CIVIL PROCEDURE NEWS

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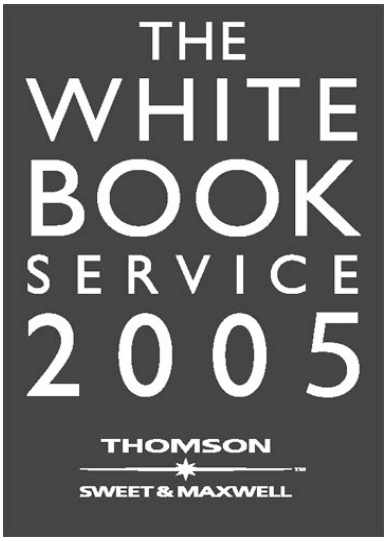

IN BRIEF

Cases

■ **A. v. HOARE** [2005] EWHC 2161 (QB), 155 New L.J. 1601 (2005) *The Times*, October 27, 2005 (Jack J.)

Limitation—access to justice—erstwhile impecunious defendant becoming millionaire

Limitation Act 1980 s.2, Human Rights Act 1998 Sched.1 Pt I art. 6—in 1989, defendant (D) convicted of attempted rape of claimant (C) and sentenced to life imprisonment—because there was no prospect of D's meeting any award of damages, C not bringing civil claim against D for the assault within the relevant limitation period—in 2002, D winning £7m in national lottery and released from prison on licence—on December 22, 2004, C commencing claim against D claiming damages for the assault—on ground that it was statute barred, Master striking out C's claim—held, dismissing C's appeal, (1) by s.2 a limitation period of six years applied to C's claim, (2) that period could not be extended by the court, (3) those legal arrangements pursued a legitimate aim by proportionate means and did not impair C's right of access to the court—*Stubbings v. U.K*, (1996) 23 E.H.R.R 524, ref'd to (see *Civil Procedure 2005* Vol. 1 para. 1.3.10, and Vol. 2 paras. 3D–5.1, 3D–30, 8–4 & 8–26.1)

■ **ASSI v. DINA FOODS LIMITED** [2005] EWHC 1099 (QB), May 20, 2005, unrep. (Judge Coulson Q.C.)

Preparation of witness statements

CPR rr.32.4 & 32.5, Practice Direction (Written Evidence) para. 18.1—claimant (C) bringing proceedings against his former employers (D) for unpaid commissions and bonuses—C relying on several witnesses as to fact and exchanging witness statements relating to their evidence—trial judge dismissing C's claims and giving judgment for D—in so doing judge (1) finding that many of the written statements provided on behalf of C were inherently unreliable because they were drafted by C himself, with scant regard for the evidence that the relevant witnesses might themselves have given if their evidence had been prepared in the conventional way, and (2) commenting that (a) whilst it can sometimes be the case that witness statements are drafted by solicitors, they will always endeavour to speak to the witnesses first and put down their evidence in their own words, (b) C's role in the preparation of the witness statements was an abuse of the procedure, now habitually adopted in civil cases, under which such statements normally stand as evidence in-chief (see *Civil Procedure 2005* Vol.1 paras 32.4.5, 32.5.1 & 32PD.18)

■ **ATOS CONSULTING LTD v. AVIS EUROPE PLC**. [2005] EWHC 982 (TCC), May 16, 2005, unrep. (Jackson J.)

Application to strike out—claim likely to obstruct just disposal

CPR rr.1.1(2) & 3.4—information services provider (C) and car rental company (D) entering into agreement—each party alleging other in repudiatory breach and claiming to accept breach—equally conceivable that C could sue D for damages, and D would defend and counterclaim for damages, or vice versa—in event, C commencing proceedings—D contending that they were the natural claimants and applying to strike out C's statement of claim on ground that it was likely to obstruct the just disposal of the proceedings (r.3.4(2)(b))—application made, not for purpose of putting an end to C's claim, but for case management reasons—held, dismissing application, (1) a court will only strike out a statement of case pursuant to the second limb of r.3.4(2)(b) if it is such that, if left, it will prevent, or create a substantial obstruction to, the just disposal of the proceedings, (2) the risk of double and/or redundant pleading resulting when pleadings are completed if a case is left to stand is not sufficient ground for striking it out (see *Civil Procedure 2005* Vol. 1 para. 3.4.3)

