), a claimant may not apply for summary judgment until after expiry of the period for filing a defence specified in rule 15.4."

para. 26.4, p.639

In para. (2) of r. 26.4, for "the court will direct that the proceedings be stayed for one month" substitute "the court will direct that the proceedings, either in whole or in part, be stayed for one month, or for such specified period as it considers appropriate"

para. 27.2, p.665

In sub-para. (1)(f) of r. 27.2, before "Part 18", insert "Subject to paragraph (3),"; and after paragraph (2), insert:

"(3) The court of its own initiative may order a party to provide further information if it considers it appropriate to do so."

para. 27.9, p.670

For para. (1) of r. 27.9, substitute:

"(1) If a party who does not attend a final hearing—

(a) has given written notice to the court and the other party at least 7 days before the hearing date that he will not attend;
(b) has served on the other party at least 7 days before the hearing date any other documents which he has filed with the court; and
(c) has, in his written notice, requested the court to decide the claim in his absence and has confirmed his compliance with paragraphs (a) and (b) above,

the court will take into account that party's statement of case and any other documents he has filed and served when it decides the claim."

para. 27.14, pp.672 & 673

In r.27.14, after para. (2), insert:

"(2A) A party's rejection of an offer in settlement will not of itself constitute unreasonable behaviour under paragraph (2)(d) but the court may take it into consideration when it is applying the unreasonableness test.

(Rule 36.2(5) allows the court to order Part 36 costs consequences in a small claim)."

In sub-para. (3)(c) of r. 27.14, after "loss of earnings", insert "or loss of leave"

For para. (5) of r. 27.14, substitute:

"(5) Where—

(a) the financial value of a claim exceeds the limit for the small claims track; but
(b) the claim has been allocated to the small claims track in accordance with rule 26.7(3),

the small claims track costs provisions will apply unless the parties agree that the fast track costs provisions are to apply.

(6) Where the parties agree that the fast track costs provisions are to apply, the claim will be treated for the purposes of costs as if it were proceeding on the fast track except that trial costs will be in the discretion of the court and will not exceed the amount set out for the value of claim in rule 46.2 (amount of fast track trial costs)."

para. 28.5, p.689

For para. (3) of r.28.5, substitute:

"(3) If no party files the completed pre-trial checklist by the date specified, the court will order that unless a completed pre-trial checklist is filed within 7 days from service of that order, the claim, defence and any counterclaim will be struck out without further order of the court."

After para. (3) of r.28.5, insert:

"(4) If—

(a) a party files a completed pre-trial checklist but another party does not;
(b) a party has failed to give all the information requested by the pre-trial checklist; or
(c) the court considers that a hearing is necessary to enable it to decide what directions to give in order to complete preparation of the case for trial,

the court may give such directions as it thinks appropriate."

para. 29.6, p.709

For para. (3) of r. 28.5, substitute:

"(3) If no party files the completed pre-trial checklist by the date specified, the court will order that unless a completed pre-trial checklist is filed within 7 days from service of that order, the claim, defence and any counterclaim will be struck out without further order of the court."

After para. (3) of r. 29.6, insert:

"(4) If—

(a) a party files a completed pre-trial checklist but another party does not;
(b) a party has failed to give all the information requested by the pre-trial checklist; or
(c) the court considers that a hearing is necessary to enable it to decide what directions to give in order to complete preparation of the case for trial,

the court may give such directions as it thinks appropriate."

para. 30.3, pp.726

At end of sub-para. (2)(g) of r. 30.3, substitute a semi-colon for the full-stop and then insert:

"(h) in the case of civil proceedings by or against the Crown, as defined in rule 66.1(2), the location of the relevant government department or officers of the Crown and, where appropriate, any relevant public interest that the matter should be tried in London."

para. 30.8, p.728

In para (1) of r. 30.8, after "Queen's Bench Division", insert "(other than proceedings in the Commercial or Admiralty Courts)"

After para (3) of r. 30.8, insert:

"(4) If any such proceedings which have been commenced in the Queen's Bench Division or a Mercantile Court fall within the scope of rule 58.1(2), any party to those proceedings may apply for the transfer of the proceedings to the Commercial Court, in accordance with rule 58.4(2) and rule 30.5(3). If the application is refused, the proceedings must be transferred to the Chancery Division of the High Court at the Royal Courts of Justice."

para. 32.19.1, p.808

After r.32.19, insert new rule:

"Notarial acts and instruments
32.20 A notarial act or instrument may be received in evidence without further proof as duly authenticated in accordance with the requirements of law unless the contrary is proved."

para. 40.3, p.1019

In para. (1) of r. 40.3, for "Every" substitute "Except as is provided at paragraph (4) below or by any Practice Direction, every"

After para. (3) of r.40.3, insert:

"(4) Except for orders made by the court of its own initiative and unless the court otherwise orders, every judgment or order made in claims proceeding in the Queen's Bench Division at the Royal Courts of Justice, other than in the Administrative Court, will be drawn up by the parties, and rule 40.3 is modified accordingly."

para. 44.13, p.1131

In sub-para. (1)(a) of r.44.13, at the beginning insert "subject to paragraphs (1A) and (1B),"

After para. (1) of r.44.13, insert:

"(1A) Where the court makes—

(a) an order granting permission to appeal;
(b) an order granting permission to apply for judicial review; or
(c) any other order or direction sought by a party on an application without notice,

and its order does not mention costs, it will be deemed to include an order for applicant's costs in the case.

(1B) Any party affected by a deemed order for costs under paragraph (1A) may apply at any time to vary the order."

para. 45.20, p.1179

After sub-para. (a)(iii) of r.45.20(2), insert:

"(iv) relates to an injury to which Section V of this Part applies; or"

para. 45.22, p.1180

After para. 45.22, insert new rules 45.23 to 45.26 constituting Section V (Fixed recoverable Success Fees in Employer's Liability Disease Claims) for Pt. 45 (Fixed Costs).

para. 48.5, p.1241

In para. (2)(a) of r.48.5, after "the court must order a detailed assessment of the costs payable by", insert ", or out of money belonging to,"

At the end of para. (2)(a) of r.48.5, after "any party who is a child or patient", omit "to his solicitor"

In para. (4)(b) of r.48.5, after "payable by the child or patient", omit "to his solicitor"

para. 55.1, p.1596

At the end of para. (f) of r.55.1, omit "and"

After para. (g) of r.55.1, substitute "; and" for the full-stop and then insert:

"(h) "a suspension claim" means a claim made by a landlord for an order under section 121A of the 1985 Act."

para. 55.2, p.1596

After para. (1) of r.55.2, for the cross-reference substitute:

"(Where a demotion claim or a suspension claim (or both) is made in the same claim form in which a possession claim is started, this Section of this Part applies as modified by rule 65.12. Where the claim is a demotion claim or a suspension claim only, or a suspension claim made in addition to a demotion claim, Section III of Part 65 applies)."

para. 55.10.1, p.1606

After r.55.10, insert new rule:

"Electronic issue of certain possession claims

55.10A. —(1) A practice direction may make provision for a claimant to start certain types of possession claim in certain courts by requesting the issue of a claim form electronically.

