
CIVIL PROCEDURE NEWS

Issue 8/2008 September 8, 2008

CONTENTS

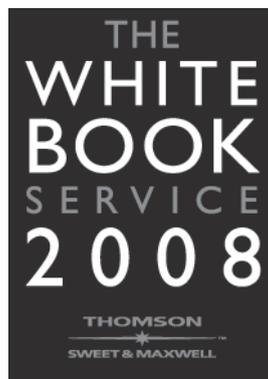
Service of documents

CPR amendments

Practice Direction amendments

Reserved judgments

Recent cases



THOMSON
—★—™
SWEET & MAXWELL

In Brief

Cases

- **ADMIRAL TAVERNS (CYGNET) LIMITED v DANIEL** [2008] EWHC 1688 (QB), July 21, 2008, unrep. (Teare J.)

Warrant of possession—stay pending appeal

CPR rr.3.1(2)(f) and 39.3, Housing Act 1980 s.89, Supreme Court Act 1981 s.49(3). On June 17, 2008, on paper, High Court judge granting tenant's (D) application staying execution of a warrant of possession obtained by landlords (C) in county court proceedings, pending determination of D's application to High Court for permission to appeal. Subsequently, on July 10, 2008, at hearing not attended by D, judge ordering that staying order be discharged. D applying under r.39.3(3) to set aside the July 10 order. At hearing of this application parties agreed that D had good reason for not attending the hearing (r.39.3(5)(b)), but contesting issue whether the July 10 order should be set aside. C submitting that, as s.89 restricts the court's power to grant a stay (either under r.3.2(1)(f) or under the court's inherent jurisdiction), the judge's order of June 17 staying execution was misconceived, and therefore D's application to set aside the discharge of that order should not be granted. **Held**, granting D's application, (1) s.89 states that an order for possession must take effect not later than 14 days after the hearing of the order and six weeks from the order in cases of exceptional hardship, however (2) the restrictions on a court's power to grant a stay imposed by that section do not apply to a court (as here) exercising appellate jurisdiction, therefore (3) an appellate court that had either granted permission to appeal from an order for possession, or (as here) was still considering permission, could stay the order pending determination of the appeal or application for permission to appeal. **Bain & Co v Church Commissioners for England** [1989] 1 W.L.R. 24; **Hackney London Borough Council v Side by Side (Kids) Ltd** [2003] EWHC 1813 (QB) [2004] 1 W.L.R. 363; **Boylard & Son Ltd v Rand** [2006] EWCA Civ 1860 [2007] H.L.R. 24, CA, ref'd to. (See **Civil Procedure 2008** Vol.1 paras 3.1.7 and 39.3.7, and Vol.2 paras 2E-104 and 9A-177.)

- **CRANE v SKY IN-HOME LTD** [2008] EWCA Civ 66 (Ch), July 3, 2008, CA, unrep. (Sir Andrew Morritt C., Arden and Dyson L.JJ.)

Notice of appeal—permission to amend

CPR rr.1.1 and 52.8, Commercial Agents (Council Directive) Regulations 1993. Self-employed TV installer and repairer (C) entering into agency agreement with company (D). Upon termination of agreement, C bringing claim against C under the 1993 Regulations for financial relief. C failing at trial, largely because of the judge's holding that, under the agreement, the extent to which C was an agent was limited. C serving Notice of Appeal. On eve of appeal, C applying to amend Notice to add ground (foreshadowed in C's skeleton argument) that C was a commercial agent within the 1993 Regulations, a ground that involved (at least arguably) the assumption that it did not matter whether or not he was an agent according to English law (a point not argued at trial). D resisting amendment. **Held**, refusing application, (1) an application to amend a notice of appeal raises special considerations which do not apply to an application to amend a pleading prior to trial, (2) the court must examine each application on its facts in the light of the guidance to be found in the authorities, (3) it is difficult to see how the court could, even consistently with the overriding objective, allow a new point to be taken on appeal if further evidence might have been produced at trial on it, or if the new point requires an evaluation by the appeal court of evidence which might be affected by seeing witnesses, (4) before allowing a new case to be raised, the appeal court should be satisfied that, if it had been raised at trial, the other party would not have altered the way it conducted the case, (5) in the instant case, the new ground of appeal would require further factual findings on areas not covered by the judge's judgment, and the drawing of inferences from the whole of the trading relationship between the parties (a matter that was not in issue at trial). **The Tasmania** (1890) App.Cas. 223, HL; **Jones v M.B.N.A. International Bank**, June 30, 2000, CA, unrep.; **Paramount Export Ltd v New Zealand Meat Board** [2004] UKPC 45, ref'd to. (See **Civil Procedure 2008** Vol.1 paras 52.0.10, 52.3.20 and 52.8.2; note also **S.C.P. 1999** Vol.1 para.59/10/10.)

- **JOHNS v SOLENT SD LTD** [2008] EWCA Civ 790; *The Times* June 27, 2008, CA (Pill, Keene and Smith L.JJ.)

Stay of proceedings—prospect of change in law

CPR r.3.1(2)(f), Supreme Court Act 1981 s.49(3). Former employee (C) bringing proceedings in employment tribunal against former employers (D) for age discrimination. Particular provision in UK Regulations implementing EU Directive apparently providing D with complete answer to C's claim. Accordingly, tribunal chairman striking out C's claim. On ground that, in a reference from another Member State pending in the ECJ, the validity of a similar

provision was being tested, EAT allowing C's appeal and ordering that C's claim should not be struck out, but should be stayed pending the outcome of that reference. EAT judge giving D permission to appeal. **Held**, dismissing D's appeal, (1) because the chairman based his reasoning on unwarranted speculation about the outcome of the ECJ reference, his conclusion that C's claim should be struck out because it had no prospect of success was perverse, (2) if C's re-instated claim were to be tried forthwith C would be greatly prejudiced, (3) the balance of prejudice lay heavily in favour of staying the claim pending the outcome of the ECJ reference. (See *Civil Procedure 2008* Vol.1 para.3.1.7, and Vol.2 para.9A-182.)

■ **KYNIXA LIMITED v HYNES** [2008] EWHC 1646 (QB), July 15, 2008, unrep. (Wyn Williams J.)
Amendment of pleadings—post-judgment

CPR r.17.3. Claimant (C) bringing proceedings against three defendants (D1, D2 and D3) for breach of contract, and against two defendants (D1 and D2) for breach of fiduciary duty. Before handing down, judge providing parties' legal representatives with copies of his reserved judgment on liability. In judgment, judge holding in favour of C. At handing down, C's representatives inviting judge to make additional finding relating to a particular allegation against D1 and D2, suggesting a discrete breach of fiduciary duty on their part. This allegation not included in C's particulars of claim, but arising (so C contended) from evidence adduced in the course of trial. **Held**, (1) the court has power to permit an amendment to pleadings after judgment has been handed down but before an order recording that judgment has been drawn up and sealed, (2) before granting such permission, the court must first decide whether there are exceptional circumstances or strong reasons for taking such an unusual course, (3) in the circumstances of this case, the proper course was for the court to decline to make any further finding in a judgment additional to that handed down, but to permit C to amend their particulars of claim pleading the particular allegation, and for that issue to be determined, both as to liability and as to quantum at the trial on quantum. *Stewart v Engel* [2000] 1 W.L.R. 2268, CA, ref'd to. (See *Civil Procedure 2008* Vol.1 para.17.3.8 and 40.2.1.)

■ **LEE v BIRMINGHAM CITY COUNCIL** [2008] EWCA Civ 891; 158 New L.J. 1180 (2008), CA
(Thomas, Hughes and Rimer L.J.)

Pre-allocation costs—fast track claim reduced to small claims track

CPR rr.26.6, 27.14, 44.9(2) and 44.11, Practice Direction (Costs) para.15.1, Pre-action Protocol for Housing Disrepair Cases para.3.7. On August 16, 2006, solicitors acting for secure tenant (C) sending letter to council landlord (D) (1) invoking disrepair protocol, (2) foreshadowing consequential damage claim, and (3) giving notice of CFA. By September 26, 2006, without any admission of liability D carrying out great majority of repairs sought. In April 2007, after further negotiations between the parties (which apparently foundered on issue of costs), C commencing claim against D, making no claim for specific performance, but claiming consequential damages put in the bracket £1,000 to £5,000. In defence, D pleading lack of sufficient notice of disrepair and putting in issue quantum. Parties agreeing that claim fell to be allocated to the small claims track (r. 26.6(3)). C applying for order for costs on the fast track "until at least the date that repairs were completed". District judge holding that the general rule in r.44.9(2) should apply and refusing application. On C's appeal, circuit judge ordering that the costs incurred by both parties prior to allocation should be reserved for consideration by the trial judge. On basis that the case raised an important point of principle, single lord justice granting D permission for second appeal. **Held**, allowing appeal in part, (1) if the relevant rules and protocol provisions are to have their intended effects in circumstances such as these, it is necessary that the court should have power to make some order for pre-allocation costs, (2) if any order ought to be made as to pre-allocation costs, it should reflect the fact that, until the repairs were carried out, the tenant's claim (notified under the protocol) was for specific performance as well as for damages, and would potentially have been allocated to the fast track, (3) an order reserving costs (such as that made by the circuit judge) had the possible disadvantages of leaving too much for later decision and of encouraging parties to continue proceedings perversely, (4) in this case, the appropriate order was that D should pay C's costs on the fast track basis up to September 26, 2006 (the date when the repairs were completed). (See *Civil Procedure 2008* Vol.1 paras 44.9.1, 44.11.1, 44PD.9 and C10-003.)

■ **NEATH PORT TALBOT BOROUGH COUNCIL v CURRIE and BROWN PROJECT MANAGEMENT Ltd** [2008] EWHC 1508 (TCC); June 16, 2008, unrep. (Ramsey J.)

TCC claim—transfer from regional centre to RCJ—level of judge

CPR rr.1.1, 30.2(4), 30.3(2) and 60.4, Supreme Court Act 1981 s.68, Practice Direction (Technology and Construction Court) paras 5 and 6, Technology and Construction Court Guide paras 3.6 and 3.7. Local authority (C) issuing Chancery claim in district registry in Bristol, commencing proceedings against consulting engineers (D) for damages in region of £54 million. Subsequently, claim transferred to TCC and managed by a senior circuit judge nominated to deal with TCC business in Bristol (the principal TCC judge at that registry). D, by letter, applying to High Court judge in charge of TCC (1) for order under r.30.2(4) transferring proceedings to RCJ, and (2) for direction

that the proceedings be classified as “HCJ” so that the case should be managed and tried by a High Court judge. C opposing these applications. **Held**, by High Court judge in charge of TCC sitting in Bristol, dismissing first application but allowing second in part, (1) D’s applications should have been (a) made by application notice in accordance with Pt 23, and (b) made to the principal TCC judge in the district registry, however (2) in the circumstances these irregularities should be waived and the applications considered on their merits, (3) there were no grounds to support a transfer to the RCJ, in particular it would not be more convenient or fair for hearings (including the trial) to be heard there, (4) in principle the case merited being managed and tried by a High Court judge, (5) in the circumstances it was appropriate to direct that the case (a) should be tried by a High Court judge, but (b) should continue to be managed generally by the principal TCC judge in Bristol. General principles, for allocation of TCC business, and arrangements for availability of High Court judges to take TCC business at regional centres, explained. (See **Civil Procedure 2008** Vol.1 para.30.2.9, and Vol.2 paras 2C-8, 2C-22 and 2C-56.)