■ **CAMPBELL v. MIRROR GROUP NEWSPAPERS LTD** (NO. 2) [2005] UKHL 61, 155 New L.J. 1633 (2005), HL

CFA success fee claimed by well-resourced claimant—whether incompatible with defendant's freedom of expression right

CPR r.44.3, Courts and Legal Services Act 1990 Pt II, Human Rights Act 1998 Sched. 1 Pt I art. 10—claimant (C) bringing claim for damages for breach of confidence and/or breach of statutory duty against newspaper (D)—C entering into conditional fee agreement with legal representatives—trial judge finding in favour of C and awarding £3,500 damages and costs ([2002] EWHC 499 (QB), March 27, 2002, unrep.)—Court of Appeal allowing D's appeal and ordering C to pay D's costs of the trial and 80% of the costs of the appeal ([2002] EWCA Civ 1373, [2003] 1 All E.R. 224, CA)—House of Lords allowing C's appeal and ordering D to pay C's costs in the Court of Appeal and in the House of Lords ([2002] UKHL 22, [2004] 2 A.C. 457, H.L.)—D petitioning House of Lords for ruling that the percentage uplift provided for as a success fee in the CFA in respect of the appeal to the House should be wholly disallowed in the costs payable by D to C—held, refusing petition, (1) the deliberate policy underlying the law is to impose the cost of all CFA funded litigation (successful or unsuccessful) upon unsuccessful litigants as a class, (2) these arrangements were a proportionate measure to secure the legitimate aim of providing

access to justice for people who could not otherwise afford to sue, (3) funding litigation by a CFA did not become disproportionate in a case where a claimant did not need a CFA in order to sue, (4) D's liability to pay the success fee was not incompatible with its right to freedom of expression, even though C might have sufficient resources to be able to fund her own litigation without resorting to such an agreement—***Tolstoy Miloslavsky v. United Kingdom (Application No.18139/91)***, (1995) 20 E.H.R.R. 442, ref'd to (see ***Civil Procedure 2005*** Vol. 1 para. 44.3A.3, and Vol. 2 para. 7A-36)

■ **DANIELS v. COMMISSIONER OF POLICE FOR THE METROPOLIS**, *The Times,* October 28, 2005, CA, unrep. (Ward & Dyson L.JJ)

Successful defendant—refusing to negotiate—not to be deprived costs

CPR rr.1.4(2)(e), 36.2 & 44.3—employee(C) bringing claim against employers (D) for negligence—C making three Pt 36 offers to settle—D accepting none of these offers and rejecting C's attempts to enter negotiations—at trial, county court judge dismissing C's claim and ordering C to pay D's costs, amounting to £,50,000—judge refusing to disallow any of D's costs—held, dismissing C's appeal (1) the general rule is that the unsuccessful party should bear the successful party's costs, (2) departure from that rule is justified where it is shown that the successful party acted unreasonably in refusing to agree to ADR, (3) in this context, ADR includes any kind of negotiation between the parties, whether direct or indirect, (4) therefore, by indicating to a claimant that he had no wish to negotiate at all, a defendant may be found to be acting unreasonably in this sense, and should be deprived of his costs, even though he was the successful party, (5) in this case, D (a public body) took the view that it would contest what it reasonably considered to be an unfounded claim in order to deter other similarly unfounded claims, (6) defendants routinely facing such claims are entitled to take a stand and contest them, and the courts should be slow to characterise such conduct as unreasonable—***Halsey v. Milton Keynes General NHS Trust*** [2004] EWCA Civ 576, [2004] 1 W.L.R. 3002, CA, ref'd to (see ***Civil Procedure 2005*** Vol. 1 paras 1.4.11, 36.2.1, 44.3.10 & 44.3.13)

■ **E. IVOR HUGHES EDUCATION FOUNDATION LTD. v. LEACH** [2005] EWHC 1317 (Ch), June 14, 2005, unrep. (Peter Smith J.)

