

## 44th UPDATE – PRACTICE DIRECTION AMENDMENTS

*The new Practice Directions and the amendments to the existing Practice Directions supplementing the Civil Procedure Rules have been made by the Master of the Rolls under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, 2(2) of the Constitutional Reform Act 2005, and have been approved by the Lord Chancellor.*

*The new Pre-Action Protocol for Construction and Engineering, and the amendment to the Pre-Action Protocol for Personal Injury Claims, have been approved by the Master of the Rolls as Head of Civil Justice in accordance with the Protocols Practice Direction.*

The amendments will come into force as follows:

PD2B	6th April 2007
PD 4 and Forms	6th April 2007
PD 5	6th April 2007
PD 7B	6th April 2007
PD 8	6th April 2007
PD 8B	6th April 2007
PD 14	6th April 2007
PD 21	6th April 2007
PD 23	6th April 2007
PD 23C	6th April 2007
PD 34	6th April 2007
PD 36	6th April 2007
PD 36B	6th April 2007
PD 37	6th April 2007
PD 41B	6th April 2007
PD 44	6th April 2007
PD 47	6th April 2007
PD 52	6th April 2007
PD 53	6th April 2007
PD 55B	1st January 2007
PD65	6th April 2007

PD 74B	6th April 2007
Pre-Action Protocol for Personal Injury Claims	6th April 2007
Pre-Action Protocol for the Construction and Engineering Disputes	6th April 2007

Sir Anthony Clarke, M.R.

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The Right Honourable  
Sir Anthony Clarke  
Master of the Rolls and Head of Civil Justice

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The Lord Chancellor

## **PRACTICE DIRECTION B SUPPLEMENTING PART 2**

(a) In paragraph 5.1-

(i) for “the Vice-Chancellor” substitute “the Chancellor”; and

(ii) for sub-paragraph (d), substitute-

“(d) where the proceedings are brought by a Part 8 claim form, seeking determination of any question of law or as to the construction of a document which is raised by the claim form;”;

(b) for paragraph 8.1A, substitute-

“8.1A A District Judge has jurisdiction to make an order under-

(1) section 1B or 1D of the Crime and Disorder Act 1998 (anti-social behaviour); and

(2) section 4 or 9 of the Violent Crime Reduction Act 2006 (drinking banning order);

and

(c) in paragraph 11.1, after “or which is treated as being allocated to the multi-track under rule 8.9(c)”, for “and Table 2 of the Practice Direction to Part 8”, substitute “and the table at Section B of the Practice Direction to Part 8”.

## **PRACTICE DIRECTION SUPPLEMENTING PART 4 AND FORMS**

In Table 1 of the Practice Direction to Part 4 (Forms)-

(a) after paragraph 3.1, insert-

“3.2 There are Court Funds Office forms referred to in Part 37. These are not listed below. They are Form 201 (Request for payment out of money in court to satisfy a Part 36 offer) and Form 202 (Notice of Defendant’s consent to payment out of money in court to satisfy a Part 36 offer). It should also be noted that use of Form N242A – Offer to settle – Part 36, referred to in paragraph 1.1 of the Practice Direction supplementing Part 36 and in the table below, is not mandatory.”.

(b) for “N16(A) General form of application for injunction”, substitute “N16A General form of application for injunction”;

(c) for “N110A Anti social behaviour injunction - power of arrest sections 153C and 153D of the Housing Act 1996”, substitute “N110A Anti-social behaviour injunction - power of arrest (Housing Act 1996, Anti-social Behaviour Act 2003, Police and Justice Act 2006)”;

(d) for “N242A “Notice of payment into court (in settlement) (Rule 36.6(2))”, substitute “N242A Notice of offer to settle – Part 36”; and

(e) omit “N243A – Notice of acceptance of payment into court (PD 36 7.7)”.

## **PRACTICE DIRECTION SUPPLEMENTING PART 5**

In paragraph 5.3(9), omit sub-paragraph (b).

## **PRACTICE DIRECTION 7B - CONSUMER CREDIT ACT 2006 – UNFAIR RELATIONSHIPS**

In Practice Direction 7B-

(a) For paragraph 3.1(5), substitute-

“(5) section 140B(2)(a) (debtor’s or surety’s application for an order relating to an unfair relationship);

(5A) section 139(1)(a) (debtor’s claim for a credit agreement to be reopened as extortionate); and”.

(b) For paragraphs 10.1 and 10.2, substitute-

“10.1 Paragraph 10.2 applies where-

(1) a debtor or any surety intends to seek an order relating to an unfair relationship between a creditor and that debtor, arising out of a credit agreement (taken together with any related agreement);

(2) a claim relating to that agreement or any related agreement has already begun; and

(3) section 140B(2)(b) or section 140B(2)(c) applies.

10.2 The debtor or surety must serve written notice of his intention on the court and every other party to the claim within 14 days of the service of the claim form on him.

10.2A Where a debtor or any surety intends to apply for a credit agreement to be reopened after a claim on or relating to the agreement has already begun, and-

(1) section 139(1)(b); or

(2) section 139(1)(c),

applies, the debtor or surety must serve written notice of his intention on the court and every other party to the proceedings within 14 days of the service of the claim form on him.

10.3 If the debtor or surety (as the case may be) serves a notice under paragraph 10.2 or 10.2A he will be treated as having filed a defence for the purposes of the Consumer Credit Act procedure.”.

### **PRACTICE DIRECTION SUPPLEMENTING PART 8**

For the Practice Direction supplementing Part 8, substitute the Practice Direction set out at **Annex A**.

### **PRACTICE DIRECTION SUPPLEMENTING PART 8**

Omit Practice Direction B supplementing Part 8.

### **PRACTICE DIRECTION SUPPLEMENTING PART 14**

(a) For paragraph 1.1, substitute-

“1.1(1) Rules 14.1, 14.1A and 14.2 deal with the manner in which a defendant may make an admission of a claim or part of a claim.

(2) Rule 14.1A makes provision about admissions made before commencement of a claim. It applies only to admissions made after 6th April 2007, and only in proceedings to which one of the following pre-action protocols apply-

- (a) the pre-action protocol for personal injury claims;
- (b) the pre-action protocol for the resolution of clinical disputes; or
- (c) the pre-action protocol for disease and illness claims.

(The pre-action protocol for personal injury claims states that it is primarily designed for certain types of personal injury claim with a value of less than £15,000. But, paragraph 2.2 of the protocol indicates that it generally applies to all claims which include a claim for personal injury.)”; and

(b) After paragraph 6 insert-

#### **“Withdrawing an admission**

7.1 An admission made under Part 14 may be withdrawn with the court’s permission.

7.2 In deciding whether to give permission for an admission to be withdrawn, the court will have regard to all the circumstances of the case, including-

- (a) the grounds upon which the applicant seeks to withdraw the admission including whether or not new evidence has come to light which was not available at the time the admission was made;
- (b) the conduct of the parties, including any conduct which led the party making the admission to do so;

- (c) the prejudice that may be caused to any person if the admission is withdrawn;
- (d) the prejudice that may be caused to any person if the application is refused;
- (e) the stage in the proceedings at which the application to withdraw is made, in particular in relation to the date or period fixed for trial;
- (f) the prospects of success (if the admission is withdrawn) of the claim or part of the claim in relation to which the offer was made; and
- (g) the interests of the administration of justice.”.

#### **PRACTICE DIRECTION SUPPLEMENTING PART 21**

After paragraph 12.3, for “(For further information on payments into and out of court see the practice directions supplementing Parts 36 and 37.)” substitute “(For further information on payments out of court, see the Practice Direction supplementing Part 37)”.

#### **PRACTICE DIRECTION SUPPLEMENTING PART 23**

For paragraph 6, substitute paragraph 6 set out at **Annex B**.

#### **PRACTICE DIRECTION C SUPPLEMENTING PART 23**

Omit Practice Direction C supplementing Part 23.

#### **PRACTICE DIRECTION SUPPLEMENTING PART 34**

In Annex C, in the table in the first column under the heading “Area”, for “Wales and Chester Circuit”, substitute “Wales Circuit”.

#### **PRACTICE DIRECTION SUPPLEMENTING PART 36**

For the Practice Direction supplementing Part 36, substitute the Practice Direction at **Annex C**.

