



RULES OF THE HIGH COURT OF JUSTICE 2009

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Statutory Document No. 352/09

HIGH COURT ACT 1991

RULES OF THE HIGH COURT OF JUSTICE 2009

Laid before Tynwald

16th June 2009

Coming into operation

1st September 2009

The Deemsters make these Rules under section 25 of the High Court Act 1991 and the other statutory provisions specified in Schedule 1.

PART 1 : INTRODUCTORY

1.1 Title and commencement

- (1) The title of these Rules is the Rules of the High Court of Justice 2009.
- (2) Subject to paragraph (3), these Rules shall come into operation on 1st September 2009.
- (3) If on that date sections 3 to 5 of the Company Officers (Disqualification) Act 2009 have not yet come into operation, rules 13.59 to 13.66 shall come into operation on such date as those sections come into operation.

1.2 The overriding objective (1.1-1.3)

- (1) These Rules are a new procedural code with the overriding objective of enabling the High Court to deal with cases justly.
- (2) Dealing with a case justly includes, so far as is practicable —
 - (a) ensuring that the parties are on an equal footing;
 - (b) saving expense;
 - (c) dealing with the case in ways which are proportionate to —
 - (i) the amount of money involved;
 - (ii) the importance of the case;
 - (iii) the complexity of the issues; and
 - (iv) the financial position of each party;
 - (d) ensuring that it is dealt with expeditiously and fairly; and
 - (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.
- (3) The court shall seek to give effect to the overriding objective when it exercises any power given to it by these Rules.
- (4) The parties are required to help the court to further the overriding objective.

1.3 Application of rules (2.1)

- (1) Subject to paragraph (2), these Rules apply to all proceedings in the High Court.

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(2) These Rules do not apply to proceedings to which any of the following rules apply, except to the extent that those rules otherwise provide —

- (a) the Companies (Winding Up) Rules 1934;
 - (b) the Election Petition Rules 1951;
 - (c) Orders 44, 44A, 51D, 51E and 51F of the Rules of the High Court of Justice 1952;
 - (d) the Probate Rules 1988;
 - (e) the Parental Responsibility Agreement Rules 1992;
 - (f) the Mental Health Rules 1998;
 - (g) the Adoption Rules 2003;
 - (h) the Rules of the High Court (Matrimonial Proceedings) 2004.
- (3) This rule is subject to —
- (a) any transitional provisions having effect under the Administration of Justice Act 2008, and
 - (b) the transitional provisions in Part 15.

1.4 Interpretation (2.3)

(1) In these Rules —

‘act’ includes an omission;

‘advocate’ includes —

- (a) a firm of advocates; and
- (b) a recognised body;

‘additional claim’ means a claim other than a claim by a claimant against a defendant, and includes —

- (a) a counterclaim by a defendant against the claimant or against the claimant and some other person;
- (b) a claim by a defendant against any person (whether or not already a party) for contribution or indemnity or some other remedy; and
- (c) where an additional claim has been made against a person who is not already a party, any claim made by that person against any other person (whether or not already a party);

and ‘additional claimant’ and ‘additional defendant’ have corresponding meanings;

‘the Appeal Division’ means the Staff of Government Division;

‘application notice’ means a document in which the applicant states his intention to seek an order of the court;

‘assisted person’ means a person receiving legal aid under Part I of the Legal Aid Act 1986;

‘the chancery procedure’ is the procedure referred to in rule 5.1(1)(c);

‘civil restraint order’ means an order under Chapter 11 of Part 2 restraining a party from issuing certain claims or making certain applications;

‘claim for personal injuries’ means proceedings in which there is a claim for damages in respect of personal injuries to the claimant or any other person or in respect of a person’s death, and ‘personal injuries’ includes any disease and any impairment of a person’s physical or mental condition;

‘claimant’ means a person who makes a claim;

‘commencement’ means the date specified in rule 1.1;

‘costs officer’ means —

- (a) the Chief Registrar; or
- (b) any other person (whether or not a court officer), other than a judge, authorised by the First Deemster to carry out any functions relating to the assessment of costs;

‘the court’ means the High Court;

‘the court office’ means the division of the General Registry dealing with the business of the court;

‘the court website’ means such website as the Chief Registrar for the time being maintains for the purposes of the business of the court;

‘court officer’ means an officer of the court (other than a judicial officer);

‘court order’ means an order of the court;

‘defendant’ means a person against whom a claim is made;

‘deponent’ means a person who gives evidence by affidavit;

‘directions’, in relation to any case, means directions for the management of the case;

‘directions questionnaire’ means a questionnaire for supplying information to assist the court in giving directions;

[subs (1) ‘directions questionnaire’ added by SD 686/09]

‘fatal accident claim’ means a claim brought under the Fatal Accidents Act 1981;

‘filing’, in relation to a document, means delivering it, by post or otherwise, to the court office;

‘firm’, in relation to an advocate, includes a recognised body of which the advocate is a member or employee;

‘instalment order’ means a court order that an amount of money be paid by instalments;

‘judge’ means a Deemster or judicial officer;

‘judicial officer’ means a judicial officer of the court;

‘the jurisdiction’ means the Island and any part of the territorial waters adjoining the Island;

‘litigation friend’ means a person by whom proceedings are conducted on behalf of a minor or a patient in accordance with Chapter 4 of Part 3;

‘note’, in relation to a judgment or decision, includes a transcript;

‘the ordinary procedure’ is the procedure referred to in rule 5.1(1)(d);

‘patient’ means a person who by reason of mental disorder within the meaning of the Mental Health Act 1998 is incapable of managing and administering his property and affairs;

‘practice direction’ means a direction given under section 27A of the High Court Act 1991;

‘prescribed fee’, in relation to any matter, means a fee fixed with respect to that matter under the Fees and Duties Act 1989;

‘prescribed form’ means a form prepared or approved under section 27B of the High Court Act 1991, and in relation to any matter means a form so prepared or approved with respect to that matter;

‘recognised body’ means a body corporate for the time being recognised under section 26 of the Advocates Act 1995;

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‘senior position’ shall be construed in accordance with paragraph (3);

‘the small claims procedure’ is the procedure referred to in rule 5.1(1)(a);

‘statement of case’ —

- (a) means a claim form, particulars of claim where these are not included in a claim form, a defence, an additional claim, or a reply to defence; and
- (b) includes any further information given in relation to them voluntarily or by a court order under rule 6.44;

‘statement of value’ means a statement of the value of a claim to be included in a claim form pursuant to rule 6.10;

‘the summary procedure’ is the procedure referred to in rule 5.1(1)(b);

‘summary judgment’ means a decision on a claim or a particular issue without a trial in accordance with Chapter 6 of Part 10;

‘trial bundle’ means the set of copies of documents referred to in rule 9.5.

(2) A reference in these Rules to an Act of Parliament or to a provision of an Act of Parliament is a reference to that Act or provision as it has effect in the Island.

(3) Any reference in these Rules to a person holding a senior position in a company or other corporation is to any of the following persons —

- (a) in relation to a company registered under the Companies Act 1931 or the Companies Act 2006, a director, the treasurer, secretary, chief executive, manager or other officer of the company;
- (b) in relation to a company to which Part XI (overseas companies) of the Companies Act 1931 applies —
 - (i) a person mentioned in (a) above, or
 - (ii) a person mentioned in section 313(1)(c) (person notified as authorised to accept service) of that Act;
- (c) in relation to a Department, any officer mentioned in paragraph 4(4) of Schedule 1 to the Government Departments Act 1987;
- (d) in relation to any other corporation, the chairman, president, chief executive, director, clerk, secretary or similar officer of the corporation.

(4) For the avoidance of doubt, in these Rules ‘officer of the court’ does not include an advocate in his capacity as such.

SCHEDULE 1 — ADDITIONAL RULE-MAKING POWERS

<i>Act</i>	<i>Provision</i>
Access to Health Records and Reports Act 1993	s.7(1) (time-limit for application for order to comply with Act)
Access to Neighbouring Land Act 1993	s.4(3) (procedure for application where respondent unknown)
Acquisition of Land Act 1984	s.28(5) and Sch.2 para.3 (investment of compensation paid into court)
Action of Arrest Act 1953	s.10 (procedure for action of arrest)
Administration of Justice Act 1981	s.9(2) & (4)(b) (interest) s.14(1) (application for garnishee order) s.15(3) (register of judgments: meaning of 'default action') s.27 (instalment orders) s.28(1) (application for attachment of earnings order) s.29(5) (power of court officer to revive attachment of earnings order) s.32(2) (power of court officer to give direction to debtor) s.34 (attachment of earnings orders: general) s.38(3) (rules may make consequential amendments or repeals) Sch.1 para.12 (claim to proceeds of sale of property arrested)
Administration of Justice Act 2008	s.10 (notice of proposal to adduce hearsay evidence) s.11 (cross-examination on hearsay evidence) s.19 (hearsay evidence — rules)
Advocates Act 1995	s.23(1) (assessment of advocate's bill by Chief Registrar) s.24(1) (appeal against decision of Chief Registrar)
Agricultural Holdings Act 1969	s.20(2) (appeal against decision of Land Court)
Agricultural Holdings and Dwellings Act 1951	s.4(2) (appeal to Staff of Government Division against decision of High Bailiff)
Anti-Terrorism and Crime Act 2003	Sch.2 para.13 (registration and enforcement of UK forfeiture order) Sch.4 para.5 (account monitoring orders: procedure) Sch.5 para.9(2) (production of materials for purpose of terrorist investigation) Sch.6 para.4 (financial information orders: procedure) Sch.13 para.16 (security of pathogens &c: appeal procedure)
Arbitration (International Investment Disputes) Act 1983	s.1(6) (application for registration of award) s.2(2) (staying of execution of award)
Arbitration Act 1976	s.12 (reference to special referee) s.35(3) (evidence for enforcement of foreign award)
Architects Act 1976	s.9(1) (appeal from decision of DLGE as to registration)

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<i>Act</i>	<i>Provision</i>
Building Control Act 1991	s.18(6) (joinder of building authority on claim for compensation)
Charities Registration Act 1989	s.4(4) (application as to status of registered charity)
Child Custody Act 1987	s.32 (child abduction: Hague Convention) s.39(2) & (3) (persons to be notified of application for variation &c) s.46 (child abduction: Custody Convention)
Children and Young Persons Act 2001	s.7(7) (recording of disclaimer of guardianship) s.12(2) (persons entitled to apply for residence or contact order) s.20(2) (expiry of wardship)
Companies Act 1931	s.341 (prescribed matters)
Control of Employment Act 1975	s.5(6) (appeal from tribunal)
Copyright Act 1991	s.113(3) (notice of application for disposal of infringing copy)
Criminal Justice Act 2001	Sch.2 paras.1(4) & 4(2) (time limit for notice disputing criminality of alleged offence abroad) Sch.4 para.3(2) (time limit for notice disputing criminality of alleged offence abroad)
Data Protection 2002	s.42(2) (notice of leave to serve enforcement notice)
Design Right Act 1991	s.19(3) (notice of application for disposal of infringing article)
Dogs Act 1990	s.29(6) (claim against keeper: time limit for defence)
Employment Act 2006	s.160(1) (time limit for appeal on question of law)
Employment Agencies Act 1975	s.4(5) (appeal from tribunal)
Estate Agents Act 1975	s.4(2) (appeal from decision of DLGE as to registration) Sch.1 para.3 (appeal to Staff of Government Division)
Evidence Act 1983	s.2 (rules as to expert evidence) s.3(1) (admissibility of expert opinion) s.4(3) (notice of intention to cite decision on foreign law)
Fire Precautions Act 1975	Sch.6 para.9 (appeal from order of court of summary jurisdiction)
High Court Act 1991 s1	s.2(5) (rules may create or abolish Divisions) s.3(3) & (5) (jurisdiction of judges) s.5(2) & (3) (times and places of sittings) s.11 (appeal jurisdiction) s.12(1) (distribution of business) s.13 (hearing in chambers) s.15(1), (2) (jurisdiction exercisable by officers &c) s.15(3) (officer's decision appealable) s.16(1) (reference to adjudication without order) s.16(2) (reference to adjudication by order) s.16(4) (time limit for applying to set aside award)

<i>Act</i>	<i>Provision</i>
	s.16A(2) (representation of body corporate)
	s.17A(1) (reference to mediation)
	s.18(2) (distribution of appeal business)
	s.18(5) (application of enactments in relation to criminal appeals)
	s.19A(1)-(3) (leave to appeal)
	s.19B((1) & (3) (powers in relation to appeals)
	s.21(1) (appeal lies to Staff of Government Division unless rules provide otherwise)
	s.21(2) (rules may provide for appeal to Division appealed against)
	s.21A (power of Appeal Division to award damages)
	s.22(5) (single judge may hear interlocutory matters relating to appeals)
	s.26(1) & (2) (rules of court may provide for decisions to bind non-parties)
	s.27 (rules of court: particular matters)
	s.27A(4) (practice directions)
	s.27B(2) (forms)
	s.31(4) (interest on funds in court)
	s.33(2) (award of provisional damages)
	s.34(1) & (2) (powers exercisable before commencement of action)
	s.35(2) & (3) (powers of court in personal injury cases)
	s.36(2) & (3) (supplementary to ss.34 & 35)
	s.40(1) & (2) (power to order interim payment)
	s.41(1), (3) & (5) (interest on debt or damages)
	s.53(1), (3) & (5) (general provision as to costs)
	s.54(1) (costs of litigants in person)
	Sch.1 para.1 (cases within admiralty jurisdiction)
	Sch.1 para.8A(3) (rules as to security on stay of proceedings)
	Sch.1 para.24 (service outside jurisdiction)
Hire Purchase Act 1939	s.13(2) (parties to actions for possession of goods)
Hire Purchase Act 1955	s.2(3) (acceptance of offer to postpone order)
Housing Act 1955	s.77(1) (authorisation to carry out works on unfit houses etc.)
Housing Improvement Act 1975	s.17(3) (appeal to Staff of Government Division against decision on rents)
Human Rights Act 2001	s.5(1) & (2) (notice to or by Attorney General)
	s.7(2) (appropriate court or tribunal)
	s.9(1) (forum for questioning judicial act)
	s.17(1) (definition of 'rules')
Inquiries (Evidence) Act 2003	s.5(3) (assessment of costs of inquiry)

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<i>Act</i>	<i>Provision</i>
International Criminal Court Act 2003	Sch.5 para.5(2) (proceeds of ICC crimes: production or access orders)
Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968	s.3 (procedure for enforcement of judgment) s.9(1) (supply of copy judgment for enforcement abroad)
Jury Act 1980	s.18 (time limit for application for trial by jury)
Land Registration Act 1982	s.7 (appeal to Staff of Government Division against decision of Land Commissioner) Sch.10 para.9 (procedure for compensation claims)
Landlord and Tenant Act 1954	s.16(5) (application for postponement of possession order)
Law Reform Act 1997	s.15(2) (defamation: summary of judgment) s.16(1) (defamation: summary disposal) s.24(1) assumed rate of return on damages
Minerals Act 1986	s.19(8) (disposal of compensation paid into court) Sch.2 para.12(2) (disposal of compensation paid into court)
Multilateral Investment Guarantee Agency Act 1989	s.2(1) (evidence of award) s.3 (application for registration of award &c)
Partition Act 1931	s.9 (applications for partition)
Performers Protection Act 1996	s.26(3) (notice of application for disposal of illicit article)
Proceeds of Crime Act 2008	s.138(1) (rules of court for Part 2) s.168(2) (production orders) s.179(2) (disclosure orders) s.186(2) (customer information orders) s.192(1) (account monitoring orders) s.193(9) (letters of request) s.217(1) (rules of court for Part 7)
Race Relations Act 2004	s.9(5) (dispensation with notice of application to modify contract)
Shipping Casualties (Inquiries, Investigations and Reports) Act 1979	s.6(3) (requirement to hold re-hearing or appeal) s.10 (re-hearings and appeals)
Small Claims Arbitration (Personal Representation) Act 2006	s.1 (small claims arbitration)
Summary Jurisdiction Act 1989	Sch.4 para.6 (allocation of appeals from courts of summary jurisdiction)
Terrorism (Finance) Act 2009 [added by SD222/10]	s.25 (rules of court: general provisions) s.26 (disclosure)
Torts (Interference with Goods) Act 1981	s.3(3) & (6) (judgment where goods are detained) s.4(2) & (4) (interlocutory relief where goods are detained) s.8(2) (competing rights to goods)
Tourist Act 1975	s.15(3) (appeal to Staff of Government Division against decision of appeal tribunal)

<i>Act</i>	<i>Provision</i>
Town and Country Planning Act 1999	s.37(3) (application for injunction against unknown person)
Trustee Act 1961	s.31(3) (rate of interest on legacy) s.62(1) (disposal of money paid into court by trustees)
Wreck and Salvage (Ships and Aircraft) Act 1979	s.14(1) (determination of right to wreck) s.14(2) (appeal to Staff of Government division against determination) s.21(1) (determination of salvage dispute)

PART 2 : ADMINISTRATION

CHAPTER 1: DIVISIONS OF THE COURT

2.1 Civil Division

There shall be a single Civil Division in place of the Chancery Division, Common Law Division and Family Law Division of the court.

CHAPTER 2: JUDGES AND OFFICERS OF THE COURT

2.2 Exercise of functions of the court (2.4)

(1) Where these Rules provide for the court to perform any act, that act may be performed by any judge.

(2) Paragraph (1) does not apply where any rule, or any other statutory provision, provides otherwise.

(3) Wherever a judicial officer has jurisdiction in any matter, he may refer the matter to a Deemster instead of dealing with it himself, and the Deemster may either dispose of the matter or refer it back to the judicial officer.

2.3 Court officers (2.5, 3.2)

(1) Where these Rules require or permit the court to perform an act of a formal or administrative character, that act may be performed by a court officer.

(2) A requirement that a court officer or a costs officer carry out any act at the request of a party is subject to the payment of any prescribed fee for the carrying out of that act.

(3) Where a step is to be taken by a court officer —

- (a) the officer may consult a judge before taking that step;
- (b) the step may be taken by a judge instead of the officer.

CHAPTER 3: GENERAL POWERS OF THE COURT

2.4 Court's power to make order of its own initiative (3.3)

(1) Except where a rule or some other statutory provision provides otherwise, the court may exercise its powers on an application or on its own initiative.

(2) Where the court proposes to make an order on its own initiative —

- (a) it may give any person likely to be affected by the order an opportunity to make representations; and
- (b) where it does so it shall specify the time by and the manner in which the representations shall be made.

(3) Where the court proposes —

- (a) to make an order on its own initiative; and
- (b) to hold a hearing to decide whether to make the order,

it shall, if practicable, and unless each such party consents to shorter notice, give each party likely to be affected by the order at least 7 days' notice of the hearing.

(4) The court may make an order on its own initiative, without hearing the parties or giving them an opportunity to make representations.

(5) Where the court has made an order under paragraph (4) —

- (a) a party affected by the order may apply to have it set aside, varied or stayed; and

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- (b) the order shall contain a statement of the right to make such an application.
- (6) An application under paragraph (5)(a) shall be made —
 - (a) within such period as may be specified by the court; or
 - (b) if the court does not specify a period, not more than 7 days after the date on which the order was served on the party making the application.
- (7) If the court on its own initiative strikes out a statement of case or dismisses an application (including an application for permission to appeal) and it considers that the claim or application is totally without merit —
 - (a) the court's order shall record that fact; and
 - (b) the court shall at the same time consider whether it is appropriate to make a civil restraint order.

2.5 Court's power to rectify error of procedure (3.10, RHC 54)

- (1) Where there has been an error of procedure such as a failure to comply with a rule or practice direction —
 - (a) the error does not invalidate any step taken in the proceedings unless the court so orders; and
 - (b) the court may make an order to remedy the error.
- (2) The court shall not allow an application to set aside any such step for an error of procedure —
 - (a) unless it is made within reasonable time; or
 - (b) if the applicant has taken a step after knowledge of the error.
- (3) The application notice shall specify the error of procedure to which the application relates.

CHAPTER 4: FORMS AND PRACTICE DIRECTIONS

2.6 Use of prescribed forms

- (1) The prescribed forms shall be used in the cases to which they apply.
- (2) A form may be varied by the court or a party if the variation is required by the circumstances of a particular case.
- (3) A form shall not be varied so as to leave out any information or guidance which the form gives to the recipient.
- (4) Where these Rules require a form to be sent by the court or by a party for another party to use, it shall be sent without any variation except such as is required by the circumstances of the particular case.

2.7 Publication of forms

- (1) Reasonable stocks of printed copies of all prescribed forms shall be kept at the court office, and such copies shall be supplied by the court office to any person applying for them, at such reasonable charge as the Chief Registrar may determine.
- (2) Electronic copies of all prescribed forms, in such format as the Chief Registrar may determine, shall be published on the court website.

2.8 Publication of practice directions

- (1) A complete set of all current practice directions, suitably indexed, shall be maintained at the court office, and may be inspected by any person free of charge at any time when the court office is open.

(2) A printed copy of any current practice direction shall be supplied by the court office to any person applying for it, at such reasonable charge as the Chief Registrar may determine.

(3) Electronic copies of all current practice directions, in such format as the Chief Registrar may determine, shall be published on the court website.

CHAPTER 5: TIME

2.9 Vacations (RHC 46, 47.4 & 5, 2.18)

(1) The following vacations shall be observed in the court and the court office:

<i>Vacation</i>	<i>First day</i>	<i>Last day</i>
Long Vacation	24th July	31st August
Christmas Vacation	23rd December	3rd January
Easter Vacation	Good Friday	Thursday in Easter week

(2) The time of the Long Vacation shall not be reckoned in the computation of the time for filing, serving or amending any statement of case, unless directed by the court.

2.10 Time (2.8)

(1) This rule shows how to calculate any period of time for doing any act which is specified by —

- (a) these Rules;
- (b) a practice direction; or
- (c) a judgment or order of the court.

(2) A period of time expressed as a number of days shall be computed as clear days.

(3) In this rule ‘clear days’ means that in computing the number of days, the following days are not included —

- (a) the day on which the period begins;
- (b) if the end of the period is defined by reference to an event, the day on which that event occurs.
- (4) Where the specified period —
 - (a) is 5 days or less; and
 - (b) includes —
 - (i) a Saturday or Sunday; or
 - (ii) a bank holiday, Christmas Day or Good Friday,

that day does not count.

(5) Where the specified period —

- (a) is more than 5 days, and
- (b) includes any day falling within a holiday period referred to in the following table,

that day does not count.

<i>Holiday period</i>	<i>First day</i>	<i>Last day</i>
Christmas	23rd December	3rd January
Easter	Good Friday	Tuesday in Easter week

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- (6) When the period specified —
 - (a) by these Rules, or
 - (b) by any judgment or court order,

for doing any act at the court office ends on a day on which the court office is closed, that act shall be in time if done on the next day on which the court office is open.

2.11 Time of filing

- (1) A document delivered at the public counter of the court office during the hours when the court office is open shall be treated as filed at the time when it is delivered.
- (2) A document delivered to the court office by post —
 - (a) on a day when the court office is open, shall be treated as filed at 12.00 noon on that day;
 - (b) on any other day, shall be treated as filed at 9.00 am on the next day on which the court office is open.
- (3) Subject to rule 4.2(2), a document delivered to the court office otherwise than as mentioned in paragraph (1) or (2) shall be treated as filed at 9.00 am on the next day on which the court office is open.

2.12 Expression of dates and times (2.9)

- (1) Where the court gives a judgment, order or direction which imposes a time limit for doing any act, the last date for compliance shall, wherever practicable —
 - (a) be expressed as a calendar date; and
 - (b) include the time of day by which the act shall be done.
- (2) Where the date by which an act must be done is inserted in any document, the date shall, wherever practicable, be expressed as a calendar date.

2.13 Meaning of ‘month’ in judgments etc. (2.10)

Where ‘month’ occurs in any judgment, order, direction or other document, it means a calendar month.

2.14 Time limits may be varied by parties (2.11)

Unless these Rules provide otherwise or the court orders 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.

CHAPTER 6: COURT DOCUMENTS

2.15 Court documents to be sealed (2.6)

- (1) The court office shall seal the following documents on issue —
 - (a) the claim form; and
 - (b) any other document which a rule requires it to seal.
- (2) The court office may place the court’s seal on the document —
 - (a) by hand; or
 - (b) by printing a facsimile of the seal on the document, whether electronically or otherwise.
- (3) A document purporting to bear the court’s seal shall be admissible in evidence without further proof.

2.16 Form of documents (RHC 49, PD5)

- (1) Every document prepared by a party for filing or use in the court must —
 - (a) unless the nature of the document renders it impracticable, be on A4 paper of durable quality, having a blank margin not less than 25mm all round;
 - (b) be fully legible;
 - (c) be produced by one or more of the following methods —
 - (i) printing (including laser or inkjet printing);
 - (ii) typewriting (not a carbon copy);
 - (iii) handwriting (in the small claims procedure only);
 - (d) where possible be bound securely in a manner which will not hamper filing; otherwise each page must be endorsed with the case number;
 - (e) have the pages numbered consecutively;
 - (f) be divided into numbered paragraphs; and
 - (g) have all numbers, including dates, expressed as figures.
- (2) Every such document must bear the title of the proceedings as follows:
 - (a) a heading —

In the High Court of Justice of the Isle of Man
Civil Division
Chancery Procedure (or as the case may be);
 - (b) in the case of proceedings under a statutory provision, or where required by another rule, a description of the claim —

Application under Partition Act 1931 (or as the case may be);
 - (c) the parties to the proceedings (described in accordance with Part 3 or another rule).
- (3) To the extent that a document produced by a photographic or similar process contains a facsimile of any printed, typewritten or handwritten matter, it shall, if it gives a positive and permanent representation free from blemishes, be treated for the purposes of paragraph (1) as if it were printed, typewritten or handwritten, as the case may be.

2.17 Signature of documents (5.3, PD5)

- (1) Statements of case and other documents drafted by an advocate must bear his signature, and if they are drafted by an advocate as a member or employee of a firm they must be signed in the name of the firm.
- (2) Where any of these Rules or a practice direction requires a document to be signed, that requirement shall be satisfied if the signature is printed by computer or other mechanical means.
- (3) Where a signature is printed by computer or other mechanical means on any document, the name of the person whose signature is printed must also be printed so that the person may be identified.

2.18 Filing and sending documents electronically (5.5)

Schedule 2.1 makes provision for documents to be filed or sent to the court by fax or other electronic means.

2.19 Record of filing of documents (PD5)

- (1) The date on which a document is filed in the court office shall be recorded on the document by either a seal or a receipt stamp.

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(2) The following particulars of every document filed in the court office shall be entered on the court file or on a computer kept in the court office for the purpose —

- (a) the title of the proceedings in which the document is filed;
- (b) a description of the document; and
- (c) the date of filing.

2.20 Register of claims (5.4)

(1) A register of all claims which have been issued out of the court office, suitably indexed, shall be maintained at the court office, and may be inspected by any person on payment of the prescribed fee at any time when the court office is open.

(2) A copy of the register may be published on the court website.

2.21 Supply of documents from court records (5.4B-4D, PD5)

(1) A party to proceedings may, unless the court orders otherwise, obtain from the records of the court a copy of any of the following documents—

- (a) a certificate of suitability of a litigation friend;
- (b) a legal aid certificate;
- (c) a claim form or other statement of case together with any documents filed with or attached to or intended by the claimant to be served with such claim form;
- (d) an acknowledgment of service together with any documents filed with or attached to or intended by the party acknowledging service to be served with such acknowledgement of service;
- (e) a certificate of service, other than a certificate of service of an application notice or order in relation to an application of a kind mentioned in sub-paragraph (g)(i) or (ii);
- (f) a notice of non-service;
- (g) an application notice, other than in relation to —
 - (i) an application by an advocate for an order declaring that he has ceased to be the advocate acting for a party; or
 - (ii) an application for an order that the identity of a party or witness should not be disclosed;
- (h) any written evidence filed in relation to an application, other than one mentioned in sub-paragraph (g)(i) or (ii);
- (i) a judgment or order given or made in public (whether made at a hearing or without a hearing);
- (j) a statement of costs;
- (k) a list of documents;
- (l) a notice of payment into court;
- (m) a notice of discontinuance; or
- (n) a notice of appeal.

(2) A party to proceedings may, if the court gives permission, obtain from the records of the court a copy of any other document filed by a party or communication between the court and a party or another person.

(3) Any other person may —

- (a) unless the court orders otherwise, obtain from the records of the court a copy of —

- (i) a claim form, but not any documents filed with or attached to or intended by the claimant to be served with such claim form, subject to paragraph (4) and to any order of the court under paragraph (5);
 - (ii) a judgment or order given or made in public (whether made at a hearing or without a hearing), subject to paragraph (4); and
- (b) if the court gives permission, obtain from the records of the court a copy of any other document filed by a party, or communication between the court and a party or another person.
- (4) A person may obtain a copy of a claim form or a judgment or order under paragraph (3)(a) only if —
 - (a) where there is one defendant, the defendant has filed an acknowledgment of service or a defence;
 - (b) where there is more than one defendant, either —
 - (i) all the defendants have filed an acknowledgment of service or a defence;
 - (ii) at least one defendant has filed an acknowledgment of service or a defence, and the court gives permission;
 - (c) the claim has been listed for a hearing; or
 - (d) judgment has been entered in the claim.
- (5) The court may, on the application of a party or of any person identified in the claim form —
 - (a) restrict the persons or classes of persons who may obtain a copy of the claim form;
 - (b) order that persons or classes of persons may only obtain a copy of the claim form if it is edited in accordance with the directions of the court; or
 - (c) make such other order as it thinks fit.
- (6) A person wishing to obtain a copy of a document under paragraph (1), (2) or (3) must pay any prescribed fee and —
 - (a) if the court's permission is required, apply for permission; or
 - (b) if permission is not required, file a written request for the document.
- (7) An application for permission to obtain a copy of a document, or for an order under paragraph (5), may be made without notice, but the court may direct notice to be given to any person who would be affected by its decision.
- (8) Paragraphs (1) to (7) do not apply in relation to any proceedings in respect of which a rule or practice direction makes different provision.
- (9) The powers of the court under this rule may be exercised by the Chief Registrar, subject to —
 - (a) any general directions given by the First Deemster, or
 - (b) any directions given by the court in the particular case.
- (10) This rule —
 - (a) does not apply to any document filed before commencement; and
 - (b) has effect subject to —
 - (i) section 14 (secrecy) of the Legal Aid Act 1986, and
 - (ii) section 4 (access to public records) of the Public Records Act 1999.

CHAPTER 7: SERVICE OF DOCUMENTS: GENERAL

2.22 Rules about service apply generally (6.1)

- (1) The rules in this Chapter apply to the service of documents, except where —
 - (a) any other statutory provision or a rule in another Chapter makes a different provision; or
 - (b) the court orders otherwise.
- (2) In the case of service of a claim form, rules 2.23 to 2.34 are subject to Chapter 8.
- (3) Except where rule 2.26(2) applies, where a document is to be served on a member of Her Majesty's Forces, it must be served in accordance with any directions given by a Minister of the Crown in the United Kingdom and for the time being in force with respect to service on such members of documents in proceedings in a civil court in England and Wales (with any necessary modifications); and the following provisions of this Part have effect subject to any such directions.

2.23 Methods of service — general (6.2)

- (1) A document may be served by any of the following methods —
 - (a) personal service, in accordance with rule 2.26;
 - (b) by post; or
 - (c) leaving the document at a place specified in rule 2.27.
- (2) A company may be served by any method permitted under this Part as an alternative to the methods of service set out in —
 - (a) section 335 or 335A of the Companies Act 1931 (service by leaving a document at or posting it to an authorised place);
 - (b) section 318 of that Act (service on overseas companies); and
 - (c) section 83 of the Companies Act 2006 (service at registered office or office of registered agent).
- (3) A limited liability company may be served by any method permitted under this Part as an alternative to the methods of service set out in section 25 of the Limited Liability Companies Act 1996 (service by leaving a document at or posting it to an authorised place).

2.24 Who is to serve (6.3)

- (1) A document prepared by a party must be served by that party, except where —
 - (a) a rule provides that the court shall serve the document in question; or
 - (b) the court orders otherwise.
- (2) Where the court orders that a document prepared by a party be served by the court, that party must —
 - (a) file a copy for the court, with an additional copy for each party to be served, and
 - (b) pay any prescribed fee.
- (3) Where the court makes an order on the application of a party, that party must serve the order, except where the court orders that it shall be served by the court.
- (4) Where the court makes an order on its own initiative, the court shall serve the order, except where the court orders that it shall be served by a party named in the order.

(5) Where a party applies for a hearing, the court shall give notice of the time and place of the hearing to that party, who shall notify every other person to be notified, except where the court orders that a person shall be notified by the court.

(6) Where the court fixes a hearing date on its own initiative, the court shall give notice of the time and place of the hearing to every person to be notified, except where the court orders that a person shall be notified by a party named in the order.

(7) Where the court is to serve a document, it is for the court to decide which of the methods of service specified in rule 2.23 is to be used.

(8) Where the court is to serve a document personally, it shall cause it to be served by a coroner.

2.25 Advocate authorised to accept service

Where —

- (a) an advocate is authorised to accept service on behalf of a party; and
- (b) that party or the advocate has notified the party serving the document in writing that the advocate is so authorised,

a document must be served on the advocate, unless personal service is required by a court order.

2.26 Personal service (6.4)

(1) A document to be served may be served personally, except as provided in rule 2.25.

(2) A document is served personally on an individual by leaving it with that individual.

(3) A document is served personally on a company or other corporation by leaving it with a person holding a senior position in the corporation.

(4) A document is served personally on a partnership where partners are being sued in the name of their firm by leaving it with —

- (a) a partner; or
- (b) a person who, at the time of service, has the control or management of the partnership business at its principal place of business.

2.27 Address for service (6.5)

(1) Except as provided by rules 2.41 to 2.50 (service out of the jurisdiction), a document must be served within the jurisdiction.

(2) A party must give an address for service within the jurisdiction. The address must include a full postcode, unless the court orders otherwise.

(3) Where a party —

- (a) does not give the business address of an advocate as his address for service; and
- (b) resides or carries on business within the jurisdiction,

he must give his residence or place of business as his address for service.

(4) Any document to be served —

- (a) by post;
- (b) by leaving it at the place of service; or
- (c) by fax or by other means of electronic communication,

must be sent or transmitted to, or left at, the address for service given by the party to be served.

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(5) Where rule 2.25 applies, the party's address for service is the business address of his advocate.

(6) Where —

(a) no advocate is acting for the party to be served; and

(b) the party has not given an address for service,

the document must be sent or transmitted to, or left at, the place shown in the following table.

<i>Nature of party to be served</i>	<i>Place of service</i>
Individual	Usual or last known residence.
Proprietor of a business	Usual or last known residence; or Place of business or last known place of business.
Individual who is suing or being sued in the name of a firm	Usual or last known residence; or Principal or last known place of business of the firm.
Corporation incorporated in the Island other than a company	Principal office of the corporation
Company incorporated in the Island	Registered office of the company
Company to which Part XI (overseas companies) of the Companies Act 1931 applies	An address notified under section 313(1)(c) of that Act or, if there is no such address, any place of business within the jurisdiction
Any other corporation	Any place within the jurisdiction where the corporation carries on its activities; or Any place of business of the company within the jurisdiction.

(7) This rule does not apply where an order made by the court under rule 2.30 (service by an alternative method) specifies where the document in question may be served.

2.28 Service of documents on minors and patients (6.6)

(1) The following table shows the person on whom a document must be served if it is a document which would otherwise be served on a minor or a patient —

<i>Type of document</i>	<i>Nature of party</i>	<i>Person to be served</i>
Claim form	Minor who is not also a patient	One of the minor's parents or guardians; or If there is no parent or guardian, the person with whom the minor resides or in whose care the minor is.

<i>Type of document</i>	<i>Nature of party</i>	<i>Person to be served</i>
Claim form	Patient	The person authorised under Part 7 of the Mental Health Act 1998 to conduct the proceedings in the name of the patient or on his behalf; or If there is no person so authorised, any of the following: (a) the receiver (if any) for the patient appointed under the said Part 7; (b) the donee of an enduring power of attorney created by the patient and registered under section 6 of the Powers of Attorney Act 1987; (c) the person with whom the patient resides or in whose care the patient is.
Application for an order appointing a litigation friend, where a minor or patient has no litigation friend	Minor or patient	See rule 3.20.
Any other document	Minor or patient	The litigation friend who is conducting proceedings on behalf of the minor or patient.

(2) The court may make an order permitting a document to be served on the minor or patient, or on some person other than the person specified in the table in this rule.

(3) An application for an order under paragraph (2) may be made without notice.

(4) The court may order that, although a document has been served on someone other than the person specified in the table, the document is to be treated as if it had been properly served.

(5) This rule does not apply where the court has made an order under rule 3.13 allowing a minor to conduct proceedings without a litigation friend.

2.29 Deemed date of service (6.7)

(1) If a document is served —

- (a) after 5 p.m. on a business day; or
- (b) at any time on Christmas Day, Good Friday or a Saturday, Sunday or bank holiday,

it shall be treated as being served on the next business day.

(2) In this rule ‘business day’ means any day except Christmas Day, Good Friday, Saturday, Sunday or a bank holiday.

2.30 Service by an alternative method (6.8, PD6.9.1)

(1) Where it appears to the court that there is a good reason to authorise service by a method not permitted by these Rules, the court may make an order permitting service by an alternative method.

- (2) An application for an order permitting service by an alternative method —
- (a) must be supported by evidence stating —
- (i) the reason why an order for an alternative method of service is sought, and
- (ii) what steps have been taken to serve by other permitted means;
- (b) must specify the alternative method proposed and the grounds for proposing it; and
- (c) may be made without notice.
- (3) An order permitting service by an alternative method must specify —
- (a) the method of service; and
- (b) the date when the document will be deemed to be served.

2.31 Power of court to dispense with service (6.9)

- (1) The court may dispense with service of a document.
- (2) An application for an order to dispense with service may be made without notice.

2.32 Certificate of service (6.10)

(1) Where a rule or court order requires a certificate of service, the certificate must state the details set out in the following table:

<i>Method of service</i>	<i>Details to be certified</i>
Post	Date of posting
Personal	Date of service and on whom served (and how identified)
Delivery of document to or leaving it at a permitted place	Date when the document was delivered to or left at the permitted place
Fax	Date and time of transmission
Other electronic means	Date of transmission and the means used
Alternative method permitted by the court	As required by the court

(2) Where the document to be served was in a sealed envelope, the certificate under paragraph (1) must state, or a separate certificate must be provided stating, —

- (a) that the person by whom the certificate is given placed the document in the envelope and sealed it, and
- (b) how the envelope was addressed;

and references to a certificate of service are to a certificate of service complying with this paragraph, or to a certificate under paragraph (1) and a separate certificate complying with this paragraph, as the case may be.

2.33 Notification of outcome of postal service by the court (6.11)

Where —

- (a) a document to be served by the court is served by post; and

(b) the document is returned to the court,
the court must send notification to the party who requested service stating that the document has been returned.

2.34 Notice of non-service by coroner (6.11A)

Where a coroner is to serve a document and is unable to serve it, he must forthwith send notification to the party who requested service, stating the reason why service cannot be effected.

2.35 Change of address for service (PD6.7)

(1) A party or his advocate who changes his address for service must give notice in writing of the change to the court and every other party as soon as it has taken place.

(2) Unless notice has been given in accordance with paragraph (1), a document served at the former address for service shall be deemed to be served on the party or his advocate, as the case may be.

CHAPTER 8: SERVICE OF CLAIM FORM

2.36 Service of claim form on advocate

Where the defendant is represented by an advocate and the conditions in rule 2.25 are fulfilled, the claim form must be served by leaving it at the business address of the defendant's advocate.

2.37 Coroner to serve claim form (RHC 4)

(1) The claimant may, and where rule 2.36 or rule 2.41 does not apply must, cause the claim form to be served by a coroner on the defendant in accordance with the following provisions of this rule.

(2) Where rule 2.36 applies, the coroner shall serve the claim form by leaving it at the business address of the defendant's advocate.

(3) Where rule 2.36 does not apply, the coroner shall serve the claim form either —

- (a) personally; or
- (b) by leaving it for the defendant with some person apparently over the age of 16 at the address for service; or
- (c) by a method permitted under the following table —

<i>Description or situation of defendant</i>	<i>Permitted method of service</i>
Company incorporated under the Companies Act 1931 or the Companies Act 2006	Leaving a copy at the registered office of the company
Company to which Part XI (overseas companies) of the Companies Act 1931 applies	Leaving a copy at an address notified under section 313(1)(c) of that Act or, if there is no such address, at any place of business within the jurisdiction
Living or serving on board a vessel (not being a vessel belonging to the Royal Navy)	Delivering a copy to the person on board who is apparently in charge at the time
Detained in an institution (within the meaning of the Custody Act 1995)	Delivering a copy at the institution to the officer in charge or apparently in charge of the institution

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<i>Description or situation of defendant</i>	<i>Permitted method of service</i>
Keeping his residence or place of business closed	Affixing a copy of the claim form to the door or inserting a copy of the claim form in the letter-box

- (4) A claim form must be served by the coroner —
 - (a) within 7 days of the receipt of the documents, or
 - (b) within such longer period as the claimant may consent to (but before the expiry of the time permitted under rule 4.3(2) or 4.4).
- (5) The claim form must include the defendant's address for service in accordance with rule 2.27.
- (6) This rule is subject to rule 2.28 (service on minors and patients).
- (7) This rule does not apply where —
 - (a) an order under rule 2.30 permits service by an alternative method; or
 - (b) the claim form is to be served out of the jurisdiction.