(2) The practice direction may, in particular—

(a) provide that only particular provisions apply in specific courts;
(b) specify—
  (i) the type of possession claim which may be issued electronically;
  (ii) the conditions that a claim must meet before it may be issued electronically;
(c) specify the court where the claim may be issued;
(d) enable the parties to make certain applications or take further steps in relation to the claim electronically;
(e) specify the requirements that must be fulfilled in relation to such applications or steps;
(f) enable the parties to correspond electronically with the court about the claim;
(g) specify the requirements that must be fulfilled in relation to electronic correspondence;
(h) provide how any fee payable on the filing of any document is to be paid where the document is filed electronically.

(3) The Practice Direction may disapply or modify these Rules as appropriate in relation to possession claims started electronically."

Vol. 2, para. 2C-8, p.291

After r.60.6, insert new rule:

"Judgments and Orders

60.7. —(1) Except for orders made by the court of its own initiative and unless the court otherwise orders, every judgment or order made in claims proceeding in the Technology and Construction Court will be drawn up by the parties, and rule 40.3 is modified accordingly.

(2) An application for a consent order must include a draft of the proposed order signed on behalf of all the parties to whom it relates.

(3) Rule 40.6 (consent judgments and orders) does not apply."

Vol 2, para. 2F-3, p.526

After para. (2)(g) in r.63.1 insert:

"(gg) "patents judge" means a person nominated under section 291(1) of the 1988 Act as the patents judge of a patents county court;"

Vol 2, para. 2F-8, p.528

After r.63.4 insert new rule:

"Patents Judge

63.4A.—(1) Subject to paragraph (2), proceedings in the patents county court shall be dealt with by the patents judge.

(2) When a matter needs to be dealt with urgently and it is not practicable or appropriate for the patents judge to deal with such matter, the matter may be dealt with by another judge with appropriate specialist experience who shall be nominated by the Vice-Chancellor."

para. 65.11, p.1685

For the sectional heading before r.65.11, substitute:

"III. Demotion claims, proceedings related to demoted tenancies and applications to suspend the right to buy"

In para. (1) of r.65.11, at the end of sub-para. (a), omit "and", and after sub-para. (a), insert:

"(aa) claims by a landlord for an order under section 121A of the Housing Act 1985 ("a suspension order"); and"

In para. (2) of r.65.11, omit "and" after sub-para. (a), and omit substitute a semi-colon for the full-stop at the end of sub-para. (b).

After sub-para. (b) of r.65.11(2), insert:

"(c) "suspension claim" means a claim made by a landlord for a suspension order; and

(d) "suspension period" means the period during which the suspension order suspends the right to buy in relation to the dwelling house."

para. 65.12, p.1686

In the heading for r.65.12, after "Demotion claims", insert "or suspension claims"

In the text of r.65.12, after "Where a demotion order", insert "or suspension order (or both)

para. 65.13, p.1686

In the heading for r.65.13, after "Other demotion", insert "or suspension"

In the text of r.65.13, after "Where a demotion claim", insert "or suspension claim (or both)"

para. 65.14, p.1687

In the heading for r.65.14, after "Starting a demotion", insert "or suspension"

In para. (1) of r.65.14, for "The demotion claim", substitute "The claim"

para. 65.17, p.1688

In para. (3) of r.65.17, after "Part 12 (default judgment) does not apply", omit "in a demotion claim"

para. 65.18, p.1688

In sub-para. (1)(a) of r.65.18, for "decide the demotion claim", substitute "decide the claim"

In para. (2) of r.65.18, for "the demotion claim", substitute "the claim" in both places where it occurs

In sub-para. (3)(a) of r.65.18, for "the demotion claim", substitute "the claim"

para. 65.19, p.1689

In r.65.19, for "a demotion claim", substitute "the claim".

para. 65PD.14, p.1700

After Pt 65, insert new Part 66 (Crown Proceedings) (rr.66.1 to 66.7), replacing with amendments Sched.1 RSC Ord. 77, and Sched.2 CCR Ord. 42.

para 74.1, pp.1783 & 1784

The following amendments to r.74.1 take effect from October 21, 2005.

In r.74.1, after para. (4) insert:

"(4A) Section V applies to—

(a) the certification of judgments and court settlements in England and Wales as European Enforcement Orders; and

(b) the enforcement in England and Wales of judgments, court settlements and authentic instruments certified as European Enforcement Orders by other Member States."

At end of sub-para. (d) of r.74.1(5), substitute a semi-colon for the full-stop, and then insert:

"(e) "the EEO Regulation" means Council Regulation (EC) No 805/2004 creating a European Enforcement Order for uncontested claims."

At the end of r.74.1, insert:

"(A copy of the EEO Regulation is annexed to Practice Direction 74B European Enforcement Orders and can be found at *http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_143/l_1432004043en00150039.pdf)"*

para. 74.26.8, p.1810

After commentary on r.74.26, insert new rr.74.27 to 74.33, constituting Section V (European Enforcement Notices) for Pt 74 (Enforcement of Judgments in Different Jurisdictions). These new provisions take effect from October 21, 2005.

para. sc77.0.1, p.1936

RSC Ord. 77 (Proceedings by and against the Crown) is revoked.

para. sc77.8A, p.1942

In r.8A of RSC Ord. 77, for "Commissioners of Inland Revenue", substitute "Commissioners for HM Revenue and Customs"

para. cc42.0.1, p.2115

CCR Ord. 42 (Proceedings by and against the Crown) is revoked.

para. cc49.15, p.2130

Rule 15 (Postal Services Act 2000) of CCR Ord. 49 (Miscellaneous Statutes) is revoked.

para. cc49.17, p.2131

In r.17(6) of r.17, after "section 65 of the Act of 1976," insert "section 56 of the Act of 1995,"

CPR UPDATE—Practice Directions

NEW PRACTICE DIRECTIONS

Following changes made to the CPR by the Civil Procedure (Amendment No. 3) Rules 2005 (S.I. 2005 No. 2292) and coming into effect on October 1, 2005, four new practice directions have been made. They were published on September 30, 2005, in TSO CPR Update 40.

CPR r.55.10A (Electronic issue of certain possession claims) is supplemented by Practice Direction (Possession Claims Online). And Pt 66 (Crown Proceedings) is supplemented by Practice Direction (Crown Proceedings).

It is said that Practice Direction (Reserved Judgments) supplements CPR Pt 40, but there is nothing in this practice direction that actually relates to any rules found in that Part, and none of those rules has been affected by the recent statutory instrument.

As a result of the addition by the Civil Procedure (Amendment No. 3) Rules 2005 of Sect. V to CPR Pt 74, coming into effect on October 21, 2005, Practice Direction (European Enforcement Orders) has been made, supplementing that Section.

Practice Direction (Directors Disqualification Proceedings), which does not supplement any CPR Part, has been very substantially amended.

In the next section (which deals with recent amendments to CPR practice directions), the place that these practice directions will occupy in the White Book is indicated, but (because of space constraints) the texts of them are not printed herein.