Payment in accepted for part of claim—other claims abandoned—costs related to recovery

CPR rr.27.14, 36.13 & 44.3(5)—charitable foundation (C) dismissing manager (D) and bringing claim against him for breach of duty etc.—C claiming account and inquiry and damages and compensation under various heads—claims totalling £610,000, including claim estimated at £87,000 in relation to expenses paid to D—D's defence and counterclaim pleading breach of contract and wrongful dismissal—proceedings by D against C in industrial tribunal for wrongful dismissal stayed—on May 16, with start of trial fixed for June 14, D making Pt 36 payment of £5,000 in respect of the expenses claim—on June 6, C accepting that payment in and simultaneously electing to abandon the entirety of the rest of their claims against D—C (whose total costs were estimated at £170,000) applying for an order for payment by D of their costs of the expenses claim—held, (1) where a claimant accepts a defendant's Pt 36 payment relating to part only of the claim and abandons the balance of the claim, the claimant will be entitled to his costs of the proceedings up to the date of serving notice of acceptance, (2) but the court has power "to order otherwise", not only in relation to the abandoned part of the claim, but also in relation to that part for which the Pt 36 payment has been accepted (r.36.13(2)), (3) in this case, C exaggerated the expenses claim and it was appropriate that the costs which they should recover from D on that claim should be measured by their recovery, (4) accordingly, the costs payable by D to C in relation to that claim should be determined on the basis that C had brought a claim with a financial value of not more than £5,000 allocated to the small claims track—***Devine v. Franklin*** [2002] EWHC 1846 (QB), May 28, 2002, unrep., ref'd to (see ***Civil Procedure 2005*** Vol. 1 paras 27.14.2, 36.13.1 & 44.3.13)

■ **GOODSON v. H.M. CORONER FOR BEDFORDSHIRE AND LUTON** [2005] EWCA Civ 1172, *The Times*, November 1, 2005, CA, unrep. (Ward, Chadwick & Moore-Bick L.JJ.)

Protective costs order for appeal—guidelines

CPR r.44.3, Supreme Court Act 1981 s.51—coroner (D) conducting inquiry into death in hospital (H) of claimant's (C) father—before and during inquest, D refusing certain applications made by C—D entering verdict of death by misadventure—C applying for permission to bring claim for judicial review of D's decisions and the quashing of the verdict—judge (a) granting permission but dismissing claim, (b) ordering C to pay costs of H (who appeared as interested party), and (c) on ground that issue of general public importance was raised, granting C permission to appeal ([2004] EWHC 2931 (Admin), [2005] 2 All E.R. 791)—C applying for protective costs order in relation to the appeal—held, refusing the application, (1) the guidelines (settled by case law) for such orders are not to be regarded as inflexible, however (2) where an application is made for the first time at the appeal stage, there is no reason why different considerations from those set out in them should be applied, (3) in this case, the public interest in the issues was not so great as to require their being decided by the appeal court at the inevitable expense of H—***R. (Corner House Research) v. Secretary of State for Trade and Industry*** [2005] EWCA Civ 192, ref'd to (see ***Civil Procedure 2005*** Vol. 1 paras 3.1.8, 44.3.15, 48.15.6.1 & 48.15.8, and Vol. 2 para. 9A-265)

■ **MASRI v. CONSOLIDATED CONTRACTORS INTERNATIONAL (U.K.) LTD**, *The Times*, October 27, 2005, CA (Sir Anthony Clarke M.R., Rix & Richards L.JJ.)

Consolidated proceedings—foreign and domestic defendants—court's jurisdiction

CPR rr.3.1(2)(g), 6.20 & 11, Council Regulation 44/2001 art. 6.1—claimant (C) bringing claim against English company (D1)—C bringing separate claim against defendants domiciled in Greece (D2) and serving claim form on D2 out of the jurisdiction—High Court judge consolidating both claims—on ground that they should have been sued in Greece, D2 applying for order setting service aside—judge refusing application ([2005] EWHC 944 (Comm), May 17, 2005, unrep. (Cresswell J.))—common ground that the two claims were "closely connected" within the meaning of art. 6(1)—held, dismissing D2's appeal, (1) the general rule is that a person domiciled in a member state should be sued in the courts of that state (art. 2), (2) but where there are several defendants (e.g. D1 & D2), and certain conditions are met, a defendant (D2) may be sued in the courts for the place where any one of them (D1) is domiciled (art. 6(1)), (3) it is not the law that this exception to the general rule applies only where the several defendants are defendants in the same action—*Kalfelis v. Bankhaus, Schröder, Münchmayer, Hengst and Co. (Case 189/87)* [1988] E.C.R. 5565, E.C.J., *Gascoine v. Pyrah*, [1994] I.L.Pr. 82, CA, ref'd to (see ***Civil Procedure 2005*** Vol. 1 paras 3.1.10, 6.17.5, 6.19.10 & 6.19.20, and Vol. 2 paras 5-216 & 5-220)