#### **PRACTICE DIRECTION B SUPPLEMENTING PART 36**

Insert Practice Direction B as set out at **Annex D**.

#### **PRACTICE DIRECTION SUPPLEMENTING PART 37**

For the Practice Direction supplementing Part 37, substitute the Practice Direction at **Annex E**.

#### **PRACTICE DIRECTION B SUPPLEMENTING PART 41**

In paragraph 6, for “rule 36.2A” substitute “rule 36.5”.

#### **PRACTICE DIRECTION SUPPLEMENTING PART 44**

For paragraph 8.4, substitute-

“8.4 In deciding what order to make about costs the court is required to have regard to all the circumstances including any payment into court or admissible offer to settle made by a party which is drawn to the court’s attention, and which is not an offer to which costs consequences under Part 36 apply.”.

#### **PRACTICE DIRECTION SUPPLEMENTING PART 47**

In paragraph 40.4(c), after “Offers to settle” omit “and payments into court”.

#### **PRACTICE DIRECTION SUPPLEMENTING PART 52**

In paragraph 8.2, in the table-

- (a) in the first column headed “Circuit” for “Wales and Chester Circuit” substitute “Wales Circuit”; and
- (b) in the second column headed “Appeal Centres”-
  - (i) after “Preston” insert “Chester”; and
  - (ii) after “Swansea” delete “Chester”.

#### **PRACTICE DIRECTION SUPPLEMENTING PART 53**

- (a) In paragraph 6.1, after “Part 36 offer” omit “, Part 36 payment”; and
- (b) in paragraph 6.2-
  - (i) after “Part 36 offer” omit “or the Part 36 payment”; and
  - (ii) for “rule 36.8(5)” substitute “rule 36.9(1)”.

#### **PRACTICE DIRECTION B SUPPLEMENTING PART 55**

##### **Paragraph 6.3**

(a) Insert at the beginning of the paragraph 6.3. “Subject to paragraphs 6.3A and 6.3B,”; and

(b) After paragraph 6.3, insert-

“6.3A Paragraph 6.3B applies where the claimant has provided the defendant with-

- (1) the information required by MCOB 13.4.1 and MCOB 13.4.4 of the Mortgages: Conduct of Business Rules issued by the Financial Services Authority; or
- (2) in schedule form, the dates and amounts of all payments due and payments made under the tenancy agreement for a period of two years immediately preceding the date of issue, or if the first date of default occurred less than two years before the date of issue, from the first date of default and a running total of the arrears.

(MCOB 13.4.1 and MCOB 13.4.4 may be found at <http://fsahandbook.info/FSA/html/handbook/MCOB/13>)

6.3B Where this paragraph applies the claimant may, in place of the information required by paragraph 6.3, include in his particulars of claim a summary only of the arrears containing at least the following information-

- (1) The amount of arrears as stated in the notice of seeking possession served under either section 83 of the Housing Act 1985 or section 8 of the Housing Act 1988, or at the date of the claimant's letter before action, as appropriate;
- (2) the dates and amounts of the last three payments in cleared funds made by the defendant or, if less than three payments have been made, the dates and amounts of all payments made;
- (3) the arrears at the date of issue, assuming that no further payments are made by the defendant.

6.3C Where the particulars of claim include a summary only of the arrears the claimant must-

- (1) serve on the defendant not more than 7 days after the date of issue, a full arrears history containing at least the information required by paragraph 6.3; and
- (2) either-
  - (a) make a witness statement confirming that he has complied with sub-paragraph (1) or (2) of paragraph 6.3A as appropriate, and including or exhibiting the full arrears history; or
  - (b) verify by way of oral evidence at the hearing that he has complied with sub-paragraph (1) or (2) of paragraph 6.3A as appropriate and also produce and verify the full arrears history.

(Rule 55.8(4) requires all witness statements to be filed and served at least 2 days before the hearing.)

#### **PRACTICE DIRECTION SUPPLEMENTING PART 65**

After paragraph 14, insert-

#### **“SECTION VI – DRINKING BANNING ORDERS UNDER THE VIOLENT CRIME REDUCTION ACT 2006**

##### **Service of an order under sections 4(7) or 9 of the 2006 Act**

15.1 An order under section 4(7) or an interim order under section 9 of the 2006 Act must be served personally on the defendant.

##### **Application to join a person to the principal proceedings**

15.2 An application by a relevant authority under section 4(5) of the 2006 Act to join a person to the principal proceedings may only be made against a person aged 18 or over.”.

#### **PRACTICE DIRECTION B SUPPLEMENTING PART 74**

For the Annex (Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims) substitute the attached Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.

#### **PRE-ACTION PROTOCOL FOR PERSONAL INJURY CLAIMS**

Omit the first sentence of paragraph 3.9.

#### **PRE-ACTION PROTOCOL FOR CONSTRUCTION AND ENGINEERING DISPUTES**

Substitute the protocol that appears at **Annex F**.

**PRACTICE DIRECTION – ALTERNATIVE PROCEDURE FOR CLAIMS**

THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 8 AND SCHEDULE 1 & SCHEDULE 2 TO THE CPR

**Terminology**

1.1 In this Practice Direction, “Schedule rules” means provisions contained in the Schedules to the CPR, which were previously contained in the Rules of the Supreme Court (1965) or the County Court Rules (1981).

**Application of this Practice Direction**

2.1 Section A contains general provisions about claims and applications to which Part 8 applies. Section B comprises a table listing claims, petitions and applications under various enactments which must be made under Part 8. Section C contains certain additions and modifications to the Part 8 procedure that apply to the particular claims and applications identified.

2.2 Some of the claims and applications listed in the table in Section B are dealt with in the Schedule Rules in the CPR. The table in Section B contains cross-reference to the relevant Schedule Rules.

**SECTION A**

**GENERAL PROVISIONS APPLICABLE TO PART 8 CLAIMS**

**Types of claim in which the Part 8 procedure may be used**

3.1 The types of claim for which the Part 8 procedure may be used include-

- (1) a claim by or against a child or patient, as defined in rule 21.1(2), which has been settled before the commencement of proceedings and the sole purpose of the claim is to obtain the approval of the court to the settlement; or
- (2) a claim for provisional damages which has been settled before the commencement of proceedings and the sole purpose of the claim is to obtain a consent judgment.

3.2 (1) The Part 8 procedure must be used for those claims, petitions and applications listed in the table in Section B.

(2) Where a claim is listed in the table in Section B and is identified as a claim to which particular provisions of Section C apply, the Part 8 procedure shall

apply subject to the additions and modifications set out in the relevant paragraphs in Section C.

3.3 The Part 8 procedure must also be used for any claim or application in relation to which an Act, rule or practice direction provides that the claim or application is brought by originating summons, originating motion or originating application.

3.4 Where it appears to a court officer that a claimant is using the Part 8 procedure inappropriately, he may refer the claim to a judge for the judge to consider the point.

3.5 The court may at any stage order the claim to continue as if the claimant had not used the Part 8 procedure and, if it does so, the court will allocate the claim to a track and give such directions as it considers appropriate.

## **ISSUING THE CLAIM**

4.1 Part 7 and the practice direction which supplements it contain a number of rules and directions applicable to all claims, including those to which Part 8 applies. Those rules and directions should be applied where appropriate.

4.2 Where a claimant uses the Part 8 procedure, the claim form (practice form N208) should be used and must state the matters set out in rule 8.2 and, if rule 8.1(6) applies, must comply with the requirements of the rule or practice direction in question. In particular, the claim form must state that Part 8 applies; a Part 8 claim form means a claim form which so states.

(The Costs Practice Direction supplementing Parts 43 to 48 contains details of the information required to be filed with a claim form to comply with rule 44.15 (providing information about funding arrangements))

## **RESPONDING TO THE CLAIM**

5.1 The provisions of Part 15 (defence and reply) do not apply where the claim form is a Part 8 claim form.

5.2 Where a defendant who wishes to respond to a Part 8 claim form is required to file an acknowledgment of service, that acknowledgment of service should be in practice form [N210](#).

5.3 Where a defendant objects to the use of the Part 8 procedure, and his statement of reasons includes matters of evidence, the acknowledgment of service must be verified by a statement of truth.

## **MANAGING THE CLAIM**

6.1 The court may give directions immediately a Part 8 claim form is issued either on the application of a party or on its own initiative. The directions may include fixing a hearing date where-

- (1) there is no dispute, such as in child and patient settlements; or
- (2) where there may be a dispute, but a hearing date could conveniently be given.

