CIVIL PROCEDURE NEWS

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In Brief

Cases

■ **ASSOCIATED ELECTRICAL INDUSTRIES LTD v ALSTOM UK** [2014] EWHC 430 (Comm), February 24, 2014, unrep. (Andrew Smith J.)

Service of particulars of claim–application for retrospective extension of time

CPR rr. 1.1, 3.1(2(a), 3.4, 10.4 & 58.5. In 1989, company (D) purchasing another company (C) and agreeing to indemnify C against liabilities. In June 2010, C settling mesothelioma claim brought against it by widow of former employee. C and D each contributing half the damages and costs, without prejudice to claims that either might have against the other for contribution. On May 30, 2013, C issuing claim form in Commercial Court bringing claim against D for indemnity of £270,000 under the 1989 agreement and serving claim form on D on October 12, 2013. C taking advantage of r.58.5(1)(a) and not including particulars of claim in the claim form or serving them with the claim form. Upon D filing notice of intention to defend on October 1, 2013 (and duty of court under r.10.4 to notify C accordingly arising), by operation of r.58.5, C required to serve the particulars on or before October 29, 2013. Late on that day, C requesting that parties agree an extension of time (r.2.11) but D declining. On November 13, 2013, D issuing and serving application for order striking out C's claim under r.3.4(2). On November 18, 2013, C serving particulars of claim and on January 30, 2014, C making application for order under r.3.1(2)(a) for extension of time for service of the particulars to November 18, 2013. **Held**, granting D's application and dismissing C's application, (1) in determining both applications "all the circumstances" had to be considered, (2) there was a real prospect that, were C's claim struck out under r.3.4(2), the consequences would be (a) that C would bring a new claim against D on the basis of the agreement to indemnify, (b) that such proceedings (i) would be complicated by issues of limitation and abuse of process (not relevant to the underlying dispute as to where liability under the indemnity agreement should fall), and (ii) would be costly for the parties and place demands on court resources, (3) the modern authorities discourage judges from giving too much weight to the likelihood of such consequences but do not hold that they should be entirely disregarded, (4) C's failure to comply with the date for service of the particulars stipulated by r.58.5 displayed indifference to compliance with the rule, (6) the default of 20 days in serving the particulars could not be categorised as trivial, (7) there was no good reason for the non-compliance, (8) it is not the case that, in dealing with applications for retrospective extensions of time, the two circumstances specifically mentioned in r.3.9 are to be given greater weight than other considerations involved in dealing with cases justly and at proportionate cost, (9) if the determination of these applications depended only on what would be just and fair between the parties and proportionate, D's application would be dismissed and C's granted, but (10) this had to be balanced with the interests accruing to others, in particular the benefits that will accrue to them by civil proceedings being conducted in a disciplined way in accordance with the requirements of the CPR. ***Birkett v James*** [1978] A.C. 297, HL; ***Wyche v Careforce Group Plc*** [2013] EWHC 3282 (Comm), [2014] 1 Costs L.R. 1; ***Mitchell v News Group Newspapers Ltd (Practice Note)*** [2013] EWCA Civ 1537, [2014] 1 W.L.R. 795, CA, ref'd to. (See ***Civil Procedure 2013*** Vol. 1 paras.3.1.2, 3.4.4 & 3.9.1, and Vol. 2 para.2A-10.1.)

■ **BANK OF IRELAND v PHILIP PANK PARTNERSHIP** [2014] EWHC 284 (TCC), February 12, 2014, unrep. (Stuart-Smith J.)

Costs budget–format–statement of truth

CPR rr.3.13 & 3.14, Practice Direction 3E para.1 & Precedent H, Practice Direction 22 para.2.2A. Within prescribed time limits, claimants (C) filing and exchanging costs budget prepared for them by costs draftsmen. Budget prepared correctly, subject to text of statement of truth being omitted. At CMC, defendants submitting (1) that the effect of that defect was to render the budget a nullity, (2) that C had therefore failed to comply with r.3.13, and (3) that, consequently r.3.14 took effect. **Held**, rejecting D's submissions, (1) C's budget was irregular but not a nullity, (2) C had not "failed to file a budget" within the meaning of r.3.14. Observations on role of statements of truth generally. (See further "In Detail" section of this issue of CP News.) (See ***Civil Procedure 2013 Cumulative Second Supplement*** paras. 3.13.1, 3.14.1, 3EPD.1, 3EPD.3 & 22PD.2.)

■ **CHELMSFORD COUNTY COUNCIL v RAMET** [2014] EWHC 56 (Fam), January 22, 2014, unrep. (Sir James Munby P.)

Contempt of court–parallel criminal proceedings–sentencing powers of civil court

CPR r.81.34, County Courts Act 1984 ss.14 & 118, Contempt of Court Act 1981 s.14. At hearing in private law family proceedings in a county court, one party (D) creating a disturbance by assaulting another party (X) and a court

officer (Y) who attempted to intervene. D arrested by police and charged with assaults on X and Y. Subsequently, summonses issued by court (r. 81.34) against D (1) for committal or fine under s. 118 for statutory contempt, and (2) for a penalty under s. 14(1)(b) for assaulting Y. Under those provisions, D liable to committal to prison for maximum periods not exceeding, respectively, one month and three months. President directing that those summonses should be returnable before him sitting as a single judge in the High Court (not as a member of a Divisional Court) and making order granting D legal aid. Before the return date, in the criminal proceedings D pleading guilty and Crown Court judge sentencing him to 20 months' imprisonment for the assault on X and to four months concurrent for the assault on Y. Before the President, D admitting the allegations made in the two summonses and court making findings of fact accordingly. In disposing of the summonses, **held**, (1) a person is not to be punished twice for the same conduct, (2) where a party has been sentenced in a criminal court for conduct inclusive of conduct alleged in a s. 14(1)(b) or s. 118 summons a civil court dealing with such a summons subsequently may sentence "only for such conduct as was not the subject of the criminal proceedings", (3) in the instant case, applying those principles, it would be wrong for the court to impose any additional sentence on D. President (a) expressing serious concern about the adequacy of the statutory penalties available to courts under s. 14(1)(b) and s. 118, and (b) explaining powers of a civil court to grant legal aid to alleged contemnor in these circumstances. ***Slade v Slade*** [2009] EWCA Civ 748, [2010] 1 W.L.R. 1262, CA; ***King's Lynn and Norfolk Council v Bunning*** [2013] EWHC 3390 (QB), ref'd to. (See ***Civil Procedure 2013*** Vol. 1 paras.81.1.5 & 81.34.1, and Vol. 2 paras.3C-9, 3C-36, 3C-86, 3C-87, 9A-435 & 9A-654.)

- **JE (JAMAICA) v SECRETARY OF STATE FOR THE HOME DEPARTMENT** [2014] EWCA Civ 192, February 25, 2014, CA, unrep. (Laws, Jackson & Black L.JJ.)