2.38 Notice of service of claim form (6.14)

- (1) Where a claim form is served by a coroner, the coroner must send the claimant a notice, which shall include —
 - (a) the method by which the claim form was served, and
 - (b) the date when the claim form was served (or is deemed to have been served under rule 2.29);

and the claimant must file the notice.

- (2) Where a coroner cannot effect service he must, at the same time as he gives notification under rule 2.34, return all the documents to the claimant at the claimant's address for service.

2.39 Service of claim form by contractually agreed method (6.15)

- (1) Where —
 - (a) a contract contains a term providing that, in the event of a claim being issued in relation to the contract, the claim form may be served by a method specified in the contract; and
 - (b) a claim form containing only a claim in respect of that contract is issued,the claim form shall, subject to paragraph (2), be deemed to be served on the defendant if it is served by a method specified in the contract.

- (2) Where the claim form is served out of the jurisdiction in accordance with the contract, it shall not be deemed to be served on the defendant unless permission to serve it out of the jurisdiction has been granted under rule 2.41.

2.40 Service of certain application notices

Where an application is made in accordance with Chapter 2 of Part 7 in a case where no claim has been started, a copy of the application notice must be served in accordance with this Chapter; and references to a claim form in rules 2.36 to 2.39 include references to such a copy.

CHAPTER 9: SERVICE OUT OF THE JURISDICTION

2.41 Service out of the jurisdiction (6.20)

- (1) A claim form may be served out of the jurisdiction with the permission of the court if —

- (a) a claim is made for a remedy against a person domiciled or ordinarily resident within the jurisdiction;
- (b) a claim is made for an injunction ordering the defendant to do or refrain from doing an act within the jurisdiction;
- (c) a claim is made against someone on whom the claim form has been or will be served (otherwise than in reliance on this paragraph) and —
 - (i) there is between the claimant and that person a real issue which it is reasonable for the court to try; and
 - (ii) the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim;
- (d) a claim is made for an interim remedy under section 56B of the High Court Act 1991;
- (e) a claim is an additional claim and the person to be served is a necessary or proper party to the claim or additional claim;
- (f) a claim is made in respect of a contract where the contract —
 - (i) was made within the jurisdiction;
 - (ii) was made by or through an agent trading or residing within the jurisdiction;
 - (iii) is governed by Manx law; or
 - (iv) contains a term to the effect that the court shall have jurisdiction to determine any claim in respect of the contract;
- (g) a claim is made in respect of a breach of contract committed within the jurisdiction;
- (h) a claim is made for a declaration that no contract exists where, if the contract were found to exist, it would comply with any of the conditions set out in paragraph (f);
- (i) a claim is made in tort and —
 - (i) damage was sustained within the jurisdiction; or
 - (ii) the damage sustained resulted from an act committed within the jurisdiction.
- (j) a claim is made to enforce a judgment or arbitral award;
- (k) the whole subject matter of a claim relates to property located within the jurisdiction;
- (l) a claim is made for any remedy which might be obtained in proceedings relating to the trusts of a written instrument where —
 - (i) the trusts ought to be executed according to Manx law; and
 - (ii) the person on whom the claim form is to be served is a trustee of the trusts or interested in the claim;
- (m) a claim is made for any remedy which might be obtained in proceedings for the administration of the estate of a person who died domiciled within the jurisdiction;
- (n) a claim is made in probate proceedings which includes a claim for the rectification of a will;
- (o) a claim is made for a remedy against the defendant as constructive trustee where the defendant's alleged liability arises out of acts committed within the jurisdiction;

- (p) a claim is made for restitution where the defendant's alleged liability arises out of acts committed within the jurisdiction;
- (q) a claim is made by the Treasury relating to duties, taxes or bona vacantia;
- (r) a claim is made by a party to proceedings for an order that the court exercise its power under section 53 of the High Court Act 1991 to make a costs order in favour of or against a person who is not a party to those proceedings;
- (s) a claim is in the nature of salvage and any part of the services took place within the jurisdiction;
- (t) a claim is made under one of the following statutory provisions —
 - (i) the Nuclear Installations Act 1965 (an Act of Parliament),
 - (ii) the Social Security Contributions and Benefits Act 1992 (an Act of Parliament),
 - (iii) the Proceeds of Crime Act 2008,
 - (iv) the Inheritance (Provision for Family and Dependants) Act 1982,
 - (v) Schedule 2 to the Immigration Act 1971 (an Act of Parliament),
 - (vi) the Pensions Act 1995 (an Act of Parliament);
- (u) it is shown to the satisfaction of the court that there are special grounds to warrant service of the claim form out of the jurisdiction.
- (2) This rule is subject to Part 3 of Schedule 1 (admiralty) to the High Court Act 1991.

2.42 Application for permission to serve claim form out of jurisdiction (6.21)

- (1) An application for permission under rule 2.41 must be supported by written evidence stating —
 - (a) the grounds on which the application is made and the paragraph or paragraphs of rule 2.41 relied on;
 - (b) that the claimant believes that his claim has a reasonable prospect of success (except in the case of a claim falling within rule 2.41(1)(l)); and
 - (c) the defendant's address or, if not known, in what place, territory or country the defendant is, or is likely, to be found.
- (2) Where the application is made in respect of a claim referred to in rule 2.41(1)(c), the written evidence must also state the grounds on which the witness believes that there is between the claimant and the person on whom the claim form has been, or will be served, a real issue which it is reasonable for the court to try.
- (3) The court shall not give permission unless it is satisfied that the Island is the proper place in which to bring the claim.
- (4) An order giving permission to serve a claim form out of the jurisdiction must specify the periods within which the defendant may —
 - (a) file an acknowledgment of service;
 - (b) file or serve an admission; and
 - (c) file a defence.
- (5) When particulars of claim are served out of the jurisdiction any statement as to the period for responding to the claim contained in any of the forms required by rule 4.7 to accompany the particulars of claim must specify the period specified by the order permitting service out of the jurisdiction.

2.43 Method of service — general provisions (6.24)

(1) Where a claim form is to be served out of the jurisdiction, it may be served by any method —

- (a) permitted by the law of the country in which it is to be served, or
- (b) provided for by rule 2.45 or rule 2.46.

(2) Nothing in this rule or in any court order shall authorise or require any person to do anything in the country where the claim form is to be served which is against the law of that country.

2.44 Method of service out of the jurisdiction (6.25)

(1) Where a claim form is to be served on a defendant in any country which is a party to the Hague Convention, the claim form may be served —

- (a) through the authority designated under the Hague Convention in respect of that country; or
- (b) if the law of that country permits —
 - (i) through the judicial authorities of that country, or
 - (ii) through a British Consular authority in that country.

(2) Where a claim form is to be served on a defendant in —

- (a) any part of the United Kingdom or the Channel Islands;
- (b) any Commonwealth State (except one mentioned in paragraph (3)(a)) ; or
- (c) any United Kingdom Overseas Territory,

the defendant must be served direct by the claimant or his agent.

(3) Where a claim form is to be served on a defendant in —

- (a) a Commonwealth State where the judicial authorities have required service to be in accordance with this paragraph,
- (b) any other country outside the Island,

the claim form may be served, if the law of that country so permits —

- (i) through the government of that country, where that government is willing to serve it; or
- (ii) through a British Consular authority in that country.

(4) In this rule and rule 2.45 —

‘the Hague Convention’ means the Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters signed at the Hague on 15th November 1965;

‘United Kingdom Overseas Territory’ means any of the following —

- (a) Anguilla;
- (b) Bermuda;
- (c) British Antarctic Territory;
- (d) British Indian Ocean Territory;
- (e) British Virgin Islands;
- (f) Cayman Islands;
- (g) Falkland Islands;
- (h) Gibraltar;
- (i) Montserrat;

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- (j) Pitcairn, Henderson, Ducie and Oeno;
- (k) St. Helena and Dependencies;
- (l) South Georgia and the South Sandwich Islands;
- (m) Sovereign Base Areas of Akrotiri and Dhekelia; and
- (n) Turks and Caicos Islands.

2.45 Procedure for service through judicial authority etc. (6.26)

-
- (1) This rule applies where the claimant wishes to serve the claim form through —
 - (a) the judicial authorities of the country where the claim form is to be served;
 - (b) a British Consular authority in that country;
 - (c) the authority designated under the Hague Convention in respect of that country; or
 - (d) the government of that country.
 - (2) Where this rule applies, the claimant must file —
 - (a) a request for service of the claim form by the method in paragraph (1) that he has chosen;
 - (b) a copy of the claim form;
 - (c) any translation required under rule 2.47; and
 - (d) any other documents, copies of documents or translations required by these Rules.
 - (3) When the claimant files the documents specified in paragraph (2), a court officer shall —
 - (a) seal the copy of the claim form; and
 - (b) forward the documents to a judge.
 - (4) The judge shall cause documents forwarded under this rule to be sent to the Foreign and Commonwealth Office with a request that it arrange for the claim to be served —
 - (a) by the method indicated in the request for service filed under paragraph (2), or
 - (b) where that request indicates alternative methods, by the most convenient method.
 - (5) An official certificate which —
 - (a) states that the claim form has been served in accordance with this rule either personally, or in accordance with the law of the country in which service was effected;
 - (b) specifies the date on which the claim form was served; and
 - (c) is made by —
 - (i) a British Consular authority in the country where the claim form was served; or
 - (ii) the government or judicial authorities in that country; or
 - (iii) any other authority designated in respect of that country under the Hague Convention,
- shall be evidence of the facts stated in the certificate.
- (6) A document purporting to be an official certificate under paragraph (5) shall be treated as such a certificate, unless it is proved not to be.

2.46 Service of claim form out of jurisdiction on State (6.27)

- (1) This rule applies where a claimant wishes to serve the claim form on a State.
- (2) The claimant must file —
 - (a) a request for service to be arranged by the Foreign and Commonwealth Office;
 - (b) a copy of the claim form; and
 - (c) any translation required under rule 2.47.
- (3) The judge shall send documents filed under this rule to the Foreign and Commonwealth Office with a request that it arrange for the claim form to be served.
- (4) An official certificate by the Foreign and Commonwealth Office stating that a claim form has been duly served on a specified date in accordance with a request made under this rule shall be evidence of that fact.
- (5) A document purporting to be such a certificate shall be treated as such a certificate, unless it is proved not to be.
- (6) Where —
 - (a) section 12(6) of the State Immunity Act 1978 (an Act of Parliament) applies; and
 - (b) the State has agreed to a method of service other than through the Foreign and Commonwealth Office,

the claim form may be served either by the method agreed or in accordance with this rule.

- (7) In this rule 'State' has the meaning given by section 14 of the State Immunity Act 1978 (an Act of Parliament).

2.47 Translation of claim form (6.28)

- (1) Except where paragraph (4) or (5) applies, every copy of the claim form filed under rule 2.45 (service through judicial authorities etc.) or 2.46 (service on State) must be accompanied by a translation of the claim form.
- (2) The translation must be —
 - (a) in the official language of the country in which it is to be served; or
 - (b) if there is more than one official language of that country, in any official language which is appropriate to the place in the country where the claim form is to be served.
- (3) Every translation filed under this rule must be accompanied by a statement by the person making it that it is a correct translation, and the statement must include —
 - (a) the name of the person making the translation;
 - (b) his address; and
 - (c) his qualifications for making a translation.
- (4) The claimant is not required to file a translation of a claim form filed under rule 2.45 where the claim form is to be served —
 - (a) in a country of which English is an official language; or
 - (b) on a British subject.
- (5) The claimant is not required to file a translation of a claim form filed under rule 2.46 (service on State) where English is an official language of the State where the claim form is to be served.
- (6) Where a translation of a claim form is required under this rule, the claimant must also file a translation of all the forms which will accompany the claim form.

2.48 Undertaking to be responsible for expenses of FCO etc. (6.29)

Every request for service filed under rule 2.45 or 2.46 must contain an undertaking by the person making the request —

- (a) to be responsible for all expenses incurred by the Foreign and Commonwealth Office or foreign judicial authority; and
- (b) to pay those expenses to the Foreign and Commonwealth Office or foreign judicial authority on being informed of the amount.

2.49 Service of documents other than the claim form (6.30, PD 6B)

(1) Rules 2.41 to 2.48 apply with any necessary modifications to service out of the jurisdiction of an application notice or order.

(2) Where an application notice is to be served out of the jurisdiction —

- (a) rule 2.42(4) does not apply;
- (b) the court shall have regard to the country in which the application notice is to be served in setting the date for the hearing of the application and giving any direction about service of the respondent's evidence; and
- (c) where the person on whom the application notice has been served is not a party to proceedings in the jurisdiction in which the application is made, that person may make an application to the court under rule 4.16(1) as if he were a defendant, and rule 4.16(2) does not apply.

(3) Subject to paragraph (4), where the court gives permission for a claim form to be served out of the jurisdiction on any party then, unless the court otherwise directs, the permission of the court need not be obtained for service out of the jurisdiction of any other document to be served on that party in the proceedings.

(4) Paragraph (3) does not apply where the party in question has given an address for service within the jurisdiction.

2.50 Proof of service out of the jurisdiction (6.31)

Where —

- (a) a hearing is fixed when the claim is issued;
- (b) the claim form is served on a defendant out of the jurisdiction; and
- (c) that defendant does not appear at the hearing,

the claimant may take no further steps against that defendant until the claimant files written evidence showing that the claim form has been duly served.

CHAPTER 10: SERVICE OF DOCUMENTS FROM FOREIGN COURTS OR TRIBUNALS

2.51 Scope and interpretation (6.48, 6.49)

(1) This Chapter applies to the service in the Island of any document in connection with civil or commercial proceedings in a convention country.

(2) In this Chapter —

'convention country' means a country outside the British Islands which is party to the Hague Convention;

'the document' means the document to be served (and, where appropriate, the translation of it provided under rule 2.52(1)(d));

'the Hague Convention' means the Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters signed at the Hague on 15th November 1965.

2.52 Request for service (6.50)

(1) The First Deemster shall refer to the Chief Registrar a document to which this Chapter applies upon receipt of—

- (a) a written request for service from a consular or other authority of that country;
- (b) a translation of that request into English;
- (c) 2 copies of the document to be served; and
- (d) unless the person who requested service certifies that the person to be served understands the language of the document, 2 copies of a translation of it into English.

(2) The Chief Registrar shall forward the documents specified in paragraph (1)(c) and (d) to a coroner with a direction to serve the document in accordance with the request for service.

2.53 After service (6.52)

- (1) The coroner must make a return in writing to the Chief Registrar including —
 - (a) either a certificate of service or a statement why the document could not be served; and
 - (b) a statement of the fee and costs incurred in serving or attempting to serve the document,

accompanied by one copy (or both copies, if the document has not been served) of the documents specified in rule 2.52(1)(c) and (d).

- (2) The Chief Registrar shall send to the person who requested service —
 - (a) a certificate, sealed with the court's seal, stating—
 - (i) when and how the document was served or the reason why it has not been served; and
 - (ii) the costs of serving or attempting to serve the document; and
 - (b) a copy of the document.

CHAPTER 11: CIVIL RESTRAINT ORDERS

2.54 Civil restraint orders: general (PD 3C)

(1) In this Chapter —

‘limited civil restraint order’ means an order against a person restraining him from making any further applications in current proceedings;

‘extended civil restraint order’ means an order against a person restraining him from issuing certain claims or making certain applications in specified courts;

‘general civil restraint order’ means an order against a person restraining him from issuing any claim or making any application in specified courts.

(2) This Chapter applies where the court is considering whether to make a civil restraint order against a party who has issued claims or made applications which are totally without merit.

(3) The other party or parties to the proceedings may apply for any civil restraint order.

- (4) An application under paragraph (3) must specify —
 - (a) which type of civil restraint order is sought, and

- (b) the grounds on which the order is sought.

2.55 Limited civil restraint orders

(1) A limited civil restraint order may be made by a judge where a party has made 2 or more applications which are totally without merit.

(2) Where the court makes a limited civil restraint order, the party against whom the order is made —

- (a) shall be restrained from making any further applications in the proceedings in which the order is made without first obtaining the permission of a judge identified in the order;
- (b) may apply for amendment or discharge of the order provided he has first obtained the permission of a judge identified in the order; and
- (c) may apply for permission to appeal the order and if permission is granted, may appeal the order.

(3) Where a party who is subject to a limited civil restraint order makes a further application in the proceedings in which the order is made without first obtaining the permission of a judge identified in the order, the application shall automatically be dismissed —

- (a) without a judge having to make any further order; and
- (b) without the need for the other party to respond to it.

(4) Where a party who is subject to a limited civil restraint order repeatedly makes applications for permission pursuant to that order which are totally without merit, the court may direct that if the party makes any further application for permission which is totally without merit, the decision to dismiss the application shall be final and there shall be no right of appeal, unless the judge on dismissing the application grants permission to appeal.

(5) A party who is subject to a limited civil restraint order may not make an application for permission under paragraph (2)(a) or (b) without first serving notice of the application on the other party in accordance with paragraph (6).

(6) A notice under paragraph (5) must —

- (a) set out the nature and grounds of the application; and
- (b) provide the other party with at least 7 days within which to respond.

(7) An application for permission under paragraph (2)(a) or (b) —

- (a) must be made in writing;
- (b) must include the other party's written response, if any, to the notice served under paragraph (5); and
- (c) shall be determined without a hearing.

(8) An order under paragraph (4) may only be made by a Deemster.

(9) Where a party makes an application for permission under paragraph (2)(a) or (b) and permission is refused, any application for permission to appeal —

- (a) must be made in writing; and
- (b) shall be determined without a hearing.

(10) A limited civil restraint order —

- (a) is limited to the particular proceedings in which it is made;
- (b) shall remain in effect for the duration of the proceedings in which it is made, unless the court otherwise orders; and
- (c) shall identify the judge or judges to whom an application for permission under paragraph (2)(a) or (b) or (9) should be made.

2.56 Extended civil restraint orders

(1) An extended civil restraint order may be made by a Deemster or the Judge of Appeal where a party has persistently issued claims or made applications which are totally without merit.

(2) Unless the court otherwise orders, where the court makes an extended civil restraint order, the party against whom the order is made —

- (a) shall be restrained from issuing claims or making applications in any court concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made without first obtaining the permission of a judge identified in the order;
- (b) may apply for amendment or discharge of the order provided he has first obtained the permission of a judge identified in the order; and
- (c) may apply for permission to appeal the order and if permission is granted, may appeal the order.

(3) Where a party who is subject to an extended civil restraint order issues a claim or makes an application in a court identified in the order concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made without first obtaining the permission of a judge identified in the order, the claim or application shall automatically be struck out or dismissed —

- (a) without the judge having to make any further order; and
- (b) without the need for the other party to respond to it.

(4) Where a party who is subject to an extended civil restraint order repeatedly makes applications for permission pursuant to that order which are totally without merit, the court may direct that if the party makes any further application for permission which is totally without merit, the decision to dismiss the application shall be final and there shall be no right of appeal, unless the judge on dismissing the application grants permission to appeal.

(5) A party who is subject to an extended civil restraint order may not make an application for permission under paragraph (2)(a) or (b) without first serving notice of the application on the other party in accordance with paragraph (6).

(6) A notice under paragraph (5) must —

- (a) set out the nature and grounds of the application; and
- (b) provide the other party with at least 7 days within which to respond.

(7) An application for permission under paragraph (2)(a) or (b) —

- (a) must be made in writing;
- (b) must include the other party's written response, if any, to the notice served under paragraph (5); and
- (c) shall be determined without a hearing.

(8) An order under paragraph (4) may only be made by a Deemster or the Judge of Appeal.

(9) Where a party makes an application for permission under paragraph (2)(a) or (b) and permission is refused, any application for permission to appeal —

- (a) must be made in writing; and
- (b) shall be determined without a hearing.

(10) An extended civil restraint order —

- (a) shall be made for a specified period not exceeding 2 years;
- (b) must identify the courts in which the party against whom the order is made is restrained from issuing claims or making applications; and

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- (c) must identify the judge or judges to whom an application for permission under paragraph (2)(a) or (b) or (9) should be made.

(11) The court may extend the duration of an extended civil restraint order, if it considers it appropriate to do so, but it must not be extended for a period greater than 2 years on any given occasion.

(12) If a judicial officer considers that it would be appropriate to make an extended civil restraint order, he must transfer the proceedings to a Deemster.

2.57 General civil restraint orders

(1) A general civil restraint order may be made by a Deemster where the party against whom the order is made persists in issuing claims or making applications which are totally without merit, in circumstances where an extended civil restraint order would not be sufficient or appropriate.

(2) Unless the court otherwise orders, where the court makes a general civil restraint order, the party against whom the order is made —

- (a) shall be restrained from issuing any claim or making any application in any court without first obtaining the permission of a judge identified in the order;
- (b) may apply for amendment or discharge of the order provided he has first obtained the permission of a judge identified in the order; and
- (c) may apply for permission to appeal the order and if permission is granted, may appeal the order.

(3) Where a party who is subject to a general civil restraint order issues a claim or makes an application in a court identified in the order without first obtaining the permission of a judge identified in the order, the claim or application shall automatically be struck out or dismissed —

- (a) without the judge having to make any further order; and
- (b) without the need for the other party to respond to it.

(4) Where a party who is subject to a general civil restraint order repeatedly makes applications for permission pursuant to that order which are totally without merit, the court may direct that if the party makes any further application for permission which is totally without merit, the decision to dismiss that application shall be final and there shall be no right of appeal, unless the judge on dismissing the application grants permission to appeal.

(5) A party who is subject to a general civil restraint order may not make an application for permission under paragraph (2)(a) or (b) without first serving notice of the application on the other party in accordance with paragraph (6).

(6) A notice under paragraph (5) must —

- (a) set out the nature and grounds of the application; and
- (b) provide the other party with at least 7 days within which to respond.

(7) An application for permission under paragraph (2)(a) or (b) —

- (a) must be made in writing;
- (b) must include the other party's written response, if any, to the notice served under paragraph (5); and
- (c) shall be determined without a hearing.

(8) An order under paragraph (4) may only be made by a Deemster.

(9) Where a party makes an application for permission under paragraph (2)(a) or (b) and permission is refused, any application for permission to appeal —

- (a) must be made in writing; and
- (b) shall be determined without a hearing.

- (10) A general civil restraint order —
 - (a) shall be made for a specified period not exceeding 2 years;
 - (b) must identify the courts in which the party against whom the order is made is restrained from issuing claims or making applications; and
 - (c) must identify the judge or judges to whom an application for permission under paragraph (2)(a) or (b) or (9) should be made.
- (11) The court may extend the duration of a general civil restraint order, if it considers it appropriate to do so, but it must not be extended for a period greater than 2 years on any given occasion.
- (12) If a judicial officer considers that it would be appropriate to make a general civil restraint order, he must transfer the proceedings to a Deemster.

CHAPTER 12: SANCTIONS

2.58 Sanctions have effect unless defaulting party obtains relief (3.8)

- (1) Where a party has failed to comply with a rule, practice direction or court order, any sanction for failure to comply imposed by the rule, practice direction or court order has effect unless the party in default applies for and obtains relief from the sanction.
 - (2) Where a rule, practice direction or court order —
 - (a) requires a party to do something within a specified time, and
 - (b) specifies the consequence of failure to comply,
- the time for doing the act in question may not be extended by agreement between the parties.

2.59 Relief from sanctions (3.9)

- (1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order the court shall consider all the circumstances including —
 - (a) the interests of the administration of justice;
 - (b) whether the application for relief has been made promptly;
 - (c) whether the failure to comply was intentional;
 - (d) whether there is a good explanation for the failure;
 - (e) the extent to which the party in default has complied with other rules, practice directions and court orders;
 - (f) whether the failure to comply was caused by the party or his advocate;
 - (g) whether the trial date or the likely trial date can still be met if relief is granted;
 - (h) the effect which the failure to comply had on each party; and
 - (i) the effect which the granting of relief would have on each party.
- (2) An application for relief shall be supported by evidence.

2.60 Sanction for non-payment of fee on filing document (3.7, 3.7A)

- (1) This rule applies where a party files any document, on the filing of which a prescribed fee is payable, without paying the prescribed fee, except where arrangements between the Chief Registrar and the party or the advocate acting for the party are in force for the payment of prescribed fees on credit.
- (2) The court shall serve a notice on the party —
 - (a) requiring payment of the prescribed fee, and

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- (b) specifying the date by which it must be paid (which may not be less than 14 days after the date of the notice);

and until the fee is paid the court shall treat the document in question as not having been filed.

- (3) If the party does not pay the fee by the date specified in the notice —
 - (a) the party's claim, defence, additional claim or application to which the document relates shall automatically be struck out without further order of the court; and
 - (b) the party shall be liable for the costs which any other party has incurred unless the court orders otherwise.

2.61 Sanctions for dishonouring cheque (3.7B)

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

- (2) The court shall serve a notice on the paying party —
 - (a) notifying him of the dishonour,
 - (b) requiring payment of the prescribed fee, and
 - (c) specifying the date by which it must be paid;

and until the fee is paid the court shall take no action on the matter in respect of which it ought to have been paid.

- (3) If the fee is not paid by the date specified in the notice —
 - (a) where the fee is payable by the claimant or applicant, the claim or application shall automatically be struck out without further order of the court;
 - (b) where the fee is payable by the defendant or respondent, the defence or response shall automatically be struck out without further order of the court,

and the paying party shall be liable for the costs which any other party has incurred unless the court orders otherwise.

- (4) If —
 - (a) the paying party applies to have the claim, application, defence or response reinstated; and
 - (b) the court grants relief,

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

- (5) The period referred to in paragraph (4) is —
 - (a) if the order granting relief is made at a hearing at which the paying party is present or represented, 2 days from the date of the order;
 - (b) in any other case, 7 days from the date of service of the order on the paying party.
- (6) In this rule 'claimant' includes a person who makes an additional claim.

CHAPTER 13: STRIKING OUT OF DORMANT CLAIMS

2.62 Striking out of dormant claims

- (1) Subject to paragraph (2), this rule applies to any claim if —
 - (a) no final judgment or order has been given or made;
 - (b) one year has elapsed since any document has been filed;
 - (c) where an order under paragraph (5) has been made, the period specified in the order has expired or the event so specified has happened; and

- (d) in the case of a claim a party to which was a minor when the claim was started, one year has elapsed since he reached the age of 18.
- (2) This rule does not apply to —
 - (a) a claim to which a minor or a patient is a party;
 - (b) a claim for personal injuries where there is no issue on liability but the proceedings have been adjourned by court order to determine the prognosis;
 - (c) where the court is dealing with the continuing administration of an estate or a trust or a receivership;
 - (d) applications relating to funds in court.
- (3) Subject to any order under paragraph (5), a court officer may give notice to every party to a claim to which this rule applies stating that, unless an application is made to the court for such an order before the expiration of such period as is specified in the notice ('the notice period'), the claim will be struck out.
- (4) The notice period must not be less than 28 days beginning with the issue of the notice.
- (5) The court may at any time, on application by any party or on its own initiative, order that a claim shall not be struck out under this rule until the expiration of such period, or the happening of such event, as is specified in the order.
- (6) Subject to any order under paragraph (5) —
 - (a) where an application for such an order is made within the notice period, on the dismissal or withdrawal of the application,
 - (b) otherwise, on the expiration of the notice period,the claim shall automatically be struck out.

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SCHEDULE 2.1 — ELECTRONIC COMMUNICATION AND FILING OF DOCUMENTS (PD5, 5B)

Rule 2.18

1. Filing by fax

(1) Subject to sub-paragraphs (8) and (9), a party may file a document by sending it by facsimile ('fax').

(2) Where a party files a document by fax, he must not send a hard copy in addition.

(3) A document filed shall not be treated as filed until it is delivered by the court's fax machine, whatever time it is shown to have been transmitted from the party's machine.

(4) The time of delivery of the faxed document shall be recorded on it in accordance with rule 2.19.

(5) It remains the responsibility of the party to ensure that the document is delivered to the court in time.

(6) If a fax is delivered after 4.00 pm it shall be treated as filed at 9.00 am on the next day the court office is open.

(7) If a fax relates to a hearing, the date and time of the hearing must be prominently displayed.

(8) Fax may not be used to send letters or documents of a routine or non-urgent nature.

(9) Fax may not be used, except in an unavoidable emergency, to deliver —

(a) a document which attracts a fee;

(b) a payment into court notice;

(c) a document relating to a hearing less than 2 hours ahead;

(d) trial bundles or skeleton arguments.

(10) Where sub-paragraph (9)(a) or (b) applies, the fax must give an explanation for the emergency and include an undertaking that the fee or money has been dispatched that day by post or will be paid at the court office counter the following business day.

(11) Sub-paragraph (9)(a) does not apply where arrangements between the Chief Registrar and the applicant or the advocate acting for the applicant, as the case may be, are in force for the payment of prescribed fees on credit.

2. Communications and documents which may be sent by e-mail

(1) Subject to sub-paragraph (2), a party may send a specified document to the court by e-mail complying with the requirements of paragraph 3.

(2) Subject to sub-paragraph (3) —

(a) a party must not use e-mail to take any step in a claim for which a fee is payable; and

(b) where —

(i) a fee is payable on the filing of a particular document; and

(ii) a party purports to file that document by e-mail,
the court shall treat the document as not having been filed.

(3) Sub-paragraph (2) does not apply where arrangements between the Chief Registrar and the applicant or the advocate acting for the applicant, as the case may be, are in force for the payment of prescribed fees on credit.

3. *Technical specifications of e-mail*

(1) The e-mail message must contain the name, telephone number and e-mail address of the sender.

(2) Correspondence and documents may be sent as either text in the body of the e-mail, or as attachments, except as mentioned in sub-paragraph (3).

(3) Documents required to be in a prescribed form must be sent in that form as attachments.

(4) Attachments must be sent in a format supported by the software used by the court as listed on the court website.

(5) Where an attachment is sent to the court otherwise than in accordance with sub-paragraph (4), the court shall treat the document as not having been received.

(6) The length of attachments and total size of e-mail must not exceed the maximum indicated on the court website.

(7) Where proceedings have been commenced, the subject line of the e-mail must contain the following information —

- (a) the case number;
- (b) the parties' names (abbreviated if necessary); and
- (c) the date and time of any hearing to which the e-mail relates.

4. *Provisions relating to the filing of documents electronically*

(1) Where a party files a document electronically, he must not send a hard copy of that document to the court except in accordance with paragraph 5.

(2) A document is not filed until the transmission is received by the court, whatever time it is shown to have been sent.

(3) The time of receipt of a transmission shall be recorded electronically on the transmission as it is received.

(4) If a transmission is received after 4.00 pm —

- (a) the transmission shall be treated as received; and
- (b) any document attached to the transmission shall be treated as filed,

at 9.00 am on the next day the court office is open.

(5) A party sending an e-mail in accordance with paragraph 2 is responsible for ensuring that the transmission or any document attached to it is filed within any relevant time limits.

(6) The court may reply by e-mail where —

- (a) the response is to a message transmitted electronically; and
- (b) the sender has provided an e-mail address.

(7) A document which is required by a rule to be filed is not filed if it is sent to the judge by e-mail.

5. *Statement of truth in documents filed electronically*

Where a party wishes to file electronically a document containing a statement of truth, that party must retain the document containing the original signature and file with the court a version of the document satisfying one of the following requirements —

- (a) the name of the person who has signed the statement of truth is typed underneath the statement;
- (b) the person who has signed the statement of truth has applied a facsimile of his signature to the statement in the document by mechanical means; or

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- (c) the document that is filed is a scanned version of the document containing the original signature to the statement of truth.

6. Arrangements for electronic communication by court

(1) The Chief Registrar may make arrangements with a party or advocate whereby documents may be sent electronically by the court to that party or advocate

- (2) The Chief Registrar shall publish on the court website —

- (a) descriptions of the documents which may be sent electronically under such arrangements;
- (b) the format or formats in which such documents may be sent;
- (c) any other technical specifications relating to the transmission; and
- (d) the information to be supplied by a party or advocate wishing to enter into such arrangements.

(3) Any reference in these rules to the return, supply, sending or service of a document by the court or the court office includes a reference to the sending of that document in accordance with such arrangements.

7. Interpretation of paragraphs 2 to 6

In paragraphs 2 to 6 —

- (a) filing or sending a document ‘electronically’ means filing or sending it in accordance with paragraph 2 or arrangements under paragraph 6, as the case may be; and
- (b) ‘specified form’, in relation to a document, means an electronic form of the document which is available for completion on the court website;
- (c) ‘specified document’ means a document listed on the court website as a document that may be sent to or filed in the court by e-mail;
- (d) ‘transmission’ means an e-mail sent by a party to the court at the appropriate e-mail address specified on the court website, or by the court to a party or advocate in accordance with arrangements under paragraph 6, as the case may be.

PART 3 : PARTIES

CHAPTER 1: GENERAL

3.1 Description of parties

- (1) Subject to Schedule 3.1, in any proceedings in the court —
 - (a) a party at whose request a claim form is issued shall be referred to as a ‘claimant’;
 - (b) any other party shall be referred to as a ‘defendant’.
- (2) Schedule 3.1 has effect with respect to the description of parties in any document used in proceedings in the court.

3.2 Number of parties (19.1)

Any number of claimants or defendants may be joined as parties to a claim.

3.3 Claims by and against firms within jurisdiction (RHC 36.1)

- (1) Subject to any statutory provision, any 2 or more persons claiming to be entitled, or alleged to be liable, as partners in respect of a cause of action and carrying on business within the jurisdiction may sue, or be sued, in the name of the firm (if any) of which they were partners at the time when the cause of action accrued.
- (2) In proceedings in which partners sue or are sued in the name of a firm, they must be referred to in the title as ‘*A & Co (a firm)*’.

3.4 Disclosure of partners’ names (RHC 36.1, 2)

- (1) Any defendant to a claim brought by partners in the name of a firm may serve on the claimants or their advocate a notice requiring them or him forthwith to furnish the defendant with a written statement of the names and places of residence of all the persons who were partners in the firm at the time when the cause of action accrued.
- (2) If a notice under paragraph (1) is not complied with, the court may —
 - (a) order the claimants or their advocate to provide the defendant with such a statement and to verify it on oath or otherwise as may be specified in the order, or
 - (b) order that further proceedings in the claim be stayed on such terms as the court may direct.
- (3) When the names of the partners have been declared in compliance with a notice under paragraph (1) or an order under paragraph (2)(a), the proceedings shall continue in the name of the firm but with the same consequences as would have ensued if the persons whose names have been so declared had been named as claimants in the claim form.
- (4) Paragraphs (1) and (2) apply in relation to a claim brought against partners in the name of a firm as they apply in relation to a claim brought by partners in the name of a firm but —
 - (a) with the substitution, for references to the defendant and the claimants, of references to the claimant and the defendants respectively, and
 - (b) with the omission of paragraph (2)(b).

3.5 Persons carrying on business in another name (RHC 36.10)

- (1) An individual carrying on business within the jurisdiction in a name or style other than his own name may (whether or not he is within the jurisdiction) be sued in that name or style as if it were the name of a firm, and rule 3.4 shall, so far as applicable, apply as if he were a partner and the name in which he carries on business were the name of his firm.

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(2) In proceedings in which an individual is sued in another name or style as mentioned in paragraph (1), he must be referred to in the title as either —

- (a) ‘*AB (trading as C & Co)*’, or
- (b) ‘*C & Co (a trading name)*’.

CHAPTER 2: ADDITION AND SUBSTITUTION OF PARTIES

3.6 Change of parties — general (19.2)

(1) This rule applies where a party is to be added or substituted except where the case falls within rule 3.10 (changing parties after the end of a relevant limitation period).

(2) The court may order a person to be added as a new party if —

- (a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or
- (b) there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue.

(3) The court may order any person to cease to be a party if it is not desirable for that person to be a party to the proceedings.

(4) The court may order a new party to be substituted for an existing one if —

- (a) the existing party’s interest or liability has passed to the new party; and
- (b) it is desirable to substitute the new party so that the court can resolve the matters in dispute in the proceedings.

3.7 Two or more persons jointly entitled to remedy (19.3)

(1) Where a claimant claims a remedy to which some other person is jointly entitled with him, all persons jointly entitled to the remedy must be parties unless the court orders otherwise.

(2) If any person does not agree to be a claimant, he must be made a defendant, unless the court orders otherwise.

(3) This rule does not apply in probate proceedings.

3.8 Procedure for adding and substituting parties (19.4)

(1) The court’s permission is required to remove, add or substitute a party, unless the claim form has not been served.

(2) An application for permission under paragraph (1) may be made by —

- (a) an existing party; or
- (b) a person who wishes to become a party.

(3) An application for an order under rule 3.6(4) —

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

(4) No-one may be added or substituted as a claimant unless —

- (a) he has given his consent in writing; and
- (b) that consent has been filed with the court.

(5) An order for the removal, addition or substitution of a party must be served on —

- (a) all parties to the proceedings; and
- (b) any other person affected by the order.

(6) When the court makes an order for the removal, addition or substitution of a party, it may give consequential directions about —

- (a) filing and serving the claim form on any new defendant;
- (b) serving relevant documents on the new party; and
- (c) the management of the proceedings.

3.9 Human rights — notice to Attorney General (RHC 37A.2)

(1) The court may not make a declaration of incompatibility in accordance with section 4 of the Human Rights Act 2001 unless 21 days' notice, or such other period of notice as the court directs, has been given to the Attorney General.

(2) Where notice has been given to the Attorney General he, or a person nominated by him, shall be joined as a party on his giving notice to the court.

(3) Where a claim is made under that Act for damages in respect of a judicial act, the party by whom the claim is made must give notice to the Attorney General.

(4) Where paragraph (3) applies and the Attorney General, or a person nominated by him, has not applied to be joined as a party within 21 days, or such other period as the court directs, after the notice is served, the court may join the Attorney General as a party.

(5) A notice to the Attorney General under this rule must include any directions given by the court and be accompanied by copies of all the pleadings.

(6) A copy of every notice under this rule must be served on all the parties.

3.10 Adding or substituting parties after end of limitation period (19.5)

(1) This rule applies to a change of parties after the end of a period of limitation under —

- (a) the Limitation Act 1984;
- (b) any other statutory provision which allows such a change, or under which such a change is allowed.

(2) The court may add or substitute a party only if —

- (a) the relevant limitation period was current when the proceedings were started; and
- (b) the addition or substitution is necessary.

(3) The addition or substitution of a party is necessary only if the court is satisfied that —

- (a) the new party is to be substituted for a party who was named in the claim form in mistake for the new party;
- (b) the claim cannot properly be carried on by or against the original party unless the new party is added or substituted as claimant or defendant; or
- (c) the original party has died or had an order of adjudication in bankruptcy made against him and his interest or liability has passed to the new party.

(4) In addition, in a claim for personal injuries the court may add or substitute a party where it directs that —

- (a) section 11 (personal injuries) or section 12 (fatal accident claim) of the Limitation Act 1984 shall not apply to the claim by or against the new party; or
- (b) the issue of whether those sections apply shall be determined at trial.

3.11 Claims for wrongful interference with goods (19.5A)

(1) A claimant in a claim for wrongful interference with goods must, in the particulars of claim, state the name and address of every person who, to his knowledge, has or claims an interest in the goods and who is not a party to the claim.

(2) A defendant to a claim for wrongful interference with goods may apply for a direction that another person be made a party to the claim to establish whether the other person —

- (a) has a better right to the goods than the claimant; or
- (b) has a claim which might render the defendant doubly liable under section 7 of the Torts (Interference with Goods) Act 1981.

(3) Where the person referred to in paragraph (2) fails to attend the hearing of the application, or comply with any directions, the court may order that he is deprived of any claim against the defendant in respect of the goods.

(4) The application notice must be served on all parties and on the person referred to in paragraph (2).

CHAPTER 3: DEATH OF PARTY

3.12 Death of party (19.8)

(1) Where a person who had an interest in a claim has died and that person has no personal representative the court may order —

- (a) the claim to proceed in the absence of a person representing the estate of the deceased; or
- (b) a person to be appointed to represent the estate of the deceased.

(2) Where —

- (a) a defendant against whom a claim could have been brought has died, and
- (b) a grant of probate or administration has been made,

the claim must be brought against the persons who are the personal representatives of the deceased.

(3) Where —

- (a) a defendant against whom a claim could have been brought has died, and
- (b) a grant of probate or administration has not been made,

then —

- (i) the claim must be brought against '*the Estate of* [name of deceased]'; and
- (ii) the claimant must apply to the court for an order appointing a person to represent the estate of the deceased in the claim.

(4) A claim shall be treated as having been brought against '*the Estate of*' the deceased in accordance with paragraph (3)(b)(i) where —

- (a) the claim is brought against '*the Personal Representatives of* [name of deceased]' but a grant of probate or administration has not been made; or
- (b) the person against whom the claim was brought was dead when the claim was started.

(5) Before making an order under this rule, the court may direct notice of the application to be given to any other person with an interest in the claim.

(6) Where an order has been made under paragraph (1) or (3)(b)(ii) any judgment or order made or given in the claim is binding on the estate of the deceased.