■ **PHILLIPS v. SYMES** [2005] EWCA Civ 663, [2005] 1 W.L.R. 2986, CA (Pill & Longmore L.JJ)

Contemnor appealing—succeeding in part—costs order

CPR r.44.3, Supreme Court Act 1981 s.51—claimants (C) applying for committal of defendant (D) for breach of undertakings and court orders—judge imposing consecutive sentences of 9 months and 15 months ([2005] EWHC 90 (Ch), January 21, 2005, unrep.) and ordering D to pay C's costs of the application—on appeal, Court of Appeal reducing totality of sentence to 12 months' imprisonment ([2005] EWCA Civ 533)—D, who was legally aided, not challenging the judge's order for costs but applying for order that C should pay his costs of the appeal—held, (1) in principle, there is no difference between proceedings for civil contempt and other inter partes proceedings, (2) but factors relevant to the court's exercise of discretion as to costs may be present in the former which are not normally present in the latter, (3) in this case, on the one hand (a) by his admitted contempts D brought the proceedings on himself, but on the other (b) a considerable proportion of the time devoted by the Court to the hearing of the appeal was taken up with issues on which C attempted, unsuccessfully, to justify the approach of the judge to their committal application, (4) in the circumstances it was appropriate to award D one half of his costs of the appeal, which are to include the costs of the costs issue—*Knight v. Clifton* [1971] Ch. 700, CA, ref'd to (see ***Civil Procedure 2005*** Vol. 1 para. 44.3.5, and Vol. 2 para. 9A-265)

■ **REHBEIM v. ISUFAI** [2005] EWCA Civ 1046, May 31, 2005, CA, unrep. (Ward & Smith L.JJ)

Committal application—applicant's submission as to sentence

CPR Sched.1 RSC O.52—wife (C) granted injunction restraining husband (D) from assaulting her and from encouraging others to do so—C making applications for orders committing D for various breaches of the injunction—judge finding D in breach of the injunction and inviting counsel for C to make submissions—counsel submitting that a sentence of imprisonment was appropriate—judge sentencing D to imprisonment for 12 months—Court of Appeal dismissing D's appeal—in doing so Court expressing view that on committal applications (1) counsel for an applicant should always be in a position to advise the judge as to (a) the extent of his powers, (b) any relevant sentencing guidelines, and (c) provisions for the remission of sentence, however (2) as sentence is a matter that lies between the court and the contemnor for the breach of the court's order, the applicant's counsel should not be invited to make submissions on sentence—(see ***Civil Procedure 2005*** Vol. 1 para. sc52.1.39)

■ **SMITHKLINE BEECHAM PLC. v. APOTEX EUROPE LTD** [2005] EWHC 1655 (Ch), *The Times*, August 10, 2005 (Lewison J.)

Interim injunction—cross-undertaking—amendment to benefit non-parties—slip rule

CPR rr.25.1(1)(f) & 40.12(1), Practice Direction (Injunctions) para. 5.1—following the commencement of revocation proceedings against them, pharmaceutical company (C) bringing claim for patent infringement against UK company (D1) and UK-based distributor (D2)—in October 2002, C obtaining interim injunction and giving undertaking to compensate D1 and D2 for losses sustained thereby—at trial, judge dismissing action and revoking patent—before discharge (in accordance with judge's order) of interim injunction, two Canadian companies (D3 & D4) applying to be joined as defendants, and for amendment under the slip rule of C's cross-undertaking so as to include an undertaking to compensate them (as well D1 and D2) for losses sustained—D3 and D4 affiliates of D1, and both companies had abided by the terms of the interim injunction and provided disclosure—held, dismissing the application, (1) para. 5.1 (which came into effect in April 1999) provides that a cross-undertaking should extend, not merely to defendants, but to anyone, whether or not technically a party to the action, who was served with or notified of the injunction, (2) that extended reach of the cross-undertaking has been largely overlooked by lawyers and judges, and was overlooked in this case, (3) the court has no power to compel the