Recoverable costs on appeal–one-way costs shifting

CPR r.52.9A. In proceedings involving an individual (C) and the Secretary of State, C appealing to Court of Appeal against decision of the Upper Tribunal. Before hearing of the appeal, C applying to Court for order providing that (1) if the appeal were successful in full or in part, the normal costs rules would apply, and (2) that in any event (a) C's reasonably disbursements would be paid by D, and (b) D would be prevented from recovery of costs (save for misconduct) against C. C submitting that the powers granted by r.52.9A enabled the Court to make a one-way costs shifting order in the form sought. Held, dismissing the application, (1) the rule deal with appeals coming up for a "no costs" or a "low costs" jurisdiction and enables the appeal court to put in place a similar costs regime to that which applied in the court or tribunal below, (2) it does not contemplate an order in favour of just one party, win or lose. Court explaining practice to be followed for applications under the rule. (See further "In Detail" section of this issue of CP News.) (See ***Civil Procedure 2013 Cumulative Second Supplement*** para.52.9A.1.)

- **LINCOLNSHIRE COUNTY COUNCIL v MOUCHEL BUSINESS SERVICES LIMITED** [2014] EWHC 352 (TCC), February 21, 2014, unrep. (Stuart-Smith J.)

Extension of time for service of claim form–application to set aside order granting

CPR rr.3.4(2)(c) & 7.6(1), Pre-Action Protocol for Construction and Engineering Disputes para.6, Technology and Construction Court Guide para.2.3.2. Education authority (C) and architects (D) in communication from 2009 onwards about defects in building designed by D and constructed in 2002. On July 19, 2013, C issuing TCC claim form against D alleging professional negligence and granted application made without notice under r.7.6(1) for order extending time for service of claim form and particulars of claim to January 18, 2014, "to enable the parties to comply with the Protocol". C sending Protocol letter of claim to D on December 3, 2013, and on December 23, 2013, making further without notice application under r.7.6(1) for extension of time for service to April 18, 2014, "to enable the parties to complete the steps set out in the Protocol". On January 15, 2014, judge making order granting the application. On D's application under r.3.4(2)(c) to set aside the order aside, **held**, granting the application, (1) against the background of their failure to issue an application for directions as required by para.6 of the TCC Pre-Action Protocol, C should have served the proceedings on or before January 18, 2014, (2) C's continuing failure to complete steps that should have been completed before the proceedings were issued was no good reason for failing to do so. Court stating that parties who issue claim forms late are obliged to act promptly and effectively and, in the absence of sound reasons (which will seldom if ever include a continuing failure to comply with pre-action protocol requirements) the proceedings should be served within four months or in accordance with any direction from the court. A claimant who does not do so and (where the TCC Protocol applies) who does not obtain directions on notice does so at extreme peril. ***Collier v Williams*** [2006] EWCA Civ 20, [2006] 1 W.L.R. 1945, CA; ***Charles Church Developments Ltd v Stent Foundations Ltd*** [2007] EWHC 855 (TCC); ***Venulum Property Investments Ltd v Space Architecture Ltd*** [2013] EWHC 1242 (TCC), May 22, 2013, unrep., ref'd to. (See further "In Detail" section of this issue of CP News.) (See ***Civil Procedure 2013*** Vol. 1 paras.3.4.4, 7.6.2 & C5-012, and Vol. 2 para.2C-44.)

■ **DEUTSCHE BANK AG v SEBASTIAN HOLDINGS INC** [2014] EWHC 112 (Comm), January 30, 2014, unrep. (Cooke J.)

CPR rr. 6.15, 6.36, 6.37(5)(b), 6.40(3), 6.42, 7.5, 23.10, & 46.2, Practice Direction 6B para. 3.1(18), Senior Courts Act 1981 s. 51, Hague Convention 1965, Admiralty and Commercial Courts Guide App. 15 para. 9. Trial judge (1) giving judgment for claimant company (C) against defendant company (D1) in sum of US$243m, (2) making order for costs against D1, and (3) ordering payment on account of costs in sum of £32m (plus non-recoverable VAT) by particular date. Upon no payment on account being made, C applying without notice for an individual (D2) to be joined as a party to the proceedings for costs purposes only, and (under r. 6.36) for permission to serve on D2 out of the jurisdiction (in Connecticut, USA) a notice of application for a non-party costs order. Judge granting application and directing (under r. 6.37(5)(b)) that the service sought be by an alternative method (by affixing notice to gate of residential property). On D2's application to set aside the order for service and the service itself, **held**, granting the application, (1) where it appears to the court that there is good reason to authorise service by a method or at a place not otherwise permitted by Part 6, the court may make an order permitting service by an alternative method or at an alternative place (r. 6.15(1)), (2) where a party wishes to serve a claim form on a party out of the UK it may be served by any method permitted by a civil procedure Convention (r. 6.40(3)(b)), (3) in this case the two states involved were signatories of the Hague Convention and service was possible under that Convention, (4) in those circumstances there had to some good reason (beyond speed and convenience) for allowing service by means other than that provided for by the Convention, (5) there was nothing in the evidence to justify a finding of "good reason" for allowing service other than by the Convention route. Judge explaining that, although notice is a prime purpose of service, service is a different concept from notice, because it is the formal act which engages the court's jurisdiction in respect of the defendant. ***Knauf UK GmbH v British Gypsum Ltd*** [2001] EWCA Civ 1570, [2002] 1 W.L.R. 907, CA, ***Cecil v Bayat*** [2011] EWCA Civ 135, [2011] 1 W.L.R. 3086, CA, ***Abela v Baadarani*** [2013] UKSC 44, [2013] 1 W.L.R. 2043, SC, ref'd to. (See ***Civil Procedure 2013*** Vol. 1 paras. 6.15.3, 6.37.53, 6.40.5, 6.40.9, 6.40.11 & 6BPD.3, and Vol. 1 paras. 2A-180.1 and 9A-199.)

Statutory Instruments

■ **CERTIFICATION OF ENFORCEMENT AGENTS REGULATIONS 2014** (SI 2014/421)

Tribunals, Courts and Enforcement Act 2007 ss.63 & 64. Make provision for the process by which persons who by virtue of s.63 require a certificate in order to act as enforcement agents are issued with a certificate. State the requirements which must be satisfied for the issue of a certificate, the duration of certificates and the circumstances in which they may be suspended and cancelled. Also provide for the handling of complaints about holders of certificates. Replace the Distress for Rent Rules 1988 and make provision for transition from those Rules to these Regulations. In force April 6, 2014. (See further "CPR Update" section of this issue of CP News.) (See ***Civil Procedure 2013*** Vol. 2 paras.9A-1057+ & 9B-1365.)

■ **CIVIL LEGAL AID (MERITS CRITERIA) (AMENDMENT) REGULATIONS 2014** (SI 2014/131)

Legal Aid, Sentencing and Punishment of Offenders Act 2012 s.11. Amend Civil Legal Aid (Merits Criteria) Regulations 2013 (SI 2013/104) for purpose of altering the criteria which the Director of Legal Aid Casework must apply when determining whether an individual or legal person qualifies for civil legal services under Part 1 of the 2012 Act in certain cases. In force January 27, 2014, subject to transitional provisions. (See ***Civil Procedure 2013*** Vol. 2 para.7D-1.)