- **NEWPORT CITY COUNCIL v CHARLES** [2008] EWCA Civ 893; *The Times* July 29, 2008, CA (Laws and Richards L.JJ.)

Court of Appeal—listed date for appeal at regional centre—application to vacate

CPR rr.3.1(2)(b) and 52.10, Practice Direction (Appeals) para.15.7. Council landlord (C) bringing possession proceedings against assisted tenant (D) in a county court in Cardiff. C succeeding at trial and circuit judge dismissing D’s appeal. On ground that appeal raised important point of principle, D granted permission for second appeal to Court of Appeal. Civil Appeals Office listing appeal for hearing on a particular date (July 16, 2008) during scheduled sittings of the Court, not at the RCJ, but on circuit in Cardiff. Before fixing date, contrary to practice where appeals heard in London, Office not endeavouring to ascertain availability of parties’ counsel. On ground that his senior counsel would be unavailable (because out of the country), D applying for date to be vacated. On grounds that property was needed urgently and that a postponement would increase costs, C opposing application. Following its refusal on paper, D’s application renewed and heard in London on July 4, 2008. **Held**, dismissing the application, (1) D’s case on urgency stood uncontradicted, (2) it was plain that alternative senior counsel could properly and effectively be instructed for a hearing on the listed date. Observations on public interest in Court holding sittings on circuit and on necessary additional difficulties that arise for the scheduling cases for hearing such sittings. (See **Civil Procedure 2008** Vol.1 paras 52.12.7 and 52PD.62.)

- **ORIAKHEL v VICKERS** [2008] EWCA Civ 748; July 4, 2008, CA (Sir Anthony Clarke M.R. Arden and Jacob L.JJ.)

Non-party costs order—admissibility of trial judge’s findings—witness immunity

CPR r.48.2, Supreme Court Act 1981 s.51(3). Claimant (C) bringing road traffic claim against defendant (D). C’s witnesses, including garage proprietor (Y), providing witness statements. D’s insurers (X) believing claim to be bogus and the product of a conspiracy. Accordingly, X joined as second defendant so that it could contest the claim and advance a counterclaim, but X not joining Y as defendant to the counterclaim. At trial in January 2007 (at which D did not appear), C’s witnesses (including Y) disbelieved and X succeeding in proving as against the other parties (C and D) that the claim was a dishonest fabrication in which Y was implicated. After close of evidence, X indicating to Y that they intended to seek a costs order against him. Judge dismissing C’s claim as “fraudulent”. In June 2007, X making formal application for non-party costs order against Y (he having been joined as a party for these purposes at an earlier stage), and Y filing witness statement taking issue with certain matters asserted by X at the trial. At hearing on August 17, 2007, judge dismissing application. Single lord justice granting X permission to appeal. **Held**, dismissing X’s appeal, (1) the judge had erred in proceeding on the basis that, as it had not been shown that Y was either the funder of, or the controller of, the claim, a non-party costs order could not be made against him, (2) as he had fettered his discretion in this respect, it was necessary for the Court to exercise the discretion afresh, (3) a non-party costs order is an exceptional order, even more so where (as here) the applicant could have joined the respondent as a party to the original proceedings, (4) an award of costs against a witness on the basis of what he had said in evidence in court, or in the preparation of evidence to be so given, would involve infringement of the principle of witness immunity, (5) a trial judge’s findings may be admitted as evidence against a respondent to an application for a non-party costs order, but this departure from basic principles can only be justified if the connection of the non-party with the trial proceedings was so close that he will not suffer any injustice, (6) in this case, although at trial Y was found to be a co-conspirator, there was no such close connection sufficient for him to be bound by the result of the trial, (7) Y had to be free to contend that he was not a conspirator and to adduce evidence to support his own defence. **Symphony Group plc. v Hodgson** [1994] Q.B. 179, CA; **Globe Equities Ltd v Globe Legal Services Ltd** [1999] B.L.R. 232, CA; **Petromec Inc v Petroleo Brasileiro SA Petrobras** [2006] EWCA Civ 1038; (2007) 2 Costs L.R. 212, CA, ref’d to. (See **Civil Procedure 2008** Vol.1 para.48.2.1, and Vol.2 para.9A-203.)

- **SPENCER v SECRETARY OF STATE FOR WORK & PENSIONS** [2008] EWCA Civ 750; July 1, 2008, CA, unrep. (Waller, Carnwath and Stanley Burnton L.JJ.)

Limitation—claim for Francovich damages—date of accrual of cause of action

CPR r.3.4(2), Limitation Act 1980 s.2, Council Directive 84/5/EEC, Untraced Drivers Agreement 1972, Council Directive 89/391/EEC, Framework Health and Safety at Work Regulations 1992 (Art.6(2)). In two unrelated cases, claimants (A and B) claiming damages for personal injuries against UK (D) as Member State of EC on ground that D had incurred liability to individual under EC law (Francovich damages). In one case, (1) A injured in road accident (April 19, 1995), (2) intimating claim to MIB under 1972 agreement (July 7, 1995), (3) receiving compensation from MIB (February 8, 2000) following an appeal to an arbitrator from on award (June 7, 1999), and (4) commencing claim (February 3, 2006) against D on ground that award inadequate as D had failed adequately to implement Council Directive 84/5/EEC (e.g. because the MIB scheme did not allow for interest or costs). In the other, B suffering repetitive strain injury at work (1996) and, having failed (on March 12, 2002) in claim against employers, commencing claim (on January 5, 2006) against D on ground that D had failed to implement Art.6(2). In both cases, D contending that the claims were statute barred by s.2 and on that ground succeeding in obtaining summary judgment against A ([2007] EWHC 879 (QB)) and against B ([2007] EWHC 1775 (QB)). On conjoined appeals to the Court of Appeal, held, dismissing appeals (1) a claim for Francovich damages must be treated as a claim in tort for which the limitation period under s.2 is six years from the accrual of the cause of action to which s.2 (common ground), (2) liability under the Francovich principle does not fit naturally into conventional domestic legal analysis, (3) it is necessary to proceed by analogy with domestic claims for economic loss, (4) in a claim for economic loss, if it can be shown that a claimant is worse off in terms that can be measured financially at the date of the negligent failure, the cause of action will accrue on that date, even though accurate measurement of damage would be difficult and some damage may still be contingent, (5) a measurable loss was suffered by both A and B in relation to their claims against D when they suffered their personal injuries, (6) accordingly, limitation was a complete answer to both claims, (7) acknowledging the existence of a supplementary cause of action in EC law which comes into effect at the same time (rather than at some late date) as the other cause of action under English law has the virtue of procedural efficiency, as it enables the two to be tried together if necessary. *Francovich v Italian Republic (C-690 & C9-90)* [1995] I.C.R. 722, E.C.J.; *Phonographic Performance Ltd v Department of Trade and Industry* [2004] EWHC 1795 (Ch); [2004] 1 W.L.R. 2893; *Law Society v Sephton & Co* [2006] UKHL 22; [2006] 2 A.C. 543, H.L.; *Nykredit Mortgage Bank Plc v Edward Erdman Group Ltd (No. 2)* [1997] 1 W.L.R. 1627, H.L., ref'd to. (See *Civil Procedure 2008* Vol.2 para.8-5.)

Statutory Instruments

- **CIVIL PROCEDURE (AMENDMENT) RULES 2008 (SI 2008/2178)**

CPR Pts 6, 7, 36, 52, 56, 65 and 78. Substitute new Pt 6 (Service of Documents) and make consequential amendments, in particular to (and substantially) r.7.5 (Service of a Claim Form). Insert new r.44.3C to provide for applications for costs orders in respect of pro bono representation. Amend rr.36.9 and 36.15 to provide for the recovery of lump sum payments under the Social Security (Recovery of Benefits) Act 1997 (as modified). Amend r.52.3(4A) (subject to transitional provisions) to enable Court of Appeal to refuse request for reconsideration at a hearing of an application for permission to appeal in family proceedings where the application totally without merit. Amend Pt 56 to provide for applications under Housing Act 2004 s.214 (tenancy deposit schemes). Omit Sect.VI of Pt 65. Insert new Pt 78 (European Order for Payment and European Small Claims Procedures) and makes consequential amendments. Make minor amendments. Pt 78 in force December 12, 2008, and January 1, 2009. Other provisions in force October 1, 2008. (See *White Book 2008* seriatim.)

Practice Directions

- **PRACTICE DIRECTION (RESERVED JUDGMENTS)**

CPR Pt 40. Availability of reserved judgments before handing down. Corrections to the draft judgment. Orders consequential on judgment. Attendance at handing down.

Replaces existing practice direction with amendments. For text, see CPR Update section of this issue of *CP News*. Published by TSO CPR Update 47. (See *White Book 2008* Vol.1, para.40EPD.1.)

In Detail

CPR PART 6—SERVICE OF DOCUMENTS

A. Introduction

In Issue 07/2008 (July 2008) it was explained that substantial changes were to be made to CPR Pt 6 with effect from October 1, 2008. The statutory instrument bringing the changes into effect (and making a number of amendments to other CPR Parts) was made on August 7, 2008; see Civil Procedure (Amendment) Rules 2008 (SI 2008/2178).

In outlining some of those changes in the CPR Update section of Issue 07/2008, it was explained that there are risks involved in purporting to explain amendments to the CPR until they have been settled by the Rule Committee and by those responsible for the making of CPR practice directions. It is now clear that the account given in that Issue was wrong in two respects.

1. *No transitional provisions*

Firstly, it was incorrect to say, in the section headed "A. Introduction" (at the bottom of p.6), that "the principal changes will be subject to transitional provisions that will give judges and practitioners time to get up to speed". The new statutory instrument contains no transitional provisions relevant to Pt 6. October 1 is D-Day. All concerned with have to have their skates on. (For certain consequences of the lack of transitional provisions, see "B. Transition to deemed day of service rules" below.)

2. *Duty to ascertain defendant's current address for service of claim form*

Secondly, it was incorrect to say, in the section headed "B. Changes in rules as to service of claim forms on individuals" (on p.8), that r.6.9 will state that, where a claimant "has actual knowledge" that the place of service for the claim form is an address at which the defendant no longer resides or carries on business, the claimant must take reasonable steps to discover the address of the defendant's current residence or place of business and to apply for an alternative service order if need be. As enacted (in r.6.9(3)), that provision states that the duty to take such reasonable steps arises, not where the claimant "has actual knowledge" that the place of service is not the defendant's current residence or place of business, but merely where he "has reason to believe" that that is the position.