6.2 Where the court does not fix a hearing date when the claim form is issued, it will give directions for the disposal of the claim as soon as practicable after the defendant has acknowledged service of the claim form or, as the case may be, after the period for acknowledging service has expired.

6.3 Certain applications may not require a hearing.

6.4 The court may convene a directions hearing before giving directions.

## **EVIDENCE**

7.1 A claimant must file the written evidence on which he relies when his Part 8 claim form is issued (unless the evidence is contained in the claim form itself).

7.2 Evidence will normally be in the form of a witness statement or an affidavit but a claimant may rely on the matters set out in his claim form provided that it has been verified by a statement of truth.

(For information about (1) statements of truth see Part 22 and the practice direction that supplements it, and (2) written evidence see Part 32 and the practice direction that supplements it.)

7.3 A defendant wishing to rely on written evidence, must file it with his acknowledgment of service.

7.4 A party may apply to the court for an extension of time to serve and file evidence under rule 8.5 or for permission to serve and file additional evidence under rule 8.6(1).

(For information about applications see Part 23 and the practice direction that supplements it)

7.5 (1) The parties may, subject to the following provisions, agree in writing on an extension of time for serving and filing evidence under rule 8.5(3) or rule 8.5(5).

(2) An agreement extending time for a defendant to file evidence under rule 8.5(3)–

(a) must be filed by the defendant at the same time as he files his acknowledgement of service; and

(b) must not extend time by more than 14 days after the defendant files his acknowledgement of service.

(3) An agreement extending time for a claimant to file evidence in reply under rule 8.5(5) must not extend time to more than 28 days after service of the defendant's evidence on the claimant.

## **HEARING**

8.1 The court may on the hearing date–

(1) proceed to hear the case and dispose of the claim;

(2) give case management directions.

8.2 Case management directions may include the specific allocation of a case to a track.

8.3 CPR rules 26.5(3) to (5) and rules 26.6 to 26.10 apply to the allocation of a claim under paragraph 8.2.

## **SECTION B**

### **CLAIMS AND APPLICATIONS THAT MUST BE MADE UNDER PART 8**

9.1 The claimant must use the Part 8 procedure if the claim is listed in the table below.

9.2 Section C of this Practice Direction contains special provisions modifying the Part 8 procedure, and where it does so, those provisions should be followed. The table below refers to the relevant paragraph of Section C where it applies.

9.3 Some of the claims and applications listed in the table below are dealt with in the Schedule Rules, and those rules modify the Part 8 procedure. A cross-reference to the relevant Schedule Rule is contained in the table below.

<b>Type of Claim or Application</b>	<b>Paragraph of Section C</b>	<b>Schedule Rule</b>
Application under section 15 of the Bills of Sale Act 1878 (Entry of satisfaction)	Paragraph 11	
Application under the proviso to section 7 of the Bills of Sale Act (1878) Amendment Act 1882 (Restraining removal on sale of goods seized)		
Application under the Public Trustee Act 1906 (free-standing proceedings)	Paragraph 12	
Applications under section 2(3) of the Public Order Act 1936	Paragraph 13	
Proceedings under jurisdiction conferred by section 1 of the Railway and Canal Commission (Abolition) Act 1949	Paragraph 14	
Administration Act 1960 (Applications under the Act)		RSC 0.109 r.1(3)
Administration of Justice Act 1960 (Appeals under section 13 of the Act)		RSC 0.109, r.2(4)
Proceedings under section 14 of the Commons Registration Act 1965		
Application under the Mines (Working Facilities and Support) Act 1966	Paragraph 15	
The Local Government Act 1972 (claims under section 92 – proceedings for disqualification)		
Proceedings under the Control of Misleading Advertisements Regulations 1988		
Applications under section 42 of the Supreme Court Act 1981	Paragraph 16	
Application for detailed assessment of returning officer's account under the Representation of the People Act 1983	Paragraph 17	

Proceedings in the High Court under Representation of the People Acts		
Applications under Part II of the Mental Health Act 1983	Paragraph 18	
Applications under section 13 of the Coroners Act 1988	Paragraph 19	
Application for an injunction to prevent Environmental Harm under section 187B or 214A of the Town and Country Planning Act 1990; section 44A of the Planning (Listed Buildings and Conservation Areas) Act 1990; or section 26AA of the Planning (Hazardous Substances) Act 1990	Paragraph 20	
Confiscation and Forfeiture in Connection with Criminal Proceedings (I. Drug Trafficking Act 1994 and Criminal Justice (International Co-operation) Act 1990 – Application for a confiscation Order)		RSC O.115, r.2B(1)
Confiscation and Forfeiture in Connection with Criminal Proceedings (I. Drug Trafficking Act 1994 and Criminal Justice (International Co-operation) Act 1990 – Application for a restraint order or charging order)		RSC O.115, r.3(1)
Confiscation and Forfeiture in Connection with Criminal Proceedings (I. Drug Trafficking Act 1994 and Criminal Justice (International Co-operation) Act 1990 – Realisation of property)		RSC O.115, r.7(1)
The Criminal Procedure and Investigations Act 1996 (Application under section 54(3)).		RSC O.116, r.5(1)
Confiscation and Forfeiture in Connection with Criminal Proceedings (III. Terrorism Act 2000 – Application for a restraint order)		RSC O.115, r.26(1)
Proceedings under the Financial Services and Markets Act 2000)	Paragraph 21	
Interpleader (Mode of application)		RSC O.17, r.3(1)
Criminal Proceedings (Estreat of recognizances)		RSC O.79, r.8(2)

Criminal Proceedings (Bail)		RSC O.79, r.9(2)
Application under an enactment giving the High Court jurisdiction to quash or prohibit any order, scheme, certificate or plan, any amendment or approval of a plan, any decision of a Minister or government department or any action on the part of a Minister or government department	Paragraph 22	

## SECTION C

### SPECIAL PROVISIONS

10.1 The following special provisions apply to the applications indicated.

#### **Applications under Section 15 of the Bills of Sale Act 1878**

11.1 This paragraph applies where an application is made under section 15 of the Bills of Sale Act 1878 for an order that a memorandum of satisfaction be written on a registered copy of a bill of sale.

11.2 If the person entitled to the benefit of the bill of sale has not consented to the satisfaction, the claim form-

- (1) must be served on that person; and
- (2) must be supported by evidence that the debt (if any) for which the bill of sale was made has been satisfied or discharged.

11.3 If the person entitled to the benefit of the bill of sale has consented to the satisfaction, the application may be made by-

- (1) claim form under Part 8; or
- (2) witness statement.

11.4 Where paragraph 11.3 applies and the application is made by Part 8 claim form, the claim form-

- (1) must contain details of the consent;
- (2) must be supported by a witness statement by a person who witnessed the consent verifying the signature on it; and
- (3) must not be served on any person other than the person entitled to the benefit of the bill of sale.

11.5 Where paragraph 11.3 applies and the application is made by witness statement-

- (1) Part 23 will apply to the application;
- (2) the witness statement will constitute the application notice under that Part;

- (3) the witness statement does not need to be served on any other person;
- and
- (4) the application will normally be dealt with without a hearing.

### **Application under the Public Trustee Act 1906**

12.1 An application under the Public Trustee Act 1906 must be made-

- (1) where no proceedings have been issued, by a Part 8 claim;
- (2) in existing proceedings, by a Part 23 application.

12.2 Without prejudice to sections 10(2) and 13(7) of the Public Trustee Act 1906, the jurisdiction of the High Court under the Act is exercised by a single judge of the Chancery Division sitting in private.

### **Application under section 2(3) of the Public Order Act 1936**

13.1 The Attorney General may determine the persons who should be made defendants to an application under section 2(3) of the Public Order Act 1936.

13.2 If the court directs an inquiry under section 2(3), it may appoint the Official Solicitor to represent any interests it considers are not sufficiently represented and ought to be represented.

### **Proceedings under section 1 of the Railway and Canal Commission (Abolition) Act 1949**

14.1 Paragraphs 15.3 to 15.14 apply, with appropriate modifications, to proceedings in which jurisdiction has been conferred on the High Court by section 1 of the Railway and Canal Commission (Abolition) Act 1949, except to the extent that-

- (1) an Act;
- (2) a rule;
- (3) a practice direction,

provides otherwise.