AMENDMENTS TO PRACTICE DIRECTIONS

A number of CPR practice directions have been amended recently. Thirty-three different supplementing practice directions are affected. Some, but by no means all of the amendments are consequences of amendments made to the CPR by the Civil Procedure (Amendment No. 3) Rules 2005.

The changes to practice directions are explained below. Most of them came into effect on October 1, 2005. On September 30, 2005, they were published in TSO CPR Update 40.

Volume, page and paragraph numbers refer to the 2005 edition of the *White Book*.

Practice Direction (Striking Out a Statement of Case) (PD3)

para. 3PD.1, p.105

After para. 1.8 insert new paragraph (reflecting paras. (4) and (6) of CPR r.3.7(4) and r. 3.7A as recently amended and inserted):

"1.9 Where a rule, practice direction or order states "shall be struck out or dismissed" or "will be struck out or dismissed" this means that the striking out or dismissal will be automatic and that no further order of the court is required."

Practice Direction (Civil Restraint Orders) (CPD3)

para CPD.4, p 112

For para. 4.1 substitute:

"4.1 A general civil restraint order may be made by—

(1) a judge of the Court of Appeal;
(2) a judge of the High Court; or
(3 a designated civil judge or his appointed deputy in a county court,

where the party against whom the order is made persists in issuing claims or making applications which are totally without merit, in circumstances where an extended civil restraint order would not be sufficient or appropriate."

Practice Direction (Court Documents) (PD5)

para 5PD.4, p.139

In para. 4.1, after "Chancery Chambers", substitute a semi-colon for the full-stop and then add:

"(3) the Admiralty and Commercial Court Registry."

After para. 4.2, a new para. 4.2A (set out immediately below) is added. This follows the recent amendment to CPR r.5.4(3) and in effect replaces that sub-rule in a more prescriptive form. Sub-para. (o) refers to "a notice of change" (sic). Presumably this should read "notice of change of solicitor".

"4.2A A party to proceedings may, unless the court orders otherwise, obtain from the records of the court a copy of-

(a) a certificate of suitability of a litigation friend;
(b) a notice of funding;
(c) a claim form or other statement of case together with any documents filed with or attached to or intended by the claimant to be served with such claim form;
(d) an acknowledgment of service together with any documents filed with or attached to or intended by the party acknowledging service to be served with such acknowledgement of service;

(e) a certificate of service, other than a certificate of service of an application notice or order in relation to a type of application mentioned in sub-paragraph (h)(i) or (ii);
(f) a notice of non-service;
(g) an allocation questionnaire;
(h) an application notice, other than in relation to—
  (i) an application by a solicitor for an order declaring that he has ceased to be the solicitor acting for a party; or
  (ii) an application for an order that the identity of a party or witness should not be disclosed;
(i) any written evidence filed in relation to an application, other than a type of application mentioned in sub-paragraph (h)(i) or (ii);
(j) a judgment or order given or made in public (whether made at a hearing or without a hearing);
(k) a statement of costs;
(l) a list of documents;
(m) a notice of payment into court;
(n) a notice of discontinuance;
(o) a notice of change of solicitor; or
(p) an appellant's or respondent's notice of appeal."

para. 5PD.8, p.142

In sub-para. (1) of para. 6.3, after "unless a child who is or has been married", insert "or has formed a civil partnership"; and in sub-para. (3), after "unless a child who is or has been married", insert "or has formed a civil partnership". For explanation, see next paragraph.

para. 5PD.9, pp.143 to 144

As a consequence of the introduction of civil partnerships by the Civil Partnerships Act 2004, the Enrolment of Deeds (Change of Name) Regulations 1994 (S.I. 1994 No. 604), contained in the Appendix to this Practice Direction, have been amended by the Enrolment of Deeds (Change of Name) (Amendment) Regulations 2005 (S.I. 2005 No. 2056). Accordingly, the following changes should be made to reg. 2, 3 and 8 of the 1994 regulations as they appear in the Appendix:

In reg. 2(4), for "or divorced", substitute "divorced, a civil partner or former civil partner and, if a former civil partner, whether the civil partnership has ended on death or dissolution".

In reg. 3(2), after "married", insert "or a civil partner"; after "certificate of marriage", insert "or civil partnership certificate"; after "spouse", in both places, insert "or civil partner"; and after "spouse's", insert "or civil partner's".

In reg. 8(2), for ", is female and is married", substitute "and is or has been married or a civil partner".

In reg. 8(5)(a), for "an affidavit", substitute "a witness statement".

Practice Direction (Electronic Communication and Filing of Documents) (BPD5)

para. 5BPD.3, p.145

As a result of amendments to CPR r.3.7, in certain circumstances claims may be struck out for non-payment of court fees. The following amendments to this Practice Direction are in part influenced by that change.

For para. 3.2 substitute:

"**3.2** Subject to paragraph 3.2A, a party must not use e-mail to take any step in a claim for which a fee is payable.

3.2A A party may make an application using e-mail in the Preston Combined Court, where he is permitted to do so by PREMA (Preston E-mail Application Service) User Guide and Protocols."

For para. 3.3 substitute:

"**3.3** Subject to paragraph 3.3A, if—

(a) a fee is payable on the filing of a particular document; and
(b) a party purports to file that document by e-mail,

the court shall treat the document as not having been filed.

3.3A A party may file an application notice by e-mail in the Civil Appeals Office or in the Preston Combined Court where he is permitted to do so by PREMA (Preston E-mail Application Service) User Guide and Protocols."

para. 5BPD.8, p.147

After para. 8.8, insert new para. 8.9:

"**8.9** A document that is required by a rule or practice direction to be filed at court is not filed when it is sent to the judge by e-mail."

Practice Direction (Service) (PD6)

para. 6PD.7, p.217

Para. 8.2 is now omitted (see CPR r.6.11, as recently amended).

Practice Direction (Service Out of the Jurisdiction) (BPD6)

para. 6BPD.4, p.224

For para. 3.1 substitute:

"Where Rule 6.25(4) applies, service should be effected by the claimant or his agent direct except in the

case of a Commonwealth State where the judicial authorities have required service to be in accordance with Rule 6.24(1)(b)(i). These are presently Malta and Singapore."

para. 6BPD.6, p.225

In para. 5.2, after sub-para. (11), insert:

"(12) The Pensions Act 1995,

(13) The Pensions Act 2004."

Practice Direction (Production Centre) (CPD7)

para. 7CPD.11, p.274

In para. 1.3(2), for sub-para. (f), substitute (with effect from September 19, 2005):

"(f) the transfer to the defendant's home court of any case for oral examination or where enforcement of a judgment (other than by warrant of execution, charging order or third party debt order) is to follow."

Practice Direction (Claims for the Recovery of Taxes) (DPD7)

paras 7DPD.1 and 7DPD.3, p.278

In para. 1.1, for "claims by the Inland Revenue" substitute "claims by HM Revenue and Customs"; and in the cross-reference after para. 3.1, for "an officer of the Commissioners of Inland Revenue" substitute "an officer of the Commissioners for HM Revenue and Customs".