From a structural point of view, the most important change is the separation into two separate regimes rules for the service of claim forms (as defined) within the jurisdiction (Sect. II of Pt 6) and rules for the service of documents in proceedings (Sect. III of Pt 6). The importance of being clear as to what is meant by "claim form" in this context cannot be stressed too highly. Paragraph (c) of r.6.2 (Interpretation) states that, in Part 6:

"“claim” includes petition and any application made before action or to commence proceedings and “claim form”, “claimant” and “defendant” are to be construed accordingly"

One of the things that may be gleaned from this rather unsatisfactory provision is that a "claim form" does not include particulars of claim where the latter document is not contained in or served with the former. (It follows from this that the deemed day of service of separate particulars of claim is calculated in accordance with r.6.26, not r.6.14.) On the other hand, it would seem that "claim form" does include an application notice for a pre-action remedy to be served before service of the claim form.

Potted accounts of the changes made to Pt 6 have begun to appear in various places. Not all of them accurately reflect what is actually going to happen on October 1. (For example on the Ministry of Justice CPR website it is suggested that there are to be no changes to the rules relating to the service of documents out of the jurisdiction; that is not entirely true, so care has to be taken.

In what follows, attention is confined to two matters of particular practical importance, the first is related to the deemed day of service of claim forms (r. 6.14), and the second to the service of the claim form by an alternative method (r. 6.15). Nothing further is said about the other innovations in Part 6 dealt with in Issue 07/2008 (viz., calculating and complying with the period of validity of claim form for service, and alternative forms of postal service).

B. Transition to deemed day of service rules

In the CPP Update section of CP News Issue 07/2008 it was explained that changes are being made to the way in which the "deemed day" of service of claim forms is calculated, according to the particular method of service utilised

by the claimant. Rule 6.14 states that a claim is served in accordance with Pt 6 is deemed to be served on the second business day “after completion of the relevant step under rule 7.5(1)”. Although r.7.5 does not use the phrase, it is likely that the “completion of the relevant step” will come to be known in lawyers’ parlance as “dispatching for service”. The text of r.7.5 was set out in Issue 07/2008, so it need not be repeated here.

In combination, r.6.14 and r.7.5(1) alter the previous law as to the fixing of the deemed day for service of a claim form. (A separate rule, r.6.26, provides for fixing such days for other documents in proceedings; in effect, r.6.14 and r.6.26 replace, with amendments, former r.6.7.)

The new “dispatching” for service concept provides a particular advantage for claimants. The risk that the claimant will fail to comply with r.7.5 because, between the time when he dispatched the claim form for service (e.g. by posting it by first class post) and the time when (according to the rules) it was deemed served, the time limit expired, is removed.

As these new rules are not subject to transitional provisions, it is important to be clear about which claimants will benefit from this change and which will not.

If the circumstances in which a claimant finds himself are that the time limit fixed by r.7.5 runs out on Tuesday, September 30, 2008 (or before that date), the old version of the rule applies and will have been complied with if service was effected on (or before) that date. If, on the other hand, the circumstances in which a claimant finds himself are that the time limit fixed by r.7.5 runs out on Wednesday, October 1, 2008 (or on a particular date after that date) the new version of the rule applies and will have been complied with if the claim form was dispatched for service on that date (or on the particular subsequent date). The point to note is that the advantage of the new “dispatching” for service concept accrues, not to claimants to whom the first circumstances apply, but to those to whom the second apply.

Under the pre-October 1, 2008, rules, the deemed day of service for a claim form served by fax is the business day after the day on which it is transmitted, if it was transmitted after 4 p.m. Under the combined effect of the new provisions in r.6.14 and 7.5(1), in these circumstances the deemed day of service is the second business day after completion of the transmission. Thus, if the period for service fixed by r.7.5 ends on October 1, and the claimant transmits the claim form by fax after 4 pm on September 30, the deemed day of service is October 2 (one day late) (whereas under the old rule the deemed day would be October 1).

It is convenient to note here that the statutory instrument amends CPR r.56.3 (claims for a new tenancy and for termination of a tenancy under the Landlord and Tenant Act 1954 ss.24 and 29(2)) so as to extend the period for service of claim form in proceedings to which that rule applies from two months to four months. If the circumstances are that the two month period expires on September 30, 2008, service will be out of time if the claim form is served after that date. If the circumstances are that the two month period expires on or after October 1, 2008, the claimant has a further two months in which to dispatch the claim form for service.

C. Retrospective effect of alternative service order

Rule 6.15 replaces former r.6.8, insofar as it applied to the service of claim forms. (Service by an alternative method of other documents in proceedings is now dealt with by r.6.27, a provision that incorporates r.6.15 by reference.)

Paragraphs (3) and (4) of r.6.15 follow para.(2) and (3) of former r.6.8 (with some amplification). It is what is now said in para.(1) and (2) of r.6.15 that has to be particularly noted. Those paragraphs state as follows:

“(1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place.

(2) On an application under this rule, the court may order that steps already taken to ring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service.”

Paragraph (1) is the same as para.(1) of former r.6.8, except that “at an alternative place” is added to “by an alternative method”.

Paragraph (2) is wholly new. It was inserted in the draft of the new rule at a very late stage. It is just as well that it was because, otherwise, r.6.15 would not have had the effect that the Rule Committee intended it should. It is an inelegant provision (perhaps reflecting the fact that it was drafted in haste.) Its significance is illustrated by *Elmes v Hygrade Food Products plc* [2001] EWCA Civ 121, January 24, 2001, CA, unrep. In that case a claimant making a personal injury claim, instead of serving the claim form on the defendant, served it on the defendant’s insurers. The Court of Appeal rejected the claimant’s submission (made after the time for service had expired) that the court had power to order retrospectively that the erroneous method of service already adopted by the claimant should be allowed to stand

as service by an alternative method permitted by the court. (See also *Maggs v Marshall* [2005] EWHC 200 (QB), January 25, 2005, unrep. (Gray J.)) Paragraph (2) states that the court may order that “steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place” is good service. The intention is that the power given to the court by this provision might be used for the purpose of coming to the rescue of a claimant in the same or a similar position to the claimant in the *Elmes* case and enabling a claimant to escape the serious consequences that would normally ensue where there has been mis-service and, not only has the period for service of the claim form fixed by r.7.5 has run, but also the relevant limitation period has expired.

In the well-known case of *Nanglegan v Royal Free Hampstead NHS Trust* [2001] EWCA Civ 127; [2002] 1 W.L.R. 1043, CA, the Court of Appeal held that a court did not have power to order retrospectively that the claimant’s mis-service of his particulars of claim (in the form of service by post on the defendant instead of on his nominated solicitor) should stand as permitted alternative service. Rule 6.15 does not apply to the service of particulars of claim. But, as was indicated above, service by an alternative method of other documents in proceedings is now dealt with in r.6.27, a provision which incorporates r.6.15 by reference. In combination, these rules give courts the power which the Court of Appeal in the *Nanglegan* held they lacked under former r.6.8.

Paragraph (1) of r.6.15 states that the court may make an alternative service order if it appears that there is “good reason” to do so. It is one thing for the court to grant an alternative service order, it is quite another thing for the court to make it take effect retrospectively. In terms, the power given to the court by para.(2) is unfettered, but doubtless criteria appropriate for its exercise will emerge. Where the effect of making an alternative service order take effect retrospectively would be to grant the claimant relief from a sanction imposed for a procedural failure it might be argued that the r.3.9 criteria are engaged.

D. New practice form for service out without permission

In the new Pt 6, para.(3) of former r.6.19 is replaced by r.6.34 (Notice of statement of grounds where the permission of the court is not required for service).

Rule 6.34 states that, where the claimant intends to serve a claim form on a defendant under r.6.32 (service in Scotland or Northern Ireland) or r.6.33 (other service out not requiring permission), the claimant must (a) file with the claim form a notice containing a statement of the grounds on which the claimant is entitled to serve the claim form out of the jurisdiction; and (b) serve a copy of that notice with the claim form.

Para. (3) of former r. 6.19 stated that, where a claim form was to be served out of the jurisdiction under, what is now r.6.32 or r.6.23, “it must contain a statement of the grounds on which the claimant is entitled to serve it out of the jurisdiction”. Whereas para.(3) required that a statement of entitlement to serve out without permission be endorsed on the claim form, new r.6.34 requires a separate notice.

Rule 6.34 is supplemented by Practice Direction B (Service Out of the Jurisdiction) para.2.1. That provision states that, where r. 6.34 applies, the claimant must file practice form N510 when filing the claim form. New practice form N510 is to be entitled “Service out of the Jurisdiction”. (At the time of writing it had not been published. Presumably it will be available on the Ministry of Justice website before October 1, 2008.)

E. Some Other Innovations

Other innovations found in the new version of Pt 6, and not explained or touched upon above, or in the CPR Update section of *CP News 07/2008*, include the following.

The “methods of service” which may be used (in the circumstances provided for in the rules) for the purpose of serving a claim form or other documents in proceedings include (as did the former rules) service “by fax or other electronic method” where the party to be served has indicated his willingness to be served by such a method. Differences between, on the one hand, service by fax and, on the other, service by “other means of electronic communication” (which includes e-mail), as to the circumstances in which such willingness may be implied have been adjusted (see r.6.20).

In any claim by a tenant against a landlord, the claim form may be served at an address given by the landlord under s.48 of the Landlord and Tenant Act 1987 (see r.6.8).

The statutory scheme for service on the solicitor for the appropriate authorised Government department in civil proceedings in which the Crown is the defendant is extended to claims for judicial review (see r.6.10).

The period within which a claimant serving a claim form must file a certificate of service is extended from within seven days of service of the claim form to within 21 days of service of the particulars of claim, and the need to file such a certificate is waived if, within that time, all defendants have filed acknowledgments of service (see r.6.17).

CPR Update

AMENDMENTS TO CPR RULES

As has been explained elsewhere, the Civil Procedure (Amendment) Rules 2008 (SI 2008/2178) substitute in the CPR a new Pt 6 (Service of Documents). As a consequence of this, this statutory instrument makes numerous consequential amendments to other rules, most of them quite small (altering references to provisions as re-numbered in the new Part). The full text of Pt 6 as it will stand as from October 1, 2008, and the two supplementing practice directions that will go with it, are being published in a special White Book supplement.

In addition the statutory instrument, for other reasons, makes amendments to other CPR provisions. Those changes, together with the changes that are a consequence of the new Pt 6, are set out below. Where the reason for the change is other than the substitution of Pt 6, a short explanation is given.

Paragraph and page references are to *The White Book 2008*.

PART 2—APPLICATION AND INTERPRETATION OF THE RULES

Para.2.3, p.20

In para.(1) of r.2.3, in the parenthesis following definition of “defendant’s home court”, for “Rule 6.5” substitute “Rule 6.23”.