■ **CIVIL PROCEDURE (AMENDMENT NO. 2) RULES 2014** (SI 2014/482)

CPR Part 84 (Enforcement by Taking Control of Goods). Inserts Section IV (rr.84.17 to 84.20) in Part 84 to provide rules, subject to transitional provisions, for purposes of proceedings in relation to certificates under the Tribunals, Courts and Enforcement Act 2007 s.64 and the Certification of Agents Regulations 2014 (SI 2014/421) made under that section. In force April 6, 2014. (See further "CPR Update" section of this issue of CP News.)

■ **COUNTY COURT JURISDICTION ORDER 2013** (SI 2014/503)

County Courts Act 1984 ss.23 & 145, County Courts Jurisdiction Order 1981. Revokes and replaces 1981 Order. Increases, from £30,000 to £350,000, the jurisdiction of the County Court under s.23 (equity jurisdiction). Also expressly provides for (without altering) jurisdiction of County Court in certain proceedings under the Trustee Act 1925 and the Administration of Estates Act 1925 which were subject to the 1981 Order but only identified therein by reference. In force April 22, 2014, subject to transitional provision. (See ***Civil Procedure 2013*** Vol. 1 para.57.1.1 and Vol. 2 paras.7C-102, 9A-448, 9B-1018 & 9A-709.)

In Detail

EXTENDING TIME FOR SERVICE OF CLAIM FORM

Rule 7.5(1) states that, where a claim form is to be served within the jurisdiction, the claimant "must complete the step required" by the table in the rule appropriate for the particular method of service chosen before midnight on the calendar day four months after the date of issue of the claim form. Rule 7.6(1) states that the claimant may apply for an order extending the period for compliance with r.7.5. The general rule is that applications to the court should be made on notice to the respondent, but a rule, practice direction or court order may provide otherwise (r.23.4). Rule 7.6(4)(b) expressly provides that an application under r.7.6(1) may be made without notice.

Rule 7.4(1)(a) states that particulars of claim must be contained in or served with the claim form. Rule 7.4(1)(b) states that, alternatively, they may be served 14 days after service of the claim form provided (r.7.4(2)) they are served "no later than the latest time" for serving the claim form (by which must be meant no later than the latest time for completing "the step required" by r.7.5(1) where that rule applies). No provision expressly provides that the claimant may apply for an order extending the period stipulated in r.7.4(1)(b). The court's power to extend it is derived from its general power to extend time for compliance with rules (r.3.1(2)(a)). The general rule that applications should be made on notice to the respondent applies where a claimant makes an application for an extension of the 14 day period fixed by r.7.4(1)(b).

So, an application under r.7.6(1) may be made without notice, but an application under r.7.4(1)(b) should be made on notice.

Rule 2.11 states that, unless a rule, practice direction or order provides otherwise, the time specified by a rule or by the court for a person to do any act may be varied by the written agreement of the parties. An example of a rule providing otherwise is r.3.8(3)(c). It states that, where a rule, practice direction or court order "requires a party to do something within a specified time" and "specifies the consequence of failure to comply" the time for doing the act in question may not be extended by agreement between the parties. Rule 7.5(1) and r.7.4(1)(b) both require the claimant "to do something within a specified time" but neither "specifies the consequence of failure to comply". Consequently, r.3.8(3)(c) does not prohibit the variation of the times specified by those rules by the written agreement of the parties, and no other rule or practice direction expressly imposes such prohibition.

A common circumstance in which a claimant may seek an extension, either by court order or by written agreement with the defendant, of the time limit for serving a claim form and particulars of claim, or, where the claim form has been served without the particulars, of the time limit for service of the particulars, is where breathing space is needed for compliance with the requirements of Practice Direction (Pre-Action Conduct) and for commencing and completing any relevant pre-action protocol process or completing any such process where it has been activated already. By definition "pre-action" protocols processes are intended as processes to be conducted by the parties before the proceedings are commenced, and therefore before any such time limits have started to run. However, it is recognised that circumstances may arise in which for good or at least understandable reasons, a claim form may be issued and perhaps served as well before the relevant protocol processes have been completed; in particular, the circumstance of the claimant's hand being forced to issue a claim form by a looming limitation deadline. Here things can become rather messy. The parties have to keep an eye on, not only the requirements of rules and practice directions, and any bespoke orders that a judge may make in the proceedings, but also on the requirements of the relevant pre-action protocol (and, possibly, the relevant court guide).

Para 9.6 of Practice Direction (Pre-Action Conduct) states that if, for any reason proceedings are started before the parties have complied with the requirements of that Practice Direction (e.g. because of the need to commence proceedings within a relevant limitation period) the parties "should seek to agree to apply to the court for an order to stay (i.e. suspend) the proceedings while the parties takes steps to comply". (It may be noted in passing that the use of the word "stay" in para.9.6 is not apt where the appropriate order to be sought from the court is an order under r.7.6(1) extending time for service of a claim.) Paragraph 9.6 applies except where a relevant pre-action protocol "contains its own provisions about the topic" (para.9.1).

Most of the pre-action protocols do contain provisions referring to the inter-play of protocol processes and the effect of limitation rules on commencement of proceedings.

Examples are the following:

Pre-Action Protocol for Personal Injury Claims para.2.11 (White Book Vol 1 para.C2-006, p 2629)

Pre-Action Protocol for the Resolution of Clinical Disputes para.3.21 (ibid para.C3-015, p 2655)

Pre-Action Protocol for Defamation para.1.4 (ibid para.C6-001, p 2675)

Professional Negligence Pre-Action Protocol paras B8.1 and C7 (ibid paras.C7-012 & C7-019, pp 2683 & 2686)

Protocol for Disease and Illness at Work Claims paras.6.11 and 11.1 (ibid paras.C9-006 & C9-011, pp 2699 & 2702)

Pre-Action Protocol for Housing Disrepair Cases paras.3.4 and 4.8 (ibid paras.C10-003 & C10-004, pp 2713 & 2722)

In the Pre-Action Protocol for Construction and Engineering Disputes para.6 states (see White Book Vol 1 para.C5-012, p 2674):

"If by reason of complying with any part of this protocol a claimant's claim may be time-barred under any provision of the Limitation Act 1980, or any other legislation which imposes a time limit for bringing an action, the claimant may commence proceedings without complying with this Protocol. In such circumstances, a claimant who commences proceedings without complying with all, or any part, of this Protocol must apply to the court on notice for directions as to the timetable and form of procedure to be adopted, at the same time as he requests the court to issue proceedings. The court will consider whether to order a stay of the whole or part of the proceedings pending compliance with this Protocol."

The substance of para.6 is recited in para.2.3.2 of the Technology and Construction Court Guide (see White Book Vol 2 para.2C-44, p 468).