Practice Direction (Default Judgment) (PD12)

para. 12PD.2, pp.326 & 327

As a result of the coming into force of the Civil Partnerships Act 2004, and of the insertion in the CPR of Pt. 66 (Crown Proceedings) and a consequential amendment to CPR r. 12.4(4), the following amendments are made to para. 2.3 of this Practice Direction.

In sub-para. (3), after "by one spouse" insert "or civil partner"; at the end of sub-para. (4), insert "; and"; and omit sub-para. (5).

Practice Direction (Statements of Case) (PD16)

para. 16PD.14, p.380

In para. 14, for "Director General" substitute "Office"; and for "Director's" substitute "Office's".

Practice Direction (Addition and Substitution of Parties) (PD19)

Following the insertion of CPR Pt 66 (Crown Proceedings) the following amendments are made.

para. 19PD.6, p.435

In para. 6.4(1), for "annexed to this practice direction", substitute "annexed to the practice direction to Part 66"

para. 19PD.7, p.436

This Annex is moved to new Practice Direction (Crown Proceedings).

Practice Direction (Children and Patients) (PD21)

para. 21PD.8, p.478

Following the insertion of CPR r.21.11A (Expenses incurred by a litigation friend) paras 8A.1 and 8A.2 are added to this Practice Direction.

"Expenses incurred by litigation friend

8A.1 A litigation friend may make a claim for expenses under rule 21.11A(1)-

(a) where the court has ordered an assessment of costs under rule 48.5(2), at the detailed assessment hearing;
(b) where the litigation friend's expenses are not of a type which would be recoverable as costs on an assessment of costs between the parties, to the Master or District Judge at the hearing to approve the settlement or compromise under Part 21 (the Master or District Judge may adjourn the matter to the Costs Judge); or
(c) where an assessment of costs under Part 48.5(2) is not required, and no approval under Part 21 is necessary, by a Part 23 application supported by a witness statement to a Costs Judge or District Judge as appropriate.

8A.2 In all circumstances, the litigation friend shall support a claim for expenses by filing a witness statement setting out-

(i) the nature and amount of the expense;
(ii) the reason the expense was incurred."

Practice Direction (Pilot Scheme for Telephone Hearings) (BPD23)

para. 23BPD.4, p.521

In the Appendix, for "27th February 2005" wherever it appears substitute "31st March 2006"

Practice Direction (Summary Disposal of Claims) (PD24)

para. 24PD.2, p.538

A new sub-para. (6) is added to para. 2 (presumably, "action" should read "application"). In civil proceedings

against the Crown, sub-para. (6) is supplanted by new CPR r. 24.4(1A).

"(6) Where the claimant has failed to comply with any relevant pre-action protocol, an action for summary judgment will not normally be entertained before the defence has been filed or, alternatively, the time for doing so has expired."

Practice Direction (Interim Injunctions) (PD25)

paras 25PD.7 to 25PD.12, pp.613 to 615

Omit the sub-heading "Orders for the preservation of evidence and property" before para 7.1.

Re-number paras 8.1, 8.2, 8.3, 8.4, 8.5 and 8.6 as 7.6, 7.7, 7.8,7.9, 7.10 and 7.11 respectively.

For sub-para. (4) of para 7.4, substitute:

"(4) the Supervising Solicitor must explain the terms and effect of the order to the respondent in everyday language and advise him—

(a) of his right to take legal advice and to apply to vary or discharge the order; and
(b) that he may be entitled to avail himself of—
(i) legal professional privilege; and
(ii) the privilege against self-incrimination."

For para. 7.9 (former 8.4 as re-numbered), substitute:

"7.9 There is no privilege against self incrimination in:

(1) Intellectual Property cases in respect of a "related offence" or for the recovery of a "related penalty" as defined in section 72 Supreme Court Act 1981;
(2) proceedings for the recovery or administration of any property, for the execution of any trust or for an account of any property or dealings with property in relation to offences under the Theft Act 1968 (see section 31 Theft Act 1968); or
(3) proceedings in which a court is hearing an application for an order under Part IV or Part V of the Children Act 1989 (see section 98 Children Act 1989).

However, the privilege may still be claimed in relation to material or information required to be disclosed by an order, as regards potential criminal proceedings outside those statutory provisions."

After para 7.11 (former para 8.6 as re-numbered) insert new paras 8.1, 8.2, 9.1 and 9.2 as follows:

"Delivery-Up Orders

8.1 The following provisions apply to orders, other than search orders, for delivery up or preservation of evidence or property where it is likely that such an order will be executed at the premises of the respondent or a third party.

8.2 In such cases the court shall consider whether to include in the order for the benefit or protection of the parties similar provisions to those specified above in relation to injunctions and search orders.

Injunctions against third parties

9.1 The following provisions apply to orders which will affect a person other than the applicant or respondent, who:

(1) did not attend the hearing at which the order was made; and
(2) is served with the order.

9.2 Where such a person served with the order requests-

(1) a copy of any materials read by the judge, including material prepared after the hearing at the direction of the judge or in compliance with the order; or
(2) a note of the hearing,

the applicant, or his legal representative, must comply promptly with the request, unless the court orders otherwise."

para. 25PD.13, p.618

In the example of a freezing order annexed to this practice direction, substitute sub-para. (c) of para. 7 as:

"(c) any money standing to the credit of any bank account including the amount of any cheque drawn on such account which has not been cleared."

para. 25PD.13, p.626

In the example of a search order annexed to this practice direction, substitute para. 11:

"11 (1) Before permitting entry to the premises by any person other than the Supervising Solicitor, the Respondent may, for a short time (not to exceed two hours, unless the Supervising Solicitor agrees to a longer period) –

(a) gather together any documents he believes may be incriminating or privileged; and
(b) hand them to the Supervising Solicitor for him to assess whether they are incriminating or privileged as claimed.

(2) If the Supervising Solicitor decides that the Respondent is entitled to withhold production of any of the documents on the ground that they are privileged or incriminating, he will exclude them from the search, record them in a list for inclusion in his report and return them to the Respondent.

(3) If the Supervising Solicitor believes that the Respondent may be entitled to withhold production of the whole or any part of a document on the ground that it or part of it may be privileged or incriminating, or if the Respondent claims to be entitled to withhold

production on those grounds, the Supervising Solicitor will exclude it from the search and retain it in his possession pending further order of the court."

para. 25PD.13, p. 631

In para (2) of Schedule E in the example of a search order annexed to this practice direction, after "his right to take legal advice" for "(such advice to include an explanation that the Respondent may be entitled to avail himself of [the privilege against self-incrimination or] [legal professional privilege])" substitute "(including an explanation that the Respondent may be entitled to avail himself of the privilege against self-incrimination and legal professional privilege)"

And for para. (4) substitute paras. (4) and (5):

"(4) Unless and until the court otherwise orders, or unless otherwise necessary to comply with any duty to the court pursuant to this order, the Supervising Solicitor shall not disclose to any person any information relating to those items, and shall keep the existence of such items confidential.

(5) Within [48] hours of completion of the search the Supervising Solicitor will make and provide to the Applicant's solicitors, the Respondent or his solicitors and to the judge who made this order (for the purposes of the court file) a written report on the carrying out of the order."