### **Application under the Mines (Working Facilities and Support) Act 1966**

15.1 In this paragraph-

- (1) 'the Act' means the Mines (Working Facilities and Support) Act 1966;
- (2) 'the applicant' means the person who has applied for the grant of a right under the Act.

15.2 This paragraph applies where the Secretary of State refers an application to the High Court under any provision of the Act.

15.3 The Secretary of State must-

- (1) file a reference signed by him or a person authorised to sign on his behalf in the Chancery Division of the High Court;
- (2) file, along with the reference, any documents and plans deposited with him by the applicant in support of his application; and
- (3) within 3 days of filing the reference, give notice to the applicant that the reference has been filed.

15.4 Within 10 days of receiving the notice referred to in paragraph 15.3(3), the applicant must issue a claim form.

15.5 The claim form-

- (1) must identify the application under the Act and the remedy sought; and
- (2) need not be served on any other party.

15.6 Within 7 days of the claim form being issued, the applicant must-

- (1) apply for the claim to be listed for a hearing before a Master; and
- (2) give notice of the hearing date to the Secretary of State.

15.7 The applicant must, not less than 2 days before the date fixed for a hearing, file at court-

- (1) a witness statement in support of the claim, giving details of all persons known to the applicant to be interested in, or affected by, the application; and
- (2) a draft of any proposed advertisement or notice of the application.

15.8 At the hearing, the Master will-

- (1) fix a date by which any notice of objection under paragraph 15.9 must be filed;
- (2) fix a date for a further hearing of the claim; and
- (3) give directions about-
  - (a) any advertisement that is to be inserted or notice of the application and hearing date that is to be given; and
  - (b) what persons are to be served with a copy of the application or any other document in the proceedings.

15.9 Any person who wishes to oppose the application must, within the time fixed by the court under paragraph 15.8, serve notice of objection on the applicant, stating

- (a) his name and address;
- (b) the name and address of his solicitor, if any;
- (c) the grounds of his objection;
- (d) any alternative method for effecting the objects of the application that he alleges may be used; and
- (e) the facts on which he relies.

15.10 Any document that is required to be served on the person who has given notice of objection ('the objector') may be served by posting it to the following address-

- (1) where the notice of objection gives the name and address of a solicitor, to the solicitor;
- (2) in any other case, to the objector at the address stated in the notice of objection.

15.11 The objector may appear, or be represented at any further hearing, and may take such part in the proceedings as the court allows.

15.12 The applicant must, not less than two days before the date set for the further hearing, file at court-

- (1) any notices of objection served on him;
- (2) a list of objectors, together with
  - (a) their names and addresses;
  - (b) the names and addresses of their solicitors, if any; and
  - (c) a summary of their respective grounds of objection.

15.13 If the objector does not appear, or is not represented, at the further hearing-

- (1) his notice of objection will have no effect; and
- (2) he will not be entitled to take any further part in the proceedings unless the court orders otherwise.

15.14 At the further hearing, the court will-

- (1) give directions about the future conduct of the claim, including-

- (a) any further information the applicant is required to give in relation to any of the grounds or facts relied on in support of the application;
  - (b) any further information the objector is required to give in relation to any of the grounds or facts relied on in opposition to the application;
  - (c) whether the applicant may serve a reply to any notice of objection;
  - (d) whether any particular fact should be proved by a witness statement;
  - (e) whether any statements of case or points of claim or defence are to be served; and
- (2) adjourn the claim for hearing before a judge.

### **Application under Section 42 of the Supreme Court Act 1981**

16.1 An application under section 42 of the Supreme Court Act 1981 is heard and determined by a Divisional Court.

16.2 The claim form must be filed at the Administrative Court and-

- (1) be accompanied by a witness statement in support; and
- (2) be served on the person against whom the order is sought.

### **Application for detailed assessment of a returning officer's account**

17.1 An application by the Secretary of State under section 30 of the Representation of the People Act 1983 for the detailed assessment of a returning officer's account must be made by claim form.

17.2 When it issues the claim form, the court will fix a date for the hearing of the detailed assessment to be dealt with if the application is granted.

17.3 The returning officer may, on the application, apply to the court to examine any claim made against him in respect of matters charged in the account.

17.4 To make an application under paragraph 17.3, the returning officer must file an application within 7 days of being served with a copy of the application for detailed assessment.

17.5 When an application is filed under paragraph 17.3, the court will-

- (a) fix a date for the hearing;
- (b) give notice of the hearing date to the returning officer; and
- (c) serve a copy of the application and notice of hearing on the claimant.

17.6 The examination and detailed assessment may take place on the same day, provided that the examination is determined before the detailed assessment is concluded.

17.7 The district judge may hear and determine-

- (a) an application for detailed assessment;
- (b) any application under paragraph 17.3.

17.8 The court will serve a copy of the order made in the application on-

- (a) the Secretary of State;
- (b) the returning officer; and
- (c) in an application under paragraph 17.3, the claimant.

### **Application under Mental Health Act 1983**

18.1 In this paragraph-

- (1) a section referred to by a number refers to the section so numbered in the Mental Health Act 1983 and 'Part II' means Part II of that Act;
- (2) 'hospital manager' means the manager of a hospital as defined in section 145(1) of the Act; and
- (3) 'place of residence' means, in relation to a patient who is receiving treatment as an in-patient in a hospital or other institution, that hospital or institution.

18.2 The claim form must be filed-

- (1) in the court for the district in which the patient's place of residence is situated; or
- (2) in the case of an application under section 30, in the court that made the order under section 29 which the application seeks to discharge or vary.

18.3 Where an application is made under section 29 for an order that the functions of the nearest relative of the patient are to be exercisable by some other person-

- (1) the nearest relative must be made a respondent, unless
  - (a) the application is made on the grounds that the patient has no nearest relative or that it is not reasonably practicable to ascertain whether he has a nearest relative; or
  - (b) the court orders otherwise; and

(2) the court may order that any other person shall be made a respondent.

18.4 Subject to paragraph 18.5, the court may accept as evidence of the facts relied upon in support of the application, any report made-

(1) by a medical practitioner; or

(2) by any of the following acting in the course of their official duties-

(a) a probation officer;

(b) an officer of a local authority;

(c) an officer of a voluntary body exercising statutory functions on behalf of a local authority; or

(d) an officer of a hospital manager.

18.5 The respondent must be informed of the substance of any part of the report dealing with his fitness or conduct that the court considers to be material to the determination of the claim.

18.6 An application under Part II shall be heard in private unless the court orders otherwise.

18.7 The judge may, for the purpose of determining the application, interview the patient. The interview may take place in the presence of, or separately from, the parties. The interview may be conducted elsewhere than at the court. Alternatively, the judge may direct the district judge to interview the patient and report to the judge in writing.

### **Applications under section 13 of the Coroners Act 1988**

19.1 An application under section 13 of the Coroners Act 1988 is heard and determined by a Divisional Court.

19.2 The application must, unless made by the Attorney General, be accompanied by the Attorney General's fiat.

19.3 The claim form must-

(1) state the grounds for the application;

(2) be filed at the Administrative Court; and

(3) be served upon all persons directly affected by the application within six weeks of the grant of the Attorney General's fiat.

## **Application for injunction to prevent Environmental Harm**

20.1 This paragraph relates to applications under-

- (1) section 187B or 214A of the Town and Country Planning Act 1990;
- (2) section 44A of the Planning (Listed Buildings and Conservation Areas) Act 1990; or
- (3) section 26AA of the Planning (Hazardous Substances) Act 1990.

20.2 An injunction may be granted under those sections against a person whose identity is unknown to the applicant.

20.3 In this paragraph, an injunction refers to an injunction under one of those sections and 'the defendant' is the person against whom the injunction is sought.

20.4 In the claim form, the applicant must describe the defendant by reference to-

- (1) a photograph;
- (2) a thing belonging to or in the possession of the defendant; or
- (3) any other evidence.

20.5 The description of the defendant under paragraph 20.4 must be sufficiently clear to enable the defendant to be served with the proceedings.

(The court has power under Part 6 to dispense with service or make an order permitting service by an alternative method).