CHAPTER 4: MINORS AND PATIENTS

3.13 Minors and patients: requirement for litigation friend (21.2)

- (1) A patient must have a litigation friend to conduct proceedings on his behalf.
- (2) A minor must have a litigation friend to conduct proceedings on his behalf unless the court makes an order under paragraph (3).
- (3) The court may make an order permitting the minor to conduct proceedings without a litigation friend.
- (4) An application for an order under paragraph (3) —
 - (a) may be made by the minor;
 - (b) if the minor already has a litigation friend, must be made on notice to the litigation friend; and
 - (c) if the minor has no litigation friend, may be made without notice.
- (5) Where —
 - (a) the court has made an order under paragraph (3); and
 - (b) it subsequently appears to the court that it is desirable for a litigation friend to conduct the proceedings on behalf of the minor,the court may appoint a person to be the minor's litigation friend.

3.14 Title of proceedings (PD 21)

- (1) In proceedings to which a patient is a party the patient must be referred to in the title as '*AB (by CD his litigation friend)*'.
- (2) Where a minor has a litigation friend, the minor must be referred to in the title to proceedings as '*AB (a minor by CD his litigation friend)*'.
- (3) Where a minor is conducting proceedings on his own behalf, the minor must be referred to in the title as '*AB (a minor)*'.
- (4) If a notice under rule 3.21(4) states that a minor intends to carry on with or continue to defend the proceedings he shall subsequently be described in the proceedings as '*AB (formerly a minor but now of full age)*'.

3.15 Stage of proceedings at which a litigation friend becomes necessary (21.3)

- (1) This rule does not apply where the court has made an order under rule 3.13(3).
- (2) A person may not, without the permission of the court —
 - (a) make an application against a minor or patient before proceedings have started; or
 - (b) take any step in proceedings except —
 - (i) issuing and serving a claim form; or
 - (ii) applying for the appointment of a litigation friend under rule 3.20,until the minor or patient has a litigation friend.
- (3) If a party becomes a patient during proceedings, no party may take any step in the proceedings without the permission of the court until the patient has a litigation friend.
- (4) Any step taken before a minor or patient has a litigation friend shall be of no effect unless the court otherwise orders.

3.16 Who may be a litigation friend without a court order (21.4)

- (1) This rule does not apply if the court has appointed a person to be a litigation friend.

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(2) A person authorised under Part 7 of the Mental Health Act 1998 to conduct legal proceedings in the name of a patient or on his behalf is entitled to be the litigation friend of the patient in any proceedings to which his authority extends.

(3) If nobody has been appointed by the court or, in the case of a patient, authorised under the said Part 7, a person may act as a litigation friend if he —

- (a) can fairly and competently conduct proceedings on behalf of the minor or patient;
- (b) has no interest adverse to that of the minor or patient; and
- (c) where the minor or patient is a claimant, undertakes to pay any costs which the minor or patient may be ordered to pay in relation to the proceedings, subject to any right he may have to be repaid from the assets of the minor or patient.

3.17 Becoming litigation friend without court order (21.5)

(1) If the court has not appointed a litigation friend, a person who wishes to act as a litigation friend must follow the procedure set out in this rule.

(2) A person authorised under Part 7 of the Mental Health Act 1998 must file an official copy of the order or other document which constitutes his authorisation to act.

(3) Any other person must file a certificate of suitability stating —

- (a) that he consents to act,
- (b) that he knows or believes that the party concerned is a minor or a patient, as the case may be,
- (c) in the case of a patient, the grounds of his belief (and, if his belief is based upon medical opinion, attaching any relevant document to the certificate),
- (d) that he can fairly and competently conduct proceedings on behalf of the minor or patient.
- (e) that he has no interest adverse to that of the minor or patient, and
- (f) where the minor or patient is a claimant, that he undertakes to pay any costs which the minor or patient may be ordered to pay in relation to the proceedings, subject to any right he may have to be repaid from the assets of the minor or patient,

and signed by him in verification of its contents.

(4) A person who is to act as a litigation friend for a claimant must file —

- (a) the authorisation; or
- (b) the certificate of suitability,

at the time when the claim is made.

(5) A person who is to act as a litigation friend for a defendant must file —

- (a) the authorisation; or
- (b) the certificate of suitability,

at the time when he first takes a step in the proceedings on behalf of the defendant.

(6) The litigation friend must —

- (a) serve the certificate of suitability on every person on whom, in accordance with rule 2.28 (service on parent, guardian etc.), the claim form should be served; and
- (b) file a certificate of service when he files the certificate of suitability.

3.18 Becoming litigation friend by court order (21.6)

- (1) The court may make an order appointing a litigation friend.
- (2) An application for an order appointing a litigation friend may be made by —
 - (a) a person who wishes to be the litigation friend; or
 - (b) a party.
- (3) Where —
 - (a) a person makes a claim against a minor or patient;
 - (b) the minor or patient has no litigation friend;
 - (c) the court has not made an order under rule 3.13(3); and
 - (d) either —
 - (i) someone who is not entitled to be a litigation friend files a defence; or
 - (ii) the claimant wishes to take some step in the proceedings,

the claimant must apply to the court for an order appointing a litigation friend for the minor or patient.

(4) An application for an order appointing a litigation friend must be supported by evidence that the proposed litigation friend —

- (a) consents to act,
- (b) can fairly and competently conduct proceedings on behalf of the minor or patient,
- (c) has no interest adverse to that of the minor or patient, and
- (d) where the minor or patient is a claimant, undertakes to pay any costs which the minor or patient may be ordered to pay in relation to the proceedings, subject to any right he may have to be repaid from the assets of the minor or patient.

(5) The court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 3.16(3).

3.19 Court's power to change litigation friend etc. (21.7)

- (1) The court may —
 - (a) direct that a person may not act as a litigation friend;
 - (b) terminate a litigation friend's appointment;
 - (c) appoint a new litigation friend in substitution for an existing one.

(2) An application for an order under paragraph (1) must set out the reasons for seeking it and be supported by evidence (including, if the order sought is the substitution of a new litigation friend for an existing one, evidence of the matters set out in rule 3.18(4)).

(3) The court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 3.16(3).

3.20 Appointment of litigation friend by court order — supplementary (21.8)

(1) An application for an order under rule 3.18 or 3.19 must be served on every person on whom, in accordance with rule 2.28 (service on parent, guardian etc.), the claim form should be served.

(2) Where an application for an order under rule 3.18 is in respect of a patient, the application must also be served on the patient unless the court orders otherwise.

- (3) An application for an order under rule 3.19 must also be served on —
 - (a) the person who is the litigation friend, or who is purporting to act as the litigation friend, when the application is made; and
 - (b) the person who it is proposed should be the litigation friend, if he is not the applicant.
- (4) On an application for an order under rule 3.18 or 3.19, the court may appoint the person proposed or any other person who complies with the conditions specified in rule 3.16(3).

3.21 Procedure where appointment of litigation friend ceases (21.9)

- (1) When a minor who is not a patient reaches the age of 18 —
 - (a) a litigation friend's appointment ceases;
 - (b) the litigation friend must forthwith serve on the minor a notice —
 - (i) stating that the minor is a party to proceedings in the court, and that his appointment to act has ceased,
 - (ii) specifying the stage which the proceedings have reached, and
 - (iii) accompanied by copies of all statements of case; and
 - (c) file a copy of the notice and a certificate of service.
- (2) When a party ceases to be a patient, the litigation friend's appointment continues until it is ended by a court order.
- (3) An application for an order under paragraph (2) may be made by —
 - (a) the former patient;
 - (b) the litigation friend; or
 - (c) a party;

and must be supported by the following evidence —

- (i) a medical report indicating that the patient has recovered and that he is capable of managing and administering his property and affairs, and
 - (ii) where a receiver was appointed for the patient, a copy of the order or notice discharging the receiver.
- (4) The minor or patient in respect of whom the appointment to act has ceased must file and serve on the other parties a notice —
 - (a) in the case of a minor, stating that he has reached full age;
 - (b) stating that the appointment of his litigation friend to act has ceased;
 - (c) giving his address for service; and
 - (d) stating whether or not he intends to carry on with or continue to defend the proceedings.
- (5) If the minor or patient does not do so within 28 days after the day on which the appointment of the litigation friend ceases the court may, on application, strike out any claim or defence brought by him.
- (6) The liability of a litigation friend for costs continues until —
 - (a) the person in respect of whom his appointment to act has ceased serves the notice referred to in paragraph (4); or
 - (b) the litigation friend serves notice on the parties that his appointment to act has ceased.

3.22 Compromise etc. by or on behalf of minor or patient (21.10)

- (1) Where a claim is made —
 - (a) by or on behalf of a minor or patient; or
 - (b) against a minor or patient,

no settlement, compromise or payment and no acceptance of money paid into court shall be valid, so far as it relates to the claim by, on behalf of or against the minor or patient, without the approval of the court.

(2) Where an application for the approval of the court under paragraph (1) is made, the application notice or, in a case falling within paragraph (3), the claim form must have attached to it a draft consent order.

- (3) Where —
 - (a) before proceedings in which a claim is made by or on behalf of, or against a minor or patient (whether alone or with any other person) are begun, an agreement is reached for the settlement of the claim; and
 - (b) the sole purpose of proceedings on that claim is to obtain the approval of the court to a settlement or compromise of the claim,

the claim must —

- (i) be allocated to the chancery procedure; and
- (ii) include a request to the court for approval of the settlement or compromise.

3.23 Control of money recovered by or on behalf of minor or patient (21.11)

- (1) Where in any proceedings —
 - (a) money is recovered by or on behalf of or for the benefit of a minor or patient; or
 - (b) money paid into court is accepted by or on behalf of a minor or patient,

the money shall be dealt with in accordance with directions given by the court under this rule and not otherwise.

(2) Directions given under this rule may provide that the money shall be wholly or partly paid into court and invested or otherwise dealt with.

3.24 Expenses incurred by litigation friend (21.11A)

(1) In proceedings to which rule 3.23 applies, a litigation friend who incurs expenses on behalf of a minor or patient in any proceedings is entitled to recover the amount paid or payable out of any money recovered, paid into court or otherwise dealt with under rule 3.23(2), to the extent that it —

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

(2) Expenses may include all or part of interest on a loan taken out to pay a recoverable disbursement.

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

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

(4) In deciding whether the expense was reasonably incurred and reasonable in amount, the court must have regard to all the circumstances of the case including the factors set out in rule 11.5(3).

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

(6) Where the claim is settled or compromised, or judgment is given, on terms that an amount not exceeding £5,000 is paid to the minor or patient, the total amount the litigation friend may recover under paragraph (1) shall not exceed —

- (a) unless the court directs otherwise, 25% of the sum so agreed or awarded;
- (b) in any event, 50% of the sum so agreed or awarded.

3.25 Appointment of guardian of minor's estate (21.12)

(1) The court may appoint the Attorney General to be a guardian of a minor's estate where —

- (a) money is paid into court on behalf of the minor in accordance with directions given under rule 3.23;
- (b) the Criminal Injuries Compensation Panel notifies the court that it has made or intends to make an award to the minor;
- (c) a court or tribunal outside the Island notifies the court that it has ordered or intends to order that money be paid to the minor;
- (d) the minor is absolutely entitled to the proceeds of a pension fund; or
- (e) in any other case, such an appointment seems desirable to the court.

(2) The court may not appoint the Attorney General under this rule unless —

- (a) the persons with parental responsibility agree; or
- (b) the court considers that their agreement can be dispensed with.

(3) The Attorney General's appointment may continue only until the minor reaches the age of 18.

3.26 Further provision as to minors and patients

Schedule 3.2 makes further provision as to minors and patients.

CHAPTER 5: NOTICE TO NON-PARTIES

3.27 Notice of proceedings to non-parties (19.8A)

(1) This rule applies to any claim relating to —

- (a) the estate of a deceased person, or
- (b) property subject to a trust.

(2) The court may at any time direct that notice of —

- (a) the claim; or
- (b) any judgment or order given in the claim,

be served on any person who is not a party but who is or may be affected by it.

(3) An application under this rule —

- (a) may be made without notice; and
- (b) must be supported by written evidence which includes the reasons why the person to be served should be bound by the judgment in the claim.

(4) Unless the court orders otherwise —

- (a) a notice of a claim or of a judgment or order under this rule must be —
 - (i) issued by the court; and

- (ii) accompanied by a form of acknowledgment of service with any necessary modifications;
- (b) a notice of a claim must also be accompanied by —
 - (i) a copy of the claim form; and
 - (ii) such other statements of case, witness statements or affidavits as the court may direct; and
- (c) a notice of a judgment or order must also be accompanied by a copy of the judgment or order.
- (5) If a person served with notice of a claim files an acknowledgment of service of the notice —
 - (a) within such period after service as the court may specify, or
 - (b) if no such period is so specified, within 14 days after service,he becomes a party to the claim.
- (6) If a person served with notice of a claim does not acknowledge service of the notice he shall be bound by any judgment given in the claim as if he were a party.
- (7) On receipt of an acknowledgment of service under paragraph (5), the court office shall —
 - (a) enter the date of receipt on each copy of the acknowledgment of service, and
 - (b) retain one copy and return the other to the claimant at his address for service;and the claimant must serve a copy of that copy on each other party to the claim.
- (8) An acknowledgment of service under paragraph (5) must —
 - (a) be signed by the person served or his advocate; and
 - (b) include that person's address for service.
- (9) If, after service of a notice of a claim on a person, the claim form is amended so as substantially to alter the relief claimed, the court may direct that a judgment shall not bind that person unless a further notice, together with a copy of the amended claim form, is served on him.
- (10) Any person served with a notice of a judgment or order under this rule —
 - (a) shall be bound by the judgment or order as if he had been a party to the claim; but
 - (b) may, provided he acknowledges service —
 - (i) within 28 days after the notice is served on him, apply to the court to set aside or vary the judgment or order; and
 - (ii) take part in any proceedings relating to the judgment or order.
- (11) A notice under this rule is issued on the date entered on the notice by the court.

CHAPTER 6: REPRESENTATIVE ACTIONS

3.28 Representative parties with same interest (19.6)

- (1) Where more than one person has the same interest in a claim —
 - (a) the claim may be started; or
 - (b) the court may order that the claim be continued,by or against one or more of the persons who have the same interest as representatives of any other persons who have that interest.
- (2) The court may direct that a person may not act as a representative.

- (3) Any party may apply to the court for an order under paragraph (2).
- (4) Unless the court otherwise directs any judgment or order given in a claim in which a party is acting as a representative under this rule —
 - (a) is binding on all persons represented in the claim; but
 - (b) may only be enforced by or against a person who is not a party to the claim with the permission of the court.
- (5) This rule does not apply to a claim to which rule 3.29 applies.

3.29 Representation of interested persons who cannot be ascertained etc. (19.7)

- (1) This rule applies to claims about —
 - (a) the estate of a deceased person;
 - (b) property subject to a trust; or
 - (c) the meaning of a document, including a statutory provision.
- (2) The court may make an order appointing a person to represent any other person or persons in the claim where the person or persons to be represented —
 - (a) are unborn;
 - (b) cannot be found;
 - (c) cannot easily be ascertained; or
 - (d) are a class of persons who have the same interest in a claim and —
 - (i) one or more members of that class are within sub-paragraph (a), (b) or (c); or
 - (ii) to appoint a representative would further the overriding objective.
- (3) An application for an order under paragraph (2) —
 - (a) may be made by —
 - (i) any person who seeks to be appointed under the order; or
 - (ii) any party to the claim; and
 - (b) may be made at any time before or after the claim has started.
- (4) An application notice for an order under paragraph (2) must be served on —
 - (a) all parties to the claim, if the claim has started;
 - (b) the person sought to be appointed, if that person is not the applicant or a party to the claim; and
 - (c) any other person as directed by the court.
- (5) The court's approval is required to settle a claim in which a party is acting as a representative under this rule.
- (6) The court may approve a settlement where it is satisfied that the settlement is for the benefit of all the represented persons.
- (7) Unless the court otherwise directs, any judgment or order given in a claim in which a party is acting as a representative under this rule —
 - (a) is binding on all persons represented in the claim; but
 - (b) may only be enforced by or against a person who is not a party to the claim with the permission of the court.

3.30 Representation of beneficiaries by trustees etc. (19.7A)

- (1) A claim may be brought by or against trustees, executors or administrators in that capacity without adding as parties any persons who have a beneficial interest in the trust or estate ('the beneficiaries').

(2) Any judgment or order given or made in the claim is binding on the beneficiaries unless the court orders otherwise in the same or other proceedings.

3.31 Derivative claims (19.9)

(1) This rule applies where a company, other incorporated body or trade union is alleged to be entitled to claim a remedy and a claim is made by one or more members of the company, body or trade union for it to be given that remedy (a ‘derivative claim’).

(2) The company, body or trade union for whose benefit a remedy is sought must be a defendant to the claim.

(3) After the claim form has been issued the claimant must apply to the court for permission to continue the claim and may not take any other step in the proceedings except —

- (a) as provided by paragraph (5); or
- (b) where the court gives permission.
- (4) An application under paragraph (3) must be supported by written evidence.
- (5) The following documents —
 - (a) the claim form;
 - (b) the application notice; and
 - (c) the written evidence in support of the application,

must be served on the defendant within the period within which the claim form must be served and, in any event, at least 14 days before the court is to deal with the application.

(6) If the court gives the claimant permission to continue the claim, the time within which the defence must be filed is 14 days after the date on which the permission is given or such period as the court may specify.

(7) The court may order the company, body or trade union to indemnify the claimant against any liability in respect of costs incurred in the claim.

CHAPTER 7: GROUP LITIGATION

3.32 Definition (19.10)

In this Chapter —

‘group issues’, in relation to a number of claims, means common or related issues of fact or law;

‘group litigation order’ means an order made under rule 3.33 to provide for the case management of claims which give rise to group issues;

‘group register’ means a register established under rule 3.33(2)(a).

3.33 Group litigation order (19.11)

(1) The court may make a group litigation order where there are or are likely to be a number of claims giving rise to group issues.

- (2) A group litigation order must —
 - (a) contain directions about the establishment of a register on which the claims managed under the group litigation order will be entered, and
 - (b) specify the group issues which will identify the claims to be managed as a group under the group litigation order
- (3) A group litigation order may —
 - (a) in relation to claims which raise one or more of the group issues —
 - (i) order their stay until further order; and
 - (ii) direct their entry on the group register;

- (b) direct that from a specified date claims which raise one or more of the group issues should be entered on the group register; and
- (c) give directions for publicising the group litigation order.
- (4) A group litigation order may not be made except by or with the consent of the First Deemster.

3.34 Effect of the group litigation order (19.12)

(1) Where a judgment or order is given or made in a claim on the group register in relation to one or more group issues —

- (a) that judgment or order is binding on the parties to all other claims that are on the group register at the time the judgment is given or the order is made unless the court orders otherwise; and
- (b) the court may give directions as to the extent to which that judgment or order is binding on the parties to any claim which is subsequently entered on the group register.

(2) Unless paragraph (3) applies, any party who is adversely affected by a judgment or order which is binding on him may seek permission to appeal the order.

(3) A party to a claim which was entered on the group register after a judgment or order which is binding on him was given or made may not —

- (a) apply for the judgment or order to be set aside, varied or stayed; or
- (b) appeal the judgment or order,

but may apply to the court for an order that the judgment or order is not binding on him.

(4) Unless the court orders otherwise, disclosure of any document relating to the group issues by a party to a claim on the group register is disclosure of that document to all parties to claims —

- (a) on the group register; and
- (b) which are subsequently entered on the group register.

3.35 Case management (19.13)

(1) Unless the court otherwise directs, a claim on the group register shall be allocated to the ordinary procedure.

(2) Directions given by the court may include directions —

- (a) varying the group issues;
- (b) providing for one or more claims on the group register to proceed as test claims;
- (c) appointing the advocate of one or more parties to be the lead advocate for the claimants or defendants;
- (d) specifying the details to be included in a statement of case in order to show that the criteria for entry of the claim on the group register have been met;
- (e) specifying a date after which no claim may be added to the group register unless the court gives permission; and
- (f) for the entry of any particular claim which meets one or more of the group issues on the group register.

3.36 Removal from the register (19.14)

(1) A party to a claim entered on the group register may apply to the court for the claim to be removed from the register.

(2) If the court orders the claim to be removed from the register it may give directions about the future management of the claim.

3.37 Test claims (19.15)

(1) Where a direction has been given for a claim on the group register to proceed as a test claim and that claim is settled, the court may order that another claim on the group register be substituted as the test claim.

(2) Where an order is made under paragraph (1), any order made in the test claim before the date of substitution is binding on the substituted claim unless the court orders otherwise.

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SCHEDULE 3.1 — DESCRIPTION OF PARTIES

Rule 3.1

1. Where there is one claimant and one defendant, the parties must be described in the title as follows:

AB *Claimant*
and
CD *Defendant*

2. Where there is more than one claimant or more than one defendant (or both), the parties must be described in the title as follows:

(1) *AB*
(2) *CD*
(3) *EF* *Claimants*
and
(1) *GH*
(2) *IJ*
(3) *KL* *Defendants*

3. The title of an additional claim must describe the status in the proceedings of every party (e.g. claimant, defendant, additional claimant, additional defendant etc.). For example:

AB *Claimant*
CD *Defendant/Additional Claimant*
EF *Additional Defendant*

4. Where a defendant makes a counterclaim not only against the claimant but also against a non-party, the title should state this as follows:

AB *Claimant/Additional Defendant*
CD *Defendant/Additional Claimant*
and
XY *Additional Defendant*

5. Where there is more than one additional claim —

- (a) the parties to the first additional claim should be described as ‘Additional Claimant (1st additional claim)’ and ‘Additional Defendant (1st additional claim)’,
- (b) the parties to the second additional claim should be described as ‘Additional Claimant (2nd additional claim)’ and ‘Additional Defendant (2nd additional claim)’, and so on.

For example:

AB *Claimant and Additional Defendant (2nd additional claim)*
CD *Defendant and Additional Claimant (1st additional claim)*
EF *Additional Defendant (1st claim) and Additional Claimant (2nd additional claim)*
GH *Additional Defendant (2nd additional claim)*

6. (1) Where the full name of a party is lengthy it must appear in the title but thereafter in a statement of case it may be identified by an abbreviation such as initials or a recognised shortened name.

(2) Where a party to proceedings has more than one status, e.g. *Claimant and Additional Defendant (2nd claim)*, or *Additional Defendant (1st claim) and Additional*

Claimant (2nd claim), the combined status must appear in the title but thereafter it may be convenient to refer to the party by name, e.g. 'Mr Smith' or, if sub-paragraph (1) applies, by initials or a shortened name.

SCHEDULE 3.2 — MINORS AND PATIENTS (PD21)

Rule 3.26

1. Settlement or compromise by or on behalf of a minor or patient before the start of proceedings

(1) This paragraph applies to a settlement or compromise to which rule 3.22(1) applies.

(2) In order to approve the settlement or compromise, the court must be provided with the following information concerning the claim —

- (a) whether and to what extent the defendant admits liability,
- (b) the age and occupation (if any) of the minor or patient,
- (c) the litigation friend's approval of the proposed settlement or compromise, and
- (d) in a claim for personal injuries arising from an accident —
 - (i) the circumstances of the accident,
 - (ii) any medical reports,
 - (iii) where appropriate, a schedule of any past and future expenses and losses claimed and any other relevant information relating to the personal injuries as set out in rule 6.13, and
 - (iv) where considerations of liability are raised, any evidence or police reports in any criminal proceedings or in an inquest, and details of any prosecution brought.

(3) An opinion on the merits of the settlement or compromise given by an advocate acting for the minor or patient must, except in very clear cases, be obtained.

(4) A copy of the opinion and, unless the instructions on which it was given are sufficiently set out in it, a copy of the instructions, must also be supplied to the court.

(5) The court must be satisfied that the parties have considered whether the damages should wholly or partly take the form of periodical payments.

(6) Where the settlement includes provision for periodical payments, the claim must —

- (a) set out the terms of the settlement or compromise; or
- (b) have attached to it a draft consent order,

which must satisfy the requirements of paragraph (7).

(7) The terms or order must specify —

- (a) the annual amount awarded, how each payment is to be made during the year and at what intervals;
- (b) the amount awarded for future —
 - (i) loss of earnings and other income; and
 - (ii) care and medical costs and other recurring or capital costs;
- (c) the duration of the payments;
- (d) if the amount of the payments are to vary annually, the method by which the variation is to be calculated;
- (e) where the terms or order provide for any part of the award to continue after the claimant's death, for the benefit of the claimant's dependants, the relevant amount and duration of the payments and how each payment is to be made during the year and at what intervals;

- (f) where an amount awarded under (b) is to increase or decrease on a certain date —
 - (i) the date on which the increase or decrease will take effect; and
 - (ii) the amount of the increase or decrease at current value;
 - (g) where damages for substantial capital purchases are awarded under (b)(ii) —
 - (i) the amount of the payments at current value;
 - (ii) when the payments are to be made; and
 - (iii) if the amount of the payments are to vary, the method by which the variation is to be calculated; and
 - (h) how the award is to be funded.
2. *Apportionment under the Fatal Accidents Act 1981*
- (1) A judgment on or settlement in respect of a claim under the Fatal Accidents Act 1981 must be apportioned between the persons by or on whose behalf the claim has been brought.
- (2) Where a claim is brought on behalf of a dependent minor or minors, the money apportioned to any minor must be invested on his behalf in accordance with paragraphs 3 and 4, unless the court otherwise directs under rule 3.23(2).
- (3) In order to approve an apportionment of money to a minor, the court will require the following information:
- (a) the matters set out in paragraph 1(2)(a), (b) and (c), and
 - (b) in respect of the deceased —
 - (i) where death was caused by an accident, the matters set out in paragraph 1(2)(d), and
 - (ii) his future loss of earnings, and
 - (c) the extent and nature of the dependency.
3. *Control of money recovered by or on behalf of a minor or patient*
- (1) In directing under rule 3.23 how money recovered or paid into court on behalf of or for the benefit of a minor or patient shall be dealt with, the court —
- (a) may direct the money to be paid into court for investment, and
 - (b) may direct that part or all of the money be paid direct to the minor or patient, his litigation friend or his advocate for the immediate benefit of the minor or patient or for expenses incurred on his behalf.
- (2) The judge shall consider the general aims to be achieved for the money in court ('the fund') by investment and will give directions as to the type of investment.
- (3) Where a minor is also a patient, and likely to remain so on reaching full age, the fund shall be administered in accordance with Part 7 of the Mental Health Act 1998.
4. *Payment out of funds in court*
- (1) Applications to a judge for payment out of money from a fund for the benefit of the minor may be dealt with without a hearing unless the court directs otherwise.
- (2) When the minor reaches full age, his fund in court —
- (a) where it is a sum of money, shall be paid out to him, and
 - (b) where it is in the form of investments other than money (eg. shares or unit trusts), shall be transferred into his name.
- (3) An application for payment out of money from a fund for the benefit of a patient must be made in accordance with the Mental Health Rules 1998.

PART 4 : START OF PROCEEDINGS

CHAPTER 1: THE CLAIM FORM

4.1 How to start proceedings (7.2, 7.3, RHC 2.1, 3)

(1) Proceedings are started when the court office issues a claim form at the request of the claimant.

(2) A claimant may use a single claim form to start all claims which can be conveniently disposed of in the same proceedings.

(3) The court office shall issue a claim form on the claimant filing —

(a) 2 copies of the claim form, and

(b) one additional copy of the claim form for each defendant, together with the prescribed fee (except where arrangements between the Chief Registrar and the claimant or his advocate are in force for the payment of prescribed fees on credit).

(4) On the filing of the matters specified in paragraph (3) the court office shall —

(a) record the claim and allocate a serial number to it,

(b) enter the date of filing on each copy of the claim form in accordance with rule 2.19(1);

(c) enter the number of the claim on, and seal, each copy of the claim form,

(d) retain one copy of the claim form and enter on it the date on which the claim form was received in the court office, and

(e) return the other copies of the claim form to the claimant at his address for service.

(5) The claim form must be headed with the title of the proceedings in accordance with rule 6.3.

(6) Any statutory requirement that proceedings in the court be started by petition or motion shall be construed as a requirement that they be started by the issue of a claim form or application notice in accordance with these Rules.

(7) Except where the claim is allocated to the small claims procedure, the court office shall include a directions questionnaire with the copies of the claim form returned to the claimant.

[Subs (7) added by SD 686/09]

4.2 Date of issue of proceedings (7.2, PD 7)

(1) A claim form is issued on the date of filing entered on the form by the court office under rule 2.19(1).

(2) Where the claim form was delivered to the court office on a date earlier than the date on which it was issued by the court, the claim is brought on that earlier date for the purposes of the Limitation Act 1984 and any other relevant statutory provision.

4.3 Service of claim form (7.5)

(1) After a claim form has been issued, it must be served on the defendant.

(2) Subject to paragraph (3) and rule 4.4, a claim form must be served within 4 months after the date of issue.

(3) Where the claim form is to be served out of the jurisdiction, it must be served within 6 months after the date of issue.

(4) The claim form must be accompanied by —

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- (a) a form of notes for the guidance of a defendant,
- (b) any documents required by any other rule to accompany the claim form, and
- (c) if particulars of claim are included in or accompany the claim form, any documents required by any other rule to accompany the particulars of claim.

4.4 Extension of time for serving claim form (7.6)

(1) The claimant may apply for an order extending the period within which the claim form may be served.

(2) Subject to paragraph (3), an application to extend the time for service must be made —

- (a) within the period for serving the claim form specified by rule 4.3; or
- (b) where an order has been made under this rule, within the period for service specified by that order.

(3) If the claimant applies for an order to extend the time for service of the claim form after the end of the period specified in rule 4.3 or by an order under this rule, the court may make such an order only if —

- (a) the coroner has been unable to serve the claim form; or
 - (b) where the claimant is permitted to serve the claim form himself, he has taken all reasonable steps to serve the claim form but has been unable to do so; and
 - (c) in either case, the claimant has acted promptly in making the application.
- (4) An application for an order extending the time for service —
- (a) must be supported by evidence of —
 - (i) all the circumstances relied on,
 - (ii) the date of issue of the claim,
 - (iii) the expiry date of any extension under this rule, and
 - (iv) a full explanation as to why the claim has not been served; and
 - (b) may be made without notice.

4.5 Application by defendant for service of claim form (7.7)

(1) Where a claim form has been issued against a defendant, but has not yet been served on him, the defendant may serve a notice on the claimant requiring him to serve the claim form or discontinue the claim within a period specified in the notice.

(2) The period specified in a notice served under paragraph (1) must be at least 14 days after service of the notice.

(3) If the claimant fails to comply with the notice, the court may, on the application of the defendant —

- (a) dismiss the claim; or
- (b) make any other order it thinks just.

4.6 Particulars of claim (7.4)

(1) Particulars of claim must —

- (a) be contained in or served with the claim form; or
- (b) be served on the defendant by the claimant —
 - (i) within 14 days after service of the claim form, and
 - (ii) in any event no later than the latest time for serving a claim form.

(2) Where particulars of claim are not contained in the claim form, the claimant must file a copy of the particulars together with a certificate of service within 7 days of service on the defendant.

(3) This rule does not apply where the claim is allocated to the chancery procedure.

4.7 Forms to be served with particulars of claim (7.8)

(1) When particulars of claim are served on a defendant, whether they are contained in the claim form, served with it or served subsequently, they must be accompanied by an acknowledgement of service in duplicate.

(2) Except where the claim is allocated to the chancery procedure, the acknowledgement of service in duplicate must include —

- (a) a form for defending the claim;
- (b) a form for admitting the claim; and
- (c) a form for acknowledging service.

CHAPTER 2: RESPONDING TO PARTICULARS OF CLAIM — GENERAL

4.8 Where claim form does not include particulars of claim (9.1)

(1) Subject to paragraph (2), where the defendant receives a claim form which does not contain particulars of claim, he need not respond to the claim until the particulars of claim have been served on him.

(2) This rule does not apply where the claim is allocated to the chancery procedure.

4.9 Defence, admission or acknowledgment of service (9.2)

When particulars of claim are served on a defendant, the defendant may —

- (a) file and serve an admission in accordance with Part 6;
- (b) file and serve a defence in accordance with Part 6,
- (c) do both, if he admits only part of the claim, or
- (d) file an acknowledgment of service in accordance with Chapter 3.

CHAPTER 3: ACKNOWLEDGMENT OF SERVICE

4.10 Acknowledgment of service (10.1, 10.5, 8.3, PD 10)

(1) Subject to paragraph (2), a defendant may file an acknowledgment of service if —

- (a) he is unable to file a defence within the period specified in rule 6.26; or
- (b) he wishes to dispute the court's jurisdiction.

(2) Where the claim is allocated to the chancery procedure, the defendant must file an acknowledgment of service.

(3) Where 2 or more defendants to a claim acknowledge service of a claim through the same advocate at the same time, only one acknowledgment of service need be used.

(4) A minor or patient may acknowledge service only by his litigation friend or his litigation friend's advocate, unless the court otherwise orders.

4.11 Form and content of acknowledgment of service (10.1, 10.5, 8.3, PD 10)

- (1) An acknowledgment of service must —

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- (a) be completed and filed in duplicate,
- (b) include the defendant's address for service (in accordance with rule 2.27), and
- (c) where the claim is allocated to the chancery procedure, state —
 - (i) whether the defendant contests the claim; and
 - (ii) if the defendant seeks a different remedy from that set out in the claim form, what that remedy is.
- (2) The defendant's name must be set out in full on the acknowledgment of service.
- (3) Where the defendant's name has been incorrectly set out in the claim form, it must be correctly set out on the acknowledgment of service followed by the words 'described as' and the incorrect name.
- (4) Subject to paragraphs (5) and (6), an acknowledgment of service must be signed by the defendant or his advocate.
- (5) Where the defendant is a body corporate, a person holding a senior position in the body may sign the acknowledgment of service on the defendant's behalf, but must state the position he holds.
- (6) Where the defendant is a partnership, the acknowledgment of service may be signed by —
 - (a) any of the partners, or
 - (b) a person having the control or management of the partnership business.

4.12 Period for filing acknowledgment of service (10.3)

- (1) Subject to paragraph (2), the period for filing an acknowledgment of service is —
 - (a) where the defendant is served with a claim form which does not contain particulars of claim, 14 days after service of the particulars of claim; and
 - (b) in any other case, 14 days after service of the claim form.
- (2) Where the claim is allocated to the chancery procedure, the period for filing an acknowledgement of service is 14 days after service of the claim form.
- (3) This rule is subject to —
 - (a) rule 2.42(4) (claim form served out of the jurisdiction), and
 - (b) any other rule, or an order under another rule, specifying a different period for filing an acknowledgement of service.

4.13 Action on filing of acknowledgment of service (RHC 2.10)

On receipt of an acknowledgment of service, the court office shall —

- (a) enter the date of receipt on each copy of the acknowledgment of service, and
- (b) retain one copy and forthwith return the other to the claimant at his address for service.

4.14 Consequence of not filing acknowledgment of service (10.2, 8.4)

- (1) Subject to paragraph (2), if a defendant —
 - (a) fails to file an acknowledgment of service within the period specified in rule 4.12(1) or such other period as is required by, or by an order under, another rule; and
 - (b) does not within that period file a defence in accordance with Chapter 5 of Part 6 or serve or file an admission in accordance with Chapter 4 of that Part,

the claimant may obtain default judgment if Chapter 2 of Part 10 allows it.

(2) Where the claim is allocated to the chancery procedure, if a defendant fails to file an acknowledgment of service within the period specified in rule 4.12(2), the defendant may attend the hearing of the claim but may not take part in the hearing unless the court gives permission.

4.15 Amendment etc. of acknowledgment of service (PD 10)

(1) An acknowledgment of service may be amended or withdrawn only with the permission of the court.

(2) An application for permission under paragraph (1) must be supported by evidence.

CHAPTER 4: *DISPUTING THE COURT'S JURISDICTION*

4.16 Procedure for disputing the court's jurisdiction (11)

(1) A defendant who wishes —

(a) to dispute the court's jurisdiction to try the claim; or

(b) to argue that the court should not exercise its jurisdiction,

may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.

(2) A defendant who wishes to make such an application must first file an acknowledgment of service in accordance with Chapter 3.

(3) A defendant who files an acknowledgment of service does not, by doing so, lose any right that he may have to dispute the court's jurisdiction.

(4) An application under this rule must —

(a) be made within 14 days after filing an acknowledgment of service; and

(b) be supported by evidence.

(5) If the defendant —

(a) files an acknowledgment of service; and

(b) does not make such an application within the period specified in paragraph (4),

he is to be treated as having accepted that the court has jurisdiction to try the claim.

(6) An order containing a declaration that the court has no jurisdiction or will not exercise its jurisdiction may also make further provision including —

(a) setting aside the claim form;

(b) setting aside service of the claim form;

(c) discharging any order made before the claim was commenced or before the claim form was served; and

(d) staying the proceedings.

(7) If on an application under this rule the court does not make a declaration —

(a) the acknowledgment of service shall cease to have effect;

(b) the defendant may file a further acknowledgment of service within 14 days or such other period as the court may direct; and

(c) the court shall give directions as to —

(i) the filing of evidence, where the claim is allocated to the chancery procedure, or

(ii) the filing and service of the defence, in any other case,

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in the event that a further acknowledgment of service is filed.

(8) If the defendant files a further acknowledgment of service in accordance with paragraph (7)(b) he shall be treated as having accepted that the court has jurisdiction to try the claim.

(9) If a defendant makes an application under this rule, he must file and serve his written evidence in support with the application notice, but he need not before the hearing of the application file —

- (a) any written evidence, where the claim is allocated to the chancery procedure,
or
- (b) a defence, in any other case.

PART 5 : CHOICE OF PROCEDURES

CHAPTER 1: GENERAL

5.1 The procedures: introduction

(1) Every claim shall be allocated to one of the following case management procedures (referred to in these Rules as ‘procedures’) —

- (a) the small claims procedure (see Chapter 2);
- (b) the summary procedure (see Chapter 3);
- (c) the chancery procedure (see Chapter 4);
- (d) the ordinary procedure (see Chapter 5).

(2) In this Part —

‘small claim’ means a claim allocated to the small claims procedure;

‘the small claims limit’ is —

- (a) £5,000, in the case of a claim for personal injuries;
- (b) £10,000, in any other case;

‘summary claim’ means a claim allocated to the summary procedure;

‘the summary limit’ is £100,000.

(3) Subject to paragraph (4), in assessing the financial value of a claim or counterclaim for the purposes of this Part the following matters shall be disregarded —

- (a) any amount not in dispute;
- (b) any claim for interest;
- (c) costs; and
- (d) any contributory negligence.

(4) Where —

- (a) 2 or more claimants have started a claim against the same defendant using the same claim form; and
- (b) each claimant has a claim against the defendant separate from the other claimants,

the claim of each claimant shall be considered separately for the purpose of assessing the financial value.

(5) For the purpose of this Part, where a claim for an unspecified amount of money is expressed to be limited to a specified amount which does not exceed the small claims limit or the summary limit, the financial value of the claim shall be treated as not exceeding the small claims limit or the summary limit, as the case may be.

5.2 Normal procedures for claims (26.6)

(1) Where any rule requires a claim to be allocated to a particular procedure, that procedure is the normal procedure for that claim; and the following provisions of this rule have effect subject to this paragraph.

(2) The chancery procedure is the normal procedure for —

- (a) a claim by or against a minor or patient 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,
- (b) 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, and

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- (c) a claim for a summary order for possession against named or unnamed defendants occupying land or premises without the licence or consent of the person claiming possession, provided there is unlikely to be a substantial dispute of fact; and
- (d) claims specified in Schedule 5.1.
- (3) The small claims procedure is the normal procedure where the financial value of the claim does not exceed the small claims limit, except where —
 - (a) there is a counterclaim whose financial value exceeds the small claims limit; or
 - (b) the chancery procedure is the normal procedure under paragraph (2).
- (4) The chancery procedure is the normal procedure where —
 - (a) the claimant seeks the court's decision on a question which is unlikely to involve a substantial dispute of fact, and
 - (b) the small claims procedure is not the normal procedure under paragraph (3).
- (5) The summary procedure is the normal procedure where the financial value of the claim does not exceed the summary limit, except where —
 - (a) there is a counterclaim whose financial value exceeds the summary limit; or
 - (b) the small claims procedure or the chancery procedure is the normal procedure under paragraph (2), (3) or (4).
- (6) The ordinary procedure is the normal procedure for any claim for which the small claims procedure, the chancery procedure or the summary procedure is not the normal procedure.

5.3 Preliminary allocation of claims to procedures

- (1) A claim shall in the first instance be allocated to whichever of the procedures is specified in the claim form filed by the claimant.
- (2) If, before the claim form is issued, it appears to a court officer that the claim to which it relates ought to be allocated to a procedure other than that specified in the claim form, the officer may amend the form by substituting whichever procedure —
 - (a) is the normal procedure for the claim, or
 - (b) appears to him to be suitable in accordance with rule 5.5;and shall notify the claimant of the amendment.
- (3) Before amending a claim form under paragraph (2) a court officer —
 - (a) may consult a judge, and
 - (b) shall do so in the cases specified in paragraphs (4) and (5).
- (4) The court officer shall consult a judge where —
 - (a) the specified procedure is not the normal procedure for the claim because its financial value exceeds the small claims limit or the summary limit, and
 - (b) the claimant files with the claim form the defendant's consent in writing to the allocation of the claim to the specified procedure.
- (5) The court officer shall also consult a judge where the claimant files with the claim form a request in writing, with reasons, that the claim be allocated to the specified procedure.
- (6) Where —
 - (a) a claim form is amended under paragraph (2) by substituting one procedure for another, and

(b) a higher fee would have been payable on the filing of the claim form, had the substituted procedure been specified by the claimant,

the notification under that paragraph shall specify the additional fee payable (being the difference between the fee paid and the higher fee).