The commentary on para.6 in the White Book points out (ibid para.C5A-001, p 2669) that it differs from comparable provisions in other pre-action protocols in that it states that, after issue, the claimant "can apply to the court for directions", and the commentary describes that particular provision as one "which could be replicated in other protocols or the Practice Direction". But it should be noted that para.6 is expressed in mandatory not permissive terms and is therefore more onerous than the commentary suggests. The paragraph states that, when he issues the claim form, the claimant "must apply to the court for directions as to the timetable and form of procedure to be adopted"; further the application must be made on notice.

It was explained above that r.7.6(4)(b) expressly states that an application under r.7.6(1) for an extension of time for service of a claim form "may be made without notice". Where para.6 applies the application must be made on notice, and the application must seek directions. In the recent case of *Lincolnshire County Council v Mouchel Business Services Ltd* [2014] EWHC 352 (TCC), February 21, 2014, unrep., Stuart-Smith J. referred to these distinctive features in para.6 and explained their justifications. His lordship said (para 24):

"First, an application for directions on notice enables the court to review the position in the light of any relevant submissions made by each affected party. This promotes the overriding objective of the CPR by providing the court with full information on which to make its case management decision and ensures a level playing field from the outset. Second, if the order is made without notice, there is always the risk that one or more affected parties will apply to set the order aside as has happened in this case. The requirement that the initial order for directions is made on notice thus removes the risk of further costly and time-consuming satellite litigation."

Stuart-Smith J. stressed that an application under r.7.6(4)(b) for an extension of time for service, and an application for directions in accordance with para.6 of the Pre-Action Protocol, are not the same thing. A claimant who applies without notice under r.7.4(6)(b) does not, thereby, comply with its obligations under para.6. His lordship explained (para.39);

"The court will exercise its discretion in order to further the overriding application when deciding either form of application–the main difference is that an application for directions on notice is likely to provide the court with further and better material on which to take its decision and has the necessary benefit of bringing both parties before the court."

In this case, the claimant made two successive applications under r.7.6(1), both without notice. The first was made upon issue of the claim form on July 19, 2013, and the judge made an order extending time for service to January 14, 2014, "to enable the parties to comply with the Protocol". The second was made on December 23, 2013, and the judge granted an extension for service to April 18, 2014. In neither application were directions sought. Although the

claim form was issued by the claimants on July 19, 2013, the letter of claim under the Protocol was not sent by them to the defendants until December 3, 2013, shortly before the date of the second application. The defendants applied for an order setting aside the order made by the judge on December 23, 2013, on the ground that the claimants had failed to comply with the court's order of July 19, 2013 (r.3.4(2)(c)). Stuart-Smith J. granted this application and struck out the claimants' claim "because it has not been validly served within the time of validity of the claim form". (See further summary of this case in the "In Brief" section of this issue of CP News.)

LIMITING RECOVERABLE COSTS OF AN APPEAL

Rule 52.9A (Orders to limit the recoverable costs of an appeal) was added to the CPR by the Civil Procedure (Amendment) Rules 2013 (SI 2013/262) and came into effect on April 1, 2013. The text of the rule is found in the Cumulative Second Supplement to the 2013 Edition of the White Book at p. 295. In the commentary following the rule the reasons for the enactment of the rule are explained (see para.52.9A.1).

Para.(1) of the rule states that, in any proceedings in which costs recovery is normally limited or excluded at first instance, an appeal court may make an order that the recoverable costs of an appeal will be limited "to the extent which the court specifies". Paragraph (2) sets out matters to which "the court will have regard", and para.(3) states that, if the appeal raises an issue of principle or practice upon which substantial sums may turn "it may not be appropriate to make an order".

Before the rule came into effect, in *Hazel v Manchester College* [2013] EWCA Civ 281, [2013] C.P. Rep. 28, CA, a costs protection order was made in proceedings where successful employees had started the proceedings in the cost-free jurisdiction of the employment tribunal and had been brought into the cost-bearing jurisdiction of the Court of Appeal by the employer. In dismissing the employer's application for a re-consideration of that order a single lord justice stated that it was a "classic case" in which the court would make an order under the new rule 52.9A when it came into force.

In the recent case of *JE (Jamaica) v Secretary of State for the Home Department* [2014] EWCA Civ 192, February 25, 2014, CA, unrep. (Laws, Jackson & Black L.JJ.), the Court of Appeal explained that the rule does not give an appeal court power to make a "one-way costs shifting order" (for summary of this case, see "In Brief" section of this issue of CP News). There are separate rules in the CPR which provide for costs shifting in specified cases.

Paragraph (4) of the rule states that an application for an order under the rule "must be made as soon as practicable". In *JJ Food Service Ltd v Zukhayir* [2013] EWCA Civ 1304, October 31, 2013, CA, unrep., an order was refused by the Court of Appeal and the applicant's delay in applying for an order was regarded as a significant factor (see CP News Issue 9/2013). In the *JE (Jamaica)* case the Court of Appeal stressed that it is important that any application should be made at an early stage. The Court said that "as soon as practicable" does not mean immediately, but envisages that both parties will require a reasonable time in which to consider their positions. If in appeal proceedings it is the appellant who seeks an order, it may be convenient and economic for the application to be included in the appellant's notice of appeal, but the rule does not require that. In the instant case, the application was made on the eve of the appeal. The Court said that was "far too late". The Court added that it would be helpful if literature provided by HMCTS to appellants and respondents drew attention to the court's power under r.52.9A and to the need for application to be made "as soon as practicable", and expressed the hope that, in the meantime, appellants and respondents will take note of this judgment.

Paragraph (4) of the rule also states that an application for an order under the rule "will be determined without a hearing, unless the court orders otherwise". In the *JE (Jamaica)* case the Court explained that normally, once made an application can be dealt with in writing at modest cost and added that any challenges to the court's decision will not be entertained unless the court has made a clear error of principle (para.13).

COSTS BUDGETS

Rule 3.13 (Filing and exchanging budgets) states that, unless the court orders otherwise, all parties except litigants in person must file and exchange budgets as required by the rules or as the court otherwise directs. Paragraph 1 of Practice Direction 3E states that, unless the court orders otherwise, a budget must be in the form of Precedent H annexed to that Practice Direction and further provides that it must be dated and "verified by a statement of truth signed by a senior legal representative of the party".

The template for Precedent H indicates where the statement of truth should go immediately above the place for signature, but does not incorporate the actual wording. The wording for the statement of truth is set out in para.2.2A of Practice Direction 22 (Statements of Truth) in the following terms:

"The costs stated to have been incurred do not exceed the costs which my client is liable to pay in respect of such work. The future costs stated in this budget are a proper estimate of the reasonable and proportionate costs which my client will incur in this litigation."

This form of words has been criticised and its urgent amendment recommended on the ground that it is wholly unsuitable for certain cases. Because it refers to past costs which "have been incurred" and future costs "which my client will incur" it is inapposite for any party whose legal representation is funded by a conditional fee agreement, a damages based agreement or an agreement to pay a fixed fee.