giving of a cross-undertaking, and its only choice, if no cross-undertaking is given is to withhold the injunction, (4) since it cannot be imposed, it cannot be imposed retrospectively, (5) the limiting of the cross-undertaking in this case to the defendants was not an "accidental" error or omission that could be corrected under r.40.12, because (6) it was given in the form in which the parties intended it should be given and at the time it did not occur to anyone that the court might require its extension to D3 and D4—development, nature and benefit of cross-undertakings explained—***Tucker v. New Brunswick Trading Company of London*** (1890) 44 Ch.D. 249; ***A Bank v. A Ltd***, *The Times*, June 23, 2000; ***F. Hoffman-La Roche Co. A.G. v. Secretary of State for Trade and Industry*** [1975] A.C. 295; ***Miller Brewing Co. v. Mersey Docks and Harbour Co.***, *The Times*, June 6, 2003, [2004] F.S.R. 5, ref'd to (see ***Civil Procedure 2005*** Vol. 1 paras 25.1.15, 25.1.16.1, 25.1.27, 25PD.5 & 40.12.1)

TAJIK ALUMINIUM PLANT v. HYDRO ALUMINIUM AS [2005] EWCA Civ 1218, October 24, 2005, CA, unrep. (Rix, Maurice Kay & Moore-Bick L.JJ.)

Witness summons to produce documents—adequate description of documents

CPR rr.31.17 & 34.2, Arbitration Act 1996 s.43, Form N20—dispute between two companies referred to arbitration in London—respondents (D) resisting claim on ground that agreement formed part of a fraudulent scheme on the part of several individuals (W) of which the claimants (C) were aware—with consent of the tribunal, D issuing witness summonses requiring W to attend to give evidence and to produce documents—on application of C and W, judge setting aside summonses to produce documents—held, dismissing D's appeal, (1) in substance a witness summons to produce documents is no different from the former subpoena *duces tecum*, (2) in the absence of any explicit guidance in the rules as to the manner in which documents are to be described in a witness summons, it is appropriate to have regard to the earlier authorities relating to that writ, (3) those authorities support the conclusion that the documents to be produced have to be specifically identified, or at least described on some compendious manner, that enable the individual documents falling within the scope of the summons to be clearly identified, (4) in this case, the documents were described in the schedule to each of the witness summonses in broad terms of the kind that would be appropriate to an application for disclosure, but which failed to identify the documents with sufficient certainty to enable the witnesses to know what was required of them, (5) there are clear distinctions to be drawn, reflected in the different procedures provided by r.31.17 and r.34.2, between an order for disclosure of documents against a person not a party and a witness summons to produce documents—***BNP Paribas v. Deloitte & Touche LLP*** [2003] EWHC 2874 (Comm), [2004] 1 Lloyd's Rep. 233, ***Council of the Borough of South Tyneside v. Wickes Building Supplies Ltd*** [2004] EWHC 2428, ***Assimina Maritime Limited v. Pakistan Shipping Corporation*** (***The "Tasman Spirit"***) [2004] EWHC 3005 (Comm), [2005] 1 Lloyd's Rep. 525, ***In re Asbestos Insurance Coverage Cases*** [1985] 1 W.L.R. 331, H.L., ref'd to (see ***Civil Procedure 2005*** Vol. 1 paras 1.3.9, 2.3.7, 31.17.1, 34.3.5 & 34.4.1A)

ULTRAFRAME (U.K.) LTD v. EUROCELL BUILDING PLASTICS LTD [2005] EWHC 2111 (Ch), August 26, 2005, unrep. (Pumfrey J.)

Inquiry as to damages—application for interim payment

CPR r.25.7—patentee (C) bringing action for infringement of UK patent against competitors (D)—interim injunction granted, and C giving cross-undertaking—C succeeding in Court of Appeal and inquiry as to damages ordered—D petitioning House of Lords for permission to appeal, but not applying to stay the inquiry—C applying for interim payment—C not quantifying future losses but, on basis of figures provided by D, calculating lost profit on sales at £2.1m—held (1) there was a genuine dispute as to the assessment of C's damages, however (2) without entering too far into the disputed matters, it was possible to identify the "irreducible minimum" of the damages, (3) an order may be made even if there is a degree of uncertainty, provided that it is treated in a conservative manner, (4) in the circumstances, an order for an interim payment of £800,000 was appropriate, (5) there was no basis for inferring that C would be unable to repay that sum, but (6) as there was the possibility that assets might be transferred within the corporate group (possibly making it more difficult for D to secure repayment), the order would be made subject to the condition that C's holding company and C join together in an undertaking to repay if D succeeded on appeal—principles (a) for exercise of discretion under r.25.7 explained, and (b) for award of damages for patent infringement summarised—***Chiron Corporation v. Murex Diagnostics Ltd (No. 13)*** [1996] F.S.R. 578, ref'd to (see ***Civil Procedure 2005*** Vol. 1 paras 1.3.9, 2.3.1, 25.7.15, 25.7.20 & 25.7.29)