(7) Where paragraph (6) applies, the claim shall be stayed until the additional fee is paid, unless —

- (a) arrangements between the Chief Registrar and the claimant or the advocate acting for the claimant are in force for the payment of prescribed fees on credit, or
- (b) the court orders that the claim be allocated to the procedure originally specified.

5.4 Transfer of claim to another procedure

(1) After a claim form is issued, the claim to which it relates shall continue to be allocated to the procedure specified under rule 5.3(1) or (2) unless and until the court orders it to be transferred to another procedure.

(2) An order under paragraph (1) may be made at any stage —

- (a) on the court's own initiative, or
- (b) on an application by any party.

(3) Where the court makes an order transferring a claim from one procedure to another, it shall serve notice of the transfer on every party.

5.5 General rules for allocation (26.7, 26.8)

(1) This rule applies to the allocation of claims to procedures by the court under rule 5.3(2) or 5.4

(2) A claim shall not be allocated —

- (a) to the small claims procedure, if the financial value of the claim exceeds the small claim limit, or
- (b) to the summary procedure, if the financial value of the claim exceeds the summary limit,

unless all the parties consent to the allocation of the claim to the small claims procedure or the summary procedure, as the case may be.

(3) Subject to paragraph (2), a claim shall be allocated to the normal procedure under rule 5.2 unless the court considers that another procedure would be more suitable, having regard to the matters mentioned in paragraphs (4) and (5).

(4) When deciding the procedure for a claim, the matters to which the court shall have regard include —

- (a) the financial value, if any, of the claim as assessed by the court in accordance with rule 5.1(3);
- (b) the nature of the remedy sought;
- (c) the likely complexity of the facts, law or evidence;
- (d) the number of parties or likely parties;
- (e) the value of any counterclaim or other additional claim and the complexity of any matters relating to it;
- (f) the amount of oral evidence which may be required;
- (g) the importance of the claim to persons who are not parties to the proceedings;
- (h) the views expressed by the parties; and

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- (i) the circumstances of the parties.
- (5) The court shall not normally allocate a claim to the summary procedure unless —
 - (a) the trial is likely to last for no longer than 2 days; and
 - (b) oral expert evidence at trial will be limited to —
 - (i) one expert per party in relation to any expert field; and
 - (ii) expert evidence in 2 expert fields.

CHAPTER 2: SMALL CLAIMS PROCEDURE

5.6 Characteristics of small claims procedure

Where a claim is allocated to the small claims procedure —

- (a) if contested, the claim shall stand referred to adjudication in accordance with rule 5.7;
- (b) the adjudication shall be conducted informally;
- (c) the award shall be entered as a judgment and execution shall issue without the need for an application;
- (d) the advocate's costs which may be recovered by any party are limited.

5.7 Reference to adjudication (RHC 26A.2)

- (1) This rule applies to a small claim where —
 - (a) a defence to the claim is filed, or
 - (b) no acknowledgment of service or defence is filed and an application is made for the assessment of damages or the determination of any other matter in dispute.
- (2) A court officer shall, without any order of the court, refer the claim to adjudication by a judicial officer.
- (3) Where any proceedings are referred for adjudication under paragraph (2), the court may make an order rescinding the reference if it is satisfied —
 - (a) that a difficult question of law or a question of fact of exceptional complexity is involved; or
 - (b) that a charge of fraud is in issue; or
 - (c) that the parties are agreed that the dispute should be tried in court; or
 - (d) that it would be unreasonable for the claim to proceed to adjudication having regard to its subject matter, the circumstances of the parties or the interests of any other person likely to be affected by the award.
- (4) An order under paragraph (3) may be made by the court —
 - (a) on its own initiative, or
 - (b) on the application of any party.
- (5) Where the court makes an order under paragraph (3) it shall also make an order transferring the claim to such other procedure as it considers suitable, having regard to the matters mentioned in rule 5.5(4).

5.8 Conduct of reference (RHC 26A.4)

- (1) Any claim referred to adjudication under rule 5.7 shall be referred on the following terms unless the court otherwise directs —

- (a) The judicial officer may appoint a date for the preliminary consideration of the claim and ways of resolving it, if he considers that the size or nature of the claim or other circumstances make such a course desirable or necessary.
 - (b) At or after the preliminary appointment, if there is one, the judicial officer shall fix a date for the claim to be heard (unless the parties consent to his deciding it on the statements and documents submitted to him) and shall give such directions regarding the steps to be taken before and at the hearing as may appear to him to be necessary or desirable.
 - (c) Any hearing shall be informal and the strict rules of evidence shall not apply.
 - (d) The hearing shall be held at such time and place as the judicial officer thinks convenient, and may be adjourned to any time or place. The judicial officer may carry out any view or inspection he thinks appropriate.
 - (e) At the hearing the judicial officer may adopt any method of procedure which he may consider to be convenient and to afford a fair and equal opportunity to each party to present his case.
 - (f) If any party does not appear at the adjudication, the judicial officer may make an award on hearing any other party to the proceedings who may be present.
 - (g) Where an award has been given in the absence of a party, the judicial officer may, on that party's application, set the award aside and order a fresh hearing.
 - (h) With the consent of the parties and at any time before giving his decision, and either before or after the hearing, the judicial officer may consult any expert or call for an expert report on any matter in dispute or invite an expert to attend the hearing as assessor.
 - (i) Subject to rule 11.21, the costs of the action up to and including the filing of the award shall be in the discretion of the judicial officer, to be exercised in the same manner as the discretion of the court.
 - (j) The judicial officer shall, within 7 days of making an award, file the award and send a copy to each party, but where the judicial officer sets an award aside under sub-paragraph (g), he shall forthwith notify the court office and each party in writing.
- (2) For the avoidance of doubt, on a reference under rule 5.7 the judicial officer shall have the same powers as a judge —
- (a) to summon witnesses,
 - (b) to administer oaths, and
 - (c) to require the production and disclosure of documents.
- (3) Nothing in this Chapter authorises a judicial officer to commit any person to prison or to enforce an order by attachment or otherwise.

5.9 Time-limit for application to set aside award (RHC 26A.7)

- (1) This rule applies to an application to the court under section 16(4) of the High Court Act 1991 to set aside the award of a judicial officer on a reference under rule 5.7.
- (2) The application must be made within 14 days after the day on which the award was entered as a judgment of the court.

5.10 Representation of corporation (SD 599/06)

- (1) A nominated individual may, on behalf of a company or other corporation, —

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- (a) take such steps and sign such statements of case and other documents on behalf of the corporation as are necessary for, or relate to, the commencement of relevant proceedings by the corporation;
- (b) represent the corporation in any relevant proceedings;
- (c) appear and be heard in any relevant proceedings; and
- (d) sign all statements of case and other documents relating to relevant proceedings or any matter arising out of or connected with those proceedings.

(2) In this rule —

‘relevant proceedings’ means proceedings in the court by or against a company or other corporation —

- (a) for which the small claims procedure is the normal procedure under rule 5.2, where the claim form has not yet been issued; or
- (b) which are for the time being allocated to the small claims procedure, in any other case;

‘nominated individual’, in relation to a company or other corporation, means an individual who is —

- (a) an officer or member of the corporation, and
- (b) authorised (either generally or specially) by a resolution of the corporation, or of the directors or other person or persons managing the affairs of the corporation, to do anything specified in paragraph (1) on behalf of the corporation (the ‘authorising resolution’).

(3) An individual shall not be taken to be a nominated individual in relation to any relevant proceedings unless a copy of the authorising resolution, certified by an officer of the corporation to be a true copy, has been filed.

(4) A copy of the authorising resolution, certified as mentioned in paragraph (3), must be served with every document signed by the nominated individual which is served on any party, unless such a copy has previously been served on that party in the relevant proceedings.

(5) A document purporting to be a copy of an authorising resolution and to be certified by an officer of the corporation to be a true copy shall be evidence of such a resolution and shall be treated as such a copy, unless it is proved not to be.

(6) This rule is without prejudice to any other rule under which anything may be done on behalf of a company or other corporation by a person holding a senior position in the corporation.

CHAPTER 3: SUMMARY PROCEDURE

5.11 Characteristics of summary procedure etc. (28.1)

- (1) Where a claim is allocated to the summary procedure —
 - (a) the case management rules in this Chapter shall apply; and
 - (b) normally standard directions shall be given and a timetable (including a trial date) fixed without application and without the parties needing to attend.
- (2) In this Chapter —
 - ‘standard directions’ means the directions set out in Schedule 5.2;
 - ‘standard disclosure’ has the meaning given by rule 7.35.

5.12 Directions to be given without application (28.2-6)

- (1) This rule applies where a claim is allocated to the summary procedure and —

- (a) either —
 - (i) a defence is filed, or
 - (ii) no acknowledgment of service or defence is filed and an application is made for the assessment of damages or the determination of any other matter in dispute; and
- (b) no application for directions is made under rule 5.13 before the expiry of 28 days beginning with the date on which the defence is filed or the application referred to in sub-paragraph (a)(ii) is made.
[Subs (b) amended by SD 686/09]
- (2) If the claimant has, before the expiry of the period referred to in paragraph (1)(b), filed a completed directions questionnaire, the court shall without any application —
 - (a) give standard directions;
 - (b) fix the trial date;
 - (c) set a timetable for the steps to be taken between the giving of the directions and the trial;
 - (d) give any other directions which it considers appropriate; and
[subs (d) amended by SD 686/09]
- (e) serve on each party a notice setting out the standard directions and the matters referred to in sub-paragraphs (b), (c) and (d).
[Subs (e) added by SD 686/09]
- (3) The claimant must serve a copy of the completed directions questionnaire on each other party to the claim.
[Subs (3) added by SD 686/09]
- (4) If the claimant has not filed a completed directions questionnaire before the expiry of the period referred to in paragraph (1)(b), the court shall fix a date for a hearing at which it shall take the steps referred to in paragraph (2)(a) to (e); and subject to rule 2.59, the defendant shall be entitled to the costs of that hearing in any event.
[Subs (4) added by SD 686/09]

5.13 Application for directions (28.1-3)

- (1) Where —
 - (a) a claim is allocated to the summary procedure, and
 - (b) a defence to the claim is filed, any party may apply to the court for directions.
- (2) A party making an application under paragraph (1) must —
 - (a) specify in the application notice the directions, including any standard directions, which he requests the court to make;
 - (b) include in, or file with, the application notice a completed directions questionnaire, unless such a questionnaire has already been filed and the replies previously given were complete and are still correct; and
 - (c) serve a copy of the notice and questionnaire on each other party to the claim.
[Subs (2) amended by SD686/09]
- (3) Where —
 - (a) no acknowledgment of service or defence is filed, and

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- (b) an application is made for the assessment of damages or the determination of any other matter in dispute,

the application may include an application for directions (in which case it must specify the directions, including any standard directions, which the applicant requests the court to make).

(4) Where directions other than standard directions are given on an application under this rule, they shall —

- (a) where appropriate, deal with —
 - (i) disclosure of documents,
 - (ii) service of witness statements, and
 - (iii) expert evidence;
 - (iv) the return of a pre-trial checklist;
 - (b) set a timetable for the steps to be taken between the giving of the directions and the trial; and
 - (c) unless the court considers it inappropriate, fix the trial date.
- (5) Directions for disclosure of documents may be —
- (a) that standard disclosure take place,
 - (b) that no disclosure take place; or
 - (c) that specified documents or specified classes of documents be disclosed.
- (6) Directions under this rule shall be given without a hearing, unless the court thinks it necessary in the special circumstances of the case to hold a hearing.

(7) In giving directions under this rule the court's first concern shall be to ensure that —

- (a) the issues between the parties are identified and
- (b) the necessary evidence is prepared and disclosed.

5.14 Variation of directions (28.4)

- (1) The court may, on an application by any party or on its own initiative, —
 - (a) vary any directions given under rule 5.12 or 5.13 or this paragraph, and
 - (b) give additional directions.
- (2) None of the following may be varied by the parties without the permission of the court —
 - (a) a date fixed by the court for —
 - (i) the return of a pre-trial check list,
 - (ii) the filing of a trial bundle, or
 - (iii) the trial,
 - (b) a date set by the court or these Rules for doing any act if the variation would make it necessary to vary any of the dates mentioned in sub-paragraph (a).
- (3) Paragraphs (6) and (7) of rule 5.13 apply to this rule.

5.15 Agreed directions

- (1) Where —
 - (a) a claim is allocated to the summary procedure,
 - (b) the parties have filed agreed directions, and
 - (c) the court considers that the directions are suitable,
- it may approve them and give directions in the terms proposed.

- (2) To obtain the court's approval the agreed directions must —
 - (a) set out a timetable by reference to calendar dates for the taking of steps for the preparation of the case,
 - (b) include a date when it is proposed that the trial shall take place,
 - (c) include provision about disclosure of documents, and
 - (d) include provision about both factual and expert evidence.
- (3) If the court does not approve the agreed directions filed by the parties but decides that it shall give directions on its own initiative without a hearing, it shall take them into account in deciding what directions to give.

5.16 Pre-trial check list (28.5)

(1) The court shall send the parties a pre-trial check list for completion and return by the date specified in directions under rule 5.12, 5.13, 5.14 or 5.15, unless it considers that the claim can proceed to trial without the need for a pre-trial check list.

(2) The date specified for filing a pre-trial check list shall not be more than 8 weeks before the trial date.

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

(4) If —

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

the court may give such directions as it thinks appropriate.

(5) Where a party files a pre-trial checklist, he must also send a copy to every other party.

5.17 Directions for trial (28.6, 39.4)

(1) As soon as practicable after the date specified for filing a completed pre-trial check list under rule 5.16, the court shall —

- (a) fix the date for the trial, if none has been previously fixed;
- (b) confirm or vary the date for the trial, if a date has been previously fixed; and
- (c) specify any further steps that need to be taken before trial.

(2) Directions under this rule shall be given without a hearing, unless the court thinks it necessary in the special circumstances of the case to hold a hearing.

(3) The court shall give the parties at least 21 days' notice of the date of the trial unless —

- (a) they agree to accept shorter notice, or
- (b) in exceptional circumstances, the court directs that shorter notice be given.

(4) When confirming or fixing a trial date, the court shall give directions as to such of the following as are appropriate —

- (a) evidence,
- (b) a trial timetable and time estimate, and
- (c) any other matter needed to prepare the case for trial.

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(5) The directions may be in terms agreed by the parties (which should be filed as a draft order), or in different terms.

(6) A direction giving permission to use expert evidence —

- (a) shall say whether it gives permission for oral evidence or reports or both,
- (b) shall name the expert concerned; and
- (c) shall not permit an expert to give oral evidence unless the court believes it is necessary in the interests of justice to do so.

(7) Where the court sets a trial timetable, it shall do so in consultation with the parties.

(8) Where —

- (a) the parties have filed agreed directions for the trial, and
- (b) the court considers that the proposals are suitable,

it may approve them and give directions in the terms proposed.

(9) If the court does not approve the agreed directions filed by the parties but decides that it shall give directions on its own initiative without a hearing, it shall take them into account in deciding what directions to give.

5.18 Failure to comply with directions (PD 28)

(1) Where a party has failed to comply with a direction under this Chapter, any other party may apply for an order to enforce compliance or for a sanction to be imposed, or for both.

(2) The court shall not allow a failure to comply with directions to lead to the postponement of the trial unless —

- (a) the circumstances of the case are exceptional, or
- (b) it is necessary in order to avoid real injustice.

(3) If it is practicable to do so, the court shall exercise its powers so as to enable the claim to be tried on the date previously set.

CHAPTER 4: CHANCERY PROCEDURE

5.19 Characteristics of chancery procedure

Where a claim is allocated to the chancery procedure —

- (a) the legal basis for the claim is to be set out in the claim form;
- (b) no statements of case, apart from the claim form, are to be filed or served;
- (c) unless the court requires or permits oral evidence to be given, only written evidence is to be given;
- (d) all written evidence is to be filed and served;
- (e) default judgment may not be given under Chapter 2 of Part 10.

5.20 Issue of claim form without naming defendants (8.2A)

(1) With the permission of the court a claim form may be issued under the chancery procedure without naming a defendant.

(2) The application notice for permission —

- (a) need not be served on any other person; and
- (b) must be accompanied by a copy of the claim form that the applicant proposes to issue.

(3) Where the court gives permission it shall give directions about the future management of the claim.

5.21 Objection to use of the chancery procedure (8.8)

(1) Where the defendant contends that the chancery procedure should not be used because —

- (a) there is a substantial dispute of fact; and
- (b) the use of the chancery procedure is not required by these Rules,

he must apply for the transfer of the claim under rule 5.4, stating the reasons for his contention, when he files his acknowledgment of service.

(2) If the reasons include matters of evidence, they must be verified by a statement of truth.

5.22 Directions (PD8)

(1) The court may give directions immediately when, or at any time after, a claim form is issued, either on the application of a party or on its own initiative.

(2) Unless otherwise directed, the claimant must —

- (a) within 7 days after the acknowledgment of service is sent to him in accordance with rule 4.13(b), or
- (b) if no acknowledgment of service is filed within the period referred to in rule 4.12(2), within 7 days after the expiry of that period,
file a completed directions questionnaire and serve a copy on each other party to the claim.

[Subs (2) amended by SD 686/09]

(2A) A party making an application under paragraph (1) must —

- (a) specify in the application notice the directions which he requests the court to make;
- (b) include in, or file with, the application notice a completed directions questionnaire, unless such a questionnaire has already been filed and the replies previously given were complete and are still correct; and
- (c) serve a copy of the notice and questionnaire on each other party to the claim.

[Subs (2A) added by SD 686/09]

(3) The directions may include fixing a hearing date where —

- (a) there is no dispute; or
- (b) there may be a dispute, but a hearing date could conveniently be given.
- (4) Where the court does not fix a hearing date when the claim form is issued, it shall 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.

(5) None of the following may be varied by the parties without the permission of the court —

- (a) a date fixed by the court for —
 - (i) the return of a pre-trial check list,
 - (ii) the filing of a trial bundle, or
 - (iii) the trial,
- (b) a date set by the court or these Rules for doing any act if the variation would make it necessary to vary any of the dates mentioned in sub-paragraph (a).

CHAPTER 5: ORDINARY PROCEDURE

5.23 Characteristics of ordinary procedure (29.2)

Where a claim is allocated to the ordinary procedure —

- (a) the case management rules in this Chapter shall apply;
- (b) subject to that, the rules in Parts 6 to 11 apply without any modification.

5.24 Directions

- (1) Any party may apply to the court for directions —
 - (a) where a defence to the claim is filed, or
 - (b) where —
 - (i) no acknowledgment of service or defence is filed, and
 - (ii) an application is made for the assessment of damages or the determination of any other matter in dispute.
- (2) The application notice must specify the directions which the applicant requests the court to make and include or be accompanied by a completed directions questionnaire (unless such a questionnaire has previously been filed and the replies previously given were complete and are still correct).

[Subs (2) amended by SD 686/09]

- (3) Directions made on an application under paragraph (1) shall —
 - (a) set a timetable for —
 - (i) the steps to be taken between the giving of directions and the trial, or
 - (ii) such of those steps as the court thinks appropriate; or
 - (b) unless the court thinks it unnecessary to do so, fix —
 - (i) a case management conference; or
 - (ii) a pre-trial review,or both, and
 - (c) make such other provision for the management of the case as the court sees fit.
- (4) The court shall fix the trial date as soon as practicable.
- (5) When the court fixes the trial date under paragraph (4), it shall —
 - (a) give notice to the parties of the date; and
 - (b) specify the date by which the parties must file a pre-trial check list.
- (6) In giving directions under this rule the court's first concern shall be to ensure that —
 - (a) the issues between the parties are identified and
 - (b) the necessary evidence is prepared and disclosed.

5.25 Agreed directions (29.4)

If —

- (a) the parties agree proposals for the management of the proceedings (including a proposed trial date or period in which the trial is to take place); and
- (b) the court considers that the proposals are suitable,
it may approve them without a hearing and give directions in the terms proposed.

5.26 Case management conference and pre-trial review (29.3, 29.7)

(1) Apart from its duty under rule 5.24(3)(b), the court may at any time, on application by any party or on its own initiative, fix —

- (a) a case management conference; or
- (b) a pre-trial review.
- (2) If the court decides —
 - (a) to fix a case management conference or pre-trial review; or
 - (b) to cancel a case management conference or pre-trial review which has already been fixed,

it shall serve notice of its decision at least 7 days before the date fixed for the hearing or, as the case may be, the cancelled hearing.

- (3) The court shall at a case management conference or pre-trial review —
 - (a) review the steps which the parties have taken in the preparation of the case, and in particular their compliance with any directions that the court may have given,
 - (b) decide and give directions about the steps which are to be taken to secure the progress of the claim in accordance with the overriding objective, and
 - (c) ensure as far as it can that all agreements that can be reached between the parties about the matters in issue and the conduct of the claim are made and recorded.
- (4) In appropriate cases, the matters which the court shall consider at a case management conference include —
 - (a) whether the claimant has made clear the claim he is bringing, in particular the amount or the relief he is claiming, so that the other party can understand the case he has to meet,
 - (b) whether any amendments are required to the claim, a statement of case or any other document,
 - (c) what disclosure of documents, if any, is necessary,
 - (d) what expert evidence is reasonably required in accordance with rule 8.51 (restriction on expert evidence) and how and when that evidence should be obtained and disclosed,
 - (e) what factual evidence should be disclosed,
 - (f) what arrangements should be made about the giving of clarification or further information and the putting of questions to experts, and
 - (g) whether it will be just and will save costs to order a split trial or the trial of one or more preliminary issues.

5.27 Variation of timetable (29.5)

(1) A party must apply to the court if he wishes to vary the date which the court has fixed for —

- (a) a case management conference;
- (b) a pre-trial review;
- (c) the return of a pre-trial check list under rule 5.28;
- (d) filing a trial bundle; or
- (e) the trial.

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(2) Any date set by the court or these Rules for doing any act may not be varied by the parties if the variation would make it necessary to vary any of the dates mentioned in paragraph (1).

5.28 Pre-trial check list (29.6)

(1) The court shall send the parties a pre-trial check list for completion and return by the date specified in directions given under rule 5.25 or 5.26 or varied under rule 5.27 unless it considers that the claim can proceed to trial without the need for a pre-trial check list.

(2) Each party must file the completed pre-trial check list by the date specified by the court.

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

(4) If —

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

the court may give such directions as it thinks appropriate.

(5) Where a party files a pre-trial checklist, he must also send a copy to every other party.

5.29 Setting a trial timetable etc. (29.8, 39.4))

(1) This rule applies where —

- (a) each party has filed a completed pre-trial check list; or
- (b) the court has held —

- (i) a hearing under rule 5.28(4)(c), or
- (ii) a pre-trial review under rule 5.26.

(2) The court shall as soon as practicable —

- (a) fix the date for the trial, if none has been previously fixed;
- (b) confirm or vary the date for the trial, if a date has been previously fixed;
- (c) set a timetable for the trial, unless a timetable has already been fixed, or the court considers that it would be inappropriate to do so;
- (d) give directions as to evidence and the preparation and filing of a trial bundle; and
- (e) specify any further steps that need to be taken before trial.

(3) Where the court sets a trial timetable, it shall do so in consultation with the parties.

SCHEDULE 5.1 — CLAIMS FOR WHICH CHANCERY PROCEDURE IS NORMAL PROCEDURE

Rule 5.2

1. Commercial

- (a) Applications under Companies Acts 1931 to 1992, Companies Act 2006 or Limited Liability Companies Act 1996
- (b) Proceedings (except claims for damages for breach of statutory duty) under —
 - (i) Industrial and Building Societies Act 1892
 - (ii) Moneylenders Act 1991
 - (iii) Financial Services Act 2008
 - (iv) Insurance Act 2008
- (c) Proceedings under Consumer Protection Act 1991 Part V (consumer contracts) or Part VI (misleading advertisements)
- (d) Proceedings relating to —
 - (i) copyright;
 - (ii) rights in performances;
 - (iii) design right;
 - (iv) plant varieties;
 - (v) moral rights;
 - (vi) database rights;
 - (vii) unauthorised decryption rights;
 - (viii) technical trade secrets;
 - (ix) passing off;
 - (x) trade marks; and
 - (xi) Community trade marks.

2. Administrative

- (a) Application under a statutory provision giving the court jurisdiction to quash a plan or public document, a revision or repeal of a plan, a decision of a Department or any action on the part of a Department
- (b) Application under Local Elections Act 1986 section 20 (disqualification)
- (c) Application under Local Government Act 1985 section 5 (default powers)
- (d) Application under Highways Act 1986 section 95 or 97 (making up of unadopted road)
- (e) Application for rectification of a register or making, amendment or cancellation of an entry in a register
- (f) Application for leave to amend definitive map and statement under Highways Act 1986 section 92
- (g) Application for leave to serve enforcement notice under Data Protection Act 2002 section 42

3. Land

- (a) Application for appointment of representative under Tourist Premises (Provision and Improvement) Act 1977 section 4
- (b) Application for consent to appointment of representative under Acquisition of Land Act 1984 section 2

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- (c) Application under —
 - (i) Settled Land Act 1891
 - (ii) Partition Act 1931
 - (d) Application under —
 - (i) Land Drainage and Boundaries Act 1851 section 4
 - (ii) Land Drainage Act 1934 section 27 or 34
 - (iii) Landlord and Tenant Act 1954 section 11
 - (iv) Recovery of Rent Act 1954 section 7
 - (v) Minerals Act 1986 Schedule 2 paragraph 11
 - (e) Application under —
 - (i) Registration of Deeds Act 1961
 - (ii) Land Registration Act 1982
 - (f) Application for charging order under Property Service Charges Act 1989 section 11A
 - (g) Application under Access to Neighbouring Land Act 1993
4. *Injunctions*
- Application for injunction under —
- (a) Town and Country Planning Act 1999 section 37
 - (b) Tree Preservation Act 1993 section 6
 - (c) Local Government (Singing Rooms) Act 1928 section 3
 - (d) Heath Burning Act 2003 section 6
 - (e) Non-Resident Traders Act 1983 Schedule 1A paragraph 1
 - (f) Employment (Sex Discrimination) Act 2000 section 40 or 41
 - (g) Race Relations Act 2004 section 14
5. *Criminal*
- (a) Application for confiscation, forfeiture etc. of property in connection with criminal proceedings
 - (b) Application for bail or forfeiture of recognizance
6. *Miscellaneous*
- (a) Application to which Chapter 2 of Part 14 applies (review of lawfulness of decision etc.)
 - (b) Application for an order under section 34(1) of the High Court Act 1991 (inspection etc. of property before start of claim)
 - (c) Application before a claim has been made for an order under section 33A of the High Court Act 1991 (preservation of evidence etc.)
 - (d) Application for a declaration of incompatibility under Human Rights Act 2001 section 4 (otherwise than in an existing claim)
 - (e) Proceedings under Representation of the People Act 1995
 - (f) Application under Mental Health Act 1998 Part 2
 - (g) Proceedings by way of interpleader (otherwise than in an existing claim)
 - (h) Application under Advocates Act 1976
 - (i) Claim under Inheritance (Provision for Family and Dependents) Act 1982
 - (j) Application relating to a trust or a deceased person's estate within rule 13.35

SCHEDULE 5.2 — STANDARD DIRECTIONS (SUMMARY PROCEDURE)

Rule 5.11

THE COURT DIRECTS as follows:

1. Each party must deliver to every other party not later than *[date]* —
 - (a) copies of all documents on which he intends to rely at the trial, and
 - (b) if he intends to rely on expert evidence, a copy of the expert's report.
2. The original documents must be brought to the hearing.
3. The trial shall take place on *[date]*. [One day is][Two days are] allowed.
4. Each party must not later than *[date]* deliver to every other party and to the court office a pre-trial checklist in the enclosed form.
5. The claimant must not later than *[date]* deliver to the court office a lever-arch file or ring-binder containing copies of all the following documents —
 - (a) the claim form and all statements of case,
 - (b) a case summary or chronology (or both), where appropriate,
 - (c) if the party intends to make submissions on any point of law, a list of any statutory provisions and decided cases to be relied on;
 - (d) requests for further information and responses to the requests,
 - (e) all witness statements to be relied on as evidence,
 - (f) any witness summaries,
 - (g) any notices of intention to rely on hearsay evidence under rule 8.24,
 - (h) any notices of intention to rely on evidence (such as a plan, photograph etc.) under rule 8.28 which is not —
 - (i) contained in a witness statement, affidavit or expert's report,
 - (ii) to be given orally at the trial,
 - (iii) hearsay evidence under rule 8.24,
 - (i) any medical reports and responses to them,
 - (j) any experts' reports and responses to them,
 - (k) any order giving directions as to the conduct of the trial,
 - (l) any document required to be included by a direction or court order; and
 - (m) any other necessary documents.
6. The claimant must not later than *[date]*, and each other party must within 14 days after that date, deliver to every other party and to the court office a skeleton argument identifying by a numbered list —
 - (a) any legal points to be argued, and
 - (b) any statutory provision, decided case or other authority (identified by section, page or paragraph reference) to be relied on in support of each point,and having annexed to it a paginated bundle containing a copy of each such authority.
7. The parties are encouraged to contact each other with a view to trying to settle the case or narrow the issues. However the court must be informed immediately if the case is settled by agreement before the hearing date.
8. No party may rely at the hearing on any report from an expert unless express permission has been granted by the court beforehand. Anyone wishing to rely on an

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expert must write to the court immediately on receipt of this order and seek permission, giving an explanation why the assistance of an expert is necessary.

NOTE: Failure to comply with the directions may result in the case being adjourned and in the party at fault having to pay costs.

PART 6 : STATEMENTS OF CASE

CHAPTER 1: GENERAL

6.1 Part not to apply in certain cases (16.1, PD 16)

- (1) Subject to paragraph (2), this Part, except —
 - (a) rules 6.2, 6.3, 6.4, 6.9 and 6.11,
 - (b) rule 6.19(1) and (2), and
 - (c) rules 6.37 and 6.40,

does not apply to a claim which is allocated to the chancery procedure.

(2) Chapter 9 (additional claims) applies to a claim which is allocated to the chancery procedure, except that a party may not make an additional claim without the court's permission.

(3) Where special provisions (eg. in Part 13) about statements of case are made by the rules applying to particular types of proceedings, this Part applies only to the extent that it is not inconsistent with those rules.

6.2 Statements of case: general (PD16.13)

A party may —

- (a) refer in his statement of case to any point of law on which his claim or defence, as the case may be, is based;
- (b) give in his statement of case the name of any witness he proposes to call; and
- (c) attach to or serve with his statement of case a copy of any document which he considers is necessary to his claim or defence, as the case may be (including any expert's report to be filed in accordance with Chapter 6 of Part 8).

6.3 Title of proceedings (PD16)

- (1) Every statement of case must be headed with the title of the proceedings.
- (2) The title must state —
 - (a) the number of the claim (when allocated under rule 4.1(4)(a)),
 - (b) the procedure referred to in rule 5.1 to which the proceedings are or are to be allocated;
 - (c) the full name of each party (so far as known to the party making the statement of case), and
 - (d) his status in the proceedings, described in accordance with Schedule 3.1.
- (3) For the purpose of paragraph (2)(c) the full name of a party is —
 - (a) in the case of an individual, his full unabbreviated name and title by which he is known;
 - (b) in the case of an individual carrying on business in a name other than his own name, the full unabbreviated name of the individual, together with the title by which he is known, and the full trading name;
 - (c) in the case of a partnership —
 - (i) where partners are being sued in the name of the partnership, the full name by which the partnership is known, together with the words '(a firm)'; or
 - (ii) where partners are being sued as individuals, the full unabbreviated name of each partner and the title by which he is known;

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- (d) in the case of a company registered in the Island, the full registered name, including suffix (plc, limited, llc, etc) if any;
- (e) in the case of any other company or corporation, the full name by which it is known, including suffix where appropriate.
- (4) This rule is subject to —
 - (a) any provision of Part 3 (parties), and
 - (b) any other rule relating to the title of proceedings or the description of parties.

6.4 Human rights (RHC 37A.3)

(1) A party who seeks to rely on any provision of or right arising under the Human Rights Act 2001 ('the Act') or seeks a remedy available under the Act must state that fact in a statement of case.

- (2) The statement of case must —
 - (a) give precise details of the Convention right which it is alleged has been infringed and details of the alleged infringement;
 - (b) specify the relief sought;
 - (c) state if the relief sought includes—
 - (i) a declaration of incompatibility in accordance with section 4 of the Act, or
 - (ii) damages in respect of a judicial act to which section 9(3) of the Act applies;
 - (d) where the relief sought includes a declaration of incompatibility in accordance with section 4 of the Act, give precise details of the legislative provision alleged to be incompatible and details of the alleged incompatibility;
 - (e) where the claim is founded on a finding of unlawfulness by another court or tribunal, give details of the finding; and
 - (f) where the claim is founded on a judicial act which is alleged to have infringed a Convention right of the party as provided by section 9 of the Act, the judicial act complained of and the court or tribunal which is alleged to have made it.

(3) A party who seeks to amend his statement of case to include a matter referred to in paragraph (1) or (2) must, unless the court orders otherwise, do so as soon as possible.

6.5 Court's power to dispense with statements of case (16.8)

If a claim form has been served, the court may order that the claim shall continue without any other statement of case.

6.6 Summary of long statement of case (PD16.1)

If a statement of case exceeds 10 pages (excluding schedules) an appropriate short summary must also be filed and served.

6.7 Address of party

Every statement of case must include the address for service of the party by whom it is filed or served.

6.8 Failure to verify a statement of case (22.2)

(1) A statement of case must be verified by a statement of truth in accordance with rule 8.68.

- (2) If a party fails to verify his statement of case by a statement of truth —
 - (a) the statement of case shall remain effective unless struck out; but
 - (b) the party may not rely on the statement of case as evidence of any of the matters set out in it.
- (3) The court may strike out a statement of case which is not verified by a statement of truth.
- (4) Any party may apply for an order striking out a statement of case under paragraph (3).

CHAPTER 2: CLAIM FORM

6.9 Contents of claim form (8.2, 16.2)

- (1) The claim form must —
 - (a) contain a concise statement of the nature of the claim;
 - (b) specify the remedy which the claimant seeks; and
 - (c) where the claimant is making a claim for money, contain a statement of value in accordance with rule 6.10.
- (2) Where the chancery procedure is specified in the claim form under rule 6.3, it must state —
 - (a) either —
 - (i) the question which the claimant wants the court to decide; or
 - (ii) the remedy which the claimant is seeking and the legal basis for the claim to that remedy; and
 - (b) if the claim is being made under a statutory provision, what that provision is.
- (3) If the particulars of claim specified in rule 6.12 are neither contained in nor served with the claim form, the claimant must state on the claim form that the particulars of claim will follow.
- (4) If the claimant is claiming in a representative capacity, the claim form must state what that capacity is.
- (5) If the defendant is sued in a representative capacity, the claim form must state what that capacity is.
- (6) The court may grant any remedy to which the claimant is entitled even if that remedy is not specified in the claim form.
- (7) Where the claim is for a specified sum of money, the claim form must include a statement of —
 - (a) the amount claimed;
 - (b) the court fee payable on the issue of the claim form;
 - (c) the coroner's fee for service of the claim form;
 - (d) the fixed costs for starting the claim under Chapter 2 of Part 11;
 - (e) the total of the amounts in sub-paragraphs (a) to (d).

6.10 Statement of value to be included in the claim form (16.3)

- (1) This rule applies where the claimant is making a claim for money (including a claim for damages, whether of a specified amount or not).
- (2) The claimant must, in the claim form, state —
 - (a) the amount of money which he is claiming; or
 - (b) that he expects to recover —

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- (i) not more than £10,000;
- (ii) more than £10,000 but not more than £100,000; or
- (iii) more than £100,000; or
- (c) that he cannot say how much he expects to recover.

In the case of a claim for personal injuries, for '£10,000' substitute '£5,000' in sub-paragraph (b).

(3) When calculating how much he expects to recover, the claimant must disregard any possibility —

- (a) that he may recover —
 - (i) interest, or
 - (ii) costs;
- (b) that the court may make a finding of contributory negligence against him;
- (c) that the defendant may make a counterclaim or that the defence may include a set-off; or
- (d) that the defendant may be liable to pay an amount of money which the court awards to the claimant to the Department of Health and Social Security under section 6 of the Social Security (Recovery of Benefits) Act 1997 (an Act of Parliament).

(4) The statement of value in the claim form does not limit the power of the court to give judgment for the amount to which it finds the claimant is entitled.

6.11 Addresses of parties to be included in claim form (PD 16)

(1) The claim form must include an address at which the claimant resides or carries on business (in addition to his address for service).

(2) Where the defendant is an individual, the claim form must include an address at which the defendant resides or carries on business (so far as known to the claimant).

(3) Sub-paragraphs (1) and (2) apply even though —

- (a) the claimant's address for service is the business address of his advocate, or
- (b) the defendant's advocate has agreed to accept service on his behalf.

(4) If the claim form does not show a full address at which each party resides or carries on business, the claim form shall be issued but shall be retained by the court office and not served until —

- (a) the claimant has supplied a full address, or
- (b) the court has dispensed with the requirement to do so.

(5) The court office shall notify the claimant that the claim form has been retained under paragraph (4).

(6) Any address which is provided for the purpose of these provisions must include a postcode, unless the court orders otherwise.

CHAPTER 3: PARTICULARS OF CLAIM

6.12 Contents of particulars of claim (16.4)

- (1) Particulars of claim must include —
 - (a) a concise statement of the facts on which the claimant relies;
 - (b) if the claimant is seeking interest, a statement to that effect and the details set out in paragraph (2);

- (c) if the claimant is seeking aggravated damages or exemplary damages, a statement to that effect and his grounds for claiming them;
- (d) if served separately from the claim form —
 - (i) the title of the proceedings, and
 - (ii) the claimant's address for service.
- (e) any other relevant matters specified in this Chapter.
- (2) If the claimant is seeking interest he must —
 - (a) state whether he is doing so —
 - (i) under the terms of a contract;
 - (ii) under a statutory provision, and if so which; or
 - (iii) on some other basis and, if so, what that basis is; and
 - (b) if the claim is for a specified amount of money, state —
 - (i) the percentage rate at which interest is claimed;
 - (ii) the date from which it is claimed;
 - (iii) the date to which it is calculated, which must not be later than the date on which the claim form is issued;
 - (iv) the total amount of interest claimed to the date of calculation; and
 - (v) the daily rate at which interest accrues after that date.

6.13 Personal injury claims (PD16.4)

- (1) In the case of a claim for personal injuries, the particulars of claim must contain —
 - (a) the claimant's date of birth, and
 - (b) brief details of the claimant's personal injuries.
- (2) The claimant must attach to his particulars of claim a schedule setting out —
 - (a) details of any past expenses and losses, and
 - (b) either estimates or a general description of any future expenses and losses, which he claims.
- (3) In a claim for provisional damages the particulars of claim must include —
 - (a) a statement to that effect;
 - (b) the claimant's grounds for claiming them;
 - (c) a statement that there is a chance that at some future time he will develop some serious disease or suffer some serious deterioration in his physical or mental condition; and
 - (d) a statement specifying the disease or type of deterioration in respect of which an application may be made at a future date.

6.14 Fatal accident claims (PD16.5)

- (1) In a fatal accident claim the claimant must state in his particulars of claim —
 - (a) that it is brought under the Fatal Accidents Act 1981,
 - (b) the dependants on whose behalf the claim is made,
 - (c) the date of birth of each dependant, and
 - (d) details of the nature of the dependency claim.
- (2) A fatal accident claim may include a claim for damages for bereavement.

(3) In a fatal accident claim the claimant may also bring a claim under the Law Reform (Miscellaneous Provisions) Act 1938 on behalf of the estate of the deceased.

6.15 Hire-purchase claims (PD16.6)

(1) Where the claim is for the delivery of goods let under a hire-purchase agreement or conditional sale agreement to a person other than a company or other corporation, the claimant must state in the particulars of claim —

- (a) the date of the agreement,
- (b) the parties to the agreement,
- (c) the number or other identification of the agreement,
- (d) where the claimant was not one of the original parties to the agreement, the means by which the rights and duties of the creditor passed to him,
- (e) the place where the agreement was signed by the defendant,
- (f) the goods claimed,
- (g) the total price of the goods,
- (h) the paid-up sum,
- (i) the unpaid balance of the total price,
- (j) the date when the right to demand delivery of the goods accrued,
- (k) the amount (if any) claimed as an alternative to the delivery of goods, and
- (l) the amount (if any) claimed in addition to —
 - (i) the delivery of the goods, or
 - (ii) any claim under (k) above,with the grounds of each claim.

(2) Where the claim is not for the delivery of goods, the claimant must state in his particulars of claim —

- (a) the matters set out in sub-paragraph (1)(a) to (e),
- (b) the goods let under the agreement,
- (c) the amount of the total price,
- (d) the paid-up sum,
- (e) the amount (if any) claimed as being due and unpaid in respect of any instalment or instalments of the total price, and
- (f) the nature and amount of any other claim and how it arises.

(3) In this paragraph —

‘hire-purchase agreement’ has the same meaning as in the Hire-Purchase Act 1939;
‘conditional sale agreement’ has the meaning given by section 2(5) of the Hire-Purchase Act 1973.