By CPR Update 69 (which at the time of writing has not been published) para.2.2A of PD is amended so as to read:

"This budget is a fair and accurate statement of incurred and estimated costs which it would be [reasonable and] proportionate for my client to incur in this litigation."

Some of the amendments made by CPR Update 69 will come into effect on April 1, 2014, but others, for necessary reasons, will not come into force until April 6 or April 22. There would seem to be no reason why the amendment to para.2.2A should not come into force on April 1. However, according to the commencement provisions in drafts of Update 69, it will not come into force until April 22.

In the recent case of *Bank of Ireland v Philip Pank Partnership* [2014] EWHC 284 (TCC), February 12, 2014, unrep., the facts were that on January 24, seven days before the original date for the Case Management Conference, the parties exchanged budgets. The claimant's (C) budget, which had not been prepared by C's solicitors but by external costs draftsmen, had been filed in time, was properly signed and dated, included the words "Statement of truth" (following the Precedent H template), but did not contain the text of the required statement of truth. On February 10, the eve of the revised date for the CMC, the defendants (D) took the point that, in the circumstances, C had failed to file a budget and that therefore, by operation of r.3.14, C had to be treated "as having filed a budget comprising only the applicable court fees". In response, C issued an application applying for relief from sanction if the court took the view that they had not filed and exchanged budgets on January 24.

Stuart-Smith J. rejected D's submissions, holding that they had no merit "technical or otherwise". His lordship said (para.9):

"Rule 3.13 requires that parties must file and exchange budgets 'as required by the rules or as the court otherwise directs.' Rule 3.14 provides for a sanction in the event that a party 'fails to provide a budget' but does not include the additional words 'complying in all respects with the formal requirements laid down by PD 3E' or any other words to similar effect. There is nothing in the rules or practice directions which requires any and every failure to comply with the formal requirements for budgets as rendering the budget a nullity, as opposed to being one which is subject to an irregularity. The logical consequence of the Defendant's argument would be that *any* failure to comply with the form of Precedent H or PD 22 would render the filing of a budget a complete nullity. It would, presumably, apply if the prescribed form for verifying a costs budget had been followed generally but words had been omitted, mis-spelt or muddled up; or even if the order of the two sentences had been reversed."

His lordship concluded that what had happened here was that C had filed and exchanged a costs budget on time; but the budget suffered from an irregularity; the notion that C's budget was a complete nullity was unsustainable.

Having reached that conclusion Stuart-Smith J. did not have to deal with C's application for relief from sanction. However, in case his conclusion was wrong his lordship made clear that he would grant such relief were it necessary to do so.

CPR Update

The Civil Procedure (Amendment) Rules 2014 (SI 2014/407) were laid before Parliament on February 27, 2014. That statutory instrument makes substantial additions and amendments to the CPR for two principal purposes. One is to give effect to the establishment, on April 22, 2014, of the "single" County Court. The other is to implement, with effect from April 6, 2014, new rules on enforcement of judgments and orders. The Civil Procedure (Amendment No. 2) Rules 2014 (SI 2014/482), laid before Parliament on March 6, 2014, were also made for the second of those purposes.

Numerous additions and amendments, related to those made to the CPR by SI 2014/407, are to be made to supplementing Practice Directions by CPR Update 69, expected to be published during March.

The 2014 edition of the White Book will be published at the end of March. Every effort has been made to include in that edition additions and amendments made by the Civil Procedure (Amendment) Rules 2014 (SI 2014/407) and CPR Update 69. The Main Volumes will be published together with the First Supplement which will include the amendments made by the Civil Procedure (Amendment No.2) Rules SI 2014/482 and the final amendments made by the Civil Procedure (Amendment) Rules SI 2014/407 and CPR Update 69. New material coming to hand after the main volumes have gone to press will be dealt with in future updating Supplements.

COMMENCEMENT OF PROCEEDINGS IN HIGH COURT – VALUE OF CLAIM

Article 4 of the High Court and County Courts Jurisdiction Order 1991 states that, subject to exceptions, proceedings in which both the county courts and the High Court have jurisdiction may be commenced either in a county court or in the High Court. From a practical point of view, the important exceptions are provided by art.4A and art.5. Those provisions state that a claim for money in which the county courts have jurisdiction may only be commenced in the High Court if the value of the claim is more than £25,000 (art.4A), but proceedings which include a claim for damages in respect of personal injuries may only be commenced in the High Court if the value of the claim is £50,000 or more (art.5(1)).

Those jurisdictional rules are reflected in CPR r.16.3 (Statement of value to be included in claim form). Paragraph (5)(a) of the rule states that if the claim form is to be issued in the High Court on the basis that, by virtue of art.4A, the claim may be commenced there, that is to be stated in the claim form. Paragraph (5)(c) of the rule states that if the claim form is to be issued in the High Court on the basis that, by virtue of art.5(1), the claim may be commenced there, then that is to be stated in the claim form.

It is expected that, with effect from April 22, 2014, when the "single" County Court is established (see further below), the 1991 Order will be amended so as to provide that a claim for money in which the County Court has jurisdiction may only be commenced in the High Court if the value of the claim is more than £100,000 (a considerable increase on the current figure of £25,000). (The amended Order had not been published at the time of writing.)

In anticipation of that amendment, by r.11 of the Civil Procedure (Amendment) Rules 2014 (SI 2014/407) the figure of £100,000 is substituted for £25,000 in para.(5)(a) of r.16.3. However, surprisingly, r.11 makes no amendment to para.(5)(c) of r.16.3 (where the figure of £50,000 as the expected recovery in a personal injury claim remains).

THE "SINGLE" COUNTY COURT

Amendments to the County Courts Act 1984 made by Part 2 of the Crime and Courts Act 2013 coming into force on April 22, 2014, have the effect of establishing in England and Wales a court called "the county court" for the purpose of exercising the jurisdiction and powers previously conferred on the several individual county courts constituted by, and regulated by, legislation contained in Part 1 of the 1984 Act (and earlier and other legislation).

This major reorganisation was accomplished by s.17(1) of the 2013 Act which inserted s.A1 in the 1984 Act, and by other legislation contained in or provided for by Part 2 of the 2013 Act. Previously, s.1 and s.2 of the 1984 Act and related delegated legislation had provided that England and Wales should be divided into districts and a county court should be held for each district. As a result there were approximately 170 county courts in England and Wales (prescribed by art.6 of, and Sch.3 to, the Civil Courts Order 1983). References to "a county court" are found in many statutes and other forms of legislation. After the establishment of the "single" county court they are deemed to be references to "the county court" established by s.A1 (see para.11 of Sch.9 to the 2013 Act). Sections 1 and 2 of

the 1984 Act are repealed (see s.17(2)). With their repeal the geographical boundaries in the county court structure are removed and complications in the handling of cases which this caused, in particular the transfer of cases from one county court to another (and from the High Court to county courts and vice versa) are relieved. Section A1(2) provides for the county court to be a court of record with a seal. This mirrors the position for the individual county courts that previously existed (each of which was in its own right a court of record with its own seal) but on a national basis for the single county court. (The High Court is a "superior" court; the county courts were not and the single county court is not.)