PART 3—THE COURT’S CASE MANAGEMENT POWERS

Para.3.7, p.81

In para.(4)(ii) of r.3.7, for “shall” substitute “will”, and in the parenthesis below that sub-paragraph after “this rule” insert “and contains provisions about when a costs order is deemed to have been made and applying for an order under section 194(3) of the Legal Services Act 2007”.

In para.(6)(b) and in para.(7) of r.3.7, for “shall” substitute “will”.

PART 7—HOW TO START PROCEEDINGS—THE CLAIM FORM

Para.7.2, p.245

In r.7.2, after the fourth parenthesis below para.(2) insert:

“(Part 78 provides procedures for European orders for payment and for the European small claims procedure.)”

Paras 7.4 and 7.5, pp.248 and 249

In r.7.4(3), for “he” substitute “the claimant”; and omit “together with a certificate of service”; and omit the parenthesis “(Rule 6.10 makes provision for a certificate of service).” below r.7.4(3).

For r.7.5 substitute the following new rule. (This change is not really consequential upon the new Pt 6, but is an integral part of the new scheme for service of claim forms.)

“Service of a claim form

7.5.—(1) Where the claim form is served within the jurisdiction, the claimant must complete the step required by the following table in relation to the particular method of service chosen, before 12.00 midnight on the calendar day four months after the date of issue of the claim form.

Method of service	Step required
First class post, document exchange or other service which provides for delivery on the next business day	Posting, leaving with, delivering to or collection by the relevant service provider
Delivery of the document to or leaving it at the relevant place	Delivering to or leaving the document at the relevant place
Personal service under rule 6.5	Completing the relevant step required by rule 6.5(3)
Fax	Completing the transmission of the fax
Other electronic method	Sending the e-mail or other electronic transmission

(2) Where the claim form is to be served out of the jurisdiction, the claim form must be served in accordance with Sect. IV of Pt 6 within six months of the date of issue.

Para.7.6, p.250

For r.7.6, substitute:

“Extension of time for serving a claim form

7.6.—(1) The claimant may apply for an order extending the period for compliance with rule 7.5.

(2) The general rule is that an application to extend the time for compliance with rule 7.5 must be made—

- (a) within the period specified by rule 7.5; or
- (b) where an order has been made under this rule, within the period for service specified by that order.

(3) If the claimant applies for an order to extend the time for compliance after the end of the period specified by rule 7.5 or by an order made under this rule, the court may make such an order only if—

- (a) the court has failed to serve the claim form; or
- (b) the claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so; and
- (c) in either case, the claimant has acted promptly in making the application.

(4) An application for an order extending the time for compliance with rule 7.5—

- (a) must be supported by evidence; and
- (b) may be made without notice."

PART 8—ALTERNATIVE PROCEDURE FOR CLAIMS

Para.8.1, p.283

In r.8.1, after the parenthesis below para.(6) insert:

"(Part 78 provides procedures for European orders for payment and for the European small claims procedure.)"

PART 10—ACKNOWLEDGMENT OF SERVICE

Para.10.3, p.311

In para.(a) of r.10.3(2), for "6.22" substitute "6.35", and after "jurisdiction" insert "under rule 6.32 or 6.33".

In para.(b) of r.10.3(2), for "6.16(4)" substitute "6.12(3)".

In para.(c) of r.10.3(2), for "6.21(4)" substitute "6.37(5)", and for "Practice Direction 6B" substitute "Practice Direction B supplementing Part 6".

Para.10.5, p.312

In r.10.5(a), for "his" substitute "the defendant's", and in the first parenthesis below rule 10.5(b), for "6.5" substitute "6.23", and for "jurisdiction" substitute "United Kingdom".

PART 12—DEFAULT JUDGMENT

Para.12.3, p.322

For the second parenthesis below r.12.3(3)(c)(ii) substitute:

"(Rule 6.17 provides that, where the claim form is served by the claimant, the claimant may not obtain default judgment unless a certificate of service has been filed.)"

For the third parenthesis below rule 12.3(3)(c)(ii) substitute:

"(Article 19(1) of the Service Regulation (which has the same meaning as in rule 6.31(e)) applies in relation to judgment in default where the claim form is served in accordance with that Regulation.)"

Para.12.4, p.324

In r.2.4(4), for "rule 6.5(8)" substitute "rule 6.10".

Para.12.10, p.329

In r.12.10, at the beginning of paragraph (b) for "he" substitute "the claimant";

In para.(b)(i) of r.12.10. for "6.19(1) or (1A)" substitute "6.32(1), 6.33(1) or 6.33(2)", and for "service without leave" substitute "service where permission of the court is not required"; and

In para.(b)(ii) of r.12.10, for "Regulation State" substitute "Member State".

Para.12.11, pp.330 and 331

In r.12.11(4)(a), for "6.19(1) or 6.19(1A)" substitute "6.32(1), 6.33(1) or 6.33(2)".

In r.12.11(6), in sub-para.(a)(ii), for "Regulation State" substitute "Member State", and in sub-para.(d), after ";" insert "and".

In r.12.11(6), in sub-para.(e), for ";" and" substitute "."; and omit sub-paragraph (f).

PART 13—SETTING ASIDE OR VARYING A DEFAULT JUDGMENT

Para.13.3, p.338

In r.13.3, for the second parenthesis below para.(2) substitute:

"(Article 19(4) of the Service Regulation (which has the same meaning as in rule 6.31(e)) applies to applications to appeal a judgment in default when the time limit for appealing has expired.)"

PART 14—ADMISSIONS*Para.14.2, p.347*

In para.(a) of r.14.2(2), for “6.22” substitute “6.35”, and after “jurisdiction” insert “under rule 6.32 or 6.33”; and in para.(b) of r.14.2(2), for “6.16(4)” substitute “6.12(3)”.

PART 15—DEFENCE AND REPLY*Para.15.4, pp.364 and 365*

In para.(a) of r.15.4(2), for “6.23” substitute “6.35”, and after “jurisdiction” insert “under rule 6.32 or 6.33”.

In para.(b) of r.15.4(2), for “he” substitute “the defendant”.

In para.(d) of r.15.4(2), for “6.16(4)” substitute “6.12(3)”.

PART 16—STATEMENTS OF CASE*Para.16.5, p.381*

In para.(8) of r.16.5, Part 16, for “he” substitute “the defendant”; and in the second parenthesis below that paragraph, for “6.5” substitute “6.23”, and for “jurisdiction” substitute “United Kingdom”.

PART 20—COUNTERCLAIMS AND OTHER ADDITIONAL CLAIMS*Para.20.13, p.477*

For the parenthesis below r.20.13(2) substitute:

“(Part 66 contains provisions about counterclaims and other Part 20 claims in relation to proceedings by or against the Crown.)”

PART 21—CHILDREN AND PROTECTED PARTIES*Para.21.1, p.484*

In the first parenthesis below r.21.1(2)(e), for “Rule 6.6 contains” substitute “Rules 6.13 and 6.25 contain”.

Para.21.5, p.487

In para.(a) r.21.5(4), for “6.6” substitute “6.13”; and in para.(b), for “he files” substitute “filing”.

In the parenthesis below r.21.5(4)(b), for “Rule 6.10 sets” substitute “Rules 6.17 and 6.29 set”.

Para.21.8, 491

In r.21.8(1), for “6.6” substitute “6.13”.

PART 26—CASE MANAGEMENT—PRELIMINARY STAGE*Para.26.3, p.649*

In the second parenthesis below r.26.3(7), for “Rule 6.7 specifies” substitute “Rules 6.14 and 6.26 specify”.

PART 36—OFFERS TO SETTLE

Amendments are made to this Part principally for the purpose of providing for the recovery of lump sum payments under the Social Security (Recovery of Benefits) Act 1997 as modified. Note also changes to Practice Direction—Judgments and Orders (40BPD) (see below).

Para.36.0.1, p.963

In the Contents table, for “Deduction of benefits” in the title for r.36.15, substitute “Deduction of benefits and lump sum payments”.

Para.36.9, p.972

In para.(3)(b) of r.36.9, for “benefits” substitute “amounts”.

For the second parenthesis below para.(3)(d) of r.36.9, substitute:

“(Rule 36.15 defines “deductible amounts”).”

Para.36.10, pp.972 and 973

In paras (1) and (2) of r.36.10, for “his” substitute “the” in both places.

Below the parenthesis following para.(3) of r.36.10, insert:

“(Rule 44.12 contains provisions about when a costs order is deemed to have been made and applying for an order under section 194(3) of the Legal Services Act 2007.)”

In para.(5)(a) of r.36.10, for “his” substitute “the”.

Para.36.15, pp.978 and 979

In r.36.15, for the heading to the r.36.15 and for paras (1), (2) and (3) of the rule, substitute:

“Deduction of benefits and lump sum payments

36.15.—(1) In this rule and rule 36.9—

- (a) “the 1997 Act” means the Social Security (Recovery of Benefits) Act 1997;
- (b) “the 2008 Regulations” means the Social Security (Recovery of Benefits)(Lump Sum Payments) Regulations 2008;
- (c) “recoverable amount” means—

- (i) “recoverable benefits” as defined in section 1(4)(c) of the 1997 Act; and
 - (ii) “recoverable lump sum payments” as defined in regulation 4 of the 2008 Regulations;
- (d) “deductible amount” means—
- (i) any benefits by the amount of which damages are to be reduced in accordance with section 8 of, and Schedule 2 to the 1997 Act (“deductible benefits”); and
 - (ii) any lump sum payment by the amount of which damages are to be reduced in accordance with regulation 12 of the 2008 Regulations (“deductible lump sum payments”); and
- (e) “certificate”—
- (i) in relation to recoverable benefits is construed in accordance with the provisions of the 1997 Act; and
 - (ii) in relation to recoverable lump sum payments has the meaning given in section 29 of the 1997 Act as applied by regulation 2 of, and modified by Schedule 1 to the 2008 Regulations.

(2) This rule applies where a payment to a claimant following acceptance of a Part 36 offer would be a compensation payment as defined in section 1(4)(b) or 1A(5)(b) of the 1997 Act.”

(3) A defendant who makes a Part 36 offer should state either—

- (a) that the offer is made without regard to any liability for recoverable amounts; or
- (b) that it is intended to include any deductible amounts.”

In para.(6)(c) of r.36.15, for “after deduction of the amount of benefit” substitute “of compensation”.

For para (7) of r.36.15, substitute:

“(7) If at the time the offeror makes the Part 36 offer, the offeror has applied for, but has not received a certificate, the offeror must clarify the offer by stating the matters referred to in paragraphs (6)(b) and (6)(c) not more than 7 days after receipt of the certificate.”

In para.(8) of r.36.15, for “he” substitute “the claimant”, and for “benefits” substitute “amounts”.

For the parenthesis following para.(8) of r.36.15, substitute:

“(Section 15(2) of the 1997 Act provides that the court must specify the compensation payment attributable to each head of damage. Schedule 1 to the 2008 Regulations modifies section 15 of the 1997 Act in relation to lump sum payments and provides that the court must specify the compensation payment attributable to each or any dependant who has received a lump sum payment.)”