6.16 Other matters to be included in particulars of claim (PD16.7)

(1) Where a claim is made for an injunction or declaration in respect of or relating to any land or the possession, occupation, use or enjoyment of any land the particulars of claim must —

- (a) state whether or not the injunction or declaration relates to residential premises, and
- (b) identify the land (by reference to a plan where necessary).

(2) Where a claim is brought to enforce a right to recover possession of goods the particulars of claim must contain a statement showing the value of the goods.

- (3) Where a claim is based upon a written agreement —
 - (a) a copy of the contract or documents constituting the agreement must be attached to or served with the particulars of claim and the original(s) must be available at the hearing, and
 - (b) any general conditions of sale incorporated in the contract must also be attached.
- (4) Where the contract is or the documents constituting the agreement are bulky, paragraph (3) is complied with by —
 - (a) attaching or serving only the relevant parts of the contract or documents, and
 - (b) including in the particulars of claim a statement that the complete contract or documents may be inspected, and copies of them taken, by any party at a place within the jurisdiction which is specified in the statement.
- (5) Where a claim is based upon an oral agreement, the particulars of claim should set out the contractual words used and state by whom, to whom, when and where they were spoken.
- (6) Where a claim is based upon an agreement by conduct, the particulars of claim must specify the conduct relied on and state by whom, when and where the acts constituting the conduct were done.

6.17 Matters to be specifically set out in the particulars of claim (PD16.8)

- (1) A claimant who wishes to rely on evidence —
 - (a) under section 11 of the Civil Evidence Act 1973 of a conviction of an offence, or
 - (b) under section 12 of that Act of a finding or adjudication of adultery or paternity,must include in his particulars of claim a statement to that effect and give the following details —
 - (i) the type of conviction, finding or adjudication and its date,
 - (ii) the court, court-martial or tribunal which made the conviction, finding or adjudication, and
 - (iii) the issue in the claim to which it relates.
- (2) The claimant must specifically set out the following matters in his particulars of claim where he wishes to rely on them in support of his claim —
 - (a) any allegation of fraud,
 - (b) the fact of any illegality,
 - (c) details of any misrepresentation,
 - (d) details of all breaches of trust,
 - (e) notice or knowledge of a fact,
 - (f) details of unsoundness of mind or undue influence,
 - (g) details of wilful default, and
 - (h) any facts relating to mitigation of loss or damage.

6.18 Claim in foreign currency

Where a claim is for a sum of money expressed in a foreign currency the particulars of claim must expressly state —

- (a) that the claim is for payment in a specified foreign currency,
- (b) why it is for payment in that currency,

- (c) the sterling equivalent of the sum at the date of the claim, and
- (d) the source of the exchange rate relied on to calculate the sterling equivalent.

CHAPTER 4: ADMISSIONS

6.19 Admissions made after start of proceedings (14.1)

- (1) A party may admit the truth of the whole or any part of another party's case.
- (2) He may do this by giving notice in writing —
 - (a) in the form for admitting a claim referred to in rule 4.7 (an 'admission form');
 - (b) in a statement of case; or
 - (c) in a letter or other suitable document;

and references in these Rules to making, returning or filing an admission are to returning or filing a notice under this paragraph.

(3) Where the only remedy which the claimant is seeking is the payment of money, the defendant may also make an admission in accordance with —

- (a) rule 6.21(1) or (3) (admission: claim for specified amount); or
- (b) rule 6.22(2) or (4) (admission: claim for unspecified amount).

(4) Where the defendant makes an admission as mentioned in paragraph (3), the claimant has a right to enter judgment except where —

- (a) the defendant is a minor or patient; or
 - (b) the claimant is a minor or patient and the admission is made under rule 6.21(3) or 6.22(4).
- (5) The permission of the court is required to amend or withdraw an admission.

6.20 Period for making an admission (14.2)

- (1) The period for filing and serving an admission under rule 6.21 or 6.22 is —
 - (a) where the defendant is served with a claim form which states that particulars of claim will follow, 14 days after service of the particulars; and
 - (b) in any other case, 14 days after service of the claim form.
- (2) Paragraph (1) is subject to any order under rule 2.41 (service out of the jurisdiction).

(3) A defendant may file and serve an admission under rule 6.21 or 6.22 after the end of the period specified in paragraph (1) if the claimant has not obtained default judgment under Chapter 2 of Part 10.

(4) If he does so, this Part shall apply as if he had made the admission within that period.

6.21 Admission of whole or part of claim for specified amount (14.4, 14.5)

- (1) Where —
 - (a) the only remedy which the claimant is seeking is the payment of a specified amount of money; and
 - (b) the defendant admits the whole of the claim,

the defendant may admit the claim by filing an admission to that effect and serving a copy on the claimant.

(2) Where, on admitting a claim under paragraph (1), the defendant requests time to pay under rule 6.23, the claimant must, within 14 days after service of the admission, file and serve on the defendant a notice stating whether or not he accepts the defendant's proposal as to payment.

- (3) Where —
 - (a) the only remedy which the claimant is seeking is the payment of a specified amount of money; and
 - (b) the defendant admits part of the claim,

the defendant may admit part of the claim by filing an admission to that effect and serving a copy on the claimant.

(4) On receipt of an admission under paragraph (3), the claimant must, within 14 days after service of the admission, file and serve on the defendant a notice stating that —

- (a) he accepts the amount admitted in satisfaction of the claim and, if the defendant has requested time to pay, whether or not he accepts the defendant's proposal as to payment, or
- (b) he does not accept the amount admitted by the defendant and wishes the proceedings to continue.

(5) If the claimant does not file the notice under paragraph (2) or (4) within 14 days after the admission is served on him, the claim is stayed until he files the notice.

6.22 Admission of liability to pay claim for unspecified amount (14.6, 14.7)

- (1) This rule applies where —
 - (a) the only remedy which the claimant is seeking is the payment of money; but
 - (b) the amount of the claim is not specified.

(2) Where the defendant admits liability but does not offer to pay a specified amount of money in satisfaction of the claim; he may admit the claim by filing an admission to that effect and serving a copy on the claimant.

(3) If the claimant does not file a request for judgment within 14 days after service of the admission on him, the claim is stayed until he files the request.

- (4) Where the defendant —
 - (a) admits liability; and
 - (b) offers to pay a specified amount of money in satisfaction of the claim,

he may admit the claim by filing an admission to that effect and serving a copy on the claimant.

(5) On receipt of an admission under paragraph (4), the claimant must, within 14 days after service of the admission, file and serve on the defendant a notice stating that —

- (a) he accepts the amount in satisfaction of the claim and, and, if the defendant has requested time to pay, whether or not he accepts the defendant's proposal as to payment, or
- (b) he does not accept the amount admitted by the defendant and wishes the proceedings to continue.

(6) If the claimant does not file a notice under paragraph (5) within 14 days after the admission is served on him, the claim is stayed until he files the notice.

6.23 Request for time to pay (14.9-10)

(1) A defendant who makes an admission under rule 6.21 or 6.22 may make a request for time to pay.

- (2) A request for time to pay is a proposal —
 - (a) about the date of payment, or
 - (b) to pay by instalments at the times and rate specified in the request.

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(3) The defendant's request for time to pay must be filed and served with his admission.

(4) If the defendant requests time to pay he must —

- (a) complete as fully as possible the statement of means contained in the admission form, or
- (b) otherwise give in writing the same details of his means as could have been given in the admission form.

CHAPTER 5: DEFENCE

6.24 Filing a defence (15.2, 15.6)

A defendant who wishes to defend all or part of a claim must file a defence and serve a copy on every other party.

6.25 Consequence of not filing a defence (15.3)

If a defendant fails to file a defence, the claimant may obtain default judgment if Part 10 allows it.

6.26 Period for filing defence (15.4)

- (1) Subject to paragraph (2), the period for filing a defence is —
 - (a) 14 days after service of the particulars of claim; or
 - (b) if the defendant files an acknowledgment of service under Chapter 3 of Part 4, 28 days after service of the particulars of claim.
- (2) Paragraph (1) is subject to the following—
 - (a) any order under rule 2.41 (service out of the jurisdiction);
 - (b) rule 4.16 (application disputing the court's jurisdiction; and
 - (c) rule 10.48 (application for summary judgment before defence filed).

6.27 Agreement extending period for filing defence (15.5)

(1) The defendant and the claimant may agree that the period for filing a defence specified in rule 6.26 shall be extended by up to 28 days.

(2) Where the defendant and the claimant agree to extend the period for filing a defence, the defendant must notify the court in writing.

6.28 Claimant's notice on defence that claim has been paid (15.10)

- (1) This rule applies where —
 - (a) the only claim (apart from a claim for costs and interest) is for a specified amount of money; and
 - (b) the defendant states in his defence that he has paid to the claimant the amount claimed.
- (2) When serving the defence the defendant must give notice to the claimant requiring him to state in writing whether he wishes the proceedings to continue, and file a copy of the notice.
- (3) When the claimant responds to the notice, he must file a copy of his response.
- (4) If the claimant fails to respond to the notice within 28 days after service on him, the claim shall be stayed.
- (5) Where a claim is stayed under this rule any party may apply for the stay to be lifted.

6.29 Claim stayed if it is not defended or admitted (15.11)

- (1) Where —
 - (a) at least 6 months have expired since the end of the period for filing a defence specified in rule 6.26;
 - (b) no defendant has served or filed an admission or filed a defence or counterclaim; and
 - (c) the claimant has not entered or applied for judgment under Chapter 2 (default judgment) or Chapter 6 (summary judgment) of Part 10,

the claim shall be stayed.

- (2) Where a claim is stayed under this rule any party may apply for the stay to be lifted.

6.30 Lifting of stay (PD 15 para.3.3)

- (1) Where a claim has been stayed under rule 6.28(4) or 6.29(1) any party may apply for the stay to be lifted.

- (2) The application must give the reason for the applicant's delay in proceeding with or responding to the claim.

6.31 Content of defence (16.5, PD16.10)

- (1) In his defence, the defendant must state —
 - (a) which of the allegations in the particulars of claim he denies;
 - (b) which allegations he is unable to admit or deny, but which he requires the claimant to prove; and
 - (c) which allegations he admits.
- (2) Where the defendant denies an allegation —
 - (a) he must state his reasons for doing so; and
 - (b) if he intends to put forward a different version of events from that given by the claimant, he must state his own version.
- (3) A defendant who —
 - (a) fails to deal with an allegation; but
 - (b) has set out in his defence the nature of his case in relation to the issue to which that allegation is relevant,

shall be taken to require that allegation to be proved.

- (4) Where the claim includes a money claim, a defendant shall be taken to require that any allegation relating to the amount of money claimed be proved unless he expressly admits the allegation.

- (5) Subject to paragraphs (3) and (4), a defendant who fails to deal with an allegation shall be taken to admit that allegation.

- (6) If the defendant disputes the claimant's statement of value under rule 6.10 he must —

- (a) state why he disputes it; and
 - (b) if he is able, give his own statement of the value of the claim.

- (7) If the defendant is defending in a representative capacity, he must state what that capacity is.

- (8) Where the claim form —

- (a) does not contain an address at which the defendant resides or carries on business, or

(b) contains an incorrect address for the defendant,
then, unless the court otherwise directs, the defendant must provide such an address in the defence (in addition to his address for service, if different).

(9) An address provided for the purpose of paragraph (8) must include a postcode, unless the court orders otherwise.

(10) Where a defendant to a claim or counterclaim is an individual, he must, in the acknowledgment of service, admission, defence, reply or other response, either provide his date of birth (if known) or state that he is over 18.

6.32 Defence of set-off (16.6)

Where a defendant —

- (a) contends he is entitled to money from the claimant; and
- (b) relies on this as a defence to the whole or part of the claim,

the contention may be included in the defence and set off against the claim, whether or not it is also an additional claim.

6.33 Defence: personal injury claims (PD16.12)

(1) Where the claim is for personal injuries and the claimant has attached a medical report in respect of his alleged injuries, the defendant must, if he has obtained his own medical report on which he intends to rely, —

- (a) state in his defence whether he —
 - (i) agrees,
 - (ii) disputes, or
 - (iii) neither agrees nor disputes but has no knowledge of, the matters contained in the claimant's medical report,
- (b) where he disputes any part of the claimant's medical report, give in his defence his reasons for doing so, and
- (c) attach his own medical report to his defence.

(2) Where the claim is for personal injuries and the claimant has included a schedule of past and future expenses and losses, the defendant should include in or attach to his defence a counter-schedule stating: —

- (a) which of those items he —
 - (i) agrees,
 - (ii) disputes, or
 - (iii) neither agrees nor disputes but has no knowledge of, and
- (b) where any items are disputed, supplying alternative figures where available.

6.34 Defence: limitation (PD16.13)

The defendant must in the defence give details of the expiry of any relevant limitation period relied on.

CHAPTER 6: REPLY

6.35 Reply to defence (15.8, 16.7)

(1) A claimant who does not file a reply to the defence shall not be taken to admit the matters raised in the defence.

- (2) A claimant who —
 - (a) files a reply to a defence; but

(b) fails to deal with a matter raised in the defence,
shall be taken to require that matter to be proved.

(3) If a claimant files a reply to the defence, he must —

(a) file it within 14 days after service on him of the defence, and

(b) serve his reply on the other parties at the same time as he files it.

6.36 No statement of case after reply to be filed without court's permission (15.9)

A party may not file or serve any statement of case after a reply without the permission of the court.

CHAPTER 7: AMENDMENT OF STATEMENT OF CASE

6.37 Amendment of statement of case (17.1)

(1) A party may amend his statement of case at any time before it has been served on any other party.

(2) If his statement of case has been served, a party may amend it only —

(a) with the written consent of all the other parties; or

(b) with the permission of the court.

(3) If a statement of case has been served, an application to amend it by removing, adding or substituting a party must be made in accordance with rule 3.8.

6.38 Power of court to disallow amendments made without permission (17.2)

(1) If a party has amended his statement of case where permission of the court was not required, the court may disallow the amendment.

(2) A party may apply to the court for an order under paragraph (1) within 14 days of service of a copy of the amended statement of case on him.

6.39 Amendment of statement of case with permission of the court (17.3)

(1) Where the court gives permission for a party to amend his statement of case, it may give directions as to —

(a) amendments to be made to any other statement of case; and

(b) service of any amended statement of case.

(2) The power of the court to give permission under this rule is subject to —

(a) rule 3.2 (number of parties);

(b) rule 3.10 (adding or substituting parties after end of limitation period); and

(c) rule 6.40 (amendment of statement of case after the end of limitation period).

6.40 Amendment of statement of case after the end of limitation period (17.4)

(1) This rule applies where —

(a) a party applies to amend his statement of case in one of the ways mentioned in this rule; and

(b) a period of limitation has expired under —

(i) the Limitation Act 1984; or

(ii) any other statutory provision which allows such an amendment, or under which such an amendment is allowed.

(2) The court may allow an amendment whose effect will be to add or substitute a new claim, but only if the new claim arises out of the same facts or substantially the same

facts as a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings.

(3) The court may allow an amendment to correct a mistake as to the name of a party, but only where the mistake was genuine and not one which would cause reasonable doubt as to the identity of the party in question.

(4) The court may allow an amendment to alter the capacity in which a party claims if the new capacity is one which that party had when the proceedings started or has since acquired.

CHAPTER 8: FURTHER INFORMATION

6.41 Preliminary request for further information or clarification (PD18.1)

(1) Before making an application to the court for an order under rule 6.44, the party seeking clarification or information ('the first party') must first serve on the party from whom it is sought ('the second party') a written request for that clarification or information (a 'request') stating a date by which the response to the request should be served. The date must allow the second party a reasonable time to respond.

(2) A request must be concise and strictly confined to matters which are reasonably necessary and proportionate to enable the first party to prepare his own case or to understand the case he has to meet.

(3) Requests must be made as far as possible in a single comprehensive document and not piecemeal.

(4) A request may be made by letter if the text of the request is brief and the reply is likely to be brief; otherwise the request should be made in a separate document.

(5) If a request is made in a letter, the letter must, in order to distinguish it from any other that might routinely be written in the course of a case, —

(a) state that it contains a request made under this rule, and

(b) deal with no matters other than the request.

(6) A request (whether made by letter or in a separate document) must —

(a) be headed with the title and number of the claim,

(b) in its heading state that it is a request made under this rule, identify the first party and the second party and state the date on which it is made,

(c) set out in a separate numbered paragraph each request for information or clarification,

(d) where a request relates to a document, identify that document and (if relevant) the paragraph or words to which it relates,

(e) state the date by which the first party expects a response to the request.

(7) A request which is not in the form of a letter may, if convenient, be prepared in such a way that the response may be given on the same document.

(8) For the purpose of sub-paragraph (7) the numbered paragraphs of the request should appear on the left hand half of each sheet so that the paragraphs of the response may then appear on the right.

(9) Where a request is prepared in that form an extra copy must be served for the use of the second party.

6.42 Responding to a request (PD18.2)

(1) A response to a request must be in writing, dated and signed by the second party or his advocate.

(2) Where the request is made in a letter the second party may give his response in a letter or in a formal reply.

(3) Such a letter must identify itself as a response to the request and deal with no other matters than the response.

(4) Unless the request is in the format described in rule 6.41(7) and the second party uses the document supplied for the purpose, a response must —

- (a) be headed with the title and number of the claim,
- (b) in its heading identify itself as a response to that request,
- (c) repeat the text of each separate paragraph of the request and set out under each paragraph the response to it,
- (d) refer to and have attached to it a copy of any document not already in the possession of the first party which forms part of the response.

(5) A second or supplementary response to a request must identify itself as such in its heading.

(6) The second party must when he serves his response on the first party serve on every other party and file a copy of the request and of his response.

6.43 Requests for further information: general (PD18.4)

(1) If the second party objects to complying with the request or part of it or is unable to do so at all or within the time stated in the request he must inform the first party promptly and in any event within that time.

(2) He may do so in a letter or in a separate document (a formal response), but in either case he must give reasons and, where relevant, give a date by which he expects to be able to comply.

(3) A second party need not apply to the court if he objects to a request or is unable to comply with it at all or within the stated time, and need only comply with sub-paragraph (1).

(4) Where a second party considers that a request can only be complied with at disproportionate expense and objects to comply for that reason he must say so in his reply and explain briefly why he has taken that view.

6.44 Order to provide further information (18.1)

- (1) The court may at any time order a party —
 - (a) to clarify any matter which is in dispute in the proceedings; or
 - (b) to give additional information in relation to any such matter,

whether or not the matter is contained or referred to in a statement of case.

(2) Paragraph (1) is subject to any rule of law to the contrary.

(3) Where the court makes an order under paragraph (1), the party against whom it is made must —

- (a) file his response; and
- (b) serve it on the other parties,

within the time specified by the court.

6.45 Applications for orders under rule 6.44 (PD 18 paras.5.1-5.7)

(1) An application notice for an order under rule 6.44 must set out or have attached to it the text of the order sought and in particular should specify the matter or matters in respect of which the clarification or information is sought.

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(2) If a request under rule 6.41 for the clarification or information has not been made, the application notice must, in addition, explain why not.

(3) If a request for clarification or information has been made, the application notice or the evidence in support must —

- (a) describe the response, if any, and
- (b) state in what respects the response is inadequate or unsatisfactory.
- (4) Where —
 - (a) the second party has made no response to a request served on him,
 - (b) at least 14 days have passed since the request was served, and
 - (c) the time stated in it for a response has expired,

the first party need not serve the application notice on the second party, and the court may deal with the application without a hearing.

(5) Unless paragraph (4) applies the application notice must be served on the second party and on all other parties to the claim.

(6) An order under rule 6.44 must be served on all parties to the claim.

6.46 Restriction on the use of further information (18.2)

The court may direct that information provided by a party to another party (whether given voluntarily or following an order under rule 6.44) must not be used for any purpose except for that of the proceedings in which it is given.

CHAPTER 9: ADDITIONAL CLAIMS

6.47 Additional claim to be treated as a claim for the purposes of the Rules (20.3)

(1) An additional claim shall be treated as if it were a claim for the purposes of these Rules, except as provided by this Chapter.

(2) The following rules do not apply to additional claims —

- (a) rules 4.3 and 4.4 (time within which claim form may be served),
- (b) Part 5 (procedures).

(3) Chapter 2 of Part 10 (default judgment) applies to an additional claim only if it is a counterclaim.

(4) With the exception of —

- (a) rule 6.19(1) and (2) (admission); and
- (b) rule 10.40 (application for judgment on admission),

which apply to all additional claims, Chapter 4 of Part 6 (admissions) and Chapter 5 of Part 10 (judgment on admission) apply to an additional claim only if it is a counterclaim.

6.48 Defendant's counterclaim against the claimant (20.4)

(1) A defendant may make a counterclaim against a claimant by filing particulars of the counterclaim.

(2) A defendant may make a counterclaim against a claimant —

- (a) without the court's permission, if he files it with his defence; or
- (b) with the court's permission, at any other time.

(3) Chapter 3 of Part 4 (acknowledgment of service) does not apply to a claimant who wishes to defend a counterclaim.

6.49 Counterclaim against a person other than the claimant (20.5)

(1) A defendant who wishes to counterclaim against a person other than the claimant must apply to the court for an order that that person be added as defendant to the counterclaim.

(2) An application for an order under paragraph (1) may be made without notice unless the court directs otherwise.

(3) Where the court makes an order under paragraph (1), it shall give directions as to the management of the case.

6.50 Defendant's claim for contribution or indemnity from co-defendant (20.6)

(1) A defendant who has filed an acknowledgment of service or a defence may make an additional claim for contribution or indemnity against another defendant by —

(a) filing a notice containing a statement of the nature and grounds of his claim; and

(b) serving that notice on the other defendant.

(2) A defendant may file and serve a notice under this rule —

(a) without the court's permission, if he files and serves it —

(i) with his defence; or

(ii) if his claim for contribution or indemnity is against a defendant added to the claim later, within 28 days after that defendant files his defence; or

(b) at any other time with the court's permission.

6.51 Procedure for making any other additional claim (20.7)

(1) This rule applies to any additional claim except —

(a) a counterclaim; and

(b) a claim for contribution or indemnity made in accordance with rule 6.50.

(2) An additional claim is made when the court issues an additional claim form.

(3) A defendant may make an additional claim —

(a) without the court's permission if the additional claim is issued before or at the same time as he files his defence;

(b) at any other time with the court's permission.

(4) Particulars of an additional claim must be contained in or served with the additional claim.

(5) An application for permission to make an additional claim may be made without notice, unless the court directs otherwise.

(6) Where an application is made for permission to make an additional claim, a copy of the proposed additional claim must be filed with the application notice.

(7) An application for permission to make an additional claim must be supported by evidence stating —

(a) the stage which the action has reached,

(b) the nature of the claim to be made by the additional claimant or details of the question or issue which needs to be decided,

(c) a summary of the facts on which the additional claim is based, and

(d) the name and address of the proposed additional defendant.

(8) Where delay has been a factor contributing to the need to apply for permission to make a additional claim, an explanation of the delay must be given in evidence.

6.52 Service of additional claim form (20.8)

(1) Where an additional claim may be made without the court's permission, the additional claim form must —

- (a) in the case of a counterclaim against an existing party only, be served on every other party when a copy of the defence is served;
- (b) in the case of any other additional claim, be served on the person against whom it is made within 14 days after the date on which the additional claim is issued by the court.

(2) Paragraph (1) does not apply to a claim for contribution or indemnity made in accordance with rule 6.50.

(3) Where the court gives permission to make an additional claim it shall at the same time give directions as to the service of the additional claim.

6.53 Matters relevant to question of whether an additional claim should be separate from main claim (20.9)

(1) This rule applies where the court is considering whether —

- (a) to permit an additional claim to be made;
- (b) to dismiss an additional claim; or
- (c) to require an additional claim to be dealt with separately from the claim by the claimant against the defendant.

(2) The matters to which the court may have regard include —

- (a) the connection between the additional claim and the claim made by the claimant against the defendant;
- (b) whether the person who makes an additional claim is seeking substantially the same remedy which some other party is claiming from him; and
- (c) whether the person who makes an additional claim wants the court to decide any question connected with the subject matter of the proceedings —
 - (i) not only between existing parties but also between existing parties and a person not already a party; or
 - (ii) against an existing party not only in a capacity in which he is already a party but also in some further capacity.

6.54 Effect of service of an additional claim (20.10)

(1) A person on whom an additional claim is served becomes a party to the proceedings if he is not a party already.

(2) When an additional claim is served on an existing party for the purpose of requiring the court to decide a question against that party in a further capacity, that party also becomes a party in the further capacity specified in the additional claim.

6.55 Procedural steps on service of an additional claim form on a non-party (20.12)

(1) Where an additional claim form is served on a person who is not already a party it must be accompanied by —

- (a) a form for defending the claim;
- (b) a form for admitting the claim;
- (c) a form for acknowledging service; and
- (d) a copy of —
 - (i) every statement of case which has already been served in the proceedings; and

- (ii) such other documents as the court may direct.
- (2) A copy of the additional claim form must be served on every existing party.

6.56 Case management where there is a defence to an additional claim (20.13)

(1) Where a person against whom an additional claim is made files a defence, other than to a counterclaim, he must at the same time make an application for a hearing to consider directions for the management of the additional claim.

(2) An application under paragraph (1) may be made by letter without notice to the other party or parties.

(3) The court shall give notice of the hearing to each party likely to be affected by any order made at the hearing.

(4) At the hearing the court may —

- (a) treat the hearing as a hearing of an application for summary judgment,
- (b) order that the additional claim be dismissed,
- (c) give directions about the way any claim, question or issue set out in or arising from the additional claim should be dealt with,
- (d) give directions as to the part, if any, the person against whom the additional claim is made will take at the trial of the claim, and
- (e) give directions about the extent to which that person is to be bound by any judgment or decision to be made in the claim.

(5) The court may make any of the orders in sub-paragraph (4) either before or after any judgment in the claim has been entered by the claimant against the defendant.

(6) In giving directions under this rule the court shall ensure that, so far as practicable, the additional claim and the main claim are managed together.

PART 7 : CASE MANAGEMENT

CHAPTER 1: GENERAL

7.1 Court's duty to manage cases (1.4)

(1) The court shall further the overriding objective (set out in rule 1.2) by actively managing cases.

(2) Active case management includes —

- (a) encouraging the parties to co-operate with each other in the conduct of the proceedings;
- (b) identifying the issues at an early stage;
- (c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;
- (d) deciding the order in which issues are to be resolved;
- (e) encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure;
- (f) helping the parties to settle the whole or part of the case;
- (g) fixing timetables or otherwise controlling the progress of the case;
- (h) considering whether the likely benefits of taking a particular step justify the cost of taking it;
- (i) dealing with as many aspects of the case as it can on the same occasion;
- (j) dealing with the case or any aspect of it without the parties needing to attend at court;
- (k) making use of technology; and
- (l) giving directions to ensure that the trial of a case proceeds quickly and efficiently.

(3) The court may give directions for the management of a claim at any stage —

- (a) on an application by any party, or
- (b) on its own initiative.

(4) As respects a claim of any description, the rules in this Part have effect subject to —

- (a) any special rules contained in Part 5 and applicable to the procedure to which the claim is allocated;
- (b) any other express provision of these Rules applying to claims of that description.

7.2 Court's general powers of management (3.1)

(1) The powers in this rule are in addition to any powers given to the court by any other rule or by any other statutory provision or rule of law.

(2) Except where these Rules provide otherwise, the court may —

- (a) extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired);
- (b) adjourn or bring forward a hearing;
- (c) require a party or a party's advocate to attend the court;
- (d) hold a hearing and receive evidence by telephone or video link or by using any other method of direct oral communication;

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- (e) direct that part of any proceedings (such as a counterclaim) be dealt with as separate proceedings;
- (f) stay the whole or part of any proceedings or judgment either generally or until a specified date or event;
- (g) consolidate proceedings;
- (h) try 2 or more claims on the same occasion;
- (i) direct a separate trial of any issue;
- (j) decide the order in which issues are to be tried;
- (k) exclude an issue from consideration;
- (l) dismiss or give judgment on a claim after a decision on a preliminary issue;
- (m) order any party to file and serve an estimate of costs;
- (n) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective in rule 1.2.
- (3) When the court makes an order, it may —
 - (a) make it subject to conditions, including a condition to pay a sum of money into court; and
 - (b) specify the consequence of failure to comply with the order or a condition.
- (4) The court may order a party to pay a sum of money into court if that party has, without good reason, failed to comply with a rule or any practice direction in force at the material time.
- (5) When exercising its power under paragraph (4) the court must have regard to —
 - (a) the amount in dispute; and
 - (b) the costs which the parties have incurred or which they may incur.
- (6) Where a party pays money into court following an order under paragraph (3) or (4), the money shall be security for any sum payable by that party to any other party in the proceedings.
- (7) A power of the court under these Rules to make an order includes a power to vary or revoke the order.

7.3 Power to strike out statement of case (3.4)

- (1) In this rule a reference to a statement of case includes a reference to part of a statement of case.
- (2) The court may strike out a statement of case if it appears to the court —
 - (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
 - (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
 - (c) that there has been a failure to comply with a rule, practice direction or court order.
- (3) When the court strikes out a statement of case it may make any consequential order it considers appropriate.
- (4) Where —
 - (a) the court has struck out a claimant's statement of case;
 - (b) the claimant has been ordered to pay costs to the defendant; and

- (c) before the claimant pays those costs, he starts another claim against the same defendant, arising out of facts which are the same or substantially the same as those relating to the claim in which the statement of case was struck out;

the court may, on the application of the defendant, stay that other claim until the costs of the first claim have been paid.

(5) Paragraph (2) does not limit any other power of the court to strike out a statement of case.

(6) If the court strikes out a claimant's statement of case and it considers that the claim is totally without merit —

- (a) the court's order shall record that fact; and
- (b) the court shall at the same time consider whether it is appropriate to make a civil restraint order.

CHAPTER 2: APPLICATIONS FOR COURT ORDERS

7.4 Scope and interpretation (23.1)

- (1) This Chapter applies to an application which is made —
 - (a) where a claim has already been started; or
 - (b) where no claim has been started, if it is permitted by a rule to be made by an application notice.
- (2) In this Chapter 'respondent' means —
 - (a) the person against whom the order is sought; and
 - (b) such other person as the court may direct.

7.5 Application notice to be filed (23.3)

- (1) Subject to paragraph (2), an application is made by filing an application notice.
- (2) An applicant may make an application without filing an application notice if —
 - (a) this is permitted by a rule; or
 - (b) the court dispenses with the requirement for an application notice.
- (3) Any statutory requirement that an application in proceedings be made by petition or motion shall be construed as a requirement that it be made in accordance with paragraph (1) or (2).

7.6 Notice of application (23.4)

- (1) Subject to paragraph (2), a copy of the application notice must be served on each respondent.
- (2) An application may be made without serving a copy of the application notice only —
 - (a) where there is exceptional urgency,
 - (b) where the overriding objective is best furthered by doing so,
 - (c) with the consent of all parties,
 - (d) where a date for a hearing has been fixed and a party wishes to make an application at that hearing but does not have sufficient time to serve an application notice,
 - (e) where this is permitted by another rule, or
 - (f) where the court so directs.

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- (3) Where paragraph (2)(d) applies, the applicant —
 - (a) must inform the other party and the court (if possible in writing) as soon as he can of the nature of the application and the reason for it; and
 - (b) may then make the application orally at the hearing.
- (4) An application for a direction under paragraph (2)(f) may be made by letter without notice to the respondent.

7.7 Time when application is made (23.5)

Where an application must be made within a specified time, it is so made if the application notice is received by the court within that time.

7.8 Contents of application notice (23.6, PD 23)

- (1) An application notice must state —
 - (a) what order the applicant is seeking; and
 - (b) briefly, why the applicant is seeking the order.
- (2) The notice must in addition be signed and include —
 - (a) the title of the claim,
 - (b) the number of the claim,
 - (c) the full name of the applicant,
 - (d) where the applicant is not already a party, his address for service, including a postcode; and
 - (e) either a request for a hearing or a request that the application be dealt with without a hearing.
- (3) A draft of the order applied for must be attached to the application notice.
- (4) Where an application is made in accordance with this Chapter before a claim has been started, paragraph (2)(a) and (b) does not apply, and rule 4.1 applies with any necessary modifications as if the application notice were a claim form.

7.9 Service of copy of application notice (23.7, PD 23)

- (1) Except where another rule otherwise provides, the applicant must serve a copy of the application notice on each respondent —
 - (a) as soon as practicable after it is filed; and
 - (b) in any event at least 3 days before the court is to deal with the application.
- (2) If a copy of the application notice is to be served by the court, the applicant must, when he files the application notice, file a copy of any written evidence in support.
- (3) When a copy of an application notice is served it must be accompanied by —
 - (a) a copy of any written evidence in support; and
 - (b) a copy of any draft order which the applicant has attached to his application.
- (4) If —
 - (a) an application notice is served; but
 - (b) the period of notice is shorter than the period required by these Rules,the court may direct that, in the circumstances of the case, sufficient notice has been given and hear the application.
- (5) This rule does not require written evidence —
 - (a) to be filed if it has already been filed; or
 - (b) to be served on a party on whom it has already been served.

7.10 Applications which may be dealt with without hearing (23.8, PD 23)

- (1) The court may deal with an application without a hearing if —
 - (a) the parties agree as to the terms of the order sought;
 - (b) the parties agree that the court should dispose of the application without a hearing, or
 - (c) the court does not consider that a hearing would be appropriate.
- (2) Where paragraph (1)(b) applies the parties must so inform the court in writing, and each must confirm that all evidence and other material on which he relies has been disclosed to the other parties to the application.
- (3) Where paragraph (1)(c) applies the court shall treat the application as if it were proposing to make an order on its own initiative.
- (4) This rule is without prejudice to any other rule allowing or requiring the court to deal with an application without a hearing.

7.11 Service where application made without notice (23.9)

- (1) This rule applies where the court has disposed of an application which it permitted to be made without service of a copy of the application notice.
- (2) Where the court makes an order, whether granting or dismissing the application, a copy of the application notice and any evidence in support must, unless the court orders otherwise, be served with the order on any party or other person —
 - (a) against whom the order was made; and
 - (b) against whom the order was sought.
- (3) The order must contain a statement of the right to make an application to set aside or vary the order under rule 7.12.

7.12 Application to set aside or vary order made without notice (23.10)

- (1) A person who was not served with a copy of the application notice before an order was made under rule 7.11 may apply to have the order set aside or varied.
- (2) An application under this rule must be made within 7 days after the date on which the order was served on the person making the application.

7.13 Power to proceed in party's absence (23.11, PD 23)

- (1) Where the applicant or any respondent fails to attend the hearing of an application, the court may proceed in his absence.
- (2) Where —
 - (a) the applicant or any respondent fails to attend the hearing of an application; and
 - (b) the court makes an order at the hearing,the court may, on application or of its own initiative, re-list the application.
- (3) The power to re-list the application is in addition to any other powers of the court with regard to the order (for example to set aside, vary, discharge or suspend the order).

7.14 Dismissal of applications totally without merit (23.12)

- If the court dismisses an application (including an application for permission to appeal) and it considers that the application is totally without merit —
- (a) the court's order must record that fact; and
 - (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.

7.15 Further provision as to applications

Schedule 7.1 makes further provisions as to applications under this Chapter.

CHAPTER 3: INTERIM REMEDIES

7.16 Orders for interim remedies (25.1)

- (1) The court may grant the following interim remedies —
 - (a) an interim injunction ;
 - (b) an interim declaration;
 - (c) an order —
 - (i) for the detention, custody or preservation of relevant property;
 - (ii) for the inspection of relevant property;
 - (iii) for the taking of a sample of relevant property;
 - (iv) for the carrying out of an experiment on or with relevant property;
 - (v) for the sale of relevant property which is of a perishable nature or which for any other good reason it is desirable to sell quickly; and
 - (vi) for the payment of income from relevant property until a claim is decided;
 - (d) an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under sub-paragraph (c);
 - (e) an order under section 4 of the Torts (Interference with Goods) Act 1981 to deliver up goods;
 - (f) an order (a ‘freezing injunction’) —
 - (i) restraining a party from removing from the jurisdiction assets located there; or
 - (ii) restraining a party from dealing with any assets whether located within the jurisdiction or not;
 - (g) an order directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing injunction ;
 - (h) an order (a ‘search order’) under section 33A of the High Court Act 1991 requiring a party to admit another party to premises for the purpose of preserving evidence etc.;
 - (i) an order under section 34 of the High Court Act 1991 (order for disclosure of documents or inspection of property before a claim has been made);
 - (j) an order under section 35 of the High Court Act 1991 (order in certain proceedings for disclosure of documents or inspection of property against a non-party);
 - (k) an order (an ‘order for an interim payment’) under rule 7.20 for payment by a defendant on account of any damages, debt or other sum (except costs) which the court may hold the defendant liable to pay;
 - (l) an order for a specified fund to be paid into court or otherwise secured, where there is a dispute over a party’s right to the fund;

- (m) an order permitting a party seeking to recover personal property to pay money into court pending the outcome of the proceedings and directing that, if he does so, the property shall be given up to him;
 - (n) an order directing a party to prepare and file accounts relating to the dispute;
 - (o) an order directing any account to be taken or inquiry to be made by the court;
 - (p) an order for the restoration of the status quo;
 - (q) an order that a trespass jury be summoned and sworn;
 - (r) an order for the arrest of a person or assets under section 1 or 3 of the Action of Arrest Act 1953;
 - (s) an order for the arrest of goods under section 7 of the Recovery of Rent 1954.
- (2) In paragraph (1)(c) and (g), ‘relevant property’ means property (including land) which is the subject of a claim or as to which any question may arise on a claim.
- (3) The fact that a particular kind of interim remedy is not listed in paragraph (1) does not affect any power that the court may have to grant that remedy.
- (4) The court may grant an interim remedy whether or not there has been a claim for a final remedy of that kind.
- (5) An application for an interim remedy, except —
- (a) an order under section 33A of the High Court Act 1991 (preservation of evidence etc.),
 - (b) an order under section 34(1) of the High Court Act 1991 (inspection etc. of property before start of claim),
 - (c) an order for the arrest of goods under section 7 of the Recovery of Rent Act 1954, or
 - (d) a property freezing order or interim receiving order under section 6 or 13 of the Proceeds of Crime Act 2008,

may not be made before a claim form is filed unless a judge gives permission.

(6) A judge shall not give permission under paragraph (5) unless he is satisfied that the matter is urgent; and such permission shall be granted subject to such conditions as the judge thinks fit

(7) On an application for an order for the restoration of the status quo, the court may refuse the order if it is not satisfied that the applicant has a real prospect of succeeding on the claim or issue.

7.17 Time when order for interim remedy may be made (25.2)

- (1) An order for an interim remedy may be made at any time, including —
 - (a) before proceedings are started; and
 - (b) after judgment has been given.
- (2) However —
 - (a) paragraph (1) is subject to any rule or other statutory provision which provides otherwise;
 - (b) the court may grant an interim remedy before a claim has been made only if —
 - (i) the matter is urgent; or
 - (ii) it is otherwise desirable to do so in the interests of justice;

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- (c) unless the court otherwise orders, a defendant may not apply for any of the orders listed in rule 7.16(1) before he has filed either an acknowledgment of service or a defence.

(3) Where the court grants an interim remedy before a claim has been started, it may give directions requiring a claim to be started.

(4) In particular, the court need not direct that a claim be started where the application is made under section 34 of the High Court Act 1991 (order for disclosure, inspection etc. before commencement of a claim).

7.18 How to apply for interim remedy (25.3)

(1) The court may grant an interim remedy on an application made without notice if it appears to the court that there are good reasons for not giving notice.

(2) An application for an interim remedy must be supported by evidence, unless the court orders otherwise.

(3) If the applicant makes an application without giving notice, the evidence in support of the application must state the reasons why notice has not been given.

7.19 Inspection of property before commencement or against a non-party (25.5)

(1) This rule applies where a person makes an application under —

- (a) section 34(1) of the High Court Act 1991 (inspection etc. of property before start of claim), or
- (b) section 35(3) of that Act (inspection etc. of property against a non-party).

(2) The evidence in support of such an application must show, if practicable by reference to any statement of case prepared in relation to the proceedings or anticipated proceedings, that the property —

- (a) is or may become the subject matter of such proceedings; or
- (b) is relevant to the issues that will arise in relation to such proceedings.

(3) A copy of the application notice and a copy of the evidence in support must be served on —

- (a) the person against whom the order is sought; and
- (b) in the case of an application under section 35(3) of the High Court Act 1991, every party to the proceedings other than the applicant.

7.20 Interim payments — general procedure (25.6)

(1) The claimant may not apply for an order for an interim payment before the end of the period for filing an acknowledgment of service applicable to the defendant against whom the application is made.

(2) The claimant may make more than one application for an order for an interim payment.

(3) A copy of an application notice for an order for an interim payment must —

- (a) be served at least 14 days before the hearing of the application; and
- (b) be supported by evidence.

(4) If the respondent to an application for an order for an interim payment wishes to rely on written evidence at the hearing, he must —

- (a) file the written evidence; and
- (b) serve copies on every other party to the application,

at least 7 days before the hearing of the application.

(5) If the applicant wishes to rely on written evidence in reply, he must —

- (a) file the written evidence; and
- (b) serve a copy on the respondent,

at least 3 days before the hearing of the application.

- (6) This rule does not require written evidence —
 - (a) to be filed if it has already been filed; or
 - (b) to be served on a party on whom it has already been served.
- (7) The court may order an interim payment in one sum or in instalments.