The single county court will sit in locations designated by the Lord Chancellor which, at least for the time being, include all former county court locations. Former county courts continue as hearing centres for the single court with court offices attached to them. Whereas previously it would have been appropriate to refer, for example, to "the Leeds County Court", henceforward such reference should be to "the County Court sitting at Leeds".

The single county court has been created principally for the purpose of facilitating the centralisation of much of the administrative work for the handling of county court claims. Insofar as the existence of the several county courts complicated the processes which the central administration operates those complications are removed.

The creation of the single county court has made necessary numerous amendments to the CPR and supplementing practice directions, most for the purpose of substituting references to "the county court" for references to "a county court", but some for more substantial reasons (see below). The amendments to the rules are made by the Civil Procedure (Amendment) Rues 2014 (SI 2014/407), laid before Parliament on February 27, 2014. The amendments to Practice Directions will be made by CPR Update 69. Throughout the relevant primary legislation and legislation amended as a consequence (e.g. the County Courts Act 1984) the single court is referred to as "the county court"; but throughout the CPR and supplementing practice directions it is referred to as "the County Court".

Section 1 of, and para.3 of the Schedule to, the Civil Procedure Act 1997 (White Book Vol. 2 paras.9A-738 and 9A-767) state that the power to make Civil Procedure Rules extends to power to make rules for "removal of proceedings", by which is meant two things: first, rules providing for the transfer of proceedings within the High Court (for example, between different Divisions or different district registries) or "between county courts", and secondly, rules providing for any jurisdiction in any proceedings to be exercised (whether concurrently or not) elsewhere within the High Court or, as the case may be, "by another county court" without the proceedings being transferred. (In this context "proceedings" includes any part of proceedings.)

As a consequence of the establishment of the "single" County Court by legislation in Part 2 the Crime and Courts Act 2013, s.1 of, and para.3 of the Schedule to, the 1997 Act have been amended by the substitution of the expression "within the county court" for "between county courts", and of the expression "elsewhere within the county court" for "by another county court" (see para.67 in Part 3 of Sch.9 to the 2013 Act).

Many of the substantial additions to the CPR, and amendments to existing rules therein, made by the Civil Procedure (Amendment No. 2) Rules 2014 (SI 2014/407) as a consequence of the establishment of the single County Court, are made to rules dealing with the removal of proceedings (in either of the two senses explained above) "within" or "elsewhere within" the County Court. Also, many of the additions to supplementing practice directions, and amendments to existing directions, made by CPR Update 69 are made for the same purpose.

Several amendments were made to the CPR by the Civil Procedure (Amendment No. 4) Rules 2011 (SI 2011/3103) to accommodate the centralisation of some basic administrative functions at the National Civil Business Centre ("the Business Centre") in respect of money claims issued under Part 7 of the CPR in the Northampton county court, the sole court for the issue of such claims. Under those arrangements the Business Centre acted as the administrative office for the Northampton county court and managed the preliminary stages of all such claims. The amendments made by the 2011 statutory instrument to facilitate this administrative reform involved the introduction of two new terms, namely "designated money claim" and "preferred court", both of which were defined in additions made to para.(1) of r.2.3 (Interpretation). For the same purpose, the 2011 statutory instrument made amendments to Part 3 (the court's case management powers), Part 12 (default judgment), Part 13 (setting aside or varying default judgment), Part 14 (admissions), Part 23 (general rules about applications for court orders), Part 26 (case management–preliminary stage) and Part 30 (transfer). At the same time, additions and amendments were made to various practice directions, notably Practice Direction 7A (how to start proceedings–the claim form)

With the establishment of the "single" County Court on April 22, 2014, the rules introduced or amended by the 2011 statutory instrument are further amended by the Civil Procedure (Amendment) Rules 2014 (SI 2014/407). The expression "designated money claim" disappears and the term "preferred hearing centre" is substituted for the term "preferred court". For practitioners, the amendments which will be of immediate relevance are those made by this statutory instrument to Part 26, in particular r.26.2A (now titled "Transfer of money claims within the County Court), and those made by CPR Update 69 to Practice Direction 7A (how to start proceedings–the claim form). The amendments made to Practice Direction 7A provide that if a claim is started in the County Court under Part 7, is a claim, for an amount of money (whether specified or unspecified), and is not a claim to which special procedures are provided in the CPR or practice directions, then practice form N1 must be sent to the County Court Money Claims Centre (P.O. Box 527, M5 0BY). Thus claims are no longer issued out of the Northampton County Court but are, instead, issued out of the County Court, with all preliminary administrative stages being managed at the CCMCC in Salford. As there is no facility for cases to be heard at the CCMCC, the claimant is required to specify in the claim form (N1) the preferred hearing centre to which proceedings should be sent in the event that the claim becomes defended or a hearing is required.

RULES ABOUT ENFORCEMENT OF JUDGMENTS AND ORDERS

Introduction

In the February 2014 issue of CP News the effects of Part 3 of the Tribunals, Courts and Enforcement Act 2007 were briefly outlined and it was explained that the provisions therein will come into force on April 6, 2014. As a result the law relating to the recovery of debts and the enforcement of judgments and orders will be changed in significant respects.

In the past, rules of court have played a role in providing procedures for the many different circumstances in which the High Court and the county court have exercised powers in support of, what could be called, the substantive law of recovery and enforcement. The substantive law has been a very complicated admixture of common law rules, statutory principles and case law embellishments thereon. Much of the complexity has arisen because of the implementation of policies (usually by statute) designed to redress the historic bias of the substantive law in favour of creditors.

By the Civil Procedure (Amendment) Rules 2014 (SI 2014/407), laid before Parliament on February 27, 2014, rules in the CPR dealing with enforcement are substantially amended and re-arranged. By this statutory instrument, four new Parts are added to the CPR. They are:

83 Writs and Warrants–General Provisions

84 Enforcement by Taking Control of Goods

85 Claims on Controlled Goods and Executed Goods

86 Stakeholder Claims and Applications

The effect is that the following RSC Orders and CCR Orders in Schedule 1 and Schedule 2 of the CPR are replaced:

RSC Ord. 17 (Interpleader)

RSC Ord. 45 (Enforcement of Judgments and Orders)

RSC Ord. 46 (Writs of Execution: General)

RSC Ord. 47 (Writs of Fieri Facias)

RSC Ord. 113 (Summary Proceedings for Possession of Land)

CCR Ord. 22 (Judgments and Orders)

CCR Ord. 24 (Summary Proceedings for the Recovery of Land)

CCR Ord. 25 (Enforcement of Judgments and Orders: General)

CCR Ord. 26 (Warrants of Execution, Delivery and Possession)

CCR Ord. 33 (Interpleader Proceedings)

It should be noted that rules in CCR Ord. 27 (Attachment of Earnings), CCR Ord. 28 (Judgment Summonses) and CCR Ord. 39 (Administration Orders) are not affected by the new rules (except in certain consequential respects) and remain in Schedule 2. Further, r.1 (Judgment creditor and debtor) and r.6 (Description of parties) of CCR Ord. 25, which had effects beyond that Order, are preserved for Schedule 2 purposes by being inserted in Ord. 28 as, respectively, r.A1 (Definitions) and r.1A (Description of parties).