Statutory Instruments

CIVIL COURTS (AMENDMENT) ORDER 2005 (S.I. 2005 No. 2923)

Matrimonial and Family Proceedings Act 1984 s.36A, Civil Courts Order 1983 (S.I. 1983 No. 713)—amends 1983 Order for purpose of designating certain county courts as civil partnership proceedings courts—courts so designated are: Birmingham, Brighton, Bristol, Cardiff, Chester, Exeter, Leeds, Manchester and Newcastle—these courts also designated as trial courts—in force December 12, 2005 (see ***Civil Procedure 2005*** Vol. 2 para. 11-6)

IN DETAIL

CROWN PROCEEDINGS

Introduction

It is explained in para. sc77.0.2 of Vol. 1 of the ***White Book*** that the broad intention of the Crown Proceedings Act 1947 (see Vol. 2 para. 299) is that proceedings by and against the Crown should be taken in the same circumstances and in the same way as proceedings between subjects. However, procedurally speaking, in a significant number of ways (and usually for obvious reasons) the Crown as a party is in a special position and enjoys advantages not extended to the ordinary party in civil proceedings. Some of these advantages are granted expressly by particular provisions in the 1947 Act (supplemented by rules of court). Others are granted indirectly by s.35(1) of the Act. That sub-section states that any power to make rules of court may contain provisions to have effect in Crown proceedings "in substitution for or by way of addition to any of the provisions of the Rules applying to proceedings between subjects". In relation to the procedural matters listed in s.35(2), rules conferring on the Crown procedural advantages not available to ordinary parties must be made. Before the CPR came into effect, rule making powers granted by the 1947 Act were exercised principally through the provisions of RSC O.77 and CCR O.42. Both of these Orders were carried forward into the CPR (see paras. sc77.0.1, p.1936, and cc42.0.1, p.2115), and (as is explained below) both are now revoked.

Modification of 1947 Act and amendment of CPR

In February 2004, the Lord Chancellor issued a consultation paper in which it was proposed that the rules of court setting out the special arrangements for cases involving the Crown should be simplified. As a result, the Civil Procedure (Amendment No. 3) Rules 2005 (S.I. 2005 No. 2292) revoke RSC O.77 and CCR O.42 and, after CPR Pt 65, insert Pt 66 (Crown Proceedings) (rr.66.1 to 66.7). In addition, consequential amendments are made to a number of CPR provisions. Part 66 is supplemented by Practice Direction (Crown Proceedings). These changes came into effect on October 1, 2005.

The new provisions do not merely simplify the special procedural arrangements for cases involving the Crown. In a number of ways they clarify and elaborate on what went before, making it easier for lawyers representing the Crown, and for parties opposed to the Crown, to know how they should proceed. In the new provisions, the effects of some of the rules formerly found in RSC O.77 and CCR O.42 are retained. But to an extent the new provisions alter the effects of former provisions by removing or limiting some of the advantages enjoyed by the Crown as a party. Inevitably, certain of the new rule provisions conflict with statutory provisions in the 1947 Act. Accordingly, by the Civil Procedure (Modification of Crown Proceedings Act 1947) Order 2005 (S.I. 2005 No. 2712), the Lord Chancellor has exercised his powers under the Civil Procedure Act 1997 s.4(2) (see Vol. 2 para. 840), for the purpose of making necessary changes to sections in the 1947 Act that placed the Crown in a special position. The important changes are those made to s.35.