Practice Direction (Case Management—Preliminary Stage : Allocation of and Re-Allocation) (PD26)

para. 26PD.2, p.648

In para. 2.5, for sub-para. (1) substitute:

"(1) If no party files an allocation questionnaire within the time specified by Form N152, the court will order that unless an allocation questionnaire is filed within 7 days from service of that order, the claim, defence and any counterclaim will be struck out without further order of the court."

In sub-para. (2), in the opening words, after "does not," insert "the file will be referred to a judge for his directions and".

Other new provisions in practice directions providing for striking out with further order are para. 6.5(1) of Practice Direction (The Fast Track) and para. 8.3(1) of Practice Direction (The Multi-Track) (see below). Note also, new CPR rr.3.7A and 3.7B and amendment to r.3.7.

Practice Direction (Small Claims Track) (PD27) Annex 1 p.32

A number of amendments are made to this Practice Direction, some as a consequence of recent amendments to rules in CPR Pt 27.

para. 27PD.2, p.676

For para. 2.2, substitute para. 2.2 to 2.5 as follows:

"2.2 Appendix A sets out details of the case that the court usually needs in the type of case described. Appendix B sets out the Standard Directions that the court may give. Appendix C sets out Special Directions that the court may give.

2.3 Before allocating the claim to the Small Claims Track and giving directions for a hearing the court may require a party to give further information about that party's case.

2.4 A party may ask the court to give particular directions about the conduct of the case.

2.5 In deciding whether to make an order for exchange of witness statements the court will have regard to the following—

(a) whether either or both the parties are represented;
(b) the amount in dispute in the proceedings;
(c) the nature of the matters in dispute;
(d) whether the need for any party to clarify his case can better be dealt with by an order under paragraph 2.3;
(e) the need for the parties to have access to justice without undue formality, cost or delay."

para. 27PD.7, p.677

Following the amendment to CPR r.27.14(3)(c), in sub-para. (1) of para. 7.3, after "loss of earnings", add "or loss of leave".

para. 27PD.8, p.678

After para. 8.1, insert:

"8A An appellant's notice in small claims must be filed and served in Form N164."

paras 27PD.9 to 27PD.14, pp.679 to 684

The Appendix to this Practice Direction contained five Forms (A to F). The Appendix is now replaced by three Appendices (A to C). These Appendices are not printed here. With certain modifications, Appendix A replaces Forms B to E, Appendix B replaces Form A, and Appendix C replaces Form F.

Practice Direction (The Fast Track) (PD28)

para. 28PD.6, p. 698

Following the recent amendment to CPR r.28.5(3), para. 6 (Pre-trial check lists) is amended as follows.

In para. 6.1, in sub-para. (3), after "expired" insert "and where a party has filed a pre-trial checklist but another party has not done so,"

In para. 6.2, for "rule 28.5(3)" substitute "rule 28.5(4)"

In para. 6.3, for "rule 28.5(3)" substitute "rule 28.5(4)"

In para. 6.5, for sub-para. (1) substitute:

"(1) Where no party files a pre-trial checklist the court will order that unless a completed pre-trial checklist is filed within 7 days from service of that order, the claim, defence and any counterclaim will be struck out without further order of the court."

Practice Direction (The Multi-Track) (PD29)

para. 29PD.4, p.716

In para. 4.10, after sub-para. (7), omit "and", and after sub-para. (8) insert:

"; and

(9) in such cases as the court thinks appropriate, the court may give directions requiring the parties to consider ADR. Such directions may be, for example, in the following terms:

> "The parties shall by [date] consider whether the case is capable of resolution by ADR. If any party considers that the case is unsuitable for resolution by ADR, that party shall be prepared to justify that decision at the conclusion of the trial, should the judge consider that such means of resolution were appropriate, when he is considering the appropriate costs order to make.
>
> The party considering the case unsuitable for ADR shall, not less than 28 days before the commencement of the trial, file with the court a witness statement without prejudice save as to costs, giving reasons upon which they rely for saying that the case was unsuitable.""

para. 29PD.9, p.720

Following the recent substitution of para. (3), and the insertion of para. (4), in CPR r.29.6, para. 8 of this practice direction is amended as follows.

In sub-para. (6) of para. 8.1, after "expired" insert "and where a party has filed a checklist but another party has not done so."

In for sub-para. (1) of para. 8.3 substitute"

"(1) Where no party files a pre-trial checklist the court will order that unless a completed pre-trial checklist is filed within 7 days from service of that order, the claim, defence and any counterclaim will be struck out without further order of the court."

In sub-para. (2), of para. 8.3, for "rule 29.6(3)" substitute "rule 29.6(4)"

In para. 8.4 and para. 8.5, for "rule 29.6(3)" substitute "rule 29.6(4)"

Practice Direction (Transfer) (PD30)

para. 30PD.10, p.731

Following the recent amendments to CPR r. 30.8, a new paragraph is inserted after para. 8.8.

"8.9 A party to a claim which has been transferred under paragraph 8.7 may apply to transfer it to the Commercial Court if it otherwise falls within the scope of rule 58.2(1), in accordance with the procedure set out in rules 58.4(2) and 30.5(3)."

Practice Direction (Disclosure and Inspection) (PD31)

para. 31PD.2, p.774

After para. 2, new paragraph 2A is added.

"Electronic Disclosure

2A.1 Rule 31.4 contains a broad definition of a document. This extends to electronic documents, including e-mail and other electronic communications, word processed documents and databases. In addition to documents that are readily accessible from computer systems and other electronic devices and media, the definition covers those documents that are stored on servers and back-up systems and electronic documents that have been "deleted". It also extends to additional information stored and associated with electronic documents known as metadata."

2A.2 The parties should, prior to the first Case Management Conference, discuss any issues that may arise regarding searches for and the preservation of electronic documents. This may involve the parties providing information about the categories of electronic documents within their control, the computer systems, electronic devices and media on which any relevant documents may be held, the storage systems maintained by the parties and their document retention policies. In the case of difficulty or disagreement, the matter should be referred to a judge for directions at the earliest practical date, if possible at the first Case Management Conference.

2A.3 The parties should co-operate at an early stage as to the format in which electronic copy documents are to be provided on inspection. In the case of difficulty or disagreement, the matter should be referred to a Judge for directions at the earliest practical date, if possible at the first Case Management Conference.

2A.4 The existence of electronic documents impacts upon the extent of the reasonable search required by Rule 31.7 for the purposes of standard disclosure. The factors that may be relevant in deciding the reasonableness of a search for electronic documents include (but are not limited to) the following:-

(a) The number of documents involved.

(b) The nature and complexity of the proceedings.
(c) The ease and expense of retrieval of any particular document. This includes:
  (i) The accessibility of electronic documents or data including e-mail communications on computer systems, servers, back-up systems and other electronic devices or media that may contain such documents taking into account alterations or developments in hardware or software systems used by the disclosing party and/or available to enable access to such documents.
  (ii) The location of relevant electronic documents, data, computer systems, servers, back-up systems and other electronic devices or media that may contain such documents.
  (iii) The likelihood of locating relevant data.
  (iv) The cost of recovering any electronic documents.
  (v) The cost of disclosing and providing inspection of any relevant electronic documents.
  (vi) The likelihood that electronic documents will be materially altered in the course of recovery, disclosure or inspection.
(d) The significance of any document which is likely to be located during the search.