Although RSC Ord. 45 and CCR Ord. 22 are now wholly revoked, not all rules in those Orders are replaced by provisions in new Parts 83 to 86. Some of them are replaced by the insertion of new rules in existing CPR Parts, in particular, by the insertion of one new rule in Part 70 (General Rules About Enforcement of Judgments and Orders) and of five new rules in Part 40 (Judgments, Orders, Sale of Land etc). This gives a more logical arrangement than heretofore. Thus, RSC Ord. 45, r.8 (Court may order act to be done at expense of disobedient party) is inserted in Part 70 as r.70.2A, and RSC Ord. 45, r.11 (Matters occurring after judgment: stay of execution, etc) is inserted in Part 40 as r.40.8A (Stay of execution and other relief), and a further four rules formerly found in CCR Ord. 22 are inserted in Part 40 as follows:

r.40.9A (County Court judgments and orders: variation of payment) replacing CCR Ord. 22 r. 10

r.40.13A (County court set-off of cross-judgments) replacing CCR Ord. 22 r.11

r.40.14A (County Court certificate of judgment) replacing CCR Ord. 22 r.8

r.40.14B (Order of appeal court) replacing CCR Ord. 22 r.13

In the Civil Procedure (Amendment) Rules 2014, the amendments made to Part 40 and Part 70 are among the provisions described as "enforcement amendments" for transitional purposes.

In the 2014 edition of the White Book (due to be published at the end of March, 2014), the texts of Parts 83 to 86 will be included with commentary thereon. In what follows, the contents of those Parts are briefly explained. For the purposes of exposition (and for reasons which should become clear) it is convenient to deal with them, not in numerical order, but to deal first with Part 85 and Part 86 in reverse order, and then with Part 83 and Part 84 together.

Part 86 (Stakeholder Claims and Applications)

There are two categories of interpleader action, (a) those arising during the execution of a judgment, and (b) those arising other than by execution (see White Book 2013 Vol. 1 paras.sc17.0.2 & cc33.0.2).

Generally, a person under a liability in respect of a debt, or in respect of any money goods or chattels will be under no doubt as to whom the liability is owed. However, circumstances may arise where, although that person does not himself claim the property or dispute the debt, several other persons lay claim to it. In those circumstances, such person (traditionally described colloquially as a "stakeholder") may protect himself from legal proceedings by calling upon the several claimants to interplead, that is to say to claim against one another, so that the title to the property or debt may be decided by the court.

In the CPR, rules of court regulating interpleader proceedings of the "stakeholder" variety in the High Court and in the county courts are contained in, respectively, Sch.1 RSC Ord. 17 and Sch.2 CCR Ord. 33. By the Civil Procedure (Amendment) Rules 2014, those rules are replaced, in amended form, by Part 86. In the new rules, the term "stakeholder" becomes a term of art and the term "interpleader" is no longer used. In r.86.2(1) it is provided that a stakeholder may make an application to the court for a direction as to whom the stakeholder should pay a debt or money, or give any goods or chattels. Subsequent provisions in r.86.2 and in the rules following deal with the procedure to be followed, the powers of the court (including power to order the trial of a preliminary issue) and costs. There is no practice direction supplementing Part 86.

Part 85 (Claims on Controlled Goods and Executed Goods)

In the CPR, rules of court regulating the other variety of interpleader proceedings, that is to say, those concerned with interpleader arising in relation to goods "under execution" in the High Court and in the county courts, are also contained in, respectively, Sch.1 RSC Ord. 17 and Sch.2 CCR Ord. 33. By the Civil Procedure (Amendment) Rules 2014, those rules are replaced by Part 85. The new rules do not simply re-enact those formerly contained in RSC Ord. 17 and CCR Ord. 33, insofar as they applied to interpleader proceedings where the relevant goods were under execution. That is because the rules now have to take into account in addition the reformed law as to the taking control of goods enacted by Part 3 and Schedule 12 of the Tribunals, Courts and Enforcement Act 2007. Thus, Part 85

provides rules for three distinct procedures: (1) for making a claim to controlled goods (Section III), (2) for making a claim against executed goods (Section IV), and (3) for a debtor making a claim to exempt goods (Section V). (The term "interpleader" is no longer used in any of these contexts.) Any claim under Part 85 must be made by an application in accordance with Part 23 (Section II). Particular rules deal with the powers of the court (including power to order the trial of a preliminary issue) and costs (Section VI). There is no practice direction supplementing Part 85.

Part 83 (Writs and Warrants–General Provisions) and Part 84 (Enforcement by Taking Control of Goods)

The Civil Procedure (Amendment) Rules 2001 (SI 2001/2792), by inserting Parts 70 to 73 in the CPR, commenced the process of incorporating in the main body of the CPR provisions in RSC and CCR Orders relating to the enforcement of judgments and orders enacted in Schedules 1 and 2 of the CPR. Part 70 contains general rules about enforcement. Parts 71 to 73 provide procedures governing, respectively, orders to obtain information from judgment debtors (known as oral examinations under the earlier rules), third party debt orders (known as garnishee orders under the earlier rules), and charging orders, stop orders and stop notices.

That legislative exercise enabled the whole of RSC Orders 48, 49 and 50, and the whole of CCR Orders 30 and 31, to be revoked. It also made inroads into RSC Ord. 45 (Enforcement of Judgments and Orders) and CCR Ord. 25 (Enforcement of Judgments and Orders: General). But it left untouched (apart from necessary consequential amendments) RSC Ord. 46 (Writs of Execution: General), RSC Ord. 47 (Writs of Fieri Facias), and CCR Ord. 26 (Warrants of Execution, Delivery and Possession).

By the Civil Procedure (Amendment) Rules 2014, the whole of RSC Ords. 46 and 47, and the whole of CCR Ord. 26, together with the provisions of RSC Ord. 45 and CCR Ord. 25 that remained in Schedules 1 and 2 after the 2001 statutory instrument, are revoked and replaced by new rules. The new rules consolidate and update the rules revoked and in addition take into account the reformed law as to the taking control of goods enacted by Part 3 and Schedule 12 of the Tribunals, Courts and Enforcement Act 2007. They reflect the fact that s.62(4) of the 2007 Act provides that various forms of process for enforcement should be renamed. Thus, writs of fieri facias become "writs of control", warrants of execution become "warrants of control", and warrants of distress (unless the power they confer is exercisable only against specific goods) become "warrants of control".