20.6 The application must be accompanied by a witness statement. The witness statement must state-

- (1) that the applicant was unable to ascertain the defendant's identity within the time reasonably available to him;
  - (2) the steps taken by him to ascertain the defendant's identity;
  - (3) the means by which the defendant has been described in the claim form;
- and
- (4) that the description is the best the applicant is able to provide.

20.7 When the court issues the claim form it will-

- (1) fix a date for the hearing; and
- (2) prepare a notice of the hearing date for each party.

20.8 The claim form must be served not less than 21 days before the hearing date.

20.9 Where the claimant serves the claim form, he must serve notice of the hearing date at the same time, unless the hearing date is specified in the claim form.

(CPR rules 3.1(2) (a) and (b) provide for the court to extend or shorten the time for compliance with any rule or practice direction, and to adjourn or bring forward a hearing)

20.10 The court may on the hearing date—

- (1) proceed to hear the case and dispose of the claim; or
- (2) give case management directions.

### **Proceedings under the Financial Services and Markets Act 2000**

21.1 This paragraph applies to proceedings in the High Court under the Financial Services and Markets Act 2000.

21.2 Proceedings in the High Court under the Act (other than applications for a mandatory order) and actions for damages for breach of a statutory duty imposed by the Act shall be assigned to the Chancery Division.

21.3 Such proceedings and actions must be begun by claim form (except for applications by petition by the Financial Services Authority under section 367 of the Act).

21.4 The Financial Services Authority may make representations to the court where there is a question about the meaning of any rule or other instrument made by, or with the approval or consent of, the Financial Services Authority.

### **Application to quash certain orders, schemes, etc**

22.1 This paragraph applies where the High Court has jurisdiction under any enactment, on the application of any person to quash or prohibit any-

- (1) order, scheme, certificate or plan of;
- (2) amendment or approval of a plan of;
- (3) decision of;
- (4) action on the part of,

a Minister or government department.

22.2 The jurisdiction shall be exercisable by a single judge of the Queen’s Bench Division.

22.3 The claim form must be filed at the Administrative Court and served within the time limited by the relevant enactment for making the application.

22.4 Subject to paragraph 22.6, the claim form must be served on the appropriate Minister or government department and on the person indicated in the following table.

<p>If the application relates to-</p> <p>(i) a compulsory purchase order made by an authority other than the appropriate Minister or government department; or</p> <p>(ii) a clearance order under the Housing Act 1985.</p>	<p>The authority that made the order.</p>
<p>If the application relates to a scheme or order-</p> <p>(i) to which Section 2 of the Highways Act 1980 applies; and</p> <p>(ii) which was made by an authority other than the Secretary of State</p>	<p>The authority that made the scheme or order.</p>
<p>If the application relates to a structure plan, local plan or other development plan within the meaning of the Town and Country Planning Act 1990</p>	<p>The local planning authority who prepared the plan.</p>
<p>If the application relates to any decision or order, or any action on the part of a Minister of the Crown to which-</p> <p>(i) section 21 of the Land Compensation Act 1961; or</p> <p>(ii) section 288 of the Town and Country Planning Act 1990, applies.</p>	<p>(a) The authority directly concerned with such decision, order or action; or</p> <p>(b) if that authority is the applicant, on every person who would, if he were aggrieved by the decision, order or action, be entitled to apply to the High Court under section 21 of the Land Compensation Act or section 288 of the Town and Country Planning Act, as the</p>

	case may be.
If the application relates to a scheme to which Schedule 32 of the Local Government, Planning and Land Act 1980 applies	The body which adopted the scheme.

22.5 In paragraph 22.4, 'the appropriate Minister or government department' means the Minister of the Crown or government department-

- (1) by whom the order, scheme, certificate, plan, amendment, approval or decision in question was or may be made, authorised, confirmed, approved or given;
- (2) on whose part the action in question was or may be taken.

22.6 Where the application relates to an order made under the Road Traffic Regulation Act 1984, the claim form must be served-

- (1) if the order was made by a Minister of the Crown, on that Minister;
- (2) if the order was made by a local authority with the consent, or following a direction, of a Minister of the Crown, on that authority and also on that Minister;
- (3) in any other case, on the local authority by whom the order was made.

22.7 Evidence at the hearing of an application under this paragraph is by witness statement.

22.8 The applicant must-

- (1) file a witness statement in support of the application in the Administrative Court within 14 days after service of the claim form; and
- (2) serve a copy of the witness statement and of any exhibit on the respondent at the time of filing.

22.9 The respondent must-

- (1) file any witness statement in opposition to the application in the Administrative Court within 21 days after service on him of the applicant's witness statement; and
- (2) serve a copy of his witness statement and of any exhibit on the applicant at the time of filing.

22.10 A party must, when filing a witness statement, file a further copy of the witness statement, including exhibits, for the use of the court.

22.11 Unless the court otherwise orders, the application will not be heard earlier than 14 days after the time for filing a witness statement by the respondent has expired.

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**TELEPHONE HEARINGS**

**Interpretation**

6.1 In this paragraph-

(a) ‘designated legal representative’ means the applicant’s legal representative (if any), or the legal representative of such other party as the court directs to arrange the telephone hearing; and

(b) ‘telephone conference enabled court’ means-

(i) a district registry of the High Court; or

(ii) a county court,

in which telephone conferencing facilities are available.

**When a hearing is to be conducted by telephone**

6.2 Subject to paragraph 6.3, at a telephone conference enabled court the following hearings will be conducted by telephone unless the court otherwise orders-

(a) allocation hearings;

(b) listing hearings; and

(c) interim applications, case management conferences and pre-trial reviews with a time estimate of less than one hour.

6.3 Paragraph 6.2 does not apply where-

(a) the hearing is of an application made without notice to the other party;

(b) all the parties are unrepresented; or

(c) more than four parties wish to make representations at the hearing (for this purpose where two or more parties are represented by the same person, they are to be treated as one party).

6.4 A request for a direction that a hearing under paragraph 6.2 should not be conducted by telephone-

(a) must be made at least 7 days before the hearing or such shorter time as the court may permit; and

(b) may be made by letter,

and the court shall determine such request without requiring the attendance of the parties.

6.5 The court may order that an application, or part of an application, to which paragraph 6.2 does not apply be dealt with by a telephone hearing. The court may make such order-

- (a) of its own initiative; or
- (b) at the request of the parties.

6.6 The applicant should indicate on his application notice if he seeks a court order under paragraph 6.5. Where he has not done so but nevertheless wishes to seek an order, the request should be made as early as possible.

6.7 An order under paragraph 6.5 will not normally be made unless every party entitled to be given notice of the application and to be heard at the hearing has consented to the order.

6.8 If the court makes an order under paragraph 6.5 it will give any directions necessary for the telephone hearing.

### **Conduct of the telephone hearing**

6.9 No party, or representative of a party, to an application being heard by telephone may attend the judge in person while the application is being heard unless every other party to the application has agreed that he may do so.

6.10 If an application is to be heard by telephone the following directions will apply, subject to any direction to the contrary-

- (1) The designated legal representative is responsible for arranging the telephone conference for precisely the time fixed by the court. The telecommunications provider used must be one on the approved panel of service providers (see Her Majesty's Courts Service website at [www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk)).
- (2) The designated legal representative must tell the operator the telephone numbers of all those participating in the conference call and the sequence in which they are to be called.
- (3) It is the responsibility of the designated legal representative to ascertain from all the other parties whether they have instructed counsel and, if so, the identity of counsel, and whether the legal representative and counsel will be on the same or different telephone numbers.
- (4) The sequence in which they are to be called will be-

- (a) the designated legal representative and (if on a different number) his counsel;
  - (b) the legal representative (and counsel) for all other parties; and
  - (c) the judge.
- (5) Each speaker is to remain on the line after being called by the operator setting up the conference call. The call shall be connected at least ten minutes before the time fixed for the hearing.
- (6) When the judge has been connected the designated legal representative (or his counsel) will introduce the parties in the usual way.
- (7) If the use of a 'speakerphone' by any party causes the judge or any other party any difficulty in hearing what is said the judge may require that party to use a hand held telephone.
- (8) The telephone charges debited to the account of the party initiating the conference call will be treated as part of the costs of the application.

## **Documents**

6.11 The designated legal representative must file and serve a case summary and draft order no later than 4pm on the last working day before the hearing-

- (a) if the claim has been allocated to the multi-track; and
- (b) in any other case, if the court so directs.