2A.5 It may be reasonable to search some or all of the parties' electronic storage systems. In some circumstances, it may be reasonable to search for electronic documents by means of keyword searches (agreed as far as possible between the parties) even where a full review of each and every document would be unreasonable. There may be other forms of electronic search that may be appropriate in particular circumstances."

para. 31PD.9, p.777

In the Annex (Disclosure Statement), after "(3) for documents in categories other than" replace the full-stop with a comma and then insert:

"(4) for electronic documents.

I carried out a search for electronic documents contained on or created by the following: [list what was searched and extent of search]

I did not search for the following:

(1) documents created before_____,

(2) documents contained on or created by the Claimant's/Defendant's PCs/portable data storage media/databases/servers/back-up tapes/off-site storage/mobile phones/laptops/notebooks/handheld devices/PDA devices (delete as appropriate),

(3) documents contained on or created by the Claimant's/Defendant's mail files/document files/calendar files/spreadsheet files/graphic and presentation files/web-based applications (delete as appropriate),

(4) documents other than by reference to the following keyword(s)/concepts_____(delete if your search was not confined to specific keywords or concepts)."

Practice Direction (Evidence) (PD32)

para. 32PD.1, p.809

For heading of this practice direction for "Written Evidence" substitute "Evidence"

para. 32PD.29, p.818

After para. 29, insert the following reference—

"A list of the sites which are available for video conferencing can be found on Her Majesty's Courts Service website at *www.hmcourts-service.gov.uk*."

Practice Direction (Experts and Assessors) (PD35)

para. 35PD.1, p.936

In the introductory paragraph to this Practice Direction, after "Permission of the court is always required either to call an expert or put an expert's report in evidence." the following sentence is added (see further para. 35.16 below). This amendment came into force on September 5, 2005.

"There is annexed to this Practice Direction a protocol for the instruction of experts to give evidence in civil claims. Experts and those instructing them are expected to have regard to the guidance contained in the protocol."

para. 35.16, p.938

"Protocol for the Instruction of Experts to give Evidence in Civil Claims" issued by the Civil Justice Council on June 2005, which is not printed here, replaces the Code of Guidance on Expert Evidence.

Practice Direction (Reserved Judgments) (EPD40)

para. 40DPD.6, p.1052

Another practice direction (the fifth) supplementing Pt. 40 is now added. Practice Direction (Reserved Judgments), which is not printed here, deals with the handing down of written judgments (see commentary in White Book vol. 1, para. 40.2.5).

Practice Direction (Costs) (PD43)

para. 43PD5, p.1091

In paras. 5.2, 5.3, 5.5 and 5.6, for "HM Customs and Excise", wherever that expression appears, substitute "HM Revenue and Customs"

para. 43PD.6, p.1094

Paras. 6.4 to 6.6 are amended and para. 6.5A is added. These provisions, in their entirety, now read as follows:

"6.4 (1) When—

(a) a party to a claim which is outside the financial scope of the small claims track files an allocation questionnaire; or

(b) a party to a claim which is being dealt with on the fast track or the multi track, or under Part 8, files a pre-trial check list (listing questionnaire),

he must also file an estimate of costs and serve a copy of it on every other party, unless the court otherwise directs. Where a party is represented, the legal representative must in addition serve an estimate on the party he represents.

(2)Where a party is required to file and serve a new estimate of costs in accordance with Rule 44.15(3), if that party is represented the legal representative must in addition serve the new estimate on the party he represents.

(3)This paragraph does not apply to litigants in person.

6.5 An estimate of costs should be substantially in the form illustrated in Precedent H in the Schedule of Costs Precedents annexed to the Practice Direction.

6.5A (1) If there is a difference of 20% or more between the base costs claimed by a receiving party on detailed assessment and the costs shown in an estimate of costs filed by that party, the receiving party must provide a statement of the reasons for the difference with his bill of costs.

(2) If a paying party—

(a) claims that he reasonably relied on an estimate of costs filed by a receiving party; or

(b) wishes to rely upon the costs shown in the estimate in order to dispute the reasonableness or proportionality of the costs claimed,

the paying party must serve a statement setting out his case in this regard in his points of dispute.

('Relevant person' is defined in paragraph 32.10(1) of the Costs Practice Direction)

6.6 (1) On an assessment of the costs of a party, the court may have regard to any estimate previously filed by that party, or by any other party in the same proceedings. Such an estimate may be taken into account as a factor among others, when assessing the reasonableness and proportionality of any costs claimed.

(2)In particular, where—

(a) there is a difference of 20% or more between the base costs claimed by a receiving party and the costs shown in an estimate of costs filed by that party; and

(b) it appears to the court that—

(i) the receiving party has not provided a satisfactory explanation for that difference; or

(ii) the paying party reasonably relied on the estimate of costs;

the court may regard the difference between the costs claimed and the costs shown in the estimate as evidence that the costs claimed are unreasonable or disproportionate."

Practice Direction (Costs) (PD44)

para. 44PD.5, p.1140

In para. 11.8 (relevant factors where in determining whether percentage increase reasonable), sub-para. (2) is now omitted.

para. 44PD.15, p.1154

For sub-para. (2) of para. 21.15, substitute sub-paras. (2) and (3) as follows (note also recent addition to CPR of r. 21.11A) (Expenses incurred by litigation friend)):

"(2) Similarly, where a party is acting as a litigation friend to a client who is a child or a patient, the court shall not take the personal resources of the litigation friend into account in assessing the resources of the client.

(3) The purpose of this provision is to ensure that any liability is determined with reference to the value of the property or fund being used to pay for the litigation, and the financial position of those who may benefit from or rely on it."

para. 44PD.15, pp.154 to 1155

At the beginning of sub-para. (2), before "the non-funded party provides written notice" insert "unless there is good reason for delay (and the application for funded services was made on or after 3 December 2001)"

At the end of sub-para. (4)(i), delete "and"; and for sub-para. (4)(ii), substitute:

"(ii) the non-funded party is an individual; and

(iii) the non-funded party will suffer severe financial hardship unless the order is made."

para. 44PD.16, pp.1156 & 1157

In paras. 22.2, 22.3, 22.4 and 22.9, after "Community Legal Service (Costs) Regulations 2000", wherever the expression appears, insert "as amended"

para. 44PD.17, p.1157

After sub-para. (3) in para. 23.1, insert:

";

(4) appeals in respect of determination."

After para. 23.2, insert (see also new para. 31.1A referred to below):

"**23.2A** (1) This paragraph applies where the appropriate office is any of the following county courts:

Barnet, Bow, Brentford, Bromley, Central London, Clerkenwell, Croydon, Edmonton, Ilford, Kingston, Lambeth, City of London, Romford, Shoreditch, Uxbridge, Wandsworth, West London, Willesden and Woolwich.