Service

RSC O.77, r. 4 and CCR O.42, r.7 made special provision for service of process and of documents in proceedings involving the Crown. These provisions are not re-enacted in terms. However, additions having similar effects are made to CPR Pt 6 (Service of documents) (see r.6.4(2A) and r.6.5(8)). The list showing the solicitors acting for the different government departments on whom service is to be effected, and their addresses, formerly annexed to Practice Direction (Addition and Substitution of parties) (see ***White Book*** Vol. 1, para. 19PD.7, p.436) is now annexed to the Practice Direction (Crown Proceedings) supplementing Pt 66. It is important to note that this list is not issued by the rule committee or by those responsible for the issuing of CPR practice directions. It is issued by the Cabinet Office and is updated by that Office from time to time. The result is that the version of the list now annexed to Practice Direction (Crown Proceedings) may become out of date. The lists issued by the Cabinet Office are always dated. The list annexed to the practice direction is not dated but appears to be the same as that issued by that Office on January 6, 2004.

Contents of claim form

RSC O.77, r.3(1) stated that, in proceedings against the Crown, the contents of the claim form, as required by CPR r.16.2, should include a statement of the circumstances in which the Crown's liability is alleged to have arisen and as to the government departments and officers of the Crown concerned (see also CCR O.42, r.4). A provision to similar effect is now inserted in r.16.2 as para. (1A).

Sub-rules (2) to (3A) of RSC O.77, r.3, outlined procedural steps that could be taken by the Crown where it was contended that a claimant had not complied with r.3(1) (see also CCR O.42, r.5). Under those rules, pending the providing by the claimant of the missing information the Crown could legitimately postpone taking procedural steps in the proceedings, being steps that an ordinary would be required to take, thereby avoiding any procedural sanction that might otherwise apply. A statutory provision stipulating that rules should be made providing for this dispensation was found in s.35(2)(b) of the 1947 Act, but has now been removed by the Civil Procedure (Modification of Crown Proceedings Act 1947) Order 2005 (S.I. 2005 No. 2712). As amended, s.35(2)(b) simply states that rules shall require the claimant to provide the Crown with the information as to the circumstances in which it is alleged that the liability of the Crown has arisen, and as to the departments and officers of the Crown concerned. Rule 16.2(1A) fulfills that requirement.

Part 20 claim where Crown not already a party

RSC O.77, r.10, and CCR O.42, r.11, stated that a Pt 20 claim for service on the Crown, where the Crown was not already a party to the proceedings, could not be issued without the permission of the court. These rules further stipulated the procedure by which a party could apply for such permission (involving notice to the Crown). And they stated that permission should not be granted unless the court was satisfied that the Crown was in possession of all such information as it reasonably required as to the circumstances in which it is alleged that the liability of the Crown had arisen, and as to the departments and officers of the Crown concerned.

CPR r.20.3(1) states that, generally, a Pt 20 claim shall be treated as if it were a claim. Consequently para. (1A) of r.16.2 (Contents of the claim form) applies. As explained above, that provision (now added to r.16.2) states that the claim form must contain the information previously referred to in RSC O.77, r.10, and CCR O.42, r.11. Whereas previously a Pt 20 claim for service on the Crown could not be issued unless a court was persuaded that the Crown was in possession of such information, now the Crown may apply to strike it out if it is not contained in the Pt 20 claim form.

Counterclaim and set-off

Paragraph (g) of s.35(2) of the 1947 Act states that provision shall be made by rules of court placing restrictions on a party's "availing himself of any set-off or counterclaim" in proceedings by the Crown. This paragraph also places restrictions on the circumstances in which the Crown is entitled to "avail itself of any set-off or counterclaim". Rules of court to this effect were found in RSC O.77, r.6 and CCR O.42, r.9. These rules are replaced by r.66.4.

Transfer of proceedings

Section 19 (Venue and related matters) and subs.(1) of s.20 (Removal and transfer of proceedings) of the 1947 Act are repealed, and subs.(2) of s.20 is amended (see Vol. 2 para. 9B-345, p.2474). The repeal of s.20(1) requires consequential amendments to the Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995 to reflect the removal of the Crown's privilege on the transfer of proceedings from the county courts to the High Court.

As amended, s.20(2) of the 1947 Act states that "all rules of law and enactments relating to the removal or transfer of proceedings from a county court to the High Court, or the transfer of proceedings from the High Court to a county court, shall apply in relation to proceedings against the Crown".

CPR r.30.3(2) sets out the matters to which the court must have regard when considering whether to make an order transferring proceedings between the High Court and a county court (County Courts Act 1984 ss.40(2), 41(1) or 42(2)), between the RCJ and district registries (CPR r.30.2(4)), and between county courts (CPR r.30.2(1)). Formerly, in certain circumstances the Crown could ensure that proceedings, wherever commenced, were transferred to the Royal Courts of Justice (see ss.19 and 20 of the 1947 Act, and RSC O.77, r.2). This power in the hands of the Crown is now removed. In lieu an additional criterion is added to r.30.3(2) requiring the court to have regard to "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".