7.21 Interim payments — conditions to be satisfied and matters to be taken into account (25.7)

(1) The court may only make an order for an interim payment where one or more of the following conditions is satisfied —

- (a) the defendant against whom the order is sought has admitted liability to pay damages or some other sum of money to the claimant;
- (b) the claimant has obtained judgment against that defendant for damages to be assessed or for a sum of money (other than costs) to be assessed;
- (c) it is satisfied that, if the claim went to trial, the claimant would obtain judgment for a substantial amount of money (other than costs) against the defendant from whom he is seeking an order for an interim payment whether or not that defendant is the only defendant or one of a number of defendants to the claim;
- (d) the following conditions are satisfied —
 - (i) the claimant is seeking an order for possession of land (whether or not any other order is also sought); and
 - (ii) the court is satisfied that, if the case went to trial, the defendant would be held liable (even if the claim for possession fails) to pay the claimant a sum of money for the defendant's occupation and use of the land while the claim for possession was pending; or
- (e) in a claim in which there are 2 or more defendants and the order is sought against any one or more of those defendants, the following conditions are satisfied —
 - (i) the court is satisfied that, if the claim went to trial, the claimant would obtain judgment for a substantial amount of money (other than costs) against at least one of the defendants (but the court cannot determine which); and
 - (ii) each of the defendants is either —
 - (a) a defendant who is insured in respect of the claim;
 - (b) a defendant whose liability will be met by an insurer under paragraph 7 of Schedule 5 to the Road Traffic Act 1985 or an insurer acting under the Motor Insurers Bureau Agreement, or the Motor Insurers Bureau where it is acting itself; or
 - (c) a public body.

(2) The court shall not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.

- (3) The court must take into account —
 - (a) contributory negligence; and
 - (b) any relevant set-off or counterclaim.

7.22 Powers of court where it has made order for interim payment (25.8)

(1) Where a defendant has been ordered to make an interim payment, or has in fact made an interim payment (whether voluntarily or under an order), the court may make an order to adjust the interim payment.

(2) The court may in particular —

- (a) order all or part of the interim payment to be repaid;
- (b) vary or discharge the order for the interim payment;
- (c) order a defendant to reimburse, either wholly or partly, another defendant who has made an interim payment.

(3) The court may make an order under paragraph (2)(c) only if —

- (a) the defendant to be reimbursed made the interim payment in relation to a claim in respect of which he has made a claim against the other defendant for a contribution, indemnity or other remedy; and
- (b) where the claim or part to which the interim payment relates has not been discontinued or disposed of, the circumstances are such that the court could make an order for interim payment under rule 7.21.

(4) The court may make an order under this rule without an application by any party if it makes the order when it disposes of the claim or any part of it.

(5) Where —

- (a) a defendant has made an interim payment; and
- (b) the amount of the payment is more than his total liability under the final judgment or order,

the court may award him interest on the overpaid amount from the date when he made the interim payment.

7.23 Restriction on disclosure of interim payment (25.9)

The fact that a defendant has made an interim payment, whether voluntarily or by court order, shall not be disclosed to the trial judge until all questions of liability and the amount of money to be awarded have been decided, unless the defendant agrees.

7.24 Interim injunction to cease if claim is stayed (25.10)

If —

- (a) the court has granted an interim injunction other than a freezing injunction; and
- (b) the claim is stayed otherwise than by agreement between the parties,

the interim injunction shall be set aside unless the court orders that it should continue to have effect even though the claim is stayed.

7.25 Interim injunction to cease after 14 days if claim struck out (25.11)

(1) If —

- (a) the court has granted an interim injunction ; and
- (b) the claim is struck out under rule 2.60 (sanctions for non-payment of certain fees),

the interim injunction shall cease to have effect 14 days after the date that the claim is struck out unless paragraph (2) applies.

(2) If the claimant applies to reinstate the claim before the interim injunction ceases to have effect under paragraph (1), the injunction shall continue until the hearing of the application unless the court orders otherwise.

7.26 Further provision as to interim orders

- (1) Schedule 7.2 makes further provision as to interim injunctions, search orders and similar interim orders.
- (2) Schedule 7.3 makes further provision as to interim payments.

CHAPTER 4: SECURITY FOR COSTS

7.27 Security for costs (25.12)

- (1) A defendant to any claim may apply under this Chapter for security for his costs of the proceedings.
- (2) An application for security for costs must be supported by written evidence.
- (3) Where the court makes an order for security for costs, it shall —
 - (a) determine the amount of security; and
 - (b) direct the manner in which; and the time within which the security must be given.

7.28 Conditions to be satisfied (25.13)

- (1) The court may make an order for security for costs under rule 7.27 if —
 - (a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and
 - (b) either —
 - (i) one or more of the conditions in paragraph (2) applies, or
 - (ii) an enactment permits the court to require security for costs.
- (2) The conditions are —
 - (a) the claimant is ordinarily resident out of the jurisdiction;
 - (b) the claimant is a company or other body (whether incorporated in or outside the Island) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so;
 - (c) the claimant has changed his address since the claim was commenced with a view to evading the consequences of the litigation;
 - (d) the claimant failed to give his address in the claim form, or gave an incorrect address in that form;
 - (e) the claimant is acting as a nominal claimant, other than as a representative claimant under Chapter 6 of Part 3, and there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so;
 - (f) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him.

7.29 Security for costs other than from claimant (25.14)

- (1) The defendant may seek an order for security for costs under rule 7.27 against someone other than the claimant.
- (2) The court may make an order for security for costs against that person if —
 - (a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and
 - (b) that person —
 - (i) has assigned the right to the claim to the claimant with a view to avoiding the possibility of a costs order being made against him;

- (ii) has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover in the proceedings; or
 - (iii) where the claimant is a company or other corporation, is a person in accordance with whose directions or instructions the directors or other persons holding a senior position in the company or corporation are accustomed to act; and
- (c) that person is a person against whom a costs order may be made.

7.30 Security for costs of appeal (25.15)

- (1) The court may order security for costs of an appeal against —
- (a) an appellant;
 - (b) a respondent who also appeals,

on the same grounds as it may order security for costs against a claimant under this Chapter.

(2) The court may also make an order under paragraph (1) where the appellant, or the respondent who also appeals, is a limited company and there is reason to believe it will be unable to pay the costs of the other parties to the appeal should its appeal be unsuccessful.

CHAPTER 5: DISCLOSURE AND INSPECTION OF DOCUMENTS

7.31 Application and interpretation (31.1, 31.4)

(1) This Chapter applies to all claims except a claim allocated to the small claims procedure.

(2) In this Chapter —

‘disclosure statement’ means a statement under rule 7.39(5).

‘document’ means anything in which information of any description is recorded; and

‘copy’, in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.

7.32 Meaning of disclosure (31.2)

A party discloses a document by stating that the document exists or has existed.

7.33 Right of inspection of a disclosed document (31.3)

(1) A party to whom a document has been disclosed has a right to inspect that document except where —

- (a) the document is no longer in the control of the party who disclosed it;
- (b) the party disclosing the document has a right or a duty to withhold inspection of it; or
- (c) paragraph (2) applies.

(2) Where a party considers that it would be disproportionate to the issues in the case to permit inspection of documents within a category or class of document disclosed under rule 7.35(b) —

- (a) he is not required to permit inspection of documents within that category or class; but
- (b) he must state in his disclosure statement that inspection of those documents will not be permitted on the grounds that to do so would be disproportionate.

7.34 Disclosure limited to standard disclosure (31.5)

- (1) An order to give disclosure is an order to give standard disclosure unless the court directs otherwise.
- (2) The court may dispense with or limit standard disclosure.
- (3) The parties may agree in writing to dispense with or to limit standard disclosure.

7.35 Standard disclosure — what documents are to be disclosed (31.6)

Standard disclosure requires a party to disclose only documents —

- (a) on which he relies; or
- (b) which adversely affect his own case or another party's case; or
- (c) support another party's case.

7.36 Duty of search (31.7)

- (1) When giving standard disclosure, a party is required to make a reasonable search for documents falling within rule 7.35(b) or (c).
- (2) The factors relevant in deciding the reasonableness of a search include the following —
 - (a) the number of documents involved;
 - (b) the nature and complexity of the proceedings;
 - (c) the ease and expense of retrieval of any particular document; and
 - (d) the significance of any document which is likely to be located during the search.
- (3) Where a party has not searched for a category or class of document on the grounds that to do so would be unreasonable, he must state this in his disclosure statement and identify the category or class of document.

7.37 Limits of party's duty of disclosure (31.8)

- (1) A party's duty to disclose documents is limited to documents which are or have been in his control.
- (2) For this purpose a party has or has had a document in his control if —
 - (a) it is or was in his physical possession;
 - (b) he has or has had a right to possession of it; or
 - (c) he has or has had a right to inspect or take copies of it.

7.38 Disclosure of copies (31.9)

- (1) A party need not disclose more than one copy of a document.
- (2) A copy of a document which contains a modification, obliteration or other marking or feature —
 - (a) on which a party intends to rely; or
 - (b) which adversely affects his own case or another party's case or supports another party's case;shall be treated as a separate document.

7.39 Procedure for standard disclosure (31.10)

- (1) The procedure for standard disclosure is as follows.
- (2) Each party must make and serve on every other party a list of documents.

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(3) The list must identify the documents in a convenient order and manner and as concisely as possible.

(4) The list must indicate —

- (a) those documents in respect of which the party claims a right or duty to withhold inspection; and
- (b) those documents which are no longer in the party's control; and
- (c) in the case of documents mentioned in paragraph (b), what has happened to those documents.

(5) The list must include a statement (a 'disclosure statement') made by the party disclosing the documents —

- (a) setting out the extent of the search that has been made to locate documents which he is required to disclose;
- (b) certifying that he understands the duty to disclose documents; and
- (c) certifying that to the best of his knowledge he has carried out that duty.

(6) Where the party making the disclosure statement is a company, firm, association or other organisation, the statement must also —

- (a) identify the person making the statement; and
- (b) explain why he is considered an appropriate person to make the statement.

(7) The parties may agree in writing —

- (a) to disclose documents without making a list; and
- (b) to disclose documents without the disclosing party making a disclosure statement.

7.40 Duty of disclosure continues during proceedings (31.11)

(1) Any duty of disclosure continues until the proceedings are concluded.

(2) If documents to which that duty extends come to a party's notice at any time during the proceedings, he must immediately notify every other party.

7.41 Specific disclosure or inspection (31.12)

(1) The court may make an order for specific disclosure or specific inspection.

(2) An order for specific disclosure is an order that a party must do one or more of the following things —

- (a) disclose documents or classes of documents specified in the order;
- (b) carry out a search to the extent stated in the order;
- (c) disclose any documents located as a result of that search.

(3) An order for specific inspection is an order that a party permit inspection of a document referred to in rule 7.33(2).

7.42 Disclosure in stages (31.13)

The parties may agree in writing, or the court may direct, that disclosure or inspection or both shall take place in stages.

7.43 Documents referred to in statements of case etc. (31.14)

(1) A party may inspect a document mentioned in —

- (a) a statement of case;
- (b) a witness statement;
- (c) a witness summary; or

(d) an affidavit.

(2) Subject to rule 8.61 (restriction on disclosure of instructions), a party may apply for an order for inspection of any document mentioned in an expert's report which has not already been disclosed in the proceedings.

7.44 Inspection and copying of documents (31.15)

Where a party has a right to inspect a document —

- (a) that party must give the party who disclosed the document written notice of his wish to inspect it;
- (b) the party who disclosed the document must permit inspection not more than 7 days after the date on which he received the notice; and
- (c) that party may request a copy of the document and, if he also undertakes to pay reasonable copying costs, the party who disclosed the document must supply him with a copy not more than 7 days after the date on which he received the request.

7.45 Disclosure before proceedings start (31.16)

(1) This rule applies where an application is made to the court under any statutory provision for disclosure before proceedings have started.

- (2) The application must be supported by evidence.
- (3) The court may make an order under this rule only where —
 - (a) the respondent is likely to be a party to subsequent proceedings;
 - (b) the applicant is also likely to be a party to those proceedings;
 - (c) if proceedings had started, the respondent's duty by way of standard disclosure under rule 7.35 would extend to the documents or classes of documents of which the applicant seeks disclosure; and
- (d) disclosure before proceedings have started is desirable in order —
 - (i) to dispose fairly of the anticipated proceedings;
 - (ii) to assist the dispute to be resolved without proceedings; or
 - (iii) to save costs.
- (4) An order under this rule must —
 - (a) specify the documents or the classes of documents which the respondent must disclose; and
 - (b) require him, when making disclosure, to specify any of those documents —
 - (i) which are no longer in his control; or
 - (ii) in respect of which he claims a right or duty to withhold inspection.
- (5) Such an order may —
 - (a) require the respondent to indicate what has happened to any documents which are no longer in his control; and
 - (b) specify the time and place for disclosure and inspection.

7.46 Orders for disclosure against a person not a party (31.17)

(1) This rule applies where an application is made to the court under any statutory provision for disclosure by a person who is not a party to the proceedings.

- (2) The application must be supported by evidence.
- (3) The court may make an order under this rule only where —

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- (a) the documents of which disclosure is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings; and
- (b) disclosure is necessary in order to dispose fairly of the claim or to save costs.
- (4) An order under this rule must —
 - (a) specify the documents or the classes of documents which the respondent must disclose; and
 - (b) require the respondent, when making disclosure, to specify any of those documents —
 - (i) which are no longer in his control; or
 - (ii) in respect of which he claims a right or duty to withhold inspection.
- (5) Such an order may —
 - (a) require the respondent to indicate what has happened to any documents which are no longer in his control;
 - (b) specify the time and place for disclosure and inspection; and
 - (c) require security to be given for the costs incurred by the respondent in complying with the order.

7.47 Saving for other powers as to disclosure (31.18)

Rules 7.45 and 7.46 do not limit any other power which the court may have to order

- (a) disclosure before proceedings have started; and
- (b) disclosure against a person who is not a party to proceedings.

7.48 Claim to withhold inspection or disclosure of document (31.19)

(1) A person may apply, without notice, for an order permitting him to withhold disclosure of a document on the ground that disclosure would damage the public interest.

- (2) Unless the court orders otherwise, an order of the court under paragraph (1)

- (a) must not be served on any other person; and
- (b) must not be open to inspection by any person.

(3) A person who wishes to claim that he has a right or a duty to withhold inspection of a document, or part of a document, must state in writing —

- (a) that he has such a right or duty; and
- (b) the grounds on which he claims that right or duty.
- (4) The statement referred to in paragraph (3) must be made —
 - (a) in the list in which the document is disclosed; or
 - (b) if there is no list, to the person wishing to inspect the document.

(5) A party may apply to the court to decide whether a claim made under paragraph (3) should be upheld.

(6) For the purpose of deciding an application under paragraph (1) (application to withhold disclosure) or paragraph (3) (claim to withhold inspection) the court may —

- (a) require the person seeking to withhold disclosure or inspection of a document to produce that document to the court; and
- (b) invite any person, whether or not a party, to make representations.
- (7) An application under paragraph (1) or (5) must be supported by evidence.

(8) This Part does not affect any rule of law which permits or requires a document to be withheld from disclosure or inspection on the ground that its disclosure or inspection would damage the public interest.

7.49 Restriction on use of privileged document (31.20)

Where a party inadvertently allows a privileged document to be inspected, the party who has inspected the document may use it or its contents only with the permission of the court.

7.50 Consequence of failure to disclose documents or permit inspection (31.21)

A party may not rely on any document which he fails to disclose or in respect of which he fails to permit inspection unless the court gives permission.

7.51 Subsequent use of disclosed documents (31.22)

(1) A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, except where —

- (a) the document has been read to or by the court, or referred to, at a hearing which has been held in public;
- (b) the court gives permission; or
- (c) the party who disclosed the document and the person to whom the document belongs agree.

(2) The court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the court, or referred to, at a hearing which has been held in public.

(3) An application for such an order may be made —

- (a) by a party; or
- (b) by any person to whom the document belongs.

7.52 False disclosure statements (31.23)

(1) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false disclosure statement without an honest belief in its truth.

(2) Proceedings under this rule may be brought only —

- (a) by the Attorney General; or
- (b) with the permission of the court.

CHAPTER 6: OFFERS TO SETTLE

7.53 Scope of this Chapter (36.1)

(1) This Chapter contains rules about —

- (a) offers to settle proceedings; and
- (b) the consequences where an offer to settle proceedings is made in accordance with this Chapter.

(2) Nothing in this Chapter prevents a party making an offer to settle proceedings in whatever way he chooses, but if the offer is not made in accordance with rule 7.54, it will not have the consequences specified in rules 7.61, 7.62 and 7.65.

7.54 Form and content of offer to settle (36.2)

(1) An offer to settle proceedings which is made in accordance with this rule is called an ‘offer to settle’.

(2) An offer to settle must—

- (a) be in writing;
 - (b) state on its face that it is intended to have the consequences of this Chapter;
 - (c) specify a period of not less than 21 days within which the defendant will be liable for the claimant's costs in accordance with rule 7.61 if the offer is accepted;
 - (d) state whether it relates to the whole of the claim or to part of it or to an issue that arises in it and if so to which part or issue; and
 - (e) state whether it takes into account any counterclaim.
- (3) Paragraph (2)(c) does not apply if the offer is made less than 21 days before the start of the trial.
- (4) In appropriate cases, an offer to settle must contain such further information as is required by rules 7.57 and 7.66.
- (5) An offeror may make an offer to settle solely in relation to liability.

7.55 Offers to settle — general provisions (36.3)

- (1) In this Part—
 - (a) the party who makes an offer to settle is the 'offeror';
 - (b) the party to whom an offer to settle is made is the 'offeree'; and
 - (c) 'the relevant period' means—
 - (i) in the case of an offer made not less than 21 days before trial, the period stated under rule 7.54(2)(c) or such longer period as the parties agree;
 - (ii) otherwise, the period up to end of the trial or such other period as the court has determined.
- (2) An offer to settle—
 - (a) may be made at any time, including before the commencement of proceedings; and
 - (b) may be made in appeal proceedings.
- (3) An offer to settle which offers to pay or offers to accept a sum of money shall be treated as inclusive of all interest until—
 - (a) the date on which the period stated under rule 7.54(2)(c) expires; or
 - (b) if rule 7.54(3) applies, a date 21 days after the date the offer was made.
- (4) An offer to settle shall have the consequences set out in this Chapter only in relation to the costs of the proceedings in respect of which it is made, and not in relation to the costs of any appeal from the final decision in those proceedings.
- (5) Before expiry of the relevant period, an offer to settle may be withdrawn or its terms changed to be less advantageous to the offeree, only if the court gives permission.
- (6) After expiry of the relevant period and provided that the offeree has not previously served notice of acceptance, the offeror may withdraw the offer or change its terms to be less advantageous to the offeree without the permission of the court.
- (7) The offeror does so by serving written notice of the withdrawal or change of terms on the offeree.

7.56 Offers to settle — defendants' offers (36.4)

- (1) Subject to rule 7.57(1), an offer to settle by a defendant to pay a sum of money in settlement of a claim must be an offer to pay a single sum of money.

(2) But an offer that includes an offer to pay all or part of the sum, if accepted, at a date later than 14 days following the date of acceptance shall not be treated as an offer to settle unless the offeree accepts the offer.

7.57 Offer to settle a claim for provisional damages (36.6)

(1) An offeror may make an offer to settle in respect of a claim which includes a claim for provisional damages.

(2) Where he does so, the offer to settle must specify whether or not the offeror is proposing that the settlement shall include an award of provisional damages.

(3) Where the offeror is offering to agree to the making of an award of provisional damages the offer to settle must also state—

- (a) that the sum offered is in satisfaction of the claim for damages on the assumption that the injured person will not develop the disease or suffer the type of deterioration specified in the offer;
- (b) that the offer is subject to the condition that the claimant must make any claim for further damages within a limited period; and
- (c) what that period is.

(4) Rule 7.56 applies to the extent that an offer to settle by a defendant includes an offer to agree to the making of an award of provisional damages.

(5) If the offeree accepts the offer to settle, the claimant must, within 7 days of the date of acceptance, apply to the court for an order for an award of provisional damages under rule 10.59.

7.58 Time when an offer to settle is made (36.7)

(1) An offer to settle is made when it is served on the offeree.

(2) A change in the terms of an offer to settle is effective when notice of the change is served on the offeree.

7.59 Clarification of an offer to settle (36.8)

(1) The offeree may, within 7 days of an offer to settle being made, request the offeror to clarify the offer.

(2) If the offeror does not give the clarification requested under paragraph (1) within 7 days of receiving the request, the offeree may, unless the trial has started, apply for an order that he do so.

(3) If the court makes an order under paragraph (2), it must specify the date when the offer to settle is to be treated as having been made.

7.60 Acceptance of an offer to settle (36.9)

(1) An offer to settle is accepted by serving written notice of the acceptance on the offeror.

(2) Subject to paragraph (3), an offer to settle may be accepted at any time (whether or not the offeree has subsequently made a different offer) unless the offeror serves notice of withdrawal on the offeree.

(3) The court's permission is required to accept an offer to settle where—

- (a) rule 7.63(4) applies;
- (b) rule 7.66(3)(b) applies, the relevant period has expired and further deductible benefits have been paid to the claimant since the date of the offer;
- (c) an apportionment is required under rule 10.61; or
- (d) the trial has started.

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(4) Where the court gives permission under paragraph (3), unless all the parties have agreed costs, the court shall make an order dealing with costs, and may order that the costs consequences set out in rule 7.61 will apply.

(5) Unless the parties agree, an offer to settle may not be accepted after the end of the trial but before judgment is handed down.

7.61 Costs consequences of acceptance of offer to settle (36.10)

(1) Subject to paragraphs (2) and (4)(a), where an offer to settle is accepted within the relevant period the claimant is entitled to his costs of the proceedings up to the date on which notice of acceptance was served on the offeror.

(2) Where —

(a) a defendant's offer to settle relates to part only of the claim; and

(b) at the time of serving notice of acceptance within the relevant period the claimant abandons the balance of the claim,

the claimant is entitled to his costs of the proceedings up to the date of serving notice of acceptance unless the court orders otherwise.

(3) Costs under paragraphs (1) and (2) shall be assessed on the standard basis if the amount of costs is not agreed.

(4) Where —

(a) an offer to settle was made less than 21 days before the start of trial and is accepted; or

(b) an offer to settle is accepted after expiry of the relevant period,

if the parties do not agree the liability for costs, the court shall make an order as to costs.

(5) Where paragraph (4)(b) applies, unless the court orders otherwise—

(a) the claimant is entitled to his costs of the proceedings up to the date on which the relevant period expired; and

(b) the offeree will be liable for the offeror's costs for the period from the date of expiry of the relevant period to the date of acceptance.

(6) The claimant's costs include any costs incurred in dealing with the defendant's counterclaim if the offer to settle states that it takes into account the counterclaim.

7.62 Effect of acceptance of an offer to settle (36.11)

(1) If an offer to settle is accepted, the claim shall be stayed.

(2) In the case of acceptance of an offer to settle which relates to the whole claim the stay shall be upon the terms of the offer.

(3) If an offer to settle which relates to part only of the claim is accepted—

(a) the claim shall be stayed as to that part upon the terms of the offer; and

(b) subject to rule 7.61(2), unless the parties have agreed costs, the liability for costs shall be decided by the court.

(4) If the approval of the court is required before a settlement can be binding, any stay which would otherwise arise on the acceptance of an offer to settle shall take effect only when that approval has been given.

(5) Any stay arising under this rule does not affect the power of the court—

(a) to enforce the terms of an offer to settle;

(b) to deal with any question of costs (including interest on costs) relating to the proceedings.

(6) Unless the parties agree otherwise in writing, where an offer to settle by a defendant which is or includes an offer to pay a single sum of money is accepted, that sum must be paid to the offeree within 14 days of the date of—

- (a) acceptance; or
- (b) the order, when the court makes an order under rule 10.59 (provisional damages),

unless the court orders otherwise.

(7) If the accepted sum is not paid within 14 days or such other period as has been agreed, the offeree may enter judgment for the unpaid sum.

(8) Where—

- (a) an offer to settle (or part of an offer to settle) which is not an offer to which paragraph (6) applies is accepted; and
- (b) a party alleges that the other party has not honoured the terms of the offer,

that party may apply to enforce the terms of the offer without the need for a new claim.

7.63 Acceptance of offer to settle made by one or more, but not all, defendants (36.12)

(1) This rule applies where the claimant wishes to accept an offer to settle made by one or more, but not all, of a number of defendants.

(2) If the defendants are sued jointly or in the alternative, the claimant may accept the offer if—

- (a) he discontinues his claim against those defendants who have not made the offer; and
- (b) those defendants give written consent to the acceptance of the offer.

(3) If the claimant alleges that the defendants have a several liability to him, the claimant may—

- (a) accept the offer; and
- (b) continue with his claims against the other defendants if he is entitled to do so.

(4) In all other cases the claimant must apply to the court for an order permitting him to accept the offer to settle.

7.64 Restriction on disclosure of an offer to settle (36.13)

(1) An offer to settle shall be treated as ‘without prejudice except as to costs’.

(2) The fact that an offer to settle has been made must not be communicated to the trial judge or to the judge (if any) allocated in advance to conduct the trial until the case has been decided.

(3) Paragraph (2) does not apply—

- (a) where the defence of tender before claim has been raised;
- (b) where the proceedings have been stayed under rule 7.62 following acceptance of an offer to settle; or
- (c) where the offeror and the offeree agree in writing that it should not apply.

7.65 Costs consequences following judgment (36.14)

(1) This rule applies where upon judgment being entered—

- (a) a claimant fails to obtain a judgment more advantageous than a defendant’s offer to settle; or
- (b) judgment against the defendant is at least as advantageous to the claimant as the proposals contained in a claimant’s offer to settle.

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(2) Subject to paragraph (6), where paragraph (1)(a) applies, the court will, unless it considers it unjust to do so, order that the defendant is entitled to—

- (a) his costs from the date on which the relevant period expired; and
- (b) interest on those costs.

(3) Subject to paragraph (6), where paragraph (1)(b) applies, the court shall, unless it considers it unjust to do so, order that the claimant is entitled to—

- (a) interest on the whole or part of any sum of money (excluding interest) awarded at a rate not exceeding 10% above base rate for some or all of the period starting with the date on which the relevant period expired;
- (b) his costs on the indemnity basis from the date on which the relevant period expired; and
- (c) interest on those costs at a rate not exceeding 10% above base rate.

(4) In considering whether it would be unjust to make the orders referred to in paragraphs (2) and (3), the court shall take into account all the circumstances of the case including—

- (a) the terms of any offer to settle;
- (b) the stage in the proceedings when any offer to settle was made, including in particular how long before the trial started the offer was made;
- (c) the information available to the parties at the time when the offer to settle was made; and
- (d) the conduct of the parties with regard to the giving or refusing to give information for the purposes of enabling the offer to be made or evaluated.

(5) Where the court awards interest under this rule and also awards interest on the same sum and for the same period under any other power, the total rate of interest may not exceed 10% above base rate.

(6) Paragraphs (2) and (3) of this rule do not apply to an offer to settle—

- (a) that has been withdrawn;
- (b) that has been changed so that its terms are less advantageous to the offeree, and the offeree has beaten the less advantageous offer;
- (c) made less than 21 days before trial, unless the court has abridged the relevant period.

7.66 Deduction of benefits (36.15)

(1) This rule applies where a payment to a claimant following acceptance of an offer to settle would be a compensation payment as defined in section 1 of the Social Security (Recovery of Benefits) Act 1997 (an Act of Parliament) ('the 1997 Act').

(2) In this rule and rule 7.60—

- (a) 'recoverable benefits' means any of the benefits referred to in section 1(1)(b) of the 1997 Act; and
 - (b) 'deductible benefits' means any benefits by the amount of which damages are to be reduced in accordance with section 8 and Schedule 2 to the 1997 Act.
- (3) A defendant who makes an offer to settle should state either—
- (a) that the offer is made without regard to any liability for recoverable benefits; or
 - (b) that it is intended to include any deductible benefits.

CHAPTER 7: PAYMENTS INTO COURT

7.67 Interpretation

In this Chapter ‘money’ includes securities.

7.68 Money paid into court under a court order (37.1)

A party who makes a payment into court under a court order must—

- (a) serve notice of the payment on every other party; and
- (b) in relation to each such notice, file a certificate of service.

7.69 Money paid into court where defendant wishes to rely on a defence of tender before claim (37.2)

(1) Where a defendant wishes to rely on a defence of tender before claim he must make a payment into court of the amount he says was tendered.

(2) If the defendant does not make a payment in accordance with paragraph (1), the defence of tender before claim is not available to him until he does so.

7.70 Payment into court under Trustee Act 1961 (PD37.6)

(1) A trustee wishing to make a payment into court under section 62 of the Trustee Act 1961 must file a witness statement or affidavit setting out —

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

(2) If a trustee pays money 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.

7.71 Payment out of money paid into court (37.3, PD37.3)

(1) Money paid into court under a court order or in support of a defence of tender before claim may not be paid out without the court’s permission except where—

- (a) an offer to settle is accepted without needing the permission of the court; and
- (b) the defendant agrees that a sum paid into court by him should be used to satisfy the offer (in whole or in part).

(2) On an application for permission, the application notice must state the grounds on which the order for payment out is sought.

(3) Where the court gives permission, it shall include a direction for the payment out of any money in court, including any interest accrued.

(4) Where permission is not required to take money out of court, the requesting party must file a request for payment containing the following details —

- (a) where the party receiving the payment is legally represented —
 - (i) the name, business address and reference of his advocate,

- (ii) 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;
- (b) where the party is acting in person—
 - (i) his name and address; and
 - (ii) either his bank account details as in (a)(ii) above, or a request that the payment be made by cheque.
- (5) Where a party seeking payment out of court is legally represented, payment must be made to his advocate.
- (6) An application for the payment out of any money paid into court under section 62 of the Trustee Act 1961 may be made without notice, but the court may direct notice to be served on any person.

7.72 Other applications relating to money paid into court (PD37.2)

An application relating to money paid into court, other than an application for the payment out of the money (for example, an application for money to be invested, or for payment of interest to any person), may be made without notice, but the court may direct notice to be served on any person.

CHAPTER 8: DISCONTINUANCE

7.73 Scope of this Part (38.1)

- (1) The rules in this Chapter set out the procedure by which a claimant may discontinue all or part of a claim.
- (2) A claimant who —
 - (a) claims more than one remedy; and
 - (b) subsequently abandons his claim to one or more of the remedies but continues with his claim for the other remedies,

is not treated as discontinuing all or part of a claim for the purposes of this Chapter.

7.74 Right to discontinue claim (38.2)

- (1) A claimant may discontinue all or part of a claim at any time.
- (2) However —
 - (a) a claimant must obtain the permission of the court if he wishes to discontinue all or part of a claim in relation to which —
 - (i) the court has granted an interim injunction ; or
 - (ii) any party has given an undertaking to the court;
 - (b) where the claimant has received an interim payment in relation to a claim (whether voluntarily or pursuant to an order under Chapter 6 of Part 10 (summary judgment)), he may discontinue that claim only if —
 - (i) the defendant who made the interim payment consents in writing; or
 - (ii) the court gives permission;
 - (c) where there is more than one claimant, a claimant may not discontinue unless —
 - (i) every other claimant consents in writing; or
 - (ii) the court gives permission.
- (3) Where there is more than one defendant, the claimant may discontinue all or part of a claim against all or any of the defendants.

7.75 Procedure for discontinuing (38.3)

- (1) To discontinue a claim or part of a claim, a claimant must —
 - (a) file a notice of discontinuance; and
 - (b) serve a copy of it on every other party to the proceedings.
- (2) The claimant must state in the notice of discontinuance which he files that he has served notice of discontinuance on every other party to the proceedings.
- (3) Where the claimant needs the consent of some other party, a copy of the necessary consent must be attached to the notice of discontinuance.
- (4) Where there is more than one defendant, the notice of discontinuance must specify against which defendants the claim is discontinued.

7.76 Right to apply to have notice of discontinuance set aside (38.4)

- (1) Where the claimant discontinues under rule 7.74(1) the defendant may apply to have the notice of discontinuance set aside.
- (2) The defendant may not make an application under this rule more than 28 days after the date when the notice of discontinuance was served on him.

7.77 When discontinuance takes effect where permission of the court is not needed (38.5)

- (1) Discontinuance against any defendant takes effect on the date when notice of discontinuance is served on him under rule 7.75(1).
- (2) Subject to rule 7.76, the proceedings are brought to an end as against him on that date.
- (3) However, this does not affect proceedings to deal with any question of costs.

7.78 Liability for costs (38.6)

- (1) Unless the court orders otherwise, a claimant who discontinues is liable for the costs which a defendant against whom he discontinues incurred on or before the date on which notice of discontinuance was served on him.
- (2) If proceedings are only partly discontinued —
 - (a) the claimant is liable under paragraph (1) for costs relating only to the part of the proceedings which he is discontinuing; and
 - (b) unless the court orders otherwise, the costs which the claimant is liable to pay must not be assessed until the conclusion of the rest of the proceedings.
- (3) This rule does not apply to claims allocated to the small claims procedure.

7.79 Discontinuance and subsequent proceedings (38.7)

A claimant who discontinues a claim needs the permission of the court to make another claim against the same defendant if —

- (a) he discontinued the claim after the defendant filed a defence; and
- (b) the other claim arises out of facts which are the same or substantially the same as those relating to the discontinued claim.

7.80 Stay of remainder of partly discontinued proceedings where costs not paid (38.8)

- (1) This rule applies where —
 - (a) proceedings are partly discontinued;
 - (b) a claimant is liable to pay costs under rule 7.78; and
 - (c) the claimant fails to pay those costs within 14 days of —

- (i) the date on which the parties agreed the sum payable by the claimant;
or
- (ii) the date on which the court ordered the costs to be paid.

(2) Where this rule applies, the court may stay the remainder of the proceedings until the claimant pays the whole of the costs which he is liable to pay under rule 7.78.

CHAPTER 9: MEDIATION

7.81 Application (RHC 26C.1)

This Chapter does not apply to a claim allocated to the small claims procedure.

7.82 Object of mediation (RHC 26C.2)

Mediation is a process the object of which is to enable the mediator to assist the parties by encouraging and facilitating discussion between them in order to promote a resolution of their dispute by agreement.

7.83 Application for referral to mediation (RHC 26C.3)

(1) At any time after a defence is filed, any party may make an application for the claim or any matter arising out of the claim to be referred to mediation.

(2) The application shall —

- (a) state the name and address of the mediator agreed by the parties; and
- (b) state the date on which it is proposed that the mediation will take place; and
- (c) identify the documents which the parties will give direct to the mediator for the purposes of the mediation.

(3) The application shall be accompanied by the written consent of all parties.

7.84 Mediation directions (RHC 26C.4)

(1) When an application is made under rule 7.83 the court shall, unless any party has withdrawn his consent, direct that the claim or matter be referred to mediation (in this Order referred to as a ‘mediation direction’).

(2) A direction under paragraph (1) (a ‘mediation direction’) shall specify the date by which the mediator must report on progress in the mediation.

(3) Mediation shall be conducted in such manner as the parties agree is best suited to achieving the object of mediation set out in rule 7.82.

(4) A mediation direction may be rescinded by the court at any stage of mediation on the application of any party to the claim.

7.85 Stay of proceedings (RHC 26C.5)

(1) If a mediation direction has been made in relation to any claim, the claim shall be stayed until either —

- (a) the mediator makes a report under rule 7.86; or
- (b) the date specified in the mediation direction as the date by which the mediator must report on progress in the mediation,

whichever is the sooner.

(2) For the purposes of any claim which is the subject of a mediation direction, the period during which the claim is stayed under paragraph (1) shall not be reckoned in the computation of time allowed by these Rules, or by any order extending or reducing time, for doing any act or taking any step.

7.86 Conclusion and termination of mediation (RHC 26C.6)

- (1) When an agreement is reached between the parties-
 - (a) the mediator shall report the agreement to the court in terms agreed between the parties; and
 - (b) the parties may take such steps as are necessary to cause the agreement to be included in a consent order.
- (2) If the mediator considers that a mediation should not continue, the mediator shall —
 - (a) terminate the mediation; and
 - (b) report that fact to the court.

7.87 Court may terminate mediation (RHC 26C.7)

- (1) The court may direct —
 - (a) the termination of a mediation at any time if it is satisfied that it is unreasonable or inappropriate for the mediation to continue; or
 - (b) the termination of the appointment of a mediator; or
 - (c) the appointment of a new mediator to replace a mediator who has died, or ceased to hold office, or whose appointment has been terminated.
- (2) If the court directs the appointment of a new mediator it may, with the consent of the parties, order that the mediation continue on whatever basis the parties have agreed.

7.88 Costs of mediation (RHC 26C.8)

The costs of the parties relating to mediation shall, unless the parties otherwise agree, be in the discretion of the court in accordance with rule 11.3.

CHAPTER 10: CHANGE OF ADVOCATE

7.89 Advocate acting for a party (42.1)

Where the address for service of a party is the business address of his advocate, the advocate shall be considered to be acting for that party until the provisions of this Chapter have been complied with.

7.90 Change of advocate — duty to give notice (42.2)

- (1) This rule applies where —
 - (a) a party for whom an advocate is acting wants to change his advocate;
 - (b) a party, after having conducted the claim in person, appoints an advocate to act on his behalf (except where the advocate is appointed only to act as an advocate for a hearing); or
 - (c) a party, after having conducted the claim by an advocate, intends to act in person.
- (2) Where this rule applies, the party or his advocate (where one is acting or intends to act) must —
 - (a) file notice of the change; and
 - (b) serve notice of the change on every other party and, where paragraph (1)(a) or (c) applies, on the former advocate.
- (3) The notice must state the party's new address for service.
- (4) The notice filed in the court must state that notice has been served as required by paragraph (2)(b).

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(5) Subject to paragraph (6), where a party has changed his advocate or intends to act in person, the former advocate will be considered to be the party's advocate unless and until —

- (a) notice is filed and served in accordance with paragraph (2); or
- (b) the court makes an order under rule 7.91 and the order is served as required by paragraph (3) of that rule.

(6) Where the legal aid certificate of an assisted person is revoked or discharged —

- (a) the advocate who acted for that person shall cease to be the advocate acting in the case as soon as his retainer is determined in accordance with the Legal Aid (General) Regulations 1997; and
- (b) if that person wishes to continue —
 - (i) where he appoints an advocate to act on his behalf, paragraph (2) shall apply as if he had previously conducted the claim in person; and
 - (ii) where he wishes to act in person, he must give an address for service.

7.91 Order that advocate has ceased to act (42.3)

(1) An advocate may apply for an order declaring that he has ceased to be the advocate acting for a party.

(2) Where an application is made under this rule —

- (a) notice of the application must be given to the party for whom the advocate is acting, unless the court directs otherwise; and
- (b) the application must be supported by evidence.

(3) Where the court makes an order that an advocate has ceased to act —

- (a) a copy of the order must be served on every party to the proceedings; and
- (b) if it is served by a party or the advocate, the party or the advocate (as the case may be) must file a certificate of service.

7.92 Removal of advocate who has ceased to act on application of another party (42.4)

(1) Where —

(a) an advocate who has acted for a party —

- (i) has died;
- (ii) has become bankrupt;
- (iii) has ceased to practise; or
- (iv) cannot be found; and

(b) the party has not given notice of a change of advocate or notice of intention to act in person as required by rule 7.90(2),

any other party may apply for an order declaring that the advocate has ceased to be the advocate acting for the other party in the case.

(2) Where an application is made under this rule, notice of the application must be given to the party to whose advocate the application relates unless the court directs otherwise.

(3) Where the court makes an order made under this rule —

- (a) a copy of the order must be served on every other party to the proceedings; and

- (b) where it is served by a party, that party must file a certificate of service.

SCHEDULE 7.1 — APPLICATIONS FOR COURT ORDERS

Rule 7.15

1. *Handling of application (PD23)*

(1) On receipt of an application notice containing a request that the application be dealt with without a hearing, the court office shall refer it to a judge, who shall decide whether the application is suitable for consideration without a hearing, and may give directions as to the filing of evidence.

(2) Where either —

(a) an application notice containing a request for a hearing is filed, or

(b) the judge decides that an application is not suitable for consideration without a hearing,

the court office shall notify the applicant of the time and place of the hearing of the application.

(3) The applicant must notify the respondents of the time and place of the hearing, and of any directions as to the filing of evidence.

(4) If the application is intended to be made to a Deemster, the application notice must so state.

(5) Every application must be made as soon as it becomes apparent that it is necessary or desirable to make it.

(6) Applications must wherever possible be made so that they can be considered at a hearing for which a date has already been fixed or for which a date is about to be fixed.

(7) At any hearing the court may review the conduct of the case as a whole and give any necessary directions. The parties must be ready to assist the court in doing so and to answer questions the court may ask for this purpose.

(8) Where —

(a) a date for a hearing has been fixed, and

(b) a party wishes to make an application at that hearing but

(c) he does not have sufficient time to serve an application notice,

he must inform the other party and the court (if possible in writing) as soon as he can of the nature of the application and the reason for it, and then make the application orally at the hearing.

2. *Telephone hearings*

(1) The court may order that an application or part of an application be dealt with by a telephone hearing.

(2) A request for an order under sub-paragraph (1) may be included in the application notice.

(3) An order under sub-paragraph (1) shall 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.