(2) Where this paragraph applies:

(i) a receiving party seeking an order specifying costs payable by an LSC funded client and/or by the Legal Services Commission under this Section must file his application in the Supreme Court Costs Office and, for all purposes relating to that application, the Supreme Court Costs Office will be treated as the appropriate office in that case; and

(ii) unless an order is made transferring the application to the Supreme Court Costs Office as part of the High Court, an appeal from any decision made by a costs judge shall lie to the Designated Civil Judge for the London Group of County Courts or such judge as he shall nominate. The appeal notice and any other relevant papers should be lodged at the Central London Civil Justice Centre."

para. 44PD.17, p.1158

In sub-para. (b) of para. 23.3, after "the receiving party's statement of resources" insert "(unless the court is determining an application against a costs order against the LSC and the costs were not incurred in the court of first instance)"

For para. 23.4, substitute:

"**23.4** The receiving party must file the above documents in the appropriate court office and (where relevant) serve copies on the LSC funded client and the Regional Director. In respect of applications for funded services made before 3 December 2001 a failure to file a request within the 3 months time limit specified in Regulation 10(2) is an absolute bar to the making of a costs order against the LSC. Where the application for funded services was made on or after 3 December 2001 the court does have power to extend the 3 months time limit, but only if the applicant can show good reason for the delay."

In para. 23.8, after "Determination proceedings will be listed for hearing before a costs judge or district judge." insert "The determination of the liability on the LSC funded client will be listed as a private hearing."

para. 44PD.17, p.1160

After para. 23.17, insert new para. 23.18:

"Appeals

23.18 (1) Save as mentioned above any determination made under Regulation 9 or 10 of the Costs Regulations is final (Regulation 11(1)). Any party with a financial interest in the assessment of the full costs, other than a funded party, may appeal against that assessment in accordance with CPR Part 52 (Regulation 11(2) and CPR rule 47.20).

(2) The receiving party or the Commission may appeal on a point of law against the making of a costs order against the Commission, against the amount of costs the Commission is required to pay or against the court's refusal to make such an order (Regulation 11(4))."

Practice Direction (Costs) (PD45)

para. 45PD.8, p.1182

Recently, Sect. V was added to CPR Pt. 45 (rr. 45.23 to 45.26), introducing a regime for fixed recoverable success fees in employer's liability disease claims. Rule 45.23 distinguishes "Type A claims" and "Type B claims". Rule 45.23, states that a Table containing a non-exclusive list of diseases within Type A and Type B will be "annexed to the Practice Direction supplementing Part 45". Accordingly, a new Section 25B (which is not printed here) is now added containing such a Table.

Practice Direction (Costs) (PD47)

para. 47PD.4, p.1214

After para. 31.1, insert new para. 31.1A, putting on permanent basis (as from July 6, 2005) pilot scheme referred to in Practice Direction (Pilot Scheme for Detailed Assessment by the SCCO of Costs of Civil Proceedings in London County Courts) (see ***White Book*** Vol. 1, para. 47BPD.1) (see also para. 23.2A of this Practice Direction referred to above):

"**31.1A** (1) This paragraph applies where the appropriate office is any of the following county courts:

Barnet, Bow, Brentford, Bromley, Central London, Clerkenwell, Croydon, Edmonton, Ilford, Kingston, Lambeth, City of London, Romford, Shoreditch,

Uxbridge, Wandsworth, West London, Willesden and Woolwich.

(2) Where this paragraph applies:

(i) the receiving party must file any request for a detailed assessment hearing in the Supreme Court Costs Office and, for all purposes relating to that detailed assessment, the Supreme Court Costs Office will be treated as the appropriate office in that case; and

(ii) unless an order is made under rule 47.4(2) directing that the Supreme Court Costs Office as part of the High Court shall be the appropriate office, an appeal from any decision made by a costs judge shall lie to the Designated Civil Judge for the London Group of County Courts or such judge as he shall nominate. The appeal notice and any other relevant papers should be lodged at the Central London Civil Justice Centre."

Practice Direction (Appeals) (PD52)

para. 52PD.18, p.1495

After sub-para. (1) in para. 5.8 (small claims appeals), insert:

"(1A) An appellant's notice must be filed and served in Form N164."

para. 52PD.42, p.1504

For sub-para. (1) of para. 8.13, substitute sub-paras. (1) and (1A) as follows:

"(1) subject to paragraph (1A), appeals and applications for permission to appeal will be heard by a High Court Judge or by a person authorised under paragraphs (1), (2) or (4) of the Table in section 9(1) of the Supreme Court Act 1981 to act as a judge of the High Court;

(1A) an appeal or application for permission to appeal from the decision of a Recorder in the county court may be heard by a Designated Civil Judge who is authorised under paragraph (5) of the Table in section 9(1) of the Supreme Court Act 1981 to act as a judge of the High Court; "

para. 52PD.92, p.1518

In the Table, after the entry relating to the Competition Appeal Tribunal, insert:

"Civil Partnership—conditional order for dissolution or nullity 21.1"

para. 52PD.95, p.1519

In the heading before para. 21.1, substitute "Appeal against decree nisi of divorce or nullity of marriage or conditional dissolution or nullity order in relation to civil partnership"

In sub-para. (1) of para. 21.1, after "on which the decree was pronounced", insert "or conditional order made"

In sub-para. (2)(a) of para. 21.1, after "the decree", insert "or conditional order"

Supplement 1, para. 52PD.99, p.41

In para. 21.5, as substituted by TSO CPR Update 39, for the expression "Commissioners of the Inland Revenue" wherever appearing, substitute "Commissioners for HM Revenue and Customs"

para. 52PD.110, p.1527

In sub-para. (1) of para. 22.4, for "Director General", substitute "Office"

para. 52PD.118, p.1532

In sub-para. (2)(a) of para. 23.3, for "Commissioners of the Inland Revenue", substitute "Commissioners for HM Revenue and Customs"

para. 52PD. 119, p.1533

In sub-para. (1)(b)(ii) of para. 23.4, for "Commissioners of the Inland Revenue", substitute "Commissioners for HM Revenue and Customs"

Practice Direction (Possession Claims) (PD55)

para. 55PD.3, p.1618

For sub-para. (2) of para. 2.3 (Residential property let on a tenancy), substitute:

"in schedule form, the dates and amounts of all payments due and payments made under the tenancy agreement for a period of two years immediately preceding the date of issue, or if the first date of default occurred less than two years before the date of issue from the first date of default and a running total of the arrears"

After para. 2.3, insert new para. 2.3A:

"2.3A If the claimant wishes to rely on a history of arrears which is longer than two years, he should state this in his particulars and exhibit a full (or longer) schedule to a witness statement."

para. 55PD.4, pp.1619 & 1620

For sub-para. (3)(a) of para. 2.5 (Land subject to mortgage), substitute:

"in schedule form, the dates and amounts of all pay-

ments due and payments made under the mortgage agreement or mortgage deed for a period of two years immediately preceding the date of issue, or if the first date of default occurred less than two years before the date of issue from the first date of default and a running total of the arrears"

After para. 2.5, insert new para. 2.5A:

"2.5A If the claimant wishes to rely on a history of arrears which is longer than two years, he should state this in his particulars and exhibit a full (or longer) schedule to a witness statement."

para. 55PD.13, p.1622

A new practice direction, Practice Direction (Possession Claims Online) (BPD55), is added supplementing Pt 55, in particular r.55.10A (Electronic issue of certain possession claims), recently added to the CPR. That Practice Direction is not printed here.