The new procedure for taking control of goods and selling then to recover a sum of money set out in Schedule 12 applies where an enactment, writ or warrant confers power to use that procedure (s.62(1)). The power conferred by a writ or warrant of control to recover a sum of money, and any power conferred by a writ or warrant of possession or delivery to take control of goods and sell the to recover a sum of money, is exercisable only by using that procedure (s.62(2)). Amongst other things, the Schedule 12 procedure replaces common law rules about how the powers to take control of and sell goods are exercised, in particular rules relating to remedies available to debtors (replevin) and offences by debtors (such as rescuing goods seized).

Conceivably, the two objectives of first, consolidating and updating the rules in RSC Ords. 45, 46 and 47, and in CCR Ords. 25 and 26, and, secondly, of providing rules necessary for court proceedings arising in the context of the new Schedule 12 procedure, could have been accomplished by the enactment of a single new CPR Part. However, the Rule Committee has adopted the more sensible approach of enacting two Parts, Parts 83 and 84, the latter dedicated to the second objective. Both Parts are supplemented by practice directions, made by CPR Update 69.

Three separate Sections in Part 83 (Writs and Warrants–General Provisions) deal with (1) writs and warrants (Section II), (2) writs only (Section III), and (3) warrants only (Section IV). The rules in Section II (rr.83.2 to 83.8) and Section III (rr.83.9 to 83.14) regulate such matters as permission to issue, duration and priority of process, stay of execution, orders for sale, and appropriate process for enforcement of orders for possession of land or for delivery of goods. The rules in Section IV (rr.83.15 to 83.29) are extensive and largely replicate the provisions of CCR Ord. 26.

Many of the rules in Part 84 (Enforcement by Taking Control of Goods), the bulk of them in Section III (rr.84.4 to 84.16), relate directly to provisions in Schedule 12 of the 2007 Act or to provisions in the very extensive Regulations made by the Lord Chancellor amplifying those provisions, that is to say, in the Taking Control of Goods Regulations 2013 (SI 2013/1894). At the beginning of the practice direction supplementing Part 84 it is explained that that Part and the practice direction "are closely linked to and need to be read with" Part 3 and Schedule 12 of the 2007 Act and with the related Regulations.

By the Civil Procedure (Amendment No. 2) Rules 2014 (SI 2014/482), with effect from April 6, 2014, a further Section, Section IV (rr.84.17 to 84.20), was added to Part 84 (subject to transitional provisions in r.5, see further below). The explanation for this addition is as follows.

Under the Tribunals, Courts and Enforcement Act 2007 s.64 (1) (as amended by the Crime and Courts Act 2013) a certificate to act as an enforcement agent may be issued by a judge of the County Court. Power to make regulations about enforcement agent certificates is granted to the Lord Chancellor by s.64(2). Regulations made in exercise of that power are the Certification of Enforcement Agents Regulations 2014 (SI 2014/421). Those Regulations (the Certification Regulations) come into effect on April 6, 2014 and make provision for the process by which persons who may, by virtue of s.63 of the 2007 Act, require a certificate in order to act as enforcement agents are issued with a certificate. They also provide for the issue of replacement certificates and the surrender of certificates, and for complaints as to fitness to hold a certificate. All of those matters may involve applications to the County Court. Necessary rules of court for the handling of such applications are provided in Section IV of Part 84.

A certificate under the Law of Distress Amendment Act 1888 s.7 which is in force on April 6, 2014, has effect as a certificate under s.64 effect for the period provided for when it was granted (s.64(4) and reg.15).

Paragraph (1) of reg.14 of the Certification Regulations states that the Distress for Rent Rules 1988 (see Vol. 2 para.9B-1365) continue to apply in relation to (a) an application for the grant of a certificate which was made before April 6, 2014, by a person who does not hold a certificate but was not determined before that date; (b) an application for the grant of a certificate to replace an existing certificate which ceases to have effect on or before August 6, 2014. Paragraph (2) states that a certificate granted on or after April 6, 2014, pursuant to an application referred to in paragraph (1)(a) or (b) has effect as a certificate under section 64 of the 2007 Act in the same way as a certificate under section 7 of the 1888 Act which is in force on that date.

Commencement and Transitional Provisions

New CPR Parts 83 to 86 and the practice directions supplementing Parts 83 and 84 come into force on April 6, 2014. Part 3 and Schedule 12 to the 2007 Act come into force on the same date. In the 2007 Act, and in the Civil Procedure (Amendment) Rules 2014, there are transitional provisions affecting the coming into force of the statutory provisions, and the rules.

In the 2007 Act, s.66 states that, where (a) by any provision of Part 3 a power becomes a power to use the procedure in Part 12, and (b) before April 6, 2014, goods have been distrained or executed against, or made subject to a walking possession agreement, under the power, Part 3 does not affect the continuing exercise of the power in relation to those goods.

In the statutory instrument, the rule inserting Parts 83 to 86 in the CPR is among the provisions described in r.41(1)(b) of the instrument as "enforcement amendments" for transitional purposes. Rule 41(2) states that enforcement amendments do not apply in relation to a writ or warrant or any enforcement action or other action taken in relation to the writ or warrant where (a) permission for the issue of the writ or warrant is sought before April 6, 2014; (b) permission is not required for the issue of the writ, and a request for the issue of the writ is filed before April 6, 2014; (c) permission is not required for the issue of a warrant of execution or warrant of delivery, and a request for the issue of the warrant is filed before April 6, 2014; or (d) an application for the issue of a warrant of possession is made before April 6, 2014.

Rule 41(3) states that the enforcement amendments do not apply in relation to enforcement action, or any action taken in relation to that enforcement action, where the right to take the enforcement action becomes exercisable otherwise than by virtue of a writ or warrant issued by a court, and the enforcement action is begun before April 6, 2014.

The rules in Parts 83 to 86 as inserted in the CPR by the statutory instrument anticipate the establishment of the "single" County Court (see above) and are drafted accordingly. However, as those Parts come into effect on April 6, 2014, and as the "single" County Court will not be established until April 22, 2014, transitional provisions have had to be included in the statutory instrument (see paras.(4) and (5) of r.41). Those provisions explain how the new Parts should be applied in the intervening period and the effects, from April 22, 2014, of proceedings started during the period and steps taken in them.

Rule 5 of the Civil Procedure (Amendment No. 2) Rules 2014 contains similar transitional provisions relevant to the rules in Section IV of Part 84 as inserted by that statutory instrument.

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LEGAL TAXONOMY
FROM SWEET & MAXWELL

The selection of headings in this index has been informed by Sweet & Maxwell's Legal Taxonomy. Subject headings in the index conform to keywords provided by the Legal Taxonomy. These keywords provide a means of identifying similar concepts in other Sweet & Maxwell publications and online services to which keywords from the Legal Taxonomy has been applied. Suggestions to *taxonomy@sweetandmaxwell.co.uk*.

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