6.12 Where a party seeks to rely on any other document at the hearing, he must file and serve the document no later than 4 p.m. on the last working day before the hearing.

**PRACTICE DIRECTION – OFFERS TO SETTLE**

**THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 36**

**FORMALITIES OF PART 36 OFFERS AND OTHER NOTICES UNDER THIS PART**

1.1 A Part 36 offer may be made using Form N242A.

1.2 Where a Part 36 offer, notice of acceptance or notice of withdrawal or change of terms is to be served on a party who is legally represented, the document to be served must be served on the legal representative.

**APPLICATION FOR PERMISSION TO WITHDRAW A PART 36 OFFER**

2.1 Rule 36.3(4) provides that before expiry of the relevant period a Part 36 offer may only be withdrawn or its terms changed to be less advantageous to the offeree with the permission of the court.

2.2 The permission of the court must be sought-

(1) by making an application under Part 23, which must be dealt with by a judge other than the judge (if any) allocated in advance to conduct the trial, unless the parties agree that such judge may hear the application;

(2) at a trial or other hearing, provided that it is not to the trial judge or to the judge (if any) allocated in advance to conduct the trial, unless the parties agree that such judge may hear the application.

**ACCEPTANCE OF A PART 36 OFFER**

3.1 Where a Part 36 offer is accepted in accordance with rule 36.9(1) the notice of acceptance must be served on the offeror and filed with the court where the case is proceeding.

3.2 Where the court's permission is required to accept a Part 36 offer, the permission of the court must be sought-

(1) by making an application under Part 23, which must be dealt with by a judge other than the judge (if any) allocated in advance to conduct the trial, unless the parties agree that such judge may hear the application;

(2) at a trial or other hearing, provided that it is not to the trial judge or to the judge (if any) allocated in advance to conduct the trial, unless the parties agree that such judge may hear the application.

3.3 Where rule 36.9(3)(b) applies, the application for permission to accept the offer must-

(1) state-

(a) the net amount offered in the Part 36 offer;

(b) the deductible benefits that had accrued at the date the offer was made;

(c) the deductible benefits that have subsequently accrued; and

(2) be accompanied by a copy of the current certificate of recoverable benefits.

**PRACTICE DIRECTION B SUPPLEMENTING PART 36**

From 6th April 2007, new rules came into force concerning offers to settle, and Part 36, as it was in force immediately before 6th April 2007, was substituted by a new Part 36.

Rule 7 of the Civil Procedure (Amendment No.3) Rules 2006 that brought those new rules into force and replaced the previous rules contained some provisions that dealt with how the rules are to apply to offers and payments into court made before 6th April 2007.

This Practice Direction explains how those provisions will operate.

**Offers and Payments made before 6th April 2007.**

1.1 Paragraph (2) of rule 7 provides that where a Part 36 offer or Part 36 payment was made before 6th April 2007, if it would have had the consequences set out in the rules of court contained in Part 36 as it was in force immediately before 6th April 2007, it will have the consequences set out in rules 36.10, 36.11 and 36.14 after that date.

1.2 This provision makes clear that a Part 36 offer or Part 36 payment that was valid before 6th April 2007, will continue to be a valid Part 36 offer under the rules in force from 6th April 2007, and will have the consequences set out in those rules, specifically in relation to costs and the effect of acceptance.

**Permission of the court**

2.1 Paragraph (3) of rule 7 provides that where a Part 36 offer or Part 36 payment was made before 6th April 2007, the permission of the court is required to accept that offer or payment, if permission would have been required under the rules of court contained in Part 36 as it was in force immediately before 6th April 2007.

2.2 This provision preserves the requirement to obtain the permission of the court to accept an offer as it existed under the rules in force immediately before 6th April 2007. Therefore, if permission would have been required before 6th April 2007, it will

be required after that date. But, if permission would not have been required because the parties have been able to agree liability for costs, or if a further offer has been made triggering a new period for acceptance, permission will not be required after 6th April 2007.

### **Payments into court made before 6th April 2007**

3.1 Paragraph (4) of rule 7 provides that rule 37.3 will apply to a Part 36 payment made before 6th April 2007 as if that payment into court had been made under a court order.

3.2 Rule 37.3 applies to all payments under Part 37, including payments into court under order, and permission is required to take the money out of court.

3.3 By applying rule 37.3 to payments into court made before 6th April 2007, this provision preserves in particular the requirement that permission be obtained to withdraw such payment.

3.4 But, rule 37.3 also provides that money may be taken out of court without the court's permission where a Part 36 offer (including an offer underlying a Part 36 payment) is accepted without needing the permission of the court and the defendant agrees that the sum may be paid out in satisfaction of the offer. Paragraph 3.4 of the Practice Direction to Part 37 makes provision about how to take money out of court.

3.5 This exception to the permission requirement preserves the right under rule 37.2, as it was in force immediately before 6th April 2007, to treat a payment into court made under order or by way of a defence of tender before claim as a Part 36 payment.

3.6 This provision has the effect that a Part 36 payment made before 6th April 2007 may be taken out of court simply by filing a request for payment if the offer underlying the Part 36 payment is accepted without needing permission. In those circumstances, it may be assumed that the defendant agrees to the money being used in satisfaction of the sum offered, and the requirement in paragraph 3.4 of the Practice Direction to Part 37 to file a Form 202 will not apply.

### **Offers remaining open for acceptance**

4.1 Paragraph (5) of rule 7 provides that the rules of court contained in Part 36 as it was in force immediately before 6th April 2007 shall continue to apply to a Part 36 offer or Part 36 payment made less than 21 days before 6th April 2007.

4.2 This provision preserves those rules in their entirety in relation to offers and payments made less than 21 days before 6th April 2007 for the period that they are expressed to remain open for acceptance.

4.3 Paragraph (6) of rule 7 provides that paragraph (5) ceases to apply at the expiry of 21 days from the date that the offer or payment was made, unless the trial has started within that period.

4.4 This provision has the effect that once the 21 day period has expired, the new regime (including the modifications at paragraphs (2), (3) and (4) of rule 7) will apply to the offer or payment.

4.5 If the trial has started within the 21 day period, the rules that were in force before 6th April 2007 will continue to apply to the offer or payment.

### **Offers made before commencement of proceedings**

5.1 Paragraph (7) of rule 7 deals with the position where, before 6th April 2007, a person made an offer to settle before commencement of proceedings which complied with the provisions of rule 36.10 as it was in force immediately before 6th April 2007.

5.2 The court will take that offer into account when making any order as to costs. This preserves the discretion of the court to take into account an offer made before commencement of proceedings as it existed before 6th April 2007.

5.3 The permission of the court will be required to accept such an offer after proceedings have been commenced. This preserves the position under rule 36.10(4) as it was in force immediately before 6th April 2007.

5.4 If proceedings are commenced after 6th April 2007, the requirement to pay money into court in respect of a defendant's money offer under rule 36.10(3)(a) (as it was in force before 6th April 2007) will not apply to a defendant's money offer made before the proceedings were commenced.

**PRACTICE DIRECTION – MISCELLANEOUS PROVISIONS ABOUT PAYMENTS INTO COURT**

**THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 37**

**PAYMENT INTO COURT UNDER AN ORDER, ETC**

1.1 Except where paragraph 1.2 applies, a party paying money into court under an order or in support of a defence of tender before claim must–

- (1) send to the Court Funds Office–
  - (a) the payment, usually a cheque made payable to the Accountant General of the Supreme Court;
  - (b) a sealed copy of the order or a copy of the defence; and
  - (c) Court Funds Office form 100;
- (2) serve notice of payment on the other parties; and
- (3) file at the court–
  - (a) a copy of the notice of payment; and
  - (b) a certificate of service confirming service of the notice on each party served.

1.2 Instead of complying with paragraph 1.1(1), a litigant in person without a current account may, in a claim proceeding in a county court or District Registry, make a payment into court by–

- (1) lodging the payment in cash with the court; and
- (2) giving the court a completed Court Funds Office form 100.

**APPLICATIONS RELATING TO FUNDS IN COURT**

2.1 This paragraph applies to an application relating to money or securities which have been paid into court other than an application for the payment out of the money or securities (for example, an application for money to be invested, or for payment of interest to any person).

2.2 An application–

- (1) must be made in accordance with Part 23; and

(2) may be made without notice, but the court may direct notice to be served on any person.