Practice Direction (Landlord and Tenant Claims and Miscellaneous Provisions About Land) (PD56)

para. 56PD.8, p.1641

In para. 4.2, for "Commissioners of Inland Revenue", substitute "Commissioners for HM Revenue and Customs"

Practice Direction (Technology and Construction Court Claims) (PD60)

Vol 2, para. 2C-22, pp.295 & 296

In para. 9.1 (Pre-trial review), after "pre-trial review questionnaire" omit "and pre-trial review directions form"; and for the cross-reference, substitute:

"(The pre-trial review questionnaire is in the form set out in Appendix C to this practice direction)."

In para. 9.2, after "the questionnaire" omit "and form"

In para. 9.3, after "the parties are encouraged to agree directions to propose to the court" omit "by reference to the pre-trial review directions form"

In para. 9.4, after "the questionnaire" omit "and the form"

Vol 2, para. 2C-28, p.303

The Form in Appendix B is replaced by a new form headed "Case Management Conference Directions Form". That Form is not printed here.

Vol 2, para. 2C-30, p.309

Appendix D, which contained a Pre-Trial Review Directions Form, is now omitted.

Practice Direction (Arbitration) (PD62)

Vol 2, para. 2E-42, p.427

After para. 2.3 (Starting the claim), a new para. 2.3A is inserted as follows:

"2.3A An arbitration claim form must, in the case of an appeal, or application for permission to appeal, from a judge-arbitrator, be issued in the Civil Division of the Court of Appeal. The judge hearing the application may adjourn the matter for oral argument before two judges of that court."

Practice Direction (Anti-Social Behaviour and Harassment) (PD65)

Following recent amendments to CPR Pt 65, changes are made to this practice direction.

para. 65PD.5, p.1697

In the heading for Sect. III of this Practice Direction, substitute "Demotion or Suspension Claims", and after the heading insert:

"(Suspension claims may be made in England, but may not be made in Wales).

After para. 5.1, insert new para. 5A.1 as follows:

"Suspension claims made in the alternative to possession claims

5A.1 If the claim relates to a residential property let on a tenancy and if the claim includes a suspension claim, the particulars of claim must—

(1) state that the suspension claim is a claim under section 121A of the 1985 Act;
(2) state which of the bodies the claimant's interest belongs to in order to comply with the landlord condition under section 80 of the 1985 Act;
(3) state details of the conduct alleged; and
(4) explain why it is reasonable to make the suspension order, having regard in particular to the factors set out in section 121A(4) of the 1985 Act."

para. 65PD.6, p.1697

For the heading to para. 6, substitute "Other demotion or suspension claims"

In para. 6.1, after "Demotion or suspension claims", insert ", other than those made in the alternative to possession claims,"

In para. 6.3, after "details of the conduct alleged", insert ", and any other matters relied upon"

para. 65PD.7, p.1697

In sub-para. (1) of para. 7.1, for "is an claim" substitute "is a claim"

After para. 7.1, insert new para. 7.2 as follows:

"7.2 In a suspension claim, the particulars of claim must—

(1) state that the suspension claim is a claim under section 121A of the 1985 Act;
(2) state which of the bodies the claimant's interest belongs to in order to comply with the landlord condition under section 80 of the 1985 Act;
(3) identify the property to which the claim relates;
(4) state details of the conduct alleged; and
(5) explain why it is reasonable to make the order, having regard in particular to the factors set out in section 121A(4) of the 1985 Act."

para. 65PD.9, p.1698

In para. 9.2, for "the demotion claim", substitute "the claim"

Practice Direction (Crown Proceedings) (PD66)

para. 65PD.14, p.1700

Recently, a new CPR Part 66 (Crown Proceedings) has been inserted in the CPR. That Part is supplemented by a new practice direction, that is Practice Direction (Crown Proceedings). That Part and the supplementing practice direction (which is not printed here) will follow para. 65PD.14.

Practice Direction (European Enforcement Orders)

paras 74.26.8 & 74PD.14, pp.1810 & 1815

Recently, a new Section V, headed "European Enforcement Orders", was inserted in CPR Part 74 (Enforcement of Judgments in Different Jurisdictions). That Part is supplemented by a new practice direction, that is Practice Direction (European Enforcement Orders). Those provisions came into force on October 21, 2005. That Part and the supplementing practice direction will follow, respectively, para. 74.26.8 and para. 74PD.14. The Practice Direction is not printed herein.

Practice Direction (Competition Law etc.)

para. B12-002, p.2226

As a consequence of the recent amendment to CPR r.30.8, amendments explained below are made to paras 2.1, 2.2 and 2.3.

In para. 2.1, after "will be assigned to the Chancery Division", insert ", unless it comes within the scope of rule 58.1(2), in which case it will be assigned to the Commercial Court of the Queen's Bench Division."

In para. 2.2, after "if they have not been commenced there" insert:

", or in the Commercial or Admiralty Courts; or

(c) apply for the transfer of the proceedings to the Commercial Court, in accordance with rules 58.4(2) and 30.5(3). If such application is refused, the proceedings must be transferred to the Chancery Division of the High Court at the Royal Courts of Justice."

In para. 2.3, after "where proceedings are taking place in the Queen's Bench Division", insert "other than proceedings commenced in the Commercial or Admiralty Courts)"; and after "Chapter I or II." insert:

"However, if any such proceedings which have been commenced in the Queen's Bench Division or a Mercantile Court fall within the scope of rule 58.1(2), any party to those proceedings may apply for the transfer of the proceedings to the Commercial Court, in accordance with rules 58.4(2) and 30.5(3). If the application is refused, the proceedings must be transferred to the Chancery Division of the High Court at the Royal Courts of Justice."

Practice Direction (Directors Disqualification Proceedings)

para. B1-001, p.2135

This practice direction is now thoroughly revised and updated. Many amendments are made, some minor and some important. Those changes are not printed here.

Practice Direction (Protocols)

para. C1-003, p.2243

In para. 4.7, after "If the claim remains in dispute, the parties should promptly engage in appropriate negotiations with a view to settling the dispute and avoiding litigation." insert:

"The courts increasingly take the view that litigation should be a last resort, and that claims should not be issued prematurely when a settlement is still likely.

Therefore, the parties should consider whether some form of alternative dispute resolution procedure would be more suitable than litigation, and if so, endeavour to agree which form to adopt. The Legal Services Commission has published a booklet on "Alternatives to Court", CLS Direct information leaflet 23 (www.cls-direct.org.uk/legalhelp/leaflet23.jsp), which lists a number of organisations that provide alternative dispute resolution services.

The parties may be required by the Court to provide evidence that alternative means of dispute resolution were considered."

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