Section 20(1) of the 1947 Act (now repealed) stated that if the Attorney General certified that particular county court proceedings against the Crown should be tried in the High Court then the proceedings should be removed to that Court. Now it is provided that the court, when considering whether to exercise its power to transfer proceedings, should take into account (in addition to the criteria in r.30.3(2)) any "note" by the Attorney General). In para. 1.2 of Practice Direction (Crown Proceedings) it is explained that, from time to time, for the assistance of practitioners and judges the Attorney General will publish a note concerning the organisation of the Government Legal Service and matters relevant to the venue of Crown proceedings. Paragraph 1.2 adds that, when considering the question of venue under r.30.3(2), "the court should have regard to the Attorney General's note in addition to all the other circumstances of the case".

Default judgment

In exercise of the rule making power conferred by s.35(2)(c), former RSC O.77, r.9 stated that a default judgment could not be entered against the Crown "except with the permission of the court". And CPR r.12.10 stated that in a claim against the Crown such default judgment could not be obtained by request (insofar as that is permitted by the rules), but only on application made under Pt 23 (see too r.12.4(2)). Rules 12.4 and 12.10 are now amended so as to provide that a default judgment against the Crown may be obtained by request in accordance with the r.12.4 procedure. However, it is expressly provided (r.12.4(4)) that such a request must be considered by a Master or a 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 s.18 of the 1947 Act and para. (8) of CPR r.6.5 (as now inserted).

Summary judgment

In exercise of the rule making power conferred by s.35(2)(d), former RSC O.77, r.7 excepted the Crown from applications for summary judgment. That exception is now removed, but CPR r.24.4(1A) expressly provides that a claimant may not apply for summary judgment against the Crown until after the expiry of the period for filing a defence specified in r.15.4.

Joinder of parties

The effect of RSC O.77, r. 8A (joinder as a party to proceedings of the Commissioners for HM Revenue and Customs) is continued by the addition of para. (4A) to CPR r.19.4.

Summary revenue applications

Section 14 of the 1947 Act enables the Crown to make summary applications in the High Court in certain revenue matters. Rules relating to such applications were found in RSC O.77, r.8. They are now found in CPR r.66.5.

Applications under the Postal Services Act 1990 s. 92

RSC O.77, r.17 (Proceedings as to postal packets) and CCR O.49, r.15 (Postal Services Act 2000) are replaced by the insertion in Pt 19 of r.19.7B.

Execution and satisfaction of orders against the Crown

RSC O.77, r.15(1), and CCR O.42, r.13(1), in combination provided that CPR Pts 69 to 73, and RSC Ords. 45 to 47 and 52, and CCR Ords. 25 to 29, shall not apply to any "order against the Crown". Those rules are replaced by r.66.6(1). Paragraph (2) of r.66.6 explains what is meant, in this context, by "order against the Crown" (and reflects s.25(1) of the 1947 Act). RSC O.77, r.15(3) and CCR O.42, r.13(2) supplemented the proviso to s.25(1) of the 1947 Act (see ***White Book*** Vol. 2, para. 9B-359) and, in effect are re-enacted in para. (3) of r.66.6.

Money due from the Crown

RSC O.77, r.16, and CCR O.42, r.14, in combination provided that certain orders that could be made under CPR Pts 69 and 72, and RSC O.45, could not be made (or, if made, would be of no effect) in respect of any money due or accruing due, or alleged to be due or accruing due, from the Crown. The particular orders referred to in those provisions were: a third party debt order under Pt 72; an order for the appointment of a received under Pt 69; and an order for the appointment of a sequestrator under RSC O.45. These rules are replaced by r.66.7.

Action on behalf of the Crown

New r.66.3 states that, where by reason of a rule, practice direction or court order the Crown is permitted or required (a) to make a witness statement, (b) to swear an affidavit, (c) to verify a document by a statement of truth, (d) to make a disclosure statement, or (e) to discharge any other procedural obligation, that function shall be performed by an appropriate officer acting on behalf of the Crown. The court may if necessary nominate an appropriate officer. This new provision subsumes RSC O.77, r.12, and CCR O.42, r.12.

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