In para.(9) of r.36.15, and in the parenthesis following, in each place where it appears, for “benefits” substitute “amounts”.

PART 38—DISCONTINUANCE

Para.38.6, p.996

In para.(1) of r.38.6, for “he” substitute “the claimant”; and for “him” substitute “the defendant”.

In the parenthesis below para.(3) of r.38.6, after “where” insert “the”; and after “discontinuance” insert “and contains provisions about when a costs order is deemed to have been made and applying for an order under section 194(3) of the Legal Services Act 2007”.

Para.38.8, pp.997 and 998

For para.(1)(b) of r.38.8, substitute—

“(b) a claimant is liable to—

- (i) pay costs under rule 38.6; or
- (ii) make a payment pursuant to an order under section 194(3) of the Legal Services Act 2007; and”.

In para.(1)(c) of r.38.8, after “those costs” insert “or make the payment”; and in sub-para.(ii) of para.(1)(c), after “to be paid” insert “or the payment to be made”.

In para.(2) of r.38.8, for “he” substitute “the claimant”; and after “rule 38.6” insert “or makes the payment pursuant to an order under section 194(3) of the Legal Services Act 2007”.

Below para.(2) of r.38.8, insert:

“(Rules 44.3C and 44.12 contain provisions about applying for an order under section 194(3) of the Legal Services Act 2007.)”

PART 40—JUDGMENTS, ORDERS, SALE OF LAND, ETC.

Para.40.4, p.1035

For the parenthesis below para.(2)(b) of r.40.4, substitute:

“(Rule 6.21 sets out who is to serve a document other than the claim form.)”

PART 42—CHANGE OF SOLICITOR

Para.42.2, p.1092

For the parenthesis below r.40.4(2)(b) substitute:

“(Rule 6.21 sets out who is to serve a document other than the claim form.”

PART 43—SCOPE OF COSTS RULES AND DEFINITIONS

Para.43.2, pp.1100 and 1101

In sub-para.(e) of r.43.2(1), for “his” substitute “that”;

In sub-para.(k)(iii) of rr. 43.2(1), for “his” substitute “that person’s”;

In sub-para.(n) of rr. 43.2(1) omit “and”;

In sub-para.(o) of rr. 43.2(1) for “.” substitute “;”;

After sub-para.(o) of rr.43.2(1) insert

“(p) “free of charge” has the same meaning as in section 194(10) of the Legal Services Act 2007;

(q) “pro bono representation” means legal representation provided free of charge; and (r) “the prescribed charity” has the same meaning as in section 194(8) of the Legal Services Act 2007.”

PART 44—GENERAL RULES ABOUT COSTS

Para.44.0.1, p.1118

In the Contents table, after r.44.3B, insert:

“44.3C Orders in respect of pro bono representation”.

Para.44.1, p.1118

In r.44.1, for “costs and entitlement to costs” substitute “costs, entitlement to costs and orders in respect of pro bono representation”.

Para.44.3B.2, p.1142

After this commentary paragraph, insert new r.44.3C as set out below. This rule provides for applications for orders in respect of pro bono applications. Related amendments are made to rr.3.7, 36.10, 38.8, 43.2, 44.1, 44.12, 44.13, 47.5, 47.11, 47.12, 47.15, 47.16 and 47.18.

“Orders in respect of pro bono representation

44.3C—(1) In this rule, “the 2007 Act” means the Legal Services Act 2007.

(2) Where the court makes an order under section 194(3) of the 2007 Act—

- (a) the court may order the payment to the prescribed charity of a sum no greater than the costs specified in Part 45 to which the party with pro bono representation would have been entitled in accordance with that Part and in respect of that representation had it not been provided free of charge; or

(b) where Part 45 does not apply, the court may

determine the amount of the payment (other than a sum equivalent to fixed costs) to be made by the paying party to the prescribed charity by—

- (i) making a summary assessment; or
(ii) making an order for detailed assessment,

of a sum equivalent to all or part of the costs the paying party would have been ordered to pay to the party with pro bono representation in respect of that representation had it not been provided free of charge.

(3) Where the court makes an order under section 194(3) of the 2007 Act, the order must specify that the payment by the paying party must be made to the prescribed charity.

(4) The receiving party must send a copy of the order to the prescribed charity within 7 days of receipt of the order.

(5) Where the court considers making or makes an order under section 194(3) of the 2007 Act, Parts 43 to 48 apply, where appropriate, with the following modifications—

- (a) references to “costs orders”, “orders about costs” or “orders for the payment of costs” are to be read, unless otherwise stated, as if they refer to an order under section 194(3);
- (b) references to “costs” are to be read, as if they referred to a sum equivalent to the costs that would have been claimed by, incurred by or awarded to the party with pro bono representation in respect of that representation had it not been provided free of charge; and
- (c) references to “receiving party” are to be read, as meaning a party who has pro bono representation and who would have been entitled to be paid costs in respect of that representation had it not been provided free of charge.”

Para.44.12, p.1158

After para.(1) of r.44.12, insert:

“(1A) Where such an order is deemed to be made in favour of a party with pro bono representation, that party may apply for an order under section 194(3) of the Legal Services Act 2007.”

Para.44.13, p.1162

For para.(a) of r.44.13(1), substitute:

“(a) subject to paragraphs (1A) and (1B), the general rule is that no party is entitled—

- (i) to costs; or
(ii) to seek an order under section 194(3) of the Legal Services Act 2007,

in relation to that order; but”.

In para.(b) of r.44.13(1), for “him” substitute “that party”.

Para.45.5, p.1201

In Table 4 below r.45.5, in the text of the second entry after “method” insert “or at an alternative place”, and for “rule 6.8” substitute “rule 6.15”.

PART 47—PROCEDURE OR DETAILED ASSESSMENT OF COSTS

Para.47.5, p.1232

For r.47.5, substitute:

“Application of this Section

47.5 This Section of Part 47 applies where a cost officer is to make a detailed assessment of—

- (a) costs which are payable by one party to another; or
- (b) the sum which is payable by one party to the prescribed charity pursuant to an order under section 194(3) of the Legal Services Act 2007.”

Para.47.11, p.1237

In para.(1) of r.47.11, for “he” substitute “that party”.

In para.(3) of r.47.11, for “him” substitute “that party”, and for “shall” substitute “will”.

After para.(3) of r.47.11, insert:

“(4) A receiving party who obtains a default costs certificate in detailed assessment proceedings pursuant to an order under section 194(3) of the Legal Services Act 2007 must send a copy of the default costs certificate to the prescribed charity.”

Para.47.12, p.1238

After the parenthesis below para.(4) of r.47.12, insert further paragraph:

“(5) Where the court sets aside or varies a default costs certificate in detailed assessment proceedings pursuant to an order under section 194(3) of the Legal Services Act 2007, the receiving party must send a copy of the order setting aside or varying the default costs certificate to the prescribed charity.”

Para.47.15, p.1246

After para.(3) of r.47.15, insert:

“(4) Where the court—

- (a) issues an interim costs certificate; or

(b) a mends or cancels an interim certificate,

in detailed assessment proceedings pursuant to an order under section 194(3) of the Legal Services Act 2007, the receiving party must send a copy of the interim costs certificate or the order amending or cancelling the interim costs certificate to the prescribed charity.”

Para.47.16, p.1247

After the parenthesis below para.(5) of r.47.16, insert further paragraph:

“(6) Where the court issues a final costs certificate in detailed assessment proceedings pursuant to an order under section 194(3) of the Legal Services Act 2007, the receiving party must send a copy of the final costs certificate to the prescribed charity.”

Para.47.18, p.1249

In para.(1) of r.47.18, for “his” substitute “the”

After para.(1) of r.47.18, insert:

“(1A) Paragraph (1) does not apply where the receiving party has pro bono representation in the detailed assessment proceedings but that party may apply for an order in respect of that representation under section 194(3) of the Legal Services Act 2007.”

PART 52—APPEALS

Para.52.3, p.1392

In 2006, para.(4A) was inserted in r.52.3. It is now amended by deleting the final sentence and the parenthesis immediately following. The effect is to enable the Court of Appeal, where it refuses permission to appeal without a hearing in family proceedings (as defined by section 32 of the Matrimonial and Family Proceedings Act 1984), to order, if it considers that application to be totally without merit, that the person seeking permission may not request the decision to be reconsidered at a hearing. These amendments to para. (4A) do not apply to proceedings where the notice of appeal was filed before October 1, 2008 and r.52.3 in force immediately before that date will continue to apply to those proceedings as if that rule had not been amended. These amendments are anticipated in para. (4A) as printed in White Book 2008 in the paragraph referred to above, so no changes to that text as it appears there are now required.

PART 54—JUDICIAL REVIEW AND STATUTORY REVIEW

Para.54.28B, p.1559

In para.(1) of r.54.28B, for “rules 6.4(2) and 6.5(5)” substitute “rules 6.7 and 6.23(2)(a)”; and

In para.(2)(a) of r.54.28B, for “his” substitute “the appellant’s”;

In para.(2) (b) of r.54.28B, for “his address” substitute “the appellant’s address”; and for “working” substitute “business”.

At the end of para.(2) of r.54.28B, for “his representative” substitute “the appellant’s representative”.

PART 55—POSSESSION CLAIMS

Para.55.8, p.1584

In para.(6) of r.55.8, for “he” substitute “the claimant”, and for “6.14(2)(a)” substitute “6.17(2)(a)”.

Para.55.23, p.1595

In para.(3) of r.55.23(3), for “6.14(2)(a)” substitute “6.17(2)(a)”.

PART 56—LANDLORD AND TENANT CLAIMS ETC.

Part 56 is amended to provide for applications under the Housing Act 2004 s.214 (tenancy deposit schemes).

Para.56.1, p.1617

In para.(d) of r.56.1(1), omit “or”, and in para.(e), for “.” substitute “; or”.

After para.(e) of r.56.1(1) insert:

“(f) section 214 of the Housing Act 2004.”

Para.56.2, p.1618

In r.56.2(2), for “The claim” substitute “Unless an enactment provides otherwise, the claim”, and for “his” substitute “the”.

Para.56.3, p.1619

In r.56.3, in para.(3)(a)(ii) after “;” insert “and”, and omit paragraph (3)(b);

For para.(4) of r.56.3, substitute:

“(4) Where the claim is an opposed claim the claimant must use the Part 7 procedure.”

PART 57—PROBATE AND INHERITANCE

Para.57.4, p.1643

In para.(3) of r.57.4(3), for “6.19” substitute “6.32 or 6.33”, and for “6.22” substitute “6.35”, and for “the practice direction supplementing Section 3 of Part 6” substitute “Practice Direction B supplementing Part 6”.

Para.57.16, p.1648

In para.(4A) of r.57.16(4A), for “6.19” substitute “6.32 or 6.33”, and for “6.22” substitute “6.35”, and for “the practice direction supplementing Section III of Part 6” substitute “Practice Direction B supplementing Part 6”.