(4) Where a party entitled to be heard at the hearing of the application is acting in person, the court —

(a) may not make an order under sub-paragraph (1) except on condition that arrangements will be made for the party acting in person to be attended at the telephone hearing by a responsible person to whom the party acting in person is known and who can confirm to the court the identity of the party; and

- (b) may not give effect to an order under sub-paragraph (1) unless the party acting in person is accompanied by a responsible person who at the commencement of the hearing confirms to the court the identity of the party.

(5) The responsible person may be an advocate, barrister, solicitor, legal executive, doctor, clergyman, civil servant, police officer, prison officer or other person of comparable status.

(6) If the court makes an order under sub-paragraph (1) it shall give any directions necessary for the telephone hearing.

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

(8) If an application is to be heard by telephone the following directions shall apply, subject to any direction to the contrary:—

- (a) The applicant's advocate must arrange the telephone conference for precisely the time fixed by the court. The telecommunications provider must be capable of connecting the parties and the court.
- (b) He 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.
- (c) The sequence in which they are to be called shall be —
 - (i) the applicant's advocate,
 - (ii) the advocates for all other parties, and
 - (iii) the judge.
- (d) The applicant's advocate must arrange for the conference to be recorded on audio tape, or in such digital electronic format as the Chief Registrar may approve, and must send the tape or a copy of the recording, as the case may be, to the court

[Subs (d) amended by SD 686/09]

- (e) Each speaker is to remain on the line after being called by the operator setting up the conference call. The call may be up to 3 minutes before the time fixed for the application.
- (f) When the judge has been connected the applicant's advocate shall introduce the parties in the usual way.
- (g) 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.
- (h) The telephone charges debited to the account of the party initiating the conference call shall be treated as part of the costs of the application.

3. *Video conferencing*

Where —

- (a) the parties to a matter wish to use video conferencing facilities, and
- (b) those facilities are available in the court,

they must apply to a judge for directions.

4. *Note of proceedings*

The judge shall keep, either by way of a note or an audio recording, brief details of all proceedings before him, including the dates of the proceedings and a short statement of the decision taken at each hearing.

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5. Evidence

(1) The court may give directions for the filing of evidence in support of or opposing a particular application. The court may also give directions for the filing of evidence in relation to any hearing that it fixes on its own initiative. The directions may specify the form that evidence is to take and when it is to be served.

(2) Where it is intended to rely on evidence which is not contained in the application itself, the evidence, if it has not already been served, must be served with the application.

(3) Where a respondent to an application wishes to rely on evidence which has not yet been served he should serve it as soon as possible and in any event in accordance with any directions the court may have given.

(4) If it is necessary for the applicant to serve any evidence in reply it should be filed and served as soon as possible and in any event in accordance with any directions the court may have given.

(5) Evidence must be filed with the court as well as served on the parties. Exhibits must not be filed unless the court otherwise directs.

(6) The contents of an application notice may be used as evidence (otherwise than at trial) provided the contents have been verified by a statement of truth.

6. Consent orders

(1) Where all parties affected by an order have written to the court consenting to the making of the order a draft of which has been filed with the court, the court shall treat the draft as having been signed in accordance with rule 10.7.

(2) The parties to an application for a consent order must ensure that they provide the court with any material it needs to be satisfied that it is appropriate to make the order. Subject to any rule a letter will generally be acceptable for this purpose.

(3) Where a judgment or order has been agreed in respect of an application or claim where a hearing date has been fixed, the parties must inform the court immediately.

7. Application to stay claim where related criminal proceedings are pending

(1) An application for the stay of civil proceedings pending the determination of related criminal proceedings may be made by —

- (a) any party to the civil proceedings or
- (b) the prosecutor or any defendant in the criminal proceedings.

(2) Every party to the civil proceedings must, unless he is the applicant, be made a respondent to the application.

(3) The evidence in support of the application must contain an estimate of the expected duration of the stay and must identify the respects in which the continuance of the civil proceedings may prejudice the criminal trial.

(4) In order to make an application under sub-paragraph (1) it is not necessary for the prosecutor or defendant in the criminal proceedings to be joined as a party to the civil proceedings.

8. Draft order

Except in the most simple applications the applicant must bring to any hearing a draft of the order sought. If the order is unusually long or complex it must also be supplied on disk, or sent to the court office by e-mail, in MS Word format for use by the court office.

SCHEDULE 7.2 — INTERIM ORDERS (PD25)

Rule 7.26(1)

1. *Making an application*

(1) Where the application notice is to be served, it must be served, with the evidence in support, as soon as practicable after issue and in any event not less than 3 days before the court is due to hear the application.

(2) Where the court is to serve, sufficient copies of the application notice and evidence in support for the court and for each respondent must be filed for issue and service.

(3) Whenever possible a draft of the order sought must be filed with the application notice. The draft should also be available to the court in electronic form in MS Word format.

2. *Injunctions*

(1) In the case of an application for an interim injunction, the application notice must state —

- (a) the order sought, and
- (b) the date, time and place of the hearing.

(2) Except as provided by sub-paragraphs (3) and (4), an interim injunction may be granted, varied or discharged only by —

- (a) a Deemster, or
- (b) a judicial officer authorised for the purpose by the First Deemster.

(3) Any judicial officer may grant injunctions —

- (a) by consent,
- (b) in connection with charging orders and appointments of receivers, or
- (c) in aid of execution of judgments.

(4) Any judicial officer may, with the consent of all the parties, vary or discharge an injunction granted by a Deemster.

3. *Evidence*

(1) Applications for search orders and freezing injunctions must be supported by affidavit evidence.

(2) Applications for other interim injunctions must be supported by evidence set out in either —

- (a) a witness statement, or
- (b) a statement of case verified by a statement of truth, or
- (c) the application notice, provided that it is verified by a statement of truth,

unless a rule or other statutory provision, or the court, requires evidence by affidavit.

(3) The evidence must set out the facts on which the applicant relies for the claim being made against the respondent, including all material facts of which the court should be made aware.

(4) Where an application is made without notice to the respondent, the evidence must also set out why notice was not given.

4. *Urgent application without notice*

(1) Where a claim form has already been issued, an application in an urgent case may be made without notice as follows —

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- (a) the application notice, evidence in support and a draft order (as in paragraph 1(3)) must be filed with the court not less than 3 hours before the hearing wherever possible,
 - (b) if an application is made before the application notice has been issued, a draft order (as in paragraph 1(3)) must be provided at the hearing, and the application notice and evidence in support must be filed with the court on the same or next working day or as ordered by the court, and
 - (c) except in cases where secrecy is essential, the applicant must take steps to notify the respondent informally of the application.
- (2) Where a claim form has not been issued, paragraph (1) applies, and in addition —
- (a) unless the court orders otherwise, either the applicant must undertake to the court to issue a claim form immediately or the court shall give directions for the commencement of the claim;
 - (b) where possible the claim form must be served with the order for the injunction; and
 - (c) an order made before the issue of a claim form must state in the title after the names of the applicant and respondent '*the Claimant and Defendant in an Intended Action*'.

5. Injunctions

- (1) Any order for an injunction, unless the court orders otherwise, must contain —
- (a) an undertaking by the applicant to the court to pay any damages which the respondent (or any other party served with or notified of the order) sustains and which the court considers the applicant should pay,
 - (b) if made without notice to any other party, an undertaking by the applicant to the court to serve on the respondent the application notice, evidence in support and any order made as soon as practicable,
 - (c) if made without notice to any other party, a return date for a further hearing at which the other party can be present,
 - (d) if made before filing the application notice, an undertaking to file and pay the appropriate fee on the same or next working day, and
 - (e) if made before issue of a claim form —
 - (i) an undertaking to issue and pay the appropriate fee on the same or next working day, or
 - (ii) directions for starting the claim.
- (2) An order for an injunction made in the presence of all parties to be bound by it or made at a hearing of which they have had notice, may state that it is effective until trial or further order.
- (3) Any order for an injunction must set out clearly what the respondent must do or not do.

6. Search orders (orders for the preservation of evidence and property)

- (1) A search order must name the individual advocate who is to execute the order ('the supervising advocate'). The supervising advocate must not be the applicant's advocate or an employee or member of the applicant's advocate's firm.
- (2) An application for a search order must be supported by an affidavit which must —

- (a) state the name, firm and its address, and experience of the supervising advocate,
 - (b) state the address of the premises to be entered, whether it is a private or business address, and if a private address, what persons are likely to be on the premises, and
 - (c) disclose fully the reason the order is sought, including the probability that relevant material would disappear if the order were not made.
- (3) The search order must be served personally by the supervising advocate, unless the court otherwise orders, and (subject to sub-paragraph (4)) must be accompanied by the evidence in support and any documents capable of being copied. If the court orders that the order need not be served by the supervising advocate, the reason for so ordering must be set out in the order.
- (4) Confidential exhibits need not be served but they must be —
 - (a) made available for inspection by the respondent in the presence of the applicant or the applicant's advocate while the order is carried out, and
 - (b) afterwards retained by the respondent's advocate on his undertaking not to permit the respondent —
 - (i) to see them or copies of them except in their presence, and
 - (ii) to make or take away any note or record of them,or, if the respondent has no advocate, retained by the supervising advocate.
- (5) The supervising advocate may be accompanied only by the persons mentioned in the search order.
- (6) The supervising advocate must explain the terms and effect of the search order to the respondent in everyday language and advise him —
- (a) of his right to take legal advice and to apply to vary or discharge the order; and
 - (b) that he may be entitled to avail himself of —
 - (i) legal professional privilege; and
 - (ii) the privilege against self-incrimination.
- (7) Where the supervising advocate is a man and the respondent is likely to be an unaccompanied woman, at least one other person named in the search order must be a woman and must accompany the supervising advocate.
- (8) The search order may only be served between 9.30 a.m. and 5.30 p.m. Monday to Friday unless the court otherwise orders.
- (9) The following provisions apply to the search for and custody of materials pursuant to a search order, unless the court otherwise orders —
- (a) no material shall be removed unless clearly covered by the terms of the order,
 - (b) the premises must not be searched and no items shall be removed from them except in the presence of the respondent or a person who appears to be a responsible employee of the respondent,
 - (c) where copies of documents are sought, the documents may be retained for no more than 2 days before return to the owner,
 - (d) where material in dispute is removed pending trial, the applicant's advocate must place it in the custody of the respondent's advocate on his undertaking to retain it in safekeeping and to produce it to the court when required or, if the respondent has no advocate, in the custody of the supervising advocate,

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- (e) in appropriate cases the applicant must insure the material retained in the respondent's advocate's or supervising advocate's custody,
 - (f) the supervising advocate must make a list of all material removed from the premises and supply a copy of the list to the respondent,
 - (g) no material shall be removed from the premises until the respondent has had reasonable time to check the list,
 - (h) if any of the listed items exists only in computer readable form, the respondent must immediately give the applicant's advocate effective access to the computers, with all necessary passwords, to enable them to be searched, and cause the listed items to be printed out,
 - (i) the applicant must take all reasonable steps to ensure that no damage is done to any computer or data,
 - (j) the applicant and his representatives may not themselves search the respondent's computers unless they have sufficient expertise to do so without damaging the respondent's system,
 - (k) the supervising advocate shall within 10 days provide a report on the carrying out of the order to the applicant's advocate,
 - (l) as soon as the report is received the applicant's advocate must file a copy of it and serve a copy of it on the respondent, and
 - (m) where the supervising advocate is satisfied that full compliance with (g) and (h) above is impracticable, he may permit the search to proceed and items to be removed without compliance with the impracticable requirements.
- (10) A search order must not be executed at the same time as a police or customs search warrant.

7. Other orders for delivery up or preservation of evidence or property

On an application for an order, other than a search order, for delivery up or preservation of evidence or property where it is likely that such an order will be executed at the premises of the respondent or a third party, the court shall consider whether to include in the order for the benefit or protection of the parties similar provisions to those specified in paragraphs 5 and 6 in relation to injunctions and search orders.

8. Orders against third parties

(1) This paragraph applies to orders which will affect a person other than the applicant or respondent, who —

- (a) did not attend the hearing at which the order was made; and
- (b) is served with the order.

(2) Where such a person requests —

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

the applicant or his advocate must comply promptly with the request, unless the court orders otherwise.

SCHEDULE 7.3 — INTERIM PAYMENTS (PD 25B)

Rule 7.26(2)

1. General

The permission of the court must be obtained before making a voluntary interim payment in respect of a claim by a minor or patient.

2. Evidence

(1) An application for an interim payment of damages must be supported by evidence dealing with the following —

- (a) the sum of money sought by way of an interim payment,
- (b) the items or matters in respect of which the interim payment is sought,
- (c) the sum of money for which final judgment is likely to be given,
- (d) the reasons for believing that the conditions set out in rule 7.21 are satisfied,
- (e) any other relevant matters,
- (f) in claims for personal injuries, details of special damages and past and future loss (if known), and
- (g) in a claim under the Fatal Accidents Act 1981, details of the person or persons on whose behalf the claim is made and the nature of the claim.

(2) Any documents in support of the application should be exhibited, including, in personal injuries claims, the medical report or reports.

3. Interim payment where account to be taken

Where —

- (a) a party seeks an interim payment under rule 7.21(1)(b),
- (b) the court has ordered an account to be taken, and
- (c) the evidence on the application for interim payment shows that the account is bound to result in a payment to the applicant,

the court shall, before making an order for interim payment, order that the liable party pay to the applicant the amount shown by the account to be due.

4. Instalments

Where an interim payment is to be paid in instalments the order shall set out —

- (a) the total amount of the payment,
- (b) the amount of each instalment,
- (c) the number of instalments and the date on which each is to be paid, and
- (d) to whom the payment should be made.

5. Compensation recovery payments

(1) Where in a claim for personal injuries there is an application for an interim payment of damages —

- (a) otherwise than by consent,
- (b) which falls under the heads of damage set out in column 1 of Schedule 2 of the Social Security (Recovery of Benefits) Act 1997 (an Act of Parliament) ('the Act') in respect of recoverable benefits received by the claimant set out in column 2 of that Schedule, and
- (c) where the defendant is liable to pay recoverable benefits to the Department of Health and Social Security,

the defendant must obtain from that Department a certificate of recoverable benefits.

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(2) A copy of the certificate must be filed at the hearing of the application for an interim payment.

(3) The order shall set out the amount by which the payment to be made to the claimant has been reduced according to the Act and the Social Security (Recovery of Benefits) Regulations 1997.

(4) The payment made to the claimant shall be the net amount but the interim payment for the purposes of rule 10.18 is the gross amount.

PART 8 : EVIDENCE

CHAPTER 1: GENERAL

8.1 Power of court to control evidence (32.1)

- (1) The court may control the evidence by giving directions as to —
 - (a) the issues on which it requires evidence;
 - (b) the nature of the evidence which it requires to decide those issues; and
 - (c) the way in which the evidence is to be placed before the court.
- (2) The court may use its power under this rule to exclude evidence that would otherwise be admissible.
- (3) The court may limit cross-examination.

8.2 Evidence of witnesses — general rule (32.2)

- (1) The general rule is that any fact which needs to be proved by the evidence of witnesses is to be proved —
 - (a) at trial, by their oral evidence given in public; and
 - (b) at any other hearing, by their evidence in writing.
- (2) This is subject —
 - (a) to any provision to the contrary contained in these Rules or elsewhere; or
 - (b) to any order of the court.

8.3 Evidence by video link or other means (32.3)

The court may allow a witness to give evidence through a video link or by other means.

8.4 Requirement to serve witness statements for use at trial (32.4)

- (1) A witness statement is a written statement signed by a person which contains the evidence which that person would be allowed to give orally.
- (2) The court shall order a party to serve on the other parties any witness statement of the oral evidence which the party serving the statement intends to rely on in relation to any issues of fact to be decided at the trial.
- (3) The court may give directions as to —
 - (a) the order in which witness statements are to be served; and
 - (b) whether or not the witness statements are to be filed.

8.5 Use at trial of witness statements which have been served (32.5)

- (1) If —
 - (a) a party has served a witness statement; and
 - (b) he wishes to rely at trial on the evidence of the witness who made the statement,he must call the witness to give oral evidence unless the court orders otherwise or he puts the statement in as hearsay evidence.
- (2) Where a witness is called to give oral evidence under paragraph (1), his witness statement shall stand as his evidence in chief unless the court orders otherwise.
- (3) A witness giving oral evidence at trial may with the permission of the court —
 - (a) amplify his witness statement; and

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- (b) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties.
- (4) The court shall give permission under paragraph (3) only if it considers that there is good reason not to confine the evidence of the witness to the contents of his witness statement.
- (5) If a party who has served a witness statement does not —
 - (a) call the witness to give evidence at trial; or
 - (b) put the witness statement in as hearsay evidence,any other party may put the witness statement in as hearsay evidence.

8.6 Evidence other than at trial (32.6)

- (1) Subject to paragraph (2), the general rule is that evidence at hearings other than the trial is to be by witness statement unless the court or a statutory provision requires otherwise.
- (2) At hearings other than the trial, a party may rely on the matters set out in —
 - (a) his statement of case; or
 - (b) his application notice,if the statement of case or application notice is verified by a statement of truth.

8.7 Order for cross-examination (32.7)

- (1) Where, at a hearing other than the trial, evidence is given in writing, any party may apply to the court for permission to cross-examine the person giving the evidence.
- (2) If the court gives permission under paragraph (1) but the person in question does not attend as required by the order, his evidence may not be used unless the court gives permission.

8.8 Form of witness statement (32.8)

A witness statement must —

- (a) comply with the requirements set out in Schedule 8.1, and
- (b) be verified by a statement of truth in accordance with Schedule 8.2.

8.9 Witness summaries (32.9)

- (1) A party who —
 - (a) is required to serve a witness statement for use at trial; but
 - (b) is unable to obtain one,may apply without notice for permission to serve a witness summary instead.
- (2) A witness summary is a summary of —
 - (a) the evidence, if known, which would otherwise be included in a witness statement; or
 - (b) if the evidence is not known, the matters about which the party serving the witness summary proposes to question the witness.
- (3) Unless the court orders otherwise, a witness summary must include the name and address of the intended witness.
- (4) Unless the court orders otherwise, a witness summary must be served within the period in which a witness statement would have had to be served.
- (5) Where a party serves a witness summary, so far as practicable rules 8.4 (requirement to serve witness statements for use at trial), 8.5(3) (amplifying witness statements) and 8.8 (form of witness statement) shall apply to the summary.

8.10 Consequence of failure to serve witness statement or summary (32.10)

If a witness statement or a witness summary for use at trial is not served in respect of an intended witness within the time specified by the court, then the witness may not be called to give oral evidence unless the court gives permission.

8.11 Cross-examination on a witness statement (32.11)

Where a witness is called to give evidence at trial, he may be cross-examined on his witness statement whether or not the statement or any part of it was referred to during the witness's evidence in chief

8.12 Use of witness statements for other purposes (32.12)

(1) Except as provided by this rule, a witness statement may be used only for the purpose of the proceedings in which it is served.

(2) Paragraph (1) does not apply if and to the extent that —

- (a) the witness gives consent in writing to some other use of it;
- (b) the court gives permission for some other use; or
- (c) the witness statement has been put in evidence at a hearing held in public.

8.13 Availability of witness statements for inspection (32.13)

(1) A witness statement which stands as evidence in chief is open to inspection by the public during the course of the trial unless the court otherwise directs.

(2) Any person may ask for a direction that a witness statement be not open to inspection.

(3) The court shall not make a direction under paragraph (2) unless it is satisfied that a witness statement should not be open to inspection because of —

- (a) the interests of justice;
 - (b) the public interest;
 - (c) the nature of any expert medical evidence in the statement;
 - (d) the nature of any confidential information (including information relating to personal financial matters) in the statement; or
 - (e) the need to protect the interests of any minor or patient.
- (4) The court may exclude from inspection words or passages in the statement.

8.14 Affidavit evidence (32.15)

(1) Evidence must be given by affidavit instead of or in addition to a witness statement if this is required by the court, a provision contained in any other rule or another statutory provision.

(2) Nothing in these Rules prevents a witness giving evidence by affidavit at a hearing other than the trial if he chooses to do so in a case where paragraph (1) does not apply, but the party putting forward the affidavit may not recover the additional cost of making it from any other party unless the court orders otherwise.

8.15 Form of affidavit (32.16)

An affidavit must comply with the requirements set out in Schedule 8.1.

8.16 Affidavit made outside the jurisdiction (32.17)

A person may make an affidavit outside the jurisdiction in accordance with —

- (a) this Part; or
- (b) the law of the place where he makes the affidavit .

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8.17 Notice to admit facts (32.18)

(1) A party may serve notice on another party requiring him to admit the facts, or the part of the case of the serving party, specified in the notice.

(2) A notice to admit facts must be served no later than 21 days before the trial.

(3) Where the other party makes any admission in response to the notice, the admission may be used against him only —

(a) in the proceedings in which the notice to admit is served; and

(b) by the party who served the notice.

(4) The court may allow a party to amend or withdraw any admission made by him on such terms as it thinks just.

8.18 Notice to admit or produce documents (32.19)

(1) A party shall be deemed to admit the authenticity of a document disclosed to him under Chapter 5 of Part 7 (disclosure and inspection of documents) unless he serves notice that he wishes the document to be proved at trial.

(2) A notice to prove a document must be served —

(a) by the latest date for serving witness statements; or

(b) within 7 days of disclosure of the document, whichever is later.

8.19 Notarial acts and instruments (32.20)

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

8.20 Further provisions as to affidavits and witness statements

Schedule 8.1 makes further provision as to affidavits and witness statements.

CHAPTER 2: CHANCERY PROCEDURE

8.21 Evidence — general (8.6)

(1) This Chapter applies where a claim is allocated to the chancery procedure.

(2) No written evidence may be relied on at the hearing of the claim unless —

(a) it has been served in accordance with rule 8.22; or

(b) the court gives permission.

(3) Oral evidence may not be given at the hearing unless required or permitted by the court.

(4) The court may give directions requiring the attendance for cross-examination of a witness who has given written evidence.

8.22 Filing and serving written evidence (8.5)

(1) The claimant must file any written evidence on which he intends to rely when he files his claim form.

(2) The claimant's evidence must be served on the defendant with the claim form.

(3) A defendant who wishes to rely on written evidence must file it when he files his acknowledgment of service.

(4) If he does so, he must also at the same time serve a copy of his evidence on the other parties.

(5) The claimant may, within 14 days of service of the defendant's evidence on him, file further written evidence in reply.

(6) If he does so, he must also, within the same time limit, serve a copy of his evidence on the other parties.

(7) The claimant may rely on the matters set out in his claim form as evidence under this rule if the claim form is verified by a statement of truth.

CHAPTER 3: HEARSAY EVIDENCE

8.23 Introductory (33.1)

In this Chapter —

‘the Act’ means the Administration of Justice Act 2008;

‘hearsay’ means a statement made, otherwise than by a person while giving oral evidence in proceedings, which is tendered as evidence of the matters stated;

references to hearsay include hearsay of whatever degree.

8.24 Notice of intention to rely on hearsay evidence (33.2)

- (1) Where a party intends to rely on hearsay evidence at trial and either —
- (a) that evidence is to be given by a witness giving oral evidence; or
 - (b) that evidence is contained in a witness statement of a person who is not being called to give oral evidence;
- that party complies with section 10(1)(a) of the Act by serving a witness statement on the other parties.

[Subs (1) amended by SD 686/09]

- (2) Where paragraph (1)(b) applies, the party intending to rely on the hearsay evidence must, when he serves the witness statement —
- (a) inform the other parties that the witness is not being called to give oral evidence; and
 - (b) give the reason why the witness shall not be called.
- (3) In all other cases where a party intends to rely on hearsay evidence at trial, that party complies with section 10(1)(a) of the Act by serving a notice on the other parties which —
- (a) identifies the hearsay evidence;
 - (b) states that the party serving the notice proposes to rely on the hearsay evidence at trial; and
 - (c) gives the reason why the witness shall not be called.
- (4) The party proposing to rely on the hearsay evidence must —
- (a) serve the notice no later than the latest date for serving witness statements; and
 - (b) if the hearsay evidence is to be in a document, supply a copy to any party who requests him to do so.

8.25 Circumstances in which notice of intention to rely on hearsay evidence is not required (33.3)

Section 10(1) of the Act (duty to give notice of intention to rely on hearsay evidence) does not apply —

- (a) to evidence at hearings other than trials;
- (b) to an affidavit or witness statement which is to be used at trial but which does not contain hearsay evidence;

- (c) to a statement which a party to a probate action wishes to put in evidence and which is alleged to have been made by the person whose estate is the subject of the proceedings; or
- (d) where the requirement is excluded by a practice direction.

8.26 Power to call witness for cross-examination on hearsay evidence (33.4)

- (1) Where a party —
 - (a) proposes to rely on hearsay evidence; and
 - (b) does not propose to call the person who made the original statement to give oral evidence,

the court may, on the application of any other party, permit that party to call the maker of the statement to be cross-examined on the contents of the statement.

(2) An application for permission to cross-examine under this rule must be made not more than 14 days after the day on which a notice of intention to rely on the hearsay evidence was served on the applicant.

8.27 Credibility (33.5)

- (1) Where a party —
 - (a) proposes to rely on hearsay evidence; but
 - (b) does not propose to call the person who made the original statement to give oral evidence; and
 - (c) another party wishes to call evidence to attack the credibility of the person who made the statement,

the party who so wishes must give notice of his intention to the party who proposes to give the hearsay statement in evidence.

(2) A party must give notice under paragraph (1) not more than 14 days after the day on which a hearsay notice relating to the hearsay evidence was served on him.

8.28 Use of plans, photographs and models as evidence (33.6)

- (1) This rule applies to evidence (such as a plan, photograph or model) which is not —
 - (a) contained in a witness statement, affidavit or expert's report;
 - (b) to be given orally at trial; or
 - (c) evidence of which prior notice must be given under rule 8.24.

(2) This rule includes documents which may be received in evidence without further proof under section 17 (proof of records of business or public authority) of the Act.

(3) Unless the court orders otherwise the evidence shall not be receivable at a trial unless the party intending to put it in evidence has given notice to the other parties in accordance with this rule.

(4) Where the party intends to use the evidence as evidence of any fact then, except where paragraph (6) applies, he must give notice not later than the latest date for serving witness statements.

(5) He must give notice at least 21 days before the hearing at which he proposes to put in the evidence, if —

- (a) there are not to be witness statements; or
- (b) he intends to put in the evidence solely in order to disprove an allegation made in a witness statement.

(6) Where the evidence forms part of expert evidence, he must give notice when the expert's report is served on the other party.

(7) Where the evidence is being produced to the court for any reason other than as part of factual or expert evidence, he must give notice at least 21 days before the hearing at which he proposes to put in the evidence.

(8) Where a party has given notice that he intends to put in the evidence, he must give every other party an opportunity to inspect it and to agree to its admission without further proof.

8.29 Evidence of finding on question of foreign law (33.7)

(1) A party who intends to put in evidence a finding on a question of foreign law by virtue of section 4(2) of the Evidence Act 1983 must give any other party notice of his intention —

- (a) if there are to be witness statements, not later than the latest date for serving them; or
 - (b) otherwise, not less than 21 days before the hearing at which he proposes to put the finding in evidence.
- (2) The notice must —
- (a) specify the question on which the finding was made; and
 - (b) enclose a copy of a document where it is reported or recorded.

8.30 Evidence of consent of trustee to act (33.8)

A document purporting to contain the written consent of a person to act as trustee and to bear his signature verified by some other person is evidence of such consent.

8.31 Human rights (33.9)

- (1) This rule applies where a claim is —
- (a) for a remedy under section 7 of the Human Rights Act 2001 in respect of a judicial act which is alleged to have infringed the claimant's rights under Article 5 of the European Convention on Human Rights; and
 - (b) based on a finding by a court or tribunal that the claimant's rights under that Convention have been infringed.
- (2) The court —
- (a) may proceed on the basis of the finding of that other court or tribunal that there has been an infringement but it is not required to do so, and
 - (b) may reach its own conclusion in the light of that finding and of the evidence heard by that other court or tribunal.

CHAPTER 4: WITNESSES AND DEPOSITIONS

8.32 Scope of Chapter (34.1)

- (1) This Chapter provides —
- (a) for the circumstances in which a person may be required to attend court to give evidence or to produce a document; and
 - (b) for a party to obtain evidence before a hearing to be used at the hearing.
- (2) In this Chapter, reference to a hearing includes a reference to the trial.

8.33 Witness summonses (34.2)

- (1) A witness summons is a document issued by the court requiring a witness to
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- (a) attend court to give evidence; or
- (b) produce documents to the court.
- (2) There must be a separate witness summons for each witness.
- (3) A witness summons may require a witness to produce documents to the court either —
 - (a) on the date fixed for a hearing; or
 - (b) on such date as the court may direct.
- (4) The only documents that a summons under this rule can require a person to produce before a hearing are documents which that person could be required to produce at the hearing.

8.34 Issue of a witness summons (34.3)

- (1) A witness summons is issued on the date entered on the summons by the court office.
- (2) A party must obtain permission from the court where he wishes —
 - (a) to have a summons issued less than 7 days before the date of the trial;
 - (b) to have a summons issued for a witness to attend court to give evidence or to produce documents on any date except the date fixed for the trial; or
 - (c) to have a summons issued for a witness to attend court to give evidence or to produce documents at any hearing except the trial.
- (3) The court may set aside or vary a witness summons issued under this rule.

8.35 Time for serving a witness summons (34.5)

- (1) The general rule is that a witness summons is binding if it is served at least 7 days before the date on which the witness is required to attend before the court.
- (2) The court may direct that a witness summons shall be binding although it shall be served less than 7 days before the date on which the witness is required to attend before the court.
- (3) A witness summons which is —
 - (a) served in accordance with this rule; and
 - (b) requires the witness to attend court to give evidence,is binding until the conclusion of the hearing at which the attendance of the witness is required.

8.36 Who is to serve a witness summons (34.6)

- (1) A witness summons is to be served by the party on whose behalf it is issued unless the court, on an application for the purpose or on its own initiative, orders that it shall be served by the court.
- (2) Where the court is to serve the witness summons, the party on whose behalf it is issued must deposit, in the court office, the money to be paid or offered to the witness under rule 8.37.

8.37 Right of witness to travelling expenses and compensation for loss of time (34.7)

In the case of a witness summons to be served outside the jurisdiction, at the time it is served the witness must be offered or paid —

- (a) a sum reasonably sufficient to cover his expenses in travelling to and from the court; and

- (b) such sum by way of compensation for loss of time as is prescribed by order under section 1 of the Witnesses' Allowances Act 1947.

8.38 Evidence by deposition (34.8)

(1) A party may apply for an order for a person to be examined before the hearing takes place.

(2) A person from whom evidence is to be obtained following an order under this rule is referred to as a 'deponent' and the evidence is referred to as a 'deposition'.

(3) An order under this rule shall be for a deponent to be examined on oath before —

- (a) a judge; or
- (b) such other person as the court appoints.

(4) The order may require the production of any document which the court considers is necessary for the purposes of the examination.

(5) The order must state the date, time and place of the examination.

(6) At the time of service of the order the deponent must be offered or paid —

- (a) a sum reasonably sufficient to cover his expenses in travelling to and from the place of examination; and
- (b) such sum by way of compensation for loss of time as is prescribed by order under section 1 of the Witnesses' Allowances Act 1947.

(7) Where the court makes an order for a deposition to be taken, it may also order the party who obtained the order to serve a witness statement or witness summary in relation to the evidence to be given by the person to be examined.

8.39 Conduct of examination (34.9)

(1) Subject to any directions contained in the order for examination, the examination must be conducted in the same way as if the witness were giving evidence at a trial.

(2) If all the parties are present, the examiner may conduct the examination of a person not named in the order for examination if all the parties and the person to be examined consent.

(3) The examiner may conduct the examination in private if he considers it appropriate to do so.

(4) The examiner must ensure that the evidence given by the witness is recorded in full.

(5) The examiner must —

- (a) file the deposition, and
- (b) send a copy of the deposition to the person who obtained the order for the examination of the witness.

(6) The party who obtained the order must send each of the other parties a copy of the deposition which he receives from the examiner.

8.40 Enforcing attendance of witness (34.10)

(1) If a person served with an order to attend before an examiner —

- (a) fails to attend; or
- (b) refuses to be sworn for the purpose of the examination or to answer any lawful question or produce any document at the examination,

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a certificate of his failure or refusal, signed by the examiner, must be filed by the party requiring the deposition.

(2) On the certificate being filed, the party requiring the deposition may apply to the court for an order requiring that person to attend or to be sworn or to answer any question or produce any document, as the case may be.

(3) An application for an order under this rule may be made without notice.

(4) The court may order the person against whom an order is made under this rule to pay any costs resulting from his failure or refusal.

8.41 Use of deposition at a hearing (34.11)

(1) A deposition ordered under rule 8.38 may be given in evidence at a hearing unless the court orders otherwise.

(2) A party intending to put in evidence a deposition at a hearing must serve notice of his intention to do so on every other party.

(3) He must serve the notice at least 21 days before the day fixed for the hearing.

(4) The court may require a deponent to attend the hearing and give evidence orally.

(5) Where a deposition is given in evidence at trial, it shall be treated as if it were a witness statement for the purposes of rule 8.13 (availability of witness statements for inspection).

8.42 Restrictions on subsequent use of deposition (34.12)

(1) Where the court orders a party to be examined about his or any other assets for the purpose of any hearing except the trial, the deposition may be used only for the purpose of the proceedings in which the order was made.

(2) However, it may be used for some other purpose —

(a) by the party who was examined;

(b) if the party who was examined agrees; or

(c) if the court gives permission.

8.43 Letter of request for examination out of the jurisdiction (34.13)

(1) This rule applies where a party wishes to take a deposition from a person who is out of the jurisdiction.

(2) The court may order the issue to the judicial authorities of the country in which that person is of a request to take the evidence of that person, or arrange for it to be taken (a ‘letter of request’).

(3) If the government of a country allows a person appointed by the court to examine a person in that country, the court may make an order appointing a special examiner for that purpose.

(4) A person may be examined under this rule on oath or affirmation or in accordance with any procedure permitted in the country in which the examination is to take place.

(5) If the court makes an order for the issue of a letter of request, the party who sought the order must file —

(a) the following documents and, except where paragraph (6) applies, a translation of them —

(i) a draft letter of request;

(ii) a statement of the issues relevant to the proceedings;

- (iii) a list of questions or the subject matter of questions to be put to the person to be examined; and
- (b) an undertaking to be responsible for the Secretary of State's expenses.
- (6) There is no need to file a translation if English is the official language, or one of the official languages, of the country where the examination is to take place.

8.44 Fees and expenses of examiner of the court (34.14)

- (1) This rule applies where an examiner is appointed under rule 8.38(3)(b).
- (2) The examiner may charge a fee for the examination.
- (3) He need not send the deposition to the court unless the fee is paid.
- (4) The examiner's fees and expenses (at such rates as the Deemsters from time to time direct) must be paid by the party who obtained the order for examination.
- (5) If the fees and expenses due to an examiner are not paid within a reasonable time, he may report that fact to the court.
- (6) The court may order the party who obtained the order for examination to deposit in the court office a specified sum in respect of the examiner's fees and, where it does so, the examiner shall not be asked to act until the sum has been deposited.
- (7) An order under this rule does not affect any decision as to the party who is ultimately to bear the costs of the examination.

CHAPTER 5: EVIDENCE UNDER 1975 ACT

8.45 Evidence (Proceedings in Other Jurisdictions) Act 1975 (34.16)

- (1) This Chapter applies to an application for an order under the 1975 Act for evidence to be obtained for proceedings in other jurisdictions.
- (2) In this Chapter 'the 1975 Act' means the Evidence (Proceedings in Other Jurisdictions) Act 1975 (an Act of Parliament).

8.46 Application for order (34.17)

An application for an order under the 1975 Act for evidence to be obtained —

- (a) must be —
 - (i) supported by written evidence; and
 - (ii) accompanied by the request as a result of which the application is made, and where appropriate, a translation of the request into English; and
- (b) may be made without notice.

8.47 Examination (34.18)

- (1) The court may order an examination to be taken before —
 - (a) any fit and proper person nominated by the person applying for the order;
 - (b) a judge; or
 - (c) such other person as the court appoints.
- (2) Unless the court orders otherwise —
 - (a) the examination shall be taken as provided by rule 8.39; and
 - (b) rule 8.40 applies.
- (3) The court may make an order under rule 8.44 for payment of the fees and expenses of the examination.

8.48 Dealing with deposition (34.19)

- (1) The examiner must file the deposition of the witness.
- (2) A court officer shall —
 - (a) give a certificate sealed with the seal of the court and identifying the following documents —
 - (i) the request;
 - (ii) the order of the court for examination; and
 - (iii) the deposition of the witness; and
 - (b) send the certificate and the documents referred to in paragraph (a) to the Secretary of State for transmission to the court or tribunal requesting the examination.

8.49 Claim to privilege (34.20)

- (1) This rule applies where —
 - (a) a witness claims to be exempt from giving evidence on the ground specified in section 3(1)(b) of the 1975 Act; and
 - (b) that claim is not supported or conceded as referred to in section 3(2) of that Act.
- (2) The examiner may require the witness to give the evidence which he claims to be exempt from giving.
- (3) Where the examiner does not require the witness to give that evidence, the court may order the witness to do so.
- (4) An application for an order under paragraph (3) may be made by the person who obtained the order under section 2 of the 1975 Act.
- (5) Where such evidence is taken —
 - (a) it must be contained in a document separate from the remainder of the deposition;
 - (b) the examiner shall send to the court —
 - (i) the deposition; and
 - (ii) a signed statement setting out the claim to be exempt and the ground on which it was made.
- (6) On receipt of the statement referred to in paragraph (5)(b)(ii), the court shall —
 - (a) retain the document containing the part of the witness's evidence to which the claim to be exempt relates; and
 - (b) send the statement and a request to determine that claim to the foreign court or tribunal together with the documents referred to in rule 8.46.
- (7) The court shall —
 - (a) if the claim to be exempt is rejected by the foreign court or tribunal, send the document referred to in paragraph (5)(a) to that court or tribunal;
 - (b) if the claim is upheld, send the document to the witness; and
 - (c) in either case, notify the witness and person who obtained the order under section 2 of the foreign court or tribunal's decision.

8.50 Order under 1975 Act as applied by Patents Act 1977 (34.21)

Where an order is made for the examination of witnesses under section 1 of the 1975 Act as applied by section 92 of the Patents Act 1977 (an Act of Parliament) the court may permit an officer of the European Patent Office —

- (a) to attend the examination and examine the witnesses; or
- (b) to request the court or the examiner before whom the examination takes place to put specified questions to them.

CHAPTER 6: EXPERTS AND ASSESSORS

8.51 Duty to restrict expert evidence (35.1)

Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings.

8.52 Interpretation (35.2)

A reference to an ‘expert’ in this Chapter is a reference to an expert who has been instructed to give or prepare evidence for the purpose of court proceedings.

8.53 Experts — overriding duty to the court (35.3, PD35.1.3-1.6)

- (1) It is the duty of an expert to help the court on the matters within his expertise.
- (2) An expert must —
 - (a) assist the court by providing objective, unbiased opinion on matters within his expertise, and not assume the role of an advocate;
 - (b) consider all material facts, including those which might detract from his opinion;
 - (c) make it clear —
 - (i) when a question or issue falls outside his expertise; and
 - (ii) when he is not able to reach a definite opinion (for example because he has insufficient information).
- (3) If, after producing a report, an expert changes his view on any material matter, he must communicate such change of view to all the parties without delay, and when appropriate to the court.
- (4) The duty of an expert under this rule overrides any obligation to the person from whom he has received instructions or by whom he is paid.

8.54 Court’s power to restrict expert evidence (35.4)

- (1) Subject to paragraph (2), no party may call an expert or put in evidence an expert’s report without the court’s permission.
- (2) A party to a claim for personal injuries may —
 - (a) call one (but not more than one) expert, or
 - (b) put in evidence one (but not more than one) expert’s report,without the court’s permission.
- (3) When a party applies for permission under this rule he must identify the field in which he wishes to rely on expert evidence
- (4) If permission is granted under this rule it shall be in relation only to the field identified under paragraph (3).
- (5) The court may limit the amount of the expert’s fees and expenses that the party who wishes to rely on the expert may recover from any other party.

8.55 General requirement for expert evidence to be given in written report (35.5)

(1) Expert evidence must be given in a written report unless the court directs otherwise.

(2) Where the claim is allocated to the summary procedure, the court shall not direct an expert to attend a hearing unless it is necessary to do so in the interests of justice.

8.56 Written questions to experts (35.6)

(1) A party may put to —

- (a) an expert instructed by another party; or
- (b) a single joint expert appointed under rule 8.57,

written questions about his report.

(2) Written questions under paragraph (1) —

- (a) may be put once only;
- (b) must be put within 28 days of service of the expert's report; and
- (c) must be for the purpose only of clarification of the report,

unless in any case —

- (i) the court gives permission; or
- (ii) the other party agrees.

(3) An expert's answers to questions put in accordance with paragraph (1) shall be treated as part of the expert's report.

(4) Where —

- (a) a party has put a written question to an expert instructed by another party in accordance with this rule; and
- (b) the expert does not answer that question,

the court may make one or both of the following orders in relation to the party who instructed the expert —

- (i) that the party may not rely on the evidence of that expert; or
- (ii) that the party may not recover the fees and expenses of that expert from any other party.