(Where money paid into court is accepted by or on behalf of a child or patient, rule 21.11(1)(b) provides that the money shall be dealt with in accordance with directions given by the court under that rule and not otherwise. Paragraphs 8 to 12 of the practice direction supplementing Part 21 make further provision about how the money may be dealt with).

### **PAYMENT OUT OF COURT**

3.1 Rule 37.3 provides that the court's permission is required to take money out of court except where the defendant agrees that the money which has been paid into court should be used to satisfy a Part 36 offer.

3.2 Permission may be obtained by making an application in accordance with Part 23. The application notice must state the grounds on which the order for payment out is sought. Evidence of any facts on which the applicant relies may also be necessary.

3.3 Where the court gives permission under rule 37.3, it will include a direction for the payment out of any money in court, including any interest accrued.

3.4 Where permission is not required to take money out of court, the requesting party should file a request for payment in Court Funds Office form 201 with the Court Funds Office, accompanied by a statement that the defendant agrees that the money should be used to satisfy the Part 36 offer in Court Funds Office form 202.

(Paragraph 3.6 of Practice Direction B supplementing Part 36 provides that a defendant who made a Part 36 payment before 6th April 2007, and whose Part 36 offer underlying the payment is accepted without requiring the permission of the court, is not required to file form 202.).

3.5 The request for payment should contain the following details–

- (1) where the party receiving the payment is legally represented–
  - (a) the name, business address and reference of the legal representative; and

(b) the name of the bank and the sort code number, the title of the account and the account number where the payment is to be transmitted;

(2) where the party is acting in person—

(a) his name and address; and

(b) his bank account details as in paragraph (1)(b) above; and

(3) whether the party receiving the payment is, or has been, in receipt of services funded by the Legal Services Commission as part of the Community Legal Service.

3.6 Where paragraph 3.4 applies, interest accruing up to the date of acceptance will be paid to the defendant.

(Rule 20.2 provides that in these Rules references to a claimant or defendant include a party bringing or defending an additional claim).

3.7 Subject to paragraph 3.8, if a party does not wish the payment to be transmitted into his bank account or if he does not have a bank account, he may send a written request to the Accountant-General for the payment to be made to him by cheque.

3.8 Where a party seeking payment out of court has provided the necessary information, the payment-

(1) where a party is legally represented, must be made to the legal representative;

(2) if the party is not legally represented but has given notice under paragraph 3.5(3), must be made to the Legal Services Commission

#### **PAYMENT INTO COURT BY LIFE ASSURANCE COMPANY**

4.1 A company wishing to make a payment into court under the Life Assurance Companies (Payment into Court) Act 1896 ('the 1896 Act') must file a witness statement or an affidavit setting out—

(1) a short description of the policy under which money is payable;

(2) a statement of the persons entitled under the policy, including their names and addresses so far as known to the company;

(3) a short statement of –

(a) the notices received by the company making any claim to the money assured, or withdrawing any such claim;

- (b) the dates of receipt of such notices; and
- (c) the names and addresses of the persons by whom they were given;

(4) a statement that, in the opinion of the board of directors of the company, no sufficient discharge can be obtained for the money which is payable, other than by paying it into court under the 1896 Act;

(5) a statement that the company agrees to comply with any order or direction the court may make –

- (a) to pay any further sum into court; or
- (b) to pay any costs;

(6) an undertaking by the company to immediately send to the Accountant General at the Court Funds Office any notice of claim received by the company after the witness statement or affidavit has been filed, together with a letter referring to the Court Funds Office reference number; and

(7) the company's address for service.

4.2 The witness statement or affidavit must be filed at –

- (1) Chancery Chambers at the Royal Courts of Justice, or
- (2) a Chancery district registry of the High Court.

4.3 The company must not deduct from the money payable by it under the policy any costs of the payment into court, except for any court fee.

4.4 If the company is a party to any proceedings issued in relation to the policy or the money assured by it, it may not make a payment into court under the 1896 Act without the permission of the court in those proceedings.

4.5 If a company pays money into court under the 1896 Act, unless the court orders otherwise it must immediately serve notice of the payment on every person who is entitled under the policy or has made a claim to the money assured.

## **APPLICATION FOR PAYMENT OUT OF MONEY PAID INTO COURT BY LIFE ASSURANCE COMPANY**

5.1 Any application for the payment out of money which has been paid into court under the 1896 Act must be made in accordance with paragraph 3 of this practice direction.

5.2 The application must be served on –

- (1) every person stated in the written evidence of the company which made the payment to be entitled to or to have an interest in the money;
- (2) any other person who has given notice of a claim to the money; and

(3) the company which made the payment, if an application is being made for costs against it, but not otherwise.

### **PAYMENT INTO COURT UNDER TRUSTEE ACT 1925**

6.1 A trustee wishing to make a payment into court under section 63 of the Trustee Act 1925 must file a witness statement or an affidavit setting out –

- (1) a short description of –
  - (a) the trust; and
  - (b) the instrument creating the trust, or the circumstances in which the trust arose;
- (2) the names of the persons interested in or entitled to the money or securities to be paid into court, with their address so far as known to him;
- (3) a statement that he agrees to answer any inquiries which the court may make or direct relating to the application of the money or securities; and
- (4) his address for service.

6.2 The witness statement or affidavit must be filed at –

- (1) Chancery Chambers at the Royal Courts of Justice;
- (2) a Chancery district registry of the High Court; or
- (3) a county court.

6.3 If a trustee pays money or securities into court, unless the court orders otherwise he must immediately serve notice of the payment into court on every person interested in or entitled to the money or securities.

### **APPLICATION FOR PAYMENT OUT OF FUNDS PAID INTO COURT BY TRUSTEE**

7.1 An application for the payment out of any money or securities paid into court under section 63 of the Trustee Act 1925 must be made in accordance with paragraph 3 of this practice direction.

7.2 The application may be made without notice, but the court may direct notice to be served on any person.

### **PAYMENT INTO COURT UNDER VEHICULAR ACCESS ACROSS COMMON AND OTHER LAND (ENGLAND) REGULATIONS 2002**

8.1 In this section of this Practice Direction–

- (1) expressions used have the meanings given by the Vehicular Access Across Common and Other Land (England) Regulations 2002; and

(2) a regulation referred to by number alone means the regulation so numbered in those Regulations.

8.2 Where the applicant wishes to pay money into a county court under regulation 14 he must file a witness statement or an affidavit when he lodges the money.

8.3 The witness statement or affidavit must –

- (1) state briefly why the applicant is making the payment into court; and
- (2) be accompanied by copies of –
  - (a) the notice served under regulation 6;
  - (b) any counter-notice served under regulation 8;
  - (c) any amended notice or counter-notice served under regulation 9;
  - (d) any determination of the Lands Tribunal of a matter referred to it under regulation 10; and
  - (e) any determination of the value of the premises by a chartered surveyor following the service of a valuation notice under regulation 12.

8.4 If an applicant pays money into court under regulation 14, he must immediately serve notice of the payment and a copy of the witness statement or affidavit on the land owner.

8.5 An application for payment out of the money must be made in accordance with paragraph 3 of this practice direction.

## **Pre-Action Protocol for Construction and Engineering Disputes**

### **1 Introduction**

1.1 This Pre-Action Protocol applies to all construction and engineering disputes (including professional negligence claims against architects, engineers and quantity surveyors).

#### Exceptions

1.2 A claimant shall not be required to comply with this Protocol before commencing proceedings to the extent that the proposed proceedings (i) are for the enforcement of the decision of an adjudicator to whom a dispute has been referred pursuant to section 108 of the Housing Grants, Construction and Regeneration Act 1996 ("the 1996 Act"), (ii) include a claim for interim injunctive relief, (iii) will be the subject of a claim for summary judgment pursuant to Part 24 of the Civil Procedure Rules, or (iv) relate to the same or substantially the same issues as have been the subject of recent adjudication under the 1996 Act, or some other formal alternative dispute resolution procedure.

#### Objectives

1.3 The objectives of this Protocol are as set out in the Practice Direction relating to Civil Procedure Pre-Action Protocols, namely:

- (i) to encourage the exchange of early and full information about the prospective legal claim;
- (ii) to enable parties to avoid litigation by agreeing a settlement of the claim before commencement of proceedings; and
- (iii) to support the efficient management of proceedings where litigation cannot be avoided.