PART 58—COMMERCIAL COURT

Vol.2, para.2A-11, p.295

In para.(3) of r.58.6(3), for “rules 6.16(4), 6.21(4) and 6.22” substitute “rules 6.12(3), 6.35 and 6.37(5)”.

Vol. 2, para.2A-15, p.296

In para.(2) of r.58.10, for “Rule 6.23 (period” substitute “Rule 6.35 (in relation to the period”.

PART 59—MERCANTILE COURTS

Vol. 2, para.2B-9, p.393

In para.(3) of r.59.5(3), for “rules 6.16(4), 6.21(4) and 6.22” substitute “rules 6.12(3), 6.35 and 6.37(5)”.

Vol. 2, para.2B-12, p.394

In para.(2) of r.59.9, for “Rule 6.23 (period” substitute “Rule 6.35 (in relation to the period”.

PART 61—ADMIRALTY CLAIMS

Vol.2, para.2D-29, p.481

In para.(b) of r.61.4(7), for “Section III” substitute “Section IV”.

Vol.2, para.2D-73, pp.495 and 496

In para.(5) of r.61.11, for “Section III” substitute “Section IV”.

In para.(7) of r.61.11, in sub-para.(a)(ii), for “he” substitute “the defendant”, and in sub-para.(b), for “he” substitute “the defendant”.

At the end of para.(7) of r.61.11, for “6.22” substitute “6.35”.

PART 62—ARBITRATION CLAIMS

Vol. 2, para.2E-12, p.555

In r.62.5(3), for “6.24 to 6.29” substitute “6.40 to 6.46”.

Vol. 2, para.2E-33, p.562

In r.62.16(4), for “6.24 to 6.29” substitute “6.40 to 6.46”.

Vol. 2, para.2E-38, p.564

In r.62.18(8)(b), for “6.24 to 6.29” substitute “6.40 to 6.46”.

Vol. 2, para.2E-42, p.566

In r.62.20(1)(a), for “United Kingdom Overseas Territory (within the meaning of rule 6.18(f))” substitute “British overseas territory”.

PART 63—INTELLECTUAL PROPERTY CLAIMS

Vol.2, para.2F-85, p.645

In para.(a) of r.63.16(2), for “Patent” substitute “Intellectual Property”, and for “jurisdiction” substitute “United Kingdom”.

In para.(b) of r.63.16(2), for “6.19(1) or (1A)” substitute “6.32(1), 6.33(1) or 6.33(2)”.

In para.(b)(i) of r.68.16(2), for “Patent” substitute “Intellectual Property”.

PART 65—ANTI-SOCIAL BEHAVIOUR AND HARASSMENT

Part 65 is amended for the purpose of removing the provisions relating to drinking banning orders as the relevant provisions of the Violent Crime Reduction Act 2006 have not been implemented.

Para.65.0.1, p.1674

In the Contents table of for Pt 65, omit the entry “VI Drinking Banning Orders under the Violent Crime Reduction Act 2006”, and the entries relating to rr.65.31 to 65.36.

Para.65.1, p.1675

In r.65.1, in para.(e) after “Protection from Harassment Act 1997;” insert “and”; and omit para.(f).

Para.65.18, p.1687

In para.(5) of r.65.18(5), for “he” substitute “the claimant”, and for “6.14(2)(a)” substitute “6.17(2)(a)”.

Paras. 65.31 to 65.36.2, pp.1694 to 1698

Omit Sect.VI of Pt 65 (rr.65.31 to 65.36).

PART 74—ENFORCEMENT IN DIFFERENT JURISDICTIONS

Para.74.6, p.1810

In para.(1)(a) of r.74.6, for “him” substitute “the judgment debtor”.

For para.(1)(b) of r.74.6, substitute:

“(b) as provided by—

- (i) section 725 of the Companies Act 1985; or
- (ii) the Companies Act 2006; or”.

In para.(2) of r.74.6, for “6.24, 6.25, 6.26 and 6.29” substitute “6.40, 6.42, 6.43 and 6.46”.

Para.74.31, p.1837

For r.74.31(2) and the two parentheses below that rule substitute—

“(2) Where a person applies to enforce an EEO expressed in a foreign currency, the application must contain a certificate of the sterling equivalent of the judgement sum at the close of business on the date nearest preceding the date of the application.

(Part 70 contains further rules about enforcement.)”

Para.74.32, p.1838

In para.(2)(a) of r.74.32, after “order” insert “(“the affected persons”)”.

In para.(2)(b) of r.74.32, after “Wales” insert “(“the relevant courts”)”; and

For para.(3) of r.74.32, substitute:

“(3) Upon service of the order on the affected persons, all enforcement proceedings under the EEO in the relevant courts will cease.”

Para.74.33, p.1838

In r.74.33, for the heading to the rule substitute “Stay of or limitation on enforcement”, and in para.(1), omit “by application”.

PART 78—EUROPEAN ORDER FOR PAYMENT AND EUROPEAN SMALL CLAIMS PROCEDURES

Para.77PD.1, p.1875

A new Part, Pt 78 is inserted in the CPR after Pt 77. Section I of Pt 78 contains rules about European orders for payment made under Reg.(EC) No 1896/2006 of the European Parliament and of the Council of December 12, 2006 creating a European order for payment procedure. Section II of Pt 78 contains rules about the European small claims procedure under Reg.(EC) No 861/2007 of the European Parliament and of the Council of July 11, 2007 establishing a European small claims procedure. Consequential amendments are made to rr.7.2, 8.1, 74.31, 74.32 and 74.33. As Pt 78 and the practice direction supplementing it do not come into effect until dates in December 2008, and January 2009, they are not included in this CPR Update.

SCHEDULE 1

RSC Ord.115

Para.sc115.17, pp.2014 and 2015

In para.(1) of r.17, for “delivering it to him” substitute “delivering it to that person” and “to him at his” substitute “to that person’s”.

In para.(2) of r.17, for “6.24, 6.25 and 6.29” substitute “6.40, 6.42 and 6.46”.

Para.sc115.33, p.2023

In para.(2) of r.33, for “6.24, 6.25 and 6.29” substitute “6.40, 6.42 and 6.46”.

SCHEDULE 2

CCR Ord.27

Para.cc27.5, p.2064

In r.5(1), for “6.2” substitute “6.20”.

Para.cc27.5, p.2070

In r.17(3A), for “6.2” substitute “6.20”.

NEW CPR PRACTICE DIRECTIONS

As has been explained elsewhere, the new CPR Pt 6 (Service of Documents) is supplemented by two new practice directions, Practice Direction A (Service Within the UK), and Practice Direction B (Service Out of the Jurisdiction). Those practice directions are published in TSO CPR Update 47 and will be included in the White Book special supplement on Pt 6 (due to be published shortly).

A new practice direction made under CPR r.51.2, and entitled Practice Direction (Automatic Orders Pilot Scheme), was published in TSO CPR Update 47. Initially, this scheme operates from October 1, 2008 to September 30, 2009, in the county courts at Chelmsford, Newcastle, Teeside, Watford and York. The scheme provides that a party's claim, defence or counterclaim is automatically struck out if that party fails to file an allocation questionnaire or pre-trial checklist following notification by the court to do so. An automatic stay of one month will be granted if all the parties make such a request. The procedures set forth in the scheme affect the operation of various provisions in CPR Pt 26 (Case Management—Preliminary Stage) and Pt 28 (The Fast Track). They are modified accordingly by the practice direction. This practice direction will be included in Supplement 2 of *The White Book 2008*.

Part 78 (European Order for Payment and European Small Claims Procedures) was inserted in the CPR by the Civil

Procedure (Amendment) Rules 2008 (SI 2008/2178). This new CPR Part does not come into effect until December 12, 2008, and January 1, 2009. A practice direction supplementing the Part was published in TSO CPR Update 47. It will be included in Supplement 2 of *The White Book 2008*.

AMENDMENTS TO CPR PRACTICE DIRECTIONS

Numerous amendments to existing CPR practice direction are made by TSO CPR Update 47. These changes come into effect on October 1, 2008. Most of the amendments are a consequence of the new Pt 6 (Service of Documents). And a number of them reflect the policy of rendering the terms of CPR provisions general neutral as and when opportunities to do so present themselves.

In what follows, the practice directions that have been amended are listed and the textual changes are set out. Paragraph and page references are to *The White Book 2008*.

Where the reasons for the changes are other than as results of the new Pt 6, a brief explanation is given.

Practice Direction—Allocation of Cases to Levels of Judiciary (2BPD)*Para.2BPD.8, p.46*

Amended to remove redundant provisions following the delayed implementation of Drinking Banning Orders provisions under the Violent Crime Reduction Act 2006.

In para.8.1A:

- (a) in sub-para.(1), after “(anti-social behaviour);” insert “and”;
- (b) in sub-para.(2), for “(parenting orders); and” substitute “(parenting orders).”; and
- (c) omit sub-para.(3).

Practice Direction—Mesothelioma Claims (3DPD)*Paras 3DPD.2 and 3DPD.6, pp.103 and 106*

Amended to provide a standard interim payment in mesothelioma cases.

In para.2, in the definition of “standard interim payment”, for “set amounts for” substitute “payment in respect of”, and after “Head of Civil Justice.” insert “The amount of this payment is currently £50,000.”

In para.6.7, after “and” insert “will normally order that”, and after “payment” omit “to”.

Practice Direction—Electronic Communication and Filing of Documents (5BPD)

Para.5BPD.3, p.142

In para.3.3A omit “he is”.

For the second parenthesis below paragraph 3.3A substitute:

“(Rules 6.3(1)(d) and 6.20(1)(d) permit service by e-mail in accordance with the relevant practice direction. Rule 6.23(6) and paragraph 4 of Practice Direction A supplementing Part 6 set out the circumstances in which a party may serve a document by e-mail.)”

Practice Direction—How to Start Proceedings—The Claim Form (7PD)

Paras 7PD.3 and 7PD.6, pp.259, 260 and 262

For para.3.5 substitute:

“3.5 Where a claim form to be served out of the jurisdiction is one which the court has power to deal with—

- (a) under the Civil Jurisdiction and Judgments Act 1982; and
- (b) the Judgments Regulation (which has the same meaning as in rule 6.31(d)),

the claim form must, pursuant to rule 6.34, be filed and served with the notice referred to in that rule and paragraph 2.1 of Practice Direction B supplementing Part 6.”

Omit para.3.5A.

In para.6.1(2), for the footnote to “claim form” substitute the footnote “See rules 7.4(2) and 7.5(1).”, and for the footnote to “jurisdiction” substitute the footnote “See rule 7.5(2).”

Practice Direction—Consumer Credit Act 2006—Unfair Relationships (7BPD)

Paras 7BPD.4, 7BPD.7, pp.266 to 268

Amended to reflect implementation of s.16 of the Consumer Credit Act 2006 to provide for service of a notice of arrears and for notice to be given to the creditor/owner of a party’s intention to apply for a time order and their proposals for payment. The time or applying for a time order is also amended.