#### Compliance

1.4 If proceedings are commenced, the court will be able to treat the standards set in this Protocol as the normal reasonable approach to pre-action conduct. If the court has to consider the question of compliance after proceedings have

begun, it will be concerned with substantial compliance and not minor departures, e.g. failure by a short period to provide relevant information. Minor departures will not exempt the "innocent" party from following the Protocol. The court will look at the effect of non-compliance on the other party when deciding whether to impose sanctions. For sanctions generally, see paragraph 2 of the Practice Direction-Protocols "Compliance with Protocols".

## Proportionality

- 1.5 The overriding objective (CPR rule 1.1) applies to the pre-action period. The Protocol must not be used as a tactical device to secure advantage for one party or to generate unnecessary costs. In lower value claims (such as those likely to proceed in the county court), the letter of claim and the response should be simple and the costs of both sides should be kept to a modest level. In all cases the costs incurred at the Protocol stage should be proportionate to the complexity of the case and the amount of money which is at stake. The Protocol does not impose a requirement on the parties to marshal and disclose all the supporting details and evidence that may ultimately be required if the case proceeds to litigation.

## 2 Overview of the Protocol

### General Aim

- 2 The general aim of this Protocol is to ensure that before court proceedings commence:
- (i) the claimant and the defendant have provided sufficient information for each party to know the nature of the other's case;
  - (ii) each party has had an opportunity to consider the other's case, and to accept or reject all or any part of the case made against him at the earliest possible stage;
  - (iii) there is more pre-action contact between the parties;
  - (iv) better and earlier exchange of information occurs;
  - (v) there is better pre-action investigation by the parties;
  - (vi) the parties have met formally on at least one occasion with a view to
    - defining and agreeing the issues between them; and
    - exploring possible ways by which the claim may be resolved;

- (vii) the parties are in a position where they may be able to settle cases early and fairly without recourse to litigation; and
- (vii) proceedings will be conducted efficiently if litigation does become necessary.

### **3 The Letter of Claim**

3 Prior to commencing proceedings, the claimant or his solicitor shall send to each proposed defendant (if appropriate to his registered address) a copy of a letter of claim which shall contain the following information:

- (i) the claimant's full name and address;
- (ii) the full name and address of each proposed defendant;
- (iii) a clear summary of the facts on which each claim is based;
- (iv) the basis on which each claim is made, identifying the principal contractual terms and statutory provisions relied on;
- (v) the nature of the relief claimed: if damages are claimed, a breakdown showing how the damages have been quantified; if a sum is claimed pursuant to a contract, how it has been calculated; if an extension of time is claimed, the period claimed;
- (vi) where a claim has been made previously and rejected by a defendant, and the claimant is able to identify the reason(s) for such rejection, the claimant's grounds of belief as to why the claim was wrongly rejected;
- (vii) the names of any experts already instructed by the claimant on whose evidence he intends to rely, identifying the issues to which that evidence will be directed.

### **4 The Defendant's Response**

The defendant's acknowledgment

4.1 Within 14 calendar days of receipt of the letter of claim, the defendant should acknowledge its receipt in writing and may give the name and address of his insurer (if any). If there has been no acknowledgment by or on behalf of the defendant within 14 days, the claimant will be entitled to commence proceedings without further compliance with this Protocol.

4.2 Objections to the court's jurisdiction or the named defendant

4.2.1 If the defendant intends to take any objection to all or any part of the claimant's claim on the grounds that (i) the court lacks jurisdiction, (ii) the matter

should be referred to arbitration, or (iii) the defendant named in the letter of claim is the wrong defendant, that objection should be raised by the defendant within 28 days after receipt of the letter of claim. The letter of objection shall specify the parts of the claim to which the objection relates, setting out the grounds relied on, and, where appropriate, shall identify the correct defendant (if known). Any failure to take such objection shall not prejudice the defendant's rights to do so in any subsequent proceedings, but the court may take such failure into account when considering the question of costs.

4.2.2 Where such notice of objection is given, the defendant is not required to send a letter of response in accordance with paragraph 4.3.1 in relation to the claim or those parts of it to which the objection relates (as the case may be).

4.2.3 If at any stage before the claimant commences proceedings, the defendant withdraws his objection, then paragraph 4.3 and the remaining part of this Protocol will apply to the claim or those parts of it to which the objection related as if the letter of claim had been received on the date on which notice of withdrawal of the objection had been given.

#### 4.3 The defendant's response

4.3.1 Within 28 days from the date of receipt of the letter of claim, or such other period as the parties may reasonably agree (up to a maximum of 3 months), the defendant shall send a letter of response to the claimant which shall contain the following information:

- (i) the facts set out in the letter of claim which are agreed or not agreed, and if not agreed, the basis of the disagreement;
- (ii) which claims are accepted and which are rejected, and if rejected, the basis of the rejection;
- (iii) if a claim is accepted in whole or in part, whether the damages, sums or extensions of time claimed are accepted or rejected, and if rejected, the basis of the rejection;
- (iv) if contributory negligence is alleged against the claimant, a summary of the facts relied on;
- (v) whether the defendant intends to make a counterclaim, and if so, giving the information which is required to be given in a letter of claim by paragraph 3(iii) to (vi) above;
- (vi) the names of any experts already instructed on whose evidence it is intended to rely, identifying the issues to which that evidence will be directed;

4.3.2 If no response is received by the claimant within the period of 28 days (or such other period as has been agreed between the parties), the claimant shall be entitled to commence proceedings without further compliance with this Protocol.

Claimant's response to counter claim

4.4 The claimant shall provide a response to any counterclaim within the equivalent period allowed to the defendant to respond to the letter of claim under paragraph 4.3.1 above.

## **5 Pre-Action Meeting**

5.1 Within 28 days after receipt by the claimant of the defendant's letter of response, or (if the claimant intends to respond to the counterclaim) after receipt by the defendant of the claimant's letter of response to the counterclaim, the parties should normally meet.

5.2 The aim of the meeting is for the parties to agree what are the main issues in the case, to identify the root cause of disagreement in respect of each issue, and to consider (i) whether, and if so how, the issues might be resolved without recourse to litigation, and (ii) if litigation is unavoidable, what steps should be taken to ensure that it is conducted in accordance with the overriding objective as defined in rule 1.1 of the Civil Procedure Rules.

5.3 In some circumstances, it may be necessary to convene more than one meeting. It is not intended by this Protocol to prescribe in detail the manner in which the meetings should be conducted. But the court will normally expect that those attending will include:

- (i) where the party is an individual, that individual, and where the party is a corporate body, a representative of that body who has authority to settle or recommend settlement of the dispute;
- (ii) a legal representative of each party (if one has been instructed);
- (iii) where the involvement of insurers has been disclosed, a representative of the insurer (who may be its legal representative);  
and
- (iv) where a claim is made or defended on behalf of some other party (such as, for example, a claim made by a main contractor pursuant to

a contractual obligation to pass on subcontractor claims), the party on whose behalf the claim is made or defended and/or his legal representatives.

- 5.4 In respect of each agreed issue or the dispute as a whole, the parties should consider whether some form of alternative dispute resolution procedure would be more suitable than litigation, and if so, endeavour to agree which form to adopt. It is expressly recognised that no party can or should be forced to mediate or enter into any form of alternative dispute resolution.
- 5.5 If the parties are unable to agree on a means of resolving the dispute other than by litigation they should use their best endeavours to agree:
- (i) if there is any area where expert evidence is likely to be required, how the relevant issues are to be defined and how expert evidence is to be dealt with including whether a joint expert might be appointed, and if so, who that should be; and (so far as is practicable)
  - (ii) the extent of disclosure of documents with a view to saving costs; and
  - (iii) the conduct of the litigation with the aim of minimising cost and delay.
- 5.6 Any party who attended any pre-action meeting shall be at liberty and may be required to disclose to the court:
- (i) that the meeting took place, when and who attended;
  - (ii) the identity of any party who refused to attend, and the grounds for such refusal;
  - (iii) if the meeting did not take place, why not; and
  - (iv) any agreements concluded between the parties.
- (v) the fact of whether alternative means of resolving the dispute were considered or agreed.
- 5.7 Except as provided in paragraph 5.6, everything said at a pre-action meeting shall be treated as "without prejudice".

## **6 Limitation of Action**

- 6 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.