In para.4.3, after “section 129(1)(b)” insert “or 129(1)(ba)”.

In para.7.3, after “section 129(1)(b)” insert “or 129(1)(ba)”; and for “his particulars” substitute “the particulars”.

After para.7.3 insert:

“7.3A A claimant who is a debtor or hirer making a claim for an order under section 129(1)(ba) of the Act must attach to the particulars of claim a copy of the notice served on the creditor or owner under section 129A(1)(a) of the Act.”

Practice Direction—Production Centre (7CPD)

Para.7CPD.1, p.272

In para.1.4(3), for “Rule 6.3(3)” substitute “Rules 6.4(3) and 6.21(4)”, and for “does” substitute “do”.

Practice Direction—Alternative Procedure for Claims (8PD)

Para.8PD.20, p.303

In the parenthesis below para.20.5, after “method” insert “or at an alternative place”.

Practice Direction—Acknowledgment of Service (10PD)

Paras 10PD.3 and 10PD.5, pp.314 and 315

In para.3.1, for “his” substitute “the”, and for the footnote to “documents” substitute the footnote “See rule 6.23”.

In para.3.2, for “rule 6.5 and the practice direction which supplements Part 6” substitute “rule 6.23”.

For the parenthesis below para.5.5 substitute:

“Paragraph 8.2 of Practice Direction A supplementing Part 6 contains provisions about service by the court on the claimant of any notice of funding filed with an acknowledgment of service.”

Practice Direction—Default Judgment (12PD)

Para.12PD.4, p.333

In para.4.3(2) for “Regulation State” substitute “Member State”.

Practice Direction—Defence and Reply

Para.15PD.3, p.371

For the parenthesis below para.3.4 substitute:

“(Paragraph 8.2 of Practice Direction A supplementing Part 6 contains provisions about service by the court on the claimant of any notice of funding filed with a defence.”

Practice Direction—Statements of Case (16PD)

Paragraphs 16PD.2 and 16PD.3, pp.386 and 387

Omit the first parenthesis below para.2.6(e).

In para.3.2(2), for the footnote to “claim form” substitute the

footnote "See rules 7.4(2) and 7.5(1).", and for the footnote to "jurisdiction" substitute the footnote "See rule 7.5(2)."

Practice Direction—Further Information (18PD)

Para.18PD.1, p.415

In para.1.7. after "the provisions of" insert "rule 6.23(5) and (6) and", and for "paragraph 3.1 to 3.3 of the Practice Direction to Part 6" substitute "paragraphs 4.1 to 4.3 of Practice Direction A supplementing Part 6".

Practice Direction—Statements of Truth (22PD)

Para.22PFD.3, p.519

In para.3.4, for the footnote to "senior position" substitute the footnote "Paragraph 6.2 of Practice Direction A supplementing Part 6 sets out the meaning of "senior position".", and for "he holds" substitute "held".

Practice Direction—Interim Payments (25BPD)

Para.25BPD.4, p.645

Follows upon amendments to other provisions, themselves being the consequences of provisions allowing for the recovery of lump sum payment compensation payment claims under the Social Security (Recovery of Benefits) Act 1997 as modified by the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008.

For para.4.1 substitute:

"4.1 Where in a claim for personal injuries there is an application for an interim payment of damages—

- (1) which is other than by consent;
- (2) which either—
 - (i) falls under the heads of damage set out in column 1 of Schedule 2 to the Social Security (Recovery of Benefits) Act 1997 ("the 1997 Act") in respect of recoverable benefits received by the claimant set out in column 2 of that Schedule;
- or
- (ii) includes damages in respect of a disease for which a lump sum payment within the definition in section 1A(2) of the 1997 Act has been, or is likely to be made; and
- (3) where the defendant is liable to pay a recoverable amount (as defined in rule 36.15(1)(c)) to the Secretary of State, the defendant should obtain from the Secretary of State a certificate (as defined in rule 36.15(1)(e))."

In para.4.2, for "should" substitute "must".

For para.4.3 substitute:

"4.3 The order will set out the deductible amount (as defined in rule 36.15(1)(d))."

Practice Direction—Offers to Settle (36PD)

Para.36PD.3, p.981

For explanation, see comment on Practice Direction—Interim Payments, above.

In para.3.3(1). in sub-para.(b), for "benefits" substitute "amounts"; and in sub-para.(c), for "benefits" substitute "amounts".

In para.3.3(2), omit "of recoverable benefits".

Practice Direction—Judgments and Orders (40BPD)

Para.40BPD.5, p.1064

For explanation, see comment on Practice Direction—Interim Payments, above.

For para.5.1 substitute:

"5.1 In a final judgment where some or all of the damages awarded—

- (1) fall under the heads of damage set out in column 1 of Schedule 2 to the Social Security (Recovery of Benefits) Act 1997 ("the 1997 Act") in respect of recoverable benefits received by the claimant set out in column 2 of that Schedule; and
- (2) where the defendant has paid to the Secretary of State the recoverable benefits in accordance with the certificate (as defined in rule 36.15(1)(e)), there will be stated in the preamble to the judgment or order the amount awarded under each head of damage and the amount by which it has been reduced in accordance with section 8 of and Schedule 2 to the 1997 Act."

After para.5.1 insert:

"5.1A Where damages are awarded in a case where a lump sum payment (to be construed in accordance with section 1A of the 1997 Act) has been made to a dependant, then section 15 of the 1997 Act (as modified by Schedule 1 to the Social Security (Recovery of Benefits)(Lump Sum Payments) Regulations 2008 sets out what the court order must contain."

Practice Direction—Reserved Judgments (40EPD)

Para.40EPD.1, p.1071

This practice direction is re-issued in a revised form. The complete text of this practice direction is printed at the end of this section of CP News, together with an Editorial Note.

Practice Direction—Change of Solicitor (42PD)

Paras 42PD.1, 42PD.2 and 45PD.5, pp.1096 and 1098

In para.1.1, for the footnote to “business address” substitute the footnote “Rules 6.7 and 6.23 contain provisions about service on the business address of a solicitor.”, and for “his” substitute “that party’s”

In para.2.4, for “his” substitute “the”; and for “jurisdiction⁵” substitute “United Kingdom⁵” (with new footnote referring to r.6.23).

In para.5.1, for “with rule 6.5(2)” substitute “with rules 6.23(1) and 6.24”.

For the first parenthesis below para.5.1 substitute—

“(Rule 6.23 provides that a party must give an address for service within the United Kingdom.)”.

In the second parenthesis below para.5.1, for “6.5(6)” substitute “6.9”.

Practice Direction About Costs (43PD, 44PD and 47PD)

Various amendments are made to this practice direction. Some are a result of changes to Pt 6. Others follow from the insertion in the CPR (by the Civil Procedure (Amendment) Rules 2008) of new r.44.3C, in which provision is made for applications for cost orders in respect of pro bono representation under the Legal Services Act 2007 s.194.

Para.43PD.4, p.1109

In para.4.2, for “A division into parts will be necessary or convenient in the following circumstances” substitute “Circumstances in which it will be necessary or convenient to divide a bill into parts include”.

In sub-para.(1) of para.4.2, for “he” substitute “that party”; and for “should” substitute “must”.

After para.(1) of para.4.2, insert:

“(1A) Where the receiving party had pro bono representation for part of the proceedings and an order under section 194(3) of the Legal Services Act 2007 has been made, the bill must be divided into different parts so as to distinguish between:

- (a) the sum equivalent to the costs claimed for work done by the legal representative acting free of charge; and
- (b) the costs claimed for work done by the legal representative not acting free of charge.”

In sub-paras. (2), (3), (4), (5) and (6) of para.4.2, each time it occurs, for “should” substitute “must”.

Paras 43PD.5 and 43PD.6, p.1116

After para.5.20, insert:

“Payment pursuant to an order under section 194(3) of the Legal Services Act 2007

5.21 Where an order is made under section 194(3) of the Legal Services Act 2007 any bill presented for agreement or assessment pursuant to that order must not include a claim for VAT.”

For para.6.2 substitute:

“6.2(1) In this Section an “estimate of costs” means—

(a) an estimate of costs of—

- (i) base costs (including disbursements) already incurred; and
- (ii) base costs (including disbursements) to be incurred, which a party, if successful in the proceedings, intends to seek to recover from any other party under an order for costs; or

(b) in proceedings where the party has pro bono representation and intends, if successful in the proceedings, to seek an order under section 194(3) of the Legal Services Act 2007, an estimate of the sum equivalent to—

- (i) the base costs (including disbursements) that the party would have already incurred had the legal representation provided to that party not been free of charge; and
- (ii) the base costs (including disbursements) that the party would incur if the legal representation to be provided to that party were not free of charge.

(‘Base costs’ are defined in paragraph 2.2 of this Practice Direction.)

(2) A party who intends to recover an additional liability (defined in rule 43.2) need not reveal the amount of that liability in the estimate.”

Para.44PD.4, p.1171

After para.10.2 insert:

“Section 10A Orders in Respect of Pro Bono Representation: Rule 44.3C

10A.1 Rule 44.3C(2) sets out how the court may determine the amount of payment when making an order under section 194(3) of the Legal Services Act 2007. Paragraph 13.2 of this Practice Direction provides that the general rule is that the court will make a summary assessment of costs in the circumstances outlined in that paragraph unless there is good reason not to do so. This will apply to rule 44.3C(2)(b) with the modification that the summary assessment of the costs

is to be read as meaning the summary assessment of the sum equivalent to the costs that would have been claimed by the party with pro bono representation in respect of that representation had it not been provided free of charge.

10A.2 Where an order under section 194(3) of the Legal Services Act 2007 is sought, to assist the court in making a summary assessment of the amount payable to the prescribed charity, the party who has pro bono representation must prepare, file and serve in accordance with paragraph 13.5(2) a written statement of the sum equivalent to the costs that party would have claimed for that legal representation had it not been provided free of charge."

47PD.5 and 47PD.8, pp.1254 and 1259

In para.32.9(2), for "Part 6 Section III" substitute "Section IV of Part 6".

In para.35.4(2), for "Part 6 Section III" substitute "Section IV of Part 6".

Practice Direction—Appeals (52PD)

This practice direction is amended for various purposes; including to take account of changes to Part 6, to include Mold as an appeal centre and Caernarfon as a hearing only centre on the Wales Circuit, to remove, in the light of the new practice direction on reserved judgments (see 40EPD above), certain provisions dealing with that matter, and to regulate appeals to the county court against a decision by the Secretary of State to impose a penalty under the provisions of the UK Borders Act 2007.

Para.52PD.33, p.1450

In para.5.23, for "6.9" substitute "6.28".

Para.52PD.43, p.1455

In the table in para.8.2, in the box listing the Appeals Centres for the Wales Circuit, below "Swansea" insert "Mold"; and in the box listing the Hearing Only Centres for the Wales Circuit, insert "Caernarfon".

Paras 52PD.70 to 52PD.75, pp.1466 and 1567

For the heading above paragraph 15.12, substitute "Reserved Judgments".

For para.15.12 substitute:

"15.12 The Practice Direction supplementing Part 40 (Reserved Judgments) contains provisions relating to reserved judgments."

Omit paras 15.13 to 15.21.

Para.52PD.98, p.1473

In the table following para.20.3, in the section "Appeals to the County Court", after "Representation of the People Act 1983, s.56 24.4 to 14.6" insert:

"UK Borders Act 2007, s.11 24.7"

Para.52PD.135, p.1504

After para.24.6 insert:

"Appeals under section 11 of the UK Borders Act 2007

24.7(1) A person appealing to a county court under section 11 of the UK Borders Act 2007 ("the Act") against a decision by the Secretary of State to impose a penalty under section 9(1) of the Act, must, subject to paragraph (2), file the appellant's notice within 28 days after receiving the penalty notice.

(2) Where the appellant has given notice of objection to the Secretary of State under section 10 of the Act within the time prescribed for doing so, the appellant's notice must be filed within 28 days after receiving notice of the Secretary of State's decision in response to the notice of objection."

Practice Direction—Judicial Review (54PD)

Amended as a result of changes to Pt 6 and the coming into effect of the UK Borders Act 2007.

Para.54PD.6, p.1568

For para.6.2 substitute:

"6.2 Where the defendant or interested party to the claim for judicial review is—

- (a) the Asylum and Immigration Tribunal, the address for service of the claim form is the Asylum and Immigration Tribunal, Official Correspondence Unit, PO Box 6987, Leicester, LE1 6ZX or fax number 0116 249 4131;
- (b) the Crown, service of the claim form must be effected on the solicitor acting for the relevant government department as if the proceedings were civil proceedings as defined in the Crown Proceedings Act 1947.

(The practice direction supplementing Part 66 gives the list published under section 17 of the Crown Proceedings Act 1947 of the solicitors acting in civil proceedings (as defined in that Act) for the different government departments on whom service is to be effected, and of their addresses.)"

54PD.18, p.1570

In para.18.1(1)(a), for "Immigration and Nationality

Directorate" substitute "UK Border Agency".

In para.18.2, in sub-paragraph (1)(b)(ii), for "Immigration and Nationality

Directorate's" substitute "UK Border Agency's"; and in sub-paragraph (2), for "Immigration and Nationality Directorate" substitute "UK Border Agency".

In the parenthesis below para.18.2(2), for "6.5(8)" substitute "6.10"; and for "Immigration and Nationality Directorate" substitute "UK Border Agency".

Practice Direction—Commercial Court (58PD)

Vol.2, paras 2A-36 and 2A-37, p.305

In para.5 of the Appendix to this practice direction, for "he" substitute "that solicitor"; and in sub-para.(b), for "him" substitute "that person", and for "England and Wales" substitute "the United Kingdom, unless the court orders otherwise".

In para.(4)(b) of the section headed "Endorsement" in that Appendix, for "him" substitute "that person", and for "England and Wales" substitute "the United Kingdom, unless the court orders otherwise".

Practice Direction—Admiralty Claims (61PD)

Vol. 2, Para.2D-92, p.504

In para.3.6(7), for "6.8" substitute "6.15".

Practice Direction—Arbitration (62PD)

Vol. 2, Para.2E-50, p.569

In para.3.1, for "6.8" substitute "6.15", and for "him" substitute "that party".

In the parenthesis below para.3.2, for "6.10" substitute "6.17".

Practice Direction—Anti-Social Behaviour and Harassment (65PD)

Para.65PD.15, pp.1705 and 1706

Amended to remove redundant provisions following the delayed implementation of Drinking Banning Orders provisions under the Violent Crime Reduction Act 2006.

Omit Section VI (paras 15.1 and 15.2).

Practice Direction—Crown Proceedings (66PD)

Para.66PD.2, p.1711

In para.2.1, for "6.5(8)" substitute "6.10 or 6.23(7)".

Practice Direction—Enforcement of Judgments and Orders (70PD)

Para.70PD.6A, p.1749

In para.6A.3, for "he" substitute "that partner or member", and in sub-para.(3), for "Section III" substitute "Section IV".

Practice Direction—Orders to Obtain Information from Judgment Debtors (71PD)

Para.71PD.3, p.1757

For para.3 substitute:

"Service of order to attend court—rule 71.3

3. Service of an order to attend court for questioning may be carried out by—

- (a) the judgment creditor (or someone acting on the judgment creditor's behalf);
- (b) a High Court enforcement officer; or
- (c) a county court bailiff."

Practice Direction—European Enforcement Orders (74BPD)

Amended to ensure that provisions contained in this practice direction are consistent with those in the new Pt 78 (European order for payment and European small claims procedures). (Provisions in Part 78 do not come into effect until December 12, 2008, and January 1, 2009.)

Para.74BPD, p.1844

In para.5.2, for "courts of the member state" substitute "court".

For the first sentence in para.5.3, substitute:

"If judgment is set aside in the court of origin, the judgment creditor must notify all courts in which enforcement proceedings are pending in England and Wales under the EEO as soon as reasonably practicable after the order is served on the judgment creditor."

Para.74BPD.6, p.1845

For the heading to para.6.1 substitute "Rule 74.32 - An application for refusal of enforcement".

In para.6.1, for "stating" substitute "showing".

In para.6.1(1), after "irreconcilable" insert "with the judgment which the judgment creditor is seeking to enforce".

Para.74BPD.7, p.1845

In para.7.1, for “An application must, unless the court orders otherwise,” substitute “Unless the court orders otherwise, an application must”.

In para.7.2(2), omit “, including the grounds on which the application is made and the order sought”.

Omit para.7.3.

Practice Direction—Applications for and Relating to Serious Crime Prevention Orders (77PD)

Amended to make provision for the claim form or applications to vary a Serious Crime Prevention Order to include details of any third party who is likely to be significantly adversely affected by the making or varying of such an order.

Para.77PD.1, pp.1874 and 1875

In para.1.2, omit “and” at the end of sub-para.(1), and in sub-para.(2), for “Act.” substitute “Act; and”.

After sub-para.(2) of para 1.2, insert:

“(3) include details of any third party whom the applicant believes is likely to be significantly adversely affected by the SCPO and the nature of that adverse effect.”

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

“(2A) where the applicant for the SCPO seeks to vary the SCPO—

- (a) details of any third party whom the applicant believes is likely to be significantly adversely affected by the proposed variation to the SCPO; and

- (b) details of the nature of that adverse effect;”

In sub-para.(3) of para.3.1, for “person or body other than the applicant for the SCPO” substitute “third party”. And in sub-para.(4) for “person or body other than the applicant for the SCPO” substitute “third party”.

PRACTICE DIRECTION—RESERVED JUDGMENTS (40EPD)*This Practice Direction supplements CPR Pt 40*

[Editorial Note: This practice direction is published in TSO CPR Update 47 and substitutes the existing practice direction (see *The White Book 2008* Vol.1 para.40EPD.1) with effect from October 1, 2008. As a consequence, paras 15.13 to 15.21 of Practice Direction (Appeals) are omitted, and para.15.12 is substituted in terms that simply draw attention to this new practice direction. Much of what was contained in the practice direction replaced is repeated herein. Changes designed to deal with the concerns expressed in *Director of Public*

Prosecutions v P. (Practice Note) [2007] EWHC 1144 (Admin) [2008] 1 W.L.R. 1024, DC, and elsewhere are made. Also, account is taken of the fact that, nowadays, before handing down routinely draft written judgments are circulated by electronic methods.]

Scope and interpretation

1.1 This Practice Direction applies to all reserved judgments which the court intends to hand down in writing.

1.2 In this Practice Direction—

- (a) “relevant court office” means the office of the court in which judgment is to be given; and
- (b) “working day” means any day on which the relevant court office is open.

Availability of reserved judgments before handing down

2.1 Where judgment is to be reserved the judge (or Presiding Judge) may, at the conclusion of the hearing, invite the views of the parties’ legal representatives as to the arrangements made for the handing down of the judgment.

2.2 Unless the court directs otherwise, the following provisions of this paragraph apply where the judge or Presiding Judge is satisfied that the judgment will attract no special degree of confidentiality or sensitivity.

2.3 The court will provide a copy of the draft judgment to the parties’ legal representatives by 4 p.m. on the second working day before handing down, or at such other time as the court may direct.

2.4 A copy of the draft judgment may be supplied, in confidence, to the parties provided that—

- (a) neither the draft judgment nor its substance is disclosed to any other person or used in the public domain; and
- (b) no action is taken (other than internally) in response to the draft judgment, before the judgment is handed down.

2.5 Where a copy of the draft judgment is supplied to a party’s legal representatives in electronic form, they may supply a copy to that party in the same form.

2.6 If a party to whom a copy of the draft judgment is supplied under paragraph 2.4 is a partnership, company, government department, local authority or other organisation of a similar nature, additional copies may be distributed in confidence within the organisation, provided that all reasonable steps are taken to preserve its confidential nature and the requirements of paragraph 2.4 are adhered to.

2.7 If the parties or their legal representatives are in any doubt about the persons to whom copies of the draft judgment may be distributed they should enquire of the judge or Presiding Judge.

2.8 Any breach of the obligations or restrictions under paragraph 2.4 or failure to take all reasonable steps under paragraph 2.6 may be treated as contempt of court.

2.9 The case will be listed for judgment, and judgment handed down at the appropriate time.

Corrections to the draft judgment

3.1 Unless the parties or their legal representatives are told otherwise when the draft judgment is circulated, any proposed corrections to the draft judgment should be sent to the clerk of the judge who prepared the draft with a copy to any other party.

Orders consequential on judgment

4.1 Following the circulation of the draft judgment the parties or their legal representatives must seek to agree orders consequential upon the judgment.

4.2 In respect of any draft agreed order the parties must—

- (a) fax or e-mail a copy to the clerk to the judge or Presiding Judge (together with any proposed corrections or amendments to the draft judgment); and
- (b) file four copies (with completed backsheets) in the relevant court office, by 12 noon on the working

day before handing down.

4.3 A copy of a draft order must bear the case reference, the date of handing down and the name of the judge or Presiding Judge.

4.4 Where a party wishes to apply for an order consequential on the judgment the application must be made by filing written submissions with the clerk to the judge or Presiding Judge by 12 noon on the working day before handing down.

4.5 Unless the court orders otherwise—

- (a) where judgment is to be given by an appeal court (which has the same meaning as in rule 52.1(3)(b)), the application will be determined without a hearing; and
- (b) where judgment is to be given by any other court, the application will be determined at a hearing.

Attendance at handing down

5.1 If there is not to be an oral hearing of an application for an order consequential on judgment—

- (a) the parties' advocates need not attend on the handing down of judgment; and
- (b) the judgment may be handed down by a judge sitting alone.

5.2 Where paragraph 5.1(a) applies but an advocate does attend the handing down of judgment, the court may if it considers such attendance unnecessary, disallow the costs of the attendance.