8.57 Court's power to direct that evidence is to be given by a single joint expert (35.7, PD35.6))

(1) Where 2 or more parties wish to submit expert evidence on a particular issue, the court may direct that the evidence on that issue is to be given by one expert only.

(2) The parties wishing to submit the expert evidence are called 'the instructing parties'.

(3) Where the instructing parties cannot agree who should be the expert, the court may —

- (a) select the expert from a list prepared or identified by the instructing parties; or
- (b) direct that the expert be selected in such other manner as the court may direct.

(4) Where there are a number of disciplines relevant to the particular issue, a leading expert in the dominant discipline shall —

- (a) be identified as the single expert;
- (b) prepare the general part of the report and

- (c) be responsible for annexing or incorporating the contents of any reports from experts in other disciplines.

8.58 Instructions to a single joint expert (35.8)

(1) Where the court gives a direction under rule 8.57 for a single joint expert to be used, each instructing party may give instructions to the expert.

(2) When an instructing party gives instructions to the expert he must, at the same time, send a copy of the instructions to the other instructing parties.

(3) The court may give directions about —

- (a) the payment of the expert's fees and expenses; and
- (b) any inspection, examination or experiments which the expert wishes to carry out.

(4) The court may, before an expert is instructed —

- (a) limit the amount that can be paid by way of fees and expenses to the expert; and
- (b) direct that the instructing parties pay that amount into court.

(5) Unless the court otherwise directs, the instructing parties are jointly and severally liable for the payment of the expert's fees and expenses.

8.59 Power of court to direct a party to provide information (35.9, PD35.3)

(1) Where a party has access to information which is not reasonably available to the other party, the court may direct the party who has access to the information to —

- (a) prepare and file a document recording the information; and
- (b) serve a copy of that document on the other party.

(2) That document must include sufficient details of all the facts, tests, experiments and assumptions which underlie any part of the information to enable the party on whom it is served to make, or to obtain, a proper interpretation of the information and an assessment of its significance.

8.60 Form and contents of report (35.10)

(1) An expert's report must be addressed to the court and not to the party from whom the expert has received his instructions.

(2) An expert's report must —

- (a) give details of the expert's qualifications;
- (b) give details of any literature or other material which the expert has relied on in making the report;
- (c) contain a statement setting out the substance of all facts and instructions given to the expert which are material to the opinions expressed in the report or upon which those opinions are based;
- (d) make clear which of the facts stated in the report are within the expert's own knowledge;
- (e) say who carried out any examination, measurement, test or experiment which the expert has used for the report, give the qualifications of that person, and say whether or not the test or experiment has been carried out under the expert's supervision;
- (f) where there is a range of opinion on the matters dealt with in the report —
 - (i) summarise the range of opinion, and
 - (ii) give reasons for his own opinion;

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- (g) contain a summary of the conclusions reached;
 - (h) if the expert is not able to give his opinion without qualification, state the qualification; and
 - (i) contain a statement that the expert understands his duty to the court, and has complied and will continue to comply with that duty.
- (3) An expert's report must be verified by a statement of truth (in the form in Schedule 8.2).

8.61 Disclosure etc. of instructions (PD35.3 & 4)

(1) The instructions, whether written or oral, on the basis of which an expert's report was written shall not be privileged against disclosure but the court shall not, in relation to those instructions —

- (a) order disclosure of any specific document; or
- (b) permit any questioning in court, other than by the party who instructed the expert,

unless it is satisfied that there are reasonable grounds to consider the statement of instructions given under rule 8.60(2)(c) to be inaccurate or incomplete.

(2) Cross-examination of the expert on the contents of his instructions shall not be allowed without the permission of the court or the consent of the party who gave the instructions.

- (3) The court shall not give such permission unless —
 - (a) it is satisfied that there are reasonable grounds to consider that the statement in the report of the substance of the instructions is inaccurate or incomplete, and
 - (b) it appears to the court to be in the interests of justice to do so.

8.62 Use by one party of expert's report disclosed by another (35.11)

Where a party has disclosed an expert's report, any party may use that expert's report as evidence at the trial.

8.63 Discussions between experts (35.12)

(1) The court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to —

- (a) identify and discuss the expert issues in the proceedings; and
 - (b) where possible, reach an agreed opinion on those issues.
- (2) The court may specify the issues which the experts must discuss.

(3) The court may direct that following a discussion between the experts they must prepare a statement for the court showing —

- (a) those issues on which they agree; and
- (b) those issues on which they disagree and a summary of their reasons for disagreeing.

(4) The content of the discussion between the experts shall not be referred to at the trial unless the parties agree.

(5) Where experts reach agreement on an issue during their discussions, the agreement shall not bind the parties unless the parties expressly agree to be bound by the agreement.

8.64 Consequence of failure to disclose expert's report (35.13)

A party who fails to disclose an expert's report may not use the report at the trial or call the expert to give evidence orally unless the court gives permission.

8.65 Expert's right to ask court for directions (35.14)

(1) An expert may file a written request for directions to assist him in carrying out his function as an expert.

(2) An expert must, unless the court orders otherwise, provide a copy of any proposed request for directions under paragraph (1)—

- (a) to the party instructing him, at least 7 days before he files the request; and
- (b) to all other parties, at least 4 days before he files it.

(3) The court, when it gives directions, may also direct that a party be served with a copy of the directions.

8.66 Service of orders on expert (PD35.6A)

Where an order of the court requires an act to be done by an expert, or otherwise affects an expert, —

- (a) the party instructing that expert must serve a copy of the order on the expert instructed by him;
- (b) in the case of a jointly instructed expert, the claimant must serve the order.

8.67 Assessors (35.15, PD35.7.1-7.4)

(1) This rule applies where the court appoints one or more persons ('assessors') under section 17 of the High Court Act 1991.

(2) Not less than 21 days before making any such appointment, the court shall notify each party in writing of —

- (a) the name of the proposed assessor,
- (b) the matter in respect of which the assistance of the assessor will be sought, and
- (c) the qualifications of the assessor to give that assistance.

(3) Where a person has been proposed for appointment as an assessor, objection to him, either personally or in respect of his qualification, may be taken by any party. Any such objection must be made in writing and filed with the court within 7 days of receipt of the notification referred to in paragraph (2), and shall be taken into account by the court in deciding whether or not to make the appointment.

(4) The assessor shall assist the court in dealing with a matter in which the assessor has skill and experience.

(5) An assessor shall take such part in the proceedings as the court may direct and in particular the court may direct the assessor —

- (a) to prepare a report for the court on any matter at issue in the proceedings; and
 - (b) to attend the whole or any part of the trial to advise the court on any such matter.
- (6) If the assessor prepares a report for the court before the trial has begun —
- (a) the court shall send a copy to each of the parties; and
 - (b) the parties may use it at trial.

(7) The remuneration to be paid to the assessor for his services shall be determined by the court and shall form part of the costs of the proceedings.

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(8) The court may order any party to deposit in the court office a specified sum in respect of the assessor's fees and, where it does so, the assessor shall not be asked to act until the sum has been deposited.

(9) Paragraphs (7) and (8) do not apply where the remuneration of the assessor is to be paid out of money provided by Tynwald.

CHAPTER 7: STATEMENTS OF TRUTH

8.68 Documents to be verified by a statement of truth (22.1, PD22.1.3, 1.4)

- (1) The following documents must be verified by a statement of truth —
- (a) a statement of case;
 - (b) a response to an order under rule 6.44 to provide further information;
 - (c) a witness statement;
 - (d) an acknowledgement of service in a claim begun under the chancery procedure;
 - (e) a certificate of service;
 - (f) an expert's report;
 - (g) an application notice for —
 - (i) an arrestment order (rule 12.27),
 - (ii) a hardship payment order (rule 12.32), or
 - (iii) a charging order (rule 12.38);
 - (h) a notice of objections to an account being taken by the court, unless verified by an affidavit or witness statement;
 - (i) a schedule or counter-schedule of expenses and losses in a claim for personal injuries, and any amendments to such a schedule or counter-schedule, whether or not they are contained in a statement of case;
 - (j) any other document where a rule so requires.

(2) Where a statement of case is amended, the amendments must be verified by a statement of truth unless the court orders otherwise.

(3) If an applicant wishes to rely on matters set out in his application notice as evidence, the application notice must be verified by a statement of truth.

- (4) Subject to paragraph (5), a statement of truth is a statement that —
- (a) the party putting forward the document;
 - (b) in the case of a witness statement, the maker of the witness statement; or
 - (c) in the case of a certificate of service, the person who signs the certificate,

believes that the facts stated in the document are true.

(5) If a party is conducting proceedings with a litigation friend, the statement of truth in —

- (a) a statement of case;
- (b) a response; or
- (c) an application notice,

is a statement that the litigation friend believes the facts stated in the document being verified are true.

(6) A statement of truth which is not contained in the document which it verifies must clearly identify that document.

- (7) A statement of truth in a statement of case may be made by —

- (a) a person who is not a party; or
- (b) by 2 parties jointly,

where this is permitted by a relevant rule.

(8) Where a prescribed form includes a jurat for the content to be verified by an affidavit, a statement of truth is not required in addition.

8.69 Signature of statement of truth (22.1(6), PD22.3.1-3.10)

- (1) A statement of truth must be signed —
 - (a) in the case of a statement of case, a response or an application, by —
 - (i) the party or litigation friend; or
 - (ii) the advocate on behalf of the party or litigation friend; and
 - (b) in the case of a witness statement, by the maker of the statement.

(2) A statement of truth verifying a notice of objections to an account must be signed by the objecting party or his advocate.

(3) Where a document is to be verified on behalf of a company or other corporation, subject to paragraph (7), the statement of truth must —

- (a) be signed by a person holding a senior position in the company or corporation, and
- (b) state the office or position he holds.

(4) Where a document is to be verified on behalf of a partnership, the statement of truth may be signed by —

- (a) any of the partners, or
- (b) a person having the control or management of the partnership business.

(5) An insurer or the Motor Insurers' Bureau may sign a statement of truth in a statement of case on behalf of a party where the insurer or the Motor Insurers' Bureau has a financial interest in the result of proceedings brought wholly or partially by or against that party.

(6) If insurers are conducting proceedings on behalf of many claimants or defendants a statement of truth in a statement of case may be signed by a senior person responsible for the case at a lead insurer, but —

- (a) the person signing must specify the capacity in which he signs;
- (b) the statement of truth must be a statement that the lead insurer believes that the facts stated in the document are true; and
- (c) the court may order that a statement of truth also be signed by one or more of the parties.

(7) Where a party is legally represented, the advocate may sign the statement of truth on his behalf. The statement signed by the advocate must refer to the client's belief, not his own, and must state the capacity in which he signs and the name of his firm where appropriate.

(8) Where an advocate has signed a statement of truth, his signature shall be taken by the court as his statement —

- (a) that the client on whose behalf he has signed had authorised him to do so,
- (b) that before signing he had explained to the client that in signing the statement of truth he would be confirming the client's belief that the facts stated in the document were true, and

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- (c) that before signing he had informed the client of the possible consequences to the client if it should subsequently appear that the client did not have an honest belief in the truth of those facts.

(9) The individual who signs a statement of truth must print his full name clearly beneath his signature.

(10) An advocate who signs a statement of truth must sign in his own name and not that of his firm or employer.

8.70 False statements (32.14)

(1) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

(2) Proceedings under this rule may be brought only —

- (a) by the Attorney General; or
- (b) with the permission of the court.

8.71 Power of the court to require a document to be verified (22.4)

(1) The court may order a person who has failed to verify a document in accordance with rule 8.68 to verify the document.

(2) Any party may apply for an order under paragraph (1).

(3) This rule does not affect any power of the court —

- (a) to strike out a statement of case which is not verified by a statement of truth
- (b) direct that a witness statement which is not verified by a statement of truth shall not be admissible as evidence.

8.72 Forms of statement of truth

A statement of truth shall be in the appropriate form in Schedule 8.2.

SCHEDULE 8.1 — AFFIDAVITS AND WITNESS STATEMENTS (PD32)

Rules 8.8 & 8.20

1. Evidence in general

(1) Subject to the following provisions of this paragraph, evidence at a hearing other than the trial shall normally be given by witness statement.

(2) A witness may give evidence by affidavit if he wishes to do so.

(3) Statements of case and application notices may also be used as evidence provided that their contents have been verified by a statement of truth.

(4) Affidavits must be used as evidence in the following cases —

(a) where sworn evidence is required by any statutory provision;

(b) in any application for a search order, a freezing injunction, or an order requiring an occupier to permit another to enter his land, and

(c) in any application for an order against anyone for alleged contempt of court.

(5) If a party believes that sworn evidence is required by a court in another jurisdiction for any purpose connected with the proceedings, he may apply to the court for a direction that evidence shall be given only by affidavit on any pre-trial applications.

(6) The court may give a direction under rule 8.14 that evidence shall be given by affidavit instead of or in addition to a witness statement or statement of case —

(a) on its own initiative, or

(b) on an application by any party.

2. Affidavits: heading

(1) An affidavit must be headed with the title of the proceedings; where the proceedings are between several parties with the same status it is sufficient to identify the parties as follows:

AB (and others) Claimants

CD (and others) Defendants

(as appropriate)

(2) At the top right hand corner of the first page there must be clearly written —

(a) the party on whose behalf it is made,

(b) the initials and surname of the deponent,

(c) the number of the affidavit in relation to that deponent,

(d) the identifying initials and number of each exhibit referred to, and

(e) the date sworn.

3. Body of affidavit

(1) The affidavit must, if practicable, be in the deponent's own words, the affidavit should be expressed in the first person and the deponent should:

(a) commence '*I [full name] of [address] state on oath'* (or, in the case of an affirmation, '*do solemnly and sincerely affirm'*'),

(b) if giving evidence in his professional, business or other occupational capacity, give the address at which he works in (a) above, the position he holds and the name of his firm or employer,

(c) give his occupation or, if he has none, his description, and

(d) state if he is a party to the proceedings or employed by a party to the proceedings, if it be the case.

(2) An affidavit must indicate:

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- (a) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief, and
- (b) the source for any matters of information or belief.
- (3) Where a deponent refers to an exhibit or exhibits, he should state '*there is now shown to me marked '...' the* [description of exhibit]'.
- (4) Where a deponent makes more than one affidavit (to which there are exhibits) in the same proceedings, the numbering of the exhibits should run consecutively throughout and not start again with each affidavit.

4. Jurat

The jurat of an affidavit (that is, the statement set out at the end of the document which authenticates it as an affidavit) must —

- (a) be signed by all deponents,
- (b) be completed and signed by the person before whom the affidavit was sworn, whose name and qualification must be printed beneath his signature,
- (c) contain the full address of the person before whom the affidavit was sworn, and
- (d) follow immediately on from the text and not be put on a separate page.

5. Format of affidavits

(1) An affidavit must —

- (a) be produced on durable quality A4 paper with a 25mm margin all round,
- (b) be fully legible and normally typed on one side of the paper only,
- (c) where possible, be bound securely in a manner which will not hamper filing, or otherwise each page should be endorsed with the case number and should bear the initials of the deponent and of the person before whom it was sworn,
- (d) have the pages numbered consecutively as a separate document (or as one of several documents contained in a file),
- (e) be divided into numbered paragraphs,
- (f) have all numbers, including dates, expressed in figures, and
- (g) give the reference to any document or documents mentioned either in the margin or in bold text in the body of the affidavit.

(2) It is usually convenient for an affidavit to follow the chronological sequence of events or matters dealt with; each paragraph of an affidavit should as far as possible be confined to a distinct portion of the subject.

6. Inability of deponent to read or sign affidavit

(1) Where an affidavit is sworn by a person who is unable to read or sign it, the person before whom the affidavit is sworn must certify in the jurat that —

- (a) he read the affidavit to the deponent,
- (b) the deponent appeared to understand it, and
- (c) the deponent signed or made his mark, in his presence.

(2) If that certificate is not included in the jurat, the affidavit may not be used in evidence unless the court is satisfied that it was read to the deponent and that he appeared to understand it.

7. Alterations to affidavits

(1) Any alteration to an affidavit must be initialled by both the deponent and the person before whom the affidavit was sworn.

(2) An affidavit which contains an alteration that has not been initialled may be filed or used in evidence only with the permission of the court.

8. *Translation of affidavit*

Where an affidavit is in a language other than English —

- (a) the party wishing to rely on it —
 - (i) must have it translated into English, and
 - (ii) must file the original affidavit with the court, and
- (b) the translator must make and file with the court an affidavit verifying the translation, stating his qualification to make it and exhibiting both the translation and a copy of the original affidavit.

9. *Exhibits: documents*

- (1) A document used in conjunction with an affidavit must be —
 - (a) produced to and verified by the deponent, and remain separate from the affidavit, and
 - (b) identified by a declaration of the person before whom the affidavit was sworn.
- (2) The declaration must be headed with the name of the proceedings in the same way as the affidavit.
- (3) The first page of each exhibit should be marked —
 - (a) as in paragraph 2(2), and
 - (b) with the exhibit mark referred to in the affidavit.

10. *Exhibits: letters*

- (1) Copies of individual letters should be collected together and exhibited in a bundle or bundles. They should be arranged in chronological order with the earliest at the top, and firmly secured.
- (2) When a bundle of correspondence is exhibited, the exhibit should have a front page attached stating that the bundle consists of original letters and copies. They should be arranged and secured as above and numbered consecutively.

11. *Exhibits: other documents*

- (1) Photocopies instead of original documents may be exhibited provided the originals are made available for inspection by the other parties before the hearing and by the judge at the hearing.
- (2) Court documents must not be exhibited.
- (3) Where an exhibit contains more than one document, a front page should be attached setting out a list of the documents contained in the exhibit; the list should contain the dates of the documents.

12. *Exhibits other than documents*

- (1) Items other than documents should be clearly marked with an exhibit number or letter in such a manner that the mark cannot become detached from the exhibit.
- (2) Small items may be placed in a container and the container appropriately marked.

13. *Exhibits: general provisions*

- (1) Where an exhibit contains more than one document —
 - (a) the bundle should not be stapled but should be securely fastened in a way that does not hinder the reading of the documents, and
 - (b) the pages should be numbered consecutively at bottom centre.

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(2) Every page of an exhibit should be clearly legible; typed copies of illegible documents should be included, paginated with 'a' numbers.

(3) Where affidavits and exhibits have become numerous, they should be put into separate bundles and the pages numbered consecutively throughout.

(4) Where on account of their bulk the service of exhibits or copies of exhibits on the other parties would be difficult or impracticable, the directions of the court should be sought as to arrangements for bringing the exhibits to the attention of the other parties and as to their custody pending trial.

14. Witness statements: heading

(1) A witness statement must be headed with the title of the proceedings, but where the proceedings are between several parties with the same status it is sufficient to identify the parties as in paragraph 2(1).

(2) At the top right hand corner of the first page there should be clearly written —

- (a) the party on whose behalf it is made,
- (b) the initials and surname of the witness,
- (c) the number of the statement in relation to that witness,
- (d) the identifying initials and number of each exhibit referred to, and
- (e) the date the statement was made.

15. Body of witness statement

(1) The witness statement must, if practicable, be in the intended witness's own words, be expressed in the first person and also state —

- (a) the full name of the witness,
- (b) his place of residence or, if he is making the statement in his professional, business or other occupational capacity, the address at which he works, the position he holds and the name of his firm or employer,
- (c) his occupation, or if he has none, his description, and
- (d) the fact that he is a party to the proceedings or is the employee of such a party if it be the case.

(2) A witness statement must indicate —

- (a) which of the statements in it are made from the witness's own knowledge and which are matters of information or belief, and
- (b) the source for any matters of information or belief.

(3) An exhibit used in conjunction with a witness statement should be verified and identified by the witness and remain separate from the witness statement.

(4) Where a witness refers to an exhibit or exhibits, he should state *'I refer to the (description of exhibit) marked '...''*.

(5) The provisions of paragraphs 9(3) to 13 (exhibits) apply similarly to witness statements as they do to affidavits.

(6) Where a witness makes more than one witness statement to which there are exhibits, in the same proceedings, the numbering of the exhibits should run consecutively throughout and not start again with each witness statement.

16. Format of witness statement

(1) A witness statement should —

- (a) be produced on durable quality A4 paper with a 25mm margin all round,
- (b) be fully legible and should normally be typed on one side of the paper only,

- (c) where possible, be bound securely in a manner which will not hamper filing, or otherwise each page should be endorsed with the case number and should bear the initials of the witness,
- (d) have the pages numbered consecutively as a separate statement (or as one of several statements contained in a file),
- (e) be divided into numbered paragraphs,
- (f) have all numbers, including dates, expressed in figures, and
- (g) give the reference to any document or documents mentioned either in the margin or in bold text in the body of the statement.

(2) It is usually convenient for a witness statement to follow the chronological sequence of the events or matters dealt with, each paragraph of a witness statement should as far as possible be confined to a distinct portion of the subject.

17. Statement of truth (22.3)

(1) A witness statement must include a statement of truth as required by rule 8.68.

(2) If the maker of a witness statement fails to verify the witness statement by a statement of truth, the court may direct that it shall not be admissible as evidence.

18. Inability of witness to read or sign statement

(1) Where a witness statement is made by a person who is unable to read or sign the witness statement, it must contain a certificate made by an authorised person.

(2) An authorised person is a person able to administer oaths and take affidavits but need not be independent of the parties or their representatives.

(3) The authorised person must certify —

- (a) that the witness statement has been read to the witness,
- (b) that the witness appeared to understand it and approved its content as accurate,
- (c) that the declaration of truth has been read to the witness,
- (d) that the witness appeared to understand the declaration and the consequences of making a false witness statement, and
- (e) that the witness signed or made his mark in the presence of the authorised person.

19. Alterations to witness statements

(1) Any alteration to a witness statement must be initialled by the person making the statement or by the authorised person where appropriate (see paragraph 18).

(2) A witness statement which contains an alteration that has not been initialled may be used in evidence only with the permission of the court.

20. Filing of witness statements

Where the court has directed that a witness statement in a language other than English is to be filed —

- (a) the party wishing to rely on it must —
 - (i) have it translated, and
 - (ii) file the original witness statement with the court, and
- (b) the translator must make and file with the court an affidavit verifying the translation, stating his qualification to make it and exhibiting both the translation and a copy of the original witness statement.

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21. Certificate of court officer

Where the court has ordered that a witness statement is not to be open to inspection by the public or that words or passages in the statement are not to be open to inspection the court officer shall so certify on the statement and make any deletions directed by the court under rule 8.13(4).

22. Defects in affidavits, witness statements and exhibits

- (1) Where —
 - (a) an affidavit,
 - (b) a witness statement, or
 - (c) an exhibit to either an affidavit or a witness statement,

does not comply with Chapter 1 or this Schedule in relation to its form, the court may refuse to admit it as evidence and may refuse to allow the costs arising from its preparation.

(2) Permission to file a defective affidavit or witness statement or to use a defective exhibit may be obtained from a judge.

23. Agreed bundles for hearings

(1) The court may give directions requiring the parties to use their best endeavours to agree a bundle or bundles of documents for use at any hearing.

(2) All documents contained in bundles which have been agreed for use at a hearing shall be admissible at that hearing as evidence of their contents, unless —

- (a) the court orders otherwise; or
- (b) a party gives written notice of objection to the admissibility of particular documents.

24. Penalty

(1) Where a party alleges that a statement of truth or a disclosure statement is false the party shall refer that allegation to the court, which may —

- (a) exercise any of its powers under the rules;
- (b) initiate steps to consider if there is a contempt of court and, where there is, to punish it;
- (c) direct the party making the allegation to refer the matter to the Attorney General with a request to him to consider whether he wishes to bring proceedings for contempt of court.

(2) An application under sub-paragraph (1)(c) must be made in writing and be accompanied by —

- (a) a copy of the order recording the direction of the judge referring the matter to him, and
- (b) information which —
 - (i) identifies the statement said to be false; and
 - (ii) explains why it is false, and why the maker knew it to be false at the time he made it;
 - (iii) explains why contempt proceedings would be appropriate in the light of the overriding objective.

(3) Where a party makes an application to the court for permission to commence proceedings for contempt of court, it must be supported by written evidence containing —

- (a) the information specified in sub-paragraph (2)(b), and
- (b) the result of the application by the applicant to the Attorney General under sub-paragraph (1)(c).

SCHEDULE 8.2 — FORM OF STATEMENT OF TRUTH

Rules 8.8 & 8.72

1. The form of statement of truth verifying a document specified in column 1 of the following table is that specified in relation to it in column 2 of the table:

<i>Document</i>	<i>Form of statement of truth</i>
Particulars of claim	[I believe][The claimant believes] that the facts stated in these particulars of claim are true
Additional claim	[I believe][The <i>[person by whom additional claim is made]</i> believes] that the facts stated in this statement of case are true
Any other statement of case	[I believe][The claimant <i>or as the case may be</i> believes] that the facts stated in [this claim form][this defence][this reply <i>or as the case may be</i>] are true
Response to order under rule 6.44 to provide further information	[I believe][The claimant <i>or as the case may be</i> believes] that the facts stated in this response are true
Application notice	[I believe][The claimant <i>or as the case may be</i> believes] that the facts stated in this application notice are true
Notice of objections to account being taken by the court	[I believe][The claimant <i>or as the case may be</i> believes] that the facts stated in this notice are true
Witness statement	I believe that the facts stated in this witness statement are true.
Statement of reasons why chancery procedure should not be used (accompanying or contained in defendant's acknowledgment of service)	[I believe][The defendant believes] that the facts stated in this statement of reasons are true
Schedule or counter-schedule of expenses and losses in claims personal injuries, and amendments to such a schedule or counter-schedule	[I believe][The claimant <i>or as the case may be</i> believes] that the facts stated in this [schedule][counter-schedule] are true
Expert's report	I confirm that insofar as the facts stated in my report are within my own knowledge, I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion.

2. Where the statement of truth is contained in a separate document, the document containing the statement of truth must be headed with the title of the proceedings and the claim number. The document being verified should be identified in the statement of truth as follows:

<i>Document</i>	<i>Identification</i>
Claim form	the claim form issued on [date]

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Particulars of claim	the particulars of claim issued on <i>[date]</i>
Statement of case	the <i>[defence or as the case may be]</i> filed on <i>[date]</i>
Application notice	the application notice issued on <i>[date]</i> for <i>[remedy sought]</i>

PART 9 : TRIALS AND HEARINGS

9.1 Interpretation (39.1)

In this Part 'hearing' includes a trial.

9.2 General rule — hearing to be in public (39.2)

- (1) The general rule is that a hearing is to be in public.
- (2) The requirement for a hearing to be in public does not require the court to make special arrangements for accommodating members of the public.
- (3) A hearing, or any part of it, may be in private if —
 - (a) publicity would defeat the object of the hearing;
 - (b) it involves matters relating to national security;
 - (c) it involves confidential information (including information relating to personal financial matters), and publicity would damage that confidentiality;
 - (d) a private hearing is necessary to protect the interests of any minor or patient;
 - (e) it is a hearing of an application made without notice, and it would be unjust to any respondent for there to be a public hearing;
 - (f) it involves uncontentious matters arising in the administration of trusts or in the administration of a deceased person's estate; or
 - (g) the court considers this to be necessary, in the interests of justice.
- (4) The court may order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary in order to protect the interests of that party or witness.

9.3 Conduct of trial (28.7, 29.9)

Unless the trial judge otherwise directs, the trial shall be conducted in accordance with any order previously made.

9.4 Failure to attend the trial (39.3)

- (1) The court may proceed with a trial in the absence of a party but —
 - (a) if no party attends the trial, it may strike out the whole of the proceedings;
 - (b) if the claimant does not attend, it may strike out his claim and any defence to counterclaim; and
 - (c) if a defendant does not attend, it may strike out his defence or counterclaim (or both).
- (2) Where the court strikes out proceedings, or any part of them, under this rule, it may subsequently restore the proceedings, or that part.
- (3) Where a party does not attend and the court gives judgment or makes an order against him, the party who failed to attend may apply for the judgment or order to be set aside.
- (4) An application under paragraph (2) or (3) must be supported by evidence.
- (5) Where an application is made under paragraph (2) or (3) by a party who failed to attend the trial, the court may grant the application only if the applicant —
 - (a) acted promptly when he found out that the court had exercised its power to strike out or to enter judgment or make an order against him;
 - (b) had a good reason for not attending the trial; and
 - (c) has a reasonable prospect of success at the trial.

9.5 Trial bundles (39.5)

(1) Unless the court orders otherwise, the claimant must file an indexed and paginated bundle of documents, in one or more lever-arch files, (a ‘trial bundle’) containing a copy of each of the following documents —

- (a) the claim form and all statements of case,
- (b) a case summary and, if appropriate, a chronology,
- (c) requests for further information and responses to the requests,
- (d) all witness statements to be relied on as evidence,
- (e) any witness summaries,
- (f) any notices of intention to rely on hearsay evidence under rule 8.24,
- (g) any notices of intention to rely on evidence (such as a plan, photograph etc.) under rule 8.28 which is not —
 - (i) contained in a witness statement, affidavit or expert’s report,
 - (ii) to be given orally at the trial,
 - (iii) hearsay evidence under rule 8.24,
- (h) any medical reports and responses to them,
- (i) any experts’ reports and responses to them,
- (j) any order giving directions as to the conduct of the trial,
- (k) any document required to be included by a direction or court order; and
- (l) any other necessary documents.

(2) The court may direct that the claimant, instead of or as well as filing those documents in paper form, supply to the court office a CD-ROM containing those documents in such electronic form, arranged in such way, as is specified in the direction.

(3) Unless the court otherwise orders, the claimant must file the trial bundle not more than 10 days and not less than 7 days before the start of the trial.

9.6 Representation at trial of corporations (39.6)

Without prejudice to rule 5.10, a company or other corporation may be represented at trial by an officer or employee if —

- (a) the officer or employee has been authorised by the company or corporation to appear at the trial on its behalf; and
- (b) the court gives permission.

9.7 Impounded documents (39.7)

(1) Documents impounded by order of the court must not be released from the custody of the court except in compliance with a court order.

(2) Documents impounded by order of the court, while in the custody of the court, may not be inspected except by a person authorised to do so by a court order.

9.8 Audio recordings (SD 89/98)

(1) In this rule ‘recording’ means an audio recording of a hearing which is required to be made under section 27(4) of the High Court Act 1991.

(2) A recording shall be kept by the court office for a period of not less than 3 years following the conclusion of the claim to which the hearing relates.

(3) For the purposes of paragraph (2), a claim is concluded —

- (a) where an appeal is made to the Appeal Division, on the expiry of 12 months after the determination or withdrawal of that appeal, unless an appeal to the Judicial Committee of the Privy Council is made within that period; or
 - (b) in any other case, when (disregarding any power of the court to grant leave to appeal out of time) there is no further possibility of an appeal in respect of the claim.
- (4) Where the public is excluded from the hearing, a person who is not a party to the claim to which the hearing relates is not entitled to obtain a copy of the recording of the hearing.
- (5) Where the hearing relates to an application made without notice, a party to the claim to which the hearing relates may not, without the permission of the court, obtain a copy of the recording of the hearing unless he or his advocate was present at the hearing.
- (6) Paragraphs (4) and (5) are subject to any court order permitting any person or party to obtain a copy of a recording.

PART 10 : JUDGMENTS AND ORDERS

CHAPTER 1: JUDGMENTS AND ORDERS — GENERAL

10.1 Scope of this Chapter (40.1)

This Chapter sets out rules about judgments and orders which apply except where another rule makes different provision in relation to the judgment or order in question.

10.2 Standard requirements (40.2)

(1) Every judgment or order must state the name and judicial title of the person who made it, unless it is —

- (a) a default judgment entered under rule 10.25(1) or a default costs certificate obtained under rule 11.30;
- (b) judgment entered under Chapter 5 (judgment on admission);
- (c) a consent order under rule 10.7(2) (consent orders made by court officers);
- (d) an order made by a court officer under rule 12.4 (orders to enforce awards as if payable under a court order); or
- (e) an order made by a court officer under rule 12.52 (orders to obtain information from judgment debtors).

(2) Every judgment or order must —

- (a) bear the date on which it is given or made; and
- (b) be sealed by the court or signed by the person who made it.

10.3 Judgment where claim for unspecified amount is limited

Where a claim for an unspecified amount of money is expressed to be limited to a specified amount ('the maximum claimed') —

- (a) judgment may not be entered for an amount (excluding interest) which exceeds the maximum claimed; and
- (b) where judgment is entered for an amount to be decided by the court, the amount decided (excluding interest) may not exceed the maximum claimed.

10.4 Drawing up and filing of judgments and orders (40.3)

(1) A judgment or order shall be drawn up by the court in the following cases —

- (a) where a rule requires, or the court orders, it to be drawn up by the court;
- (b) where an award of a judicial officer is entered under rule 10.37;
- (c) where the order is made on the court's own initiative.

(2) A consent judgment or order under rule 10.7 shall be drawn up by the parties in accordance with the terms of their agreement.

(3) Where the court orders a judgment or order to be drawn up by a specified party, it shall be drawn up by that party.

(4) In any other case a judgment or order shall be drawn up by the party at whose request or on whose application it is entered or made.

(5) The court may direct that —

- (a) a judgment or an order drawn up by a party must be checked by the court before it is sealed or signed; or
- (b) before a judgment or an order is drawn up by the court, the parties must file an agreed statement of its terms.

(6) Where a judgment or order is to be drawn up by a party —

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- (a) he must file it no later than 7 days after the date on which the court ordered or permitted him to draw it up so that it can be sealed by the court or signed; and
- (b) if he fails to file it within that period, any other party may draw it up and file it.

(7) Where a draft of a written judgment to be drawn up by the court is supplied to a party or the advocate for a party in advance of its being pronounced in court, the draft or any of its contents may not, without the permission of the court, be communicated to any person (except to a party by the advocate for that party) until the judgment is pronounced in court.

10.5 Service of judgments and orders (40.4)

(1) Where a judgment or an order has been drawn up by a party and is to be served by the court —

- (a) the party who drew it up must file a copy to be retained at court and sufficient copies for service on him and on the other parties; and
- (b) once it has been sealed or signed, the court must serve a copy of it on each party to the proceedings.

(2) Unless the court directs otherwise, any order made otherwise than at trial must be served on —

- (a) each party, and
- (b) any other person on whom the court orders it to be served.

10.6 Judgment or order to be served on a party as well as advocate (40.5)

Where the party on whom a judgment or order is to be served is acting by an advocate, the court may order the judgment or order to be served on the party as well as on his advocate.

10.7 Consent judgments and orders (40.6)

(1) This rule applies where all the parties agree the terms in which a judgment should be given or an order should be made.

(2) A court officer may enter and seal or sign an agreed judgment or order if —

- (a) the judgment or order is listed in paragraph (3);
- (b) none of the parties is a litigant in person; and
- (c) the approval of the court is not required by these Rules or any statutory provision before an agreed order can be made.

(3) The judgments and orders referred to in paragraph (2) are —

- (a) a judgment or order for —
 - (i) the payment of an amount of money (including a judgment or order for damages or the value of goods to be decided by the court); or
 - (ii) the delivery up of goods with or without the option of paying the value of the goods or the agreed value;
- (b) an order for —
 - (i) the dismissal of any proceedings, wholly or in part;
 - (ii) the stay of proceedings on agreed terms, disposing of the proceedings, whether those terms are recorded in a schedule to the order or elsewhere;

- (iii) the stay of enforcement of a judgment, either unconditionally or on condition that the money due under the judgment is paid in accordance with an instalment order;
- (iv) the setting aside under Chapter 2 of a default judgment which has not been satisfied;
- (v) the payment out of money which has been paid into court;
- (vi) the discharge from liability of any party;
- (vii) the payment, assessment or waiver of costs, or such other provision for costs as may be agreed.

(4) Rule 10.4 (drawing up and filing of judgments and orders) applies to judgments and orders entered and sealed or signed by a court officer under paragraph (2) as it applies to other judgments and orders.

(5) Where paragraph (2) does not apply, any party may apply for a judgment or order in the terms agreed.

(6) The court may deal with an application under paragraph (5) without a hearing.

(7) Where this rule applies —

- (a) the order which is agreed by the parties must be drawn up in the terms agreed;
- (b) it must be expressed as being '*By Consent*';
- (c) it must be signed by the advocate acting for each of the parties to whom the order relates or, where paragraph (5) applies, by the party if he is a litigant in person.

10.8 When judgment or order takes effect (40.7)

(1) A judgment or order takes effect from the day when it is given or made, or such later date as the court may specify.

(2) This rule applies to all judgments and orders except those to which rule 10.11 (judgment against a State) applies.

10.9 Time from which interest begins to run (40.8)

(1) Where interest is payable on a judgment pursuant to section 9 of the Administration of Justice Act 1981, the interest shall begin to run from the date that judgment is given unless —

- (a) another rule makes different provision; or
- (b) the court orders otherwise.

(2) The court may order that interest shall begin to run from a date before the date that judgment is given.

10.10 Who may apply to set aside or vary a judgment or order (40.9)

A person who is not a party but who is directly affected by a judgment or order may apply to have the judgment or order set aside or varied.

10.11 Judgment against State in default of acknowledgment of service (40.10)

(1) Where the claimant obtains default judgment under Chapter 2 on a claim against a State where the defendant has failed to file an acknowledgment of service, the judgment does not take effect until 2 months after service on the State of —

- (a) a copy of the judgment; and

- (b) a copy of the evidence in support of the application for permission to enter default judgment (unless the evidence has already been served on the State in accordance with an order made under Chapter 2).

(2) In this rule, 'State' has the meaning given by section 14 of the State Immunity Act 1978 (an Act of Parliament).

10.12 Time for complying with judgment or order (40.11)

A party must comply with a judgment or order for the payment of an amount of money (including costs) within 14 days of the date of the judgment or order, unless —

- (a) the judgment or order specifies a different date for compliance;
- (b) an instalment order is in force;
- (c) any of these Rules specifies a different date for compliance; or
- (d) the court has stayed the proceedings or judgment.

10.13 Order requiring an act to be done (PD40B.8)

(1) An order which requires an act to be done (other than a judgment or order for the payment of an amount of money) must specify the time within which the act should be done.

(2) The consequences of failure to do an act within the time specified may be set out in the order in the form of one of the following examples, suitably adapted —

- (a) *Unless the [claimant][defendant] serves his list of documents by 4.00 pm on [date] his [claim][defence] shall be struck out and judgment entered for the [defendant][claimant].*
- (b) *Unless the [claimant][defendant] serves his list of documents within 14 days of service of this order his [claim][defence] will be struck out and judgment entered for the [defendant][claimant].*

10.14 Non-compliance with judgment or order (PD40B.9)

(1) An order which restrains a party from doing an act or requires an act to be done should, if disobedience is to be dealt with by an application to bring contempt of court proceedings, have a penal notice endorsed on it as follows:

'If you the within-named [] do not comply with this order you may be held to be in contempt of court and imprisoned or fined, or [in the case of a company or corporation] your assets may be seized.'

(2) Paragraph (1) applies to an order which contains an undertaking by a party to do or not do an act, except that the court may decline —

- (a) to accept an undertaking, and
- (b) to deal with disobedience in respect of an undertaking by contempt of court proceedings,

unless the party giving the undertaking has made a signed statement to the effect that he understands the terms of his undertaking and the consequences of failure to comply with it.

10.15 Correction of errors in judgments and orders (40.12)

(1) The court may at any time correct an accidental slip or omission in a judgment or order.

- (2) A party may apply for a correction without notice.

10.16 Judgment on both claim and counterclaim (40.13)

(1) This rule applies where the court gives judgment for specified amounts both for the claimant on his claim and against the claimant on a counterclaim.

(2) If there is a balance in favour of one of the parties, it may order the party whose judgment is for the lesser amount to pay the balance.

(3) The court may make a separate order as to costs against each party.

10.17 Judgment in favour of certain part owners relating to the detention of goods (40.14)

(1) In this rule ‘part owner’ means one of two or more persons who have an interest in the same goods.

(2) Where —

(a) a part owner makes a claim relating to the detention of the goods; and

(b) the claim is not based on a right to possession,

any judgment or order given or made in respect of the claim is to be for the payment of damages only, unless the claimant had the written authority of every other part owner of the goods to make the claim on his behalf as well as for himself.

(3) This rule applies notwithstanding anything in section 3(3) of the Torts (Interference with Goods) Act 1981, but does not affect the remedies and jurisdiction mentioned in section 3(8) of that Act.

10.18 Adjustment in respect of compensation recovery payments (PD40B.5)

(1) In a final judgment where —

(a) some or all of the damages awarded fall under the heads of damage set out in column 1 of Schedule 2 to the 1997 Act in respect of recoverable benefits received by the claimant set out in column 2 of that Schedule and

(b) the defendant has paid to the Department of Health and Social Security the recoverable benefits in accordance with the certificate of recoverable benefits,

there shall be stated in a preamble to the judgment or order the amount awarded under each head of damage and the amount by which it has been reduced in accordance with section 8 and Schedule 2 to the 1997 Act.

(2) The judgment or order shall then provide for entry of judgment and payment of the balance.

(3) In this rule —

‘the 1997 Act’ means the Social Security (Recovery of Benefits) Act 1997 (an Act of Parliament);

‘judgment’ includes any order to pay a sum of money, a final award of damages and an assessment of damages.

10.19 Adjustment in respect of interim payment (25.8, PD40B.6)

(1) In a final judgment where an interim payment has previously been made, the judgment shall set out in a preamble —

(a) the total amount awarded by the judge, and

(b) the amount and date of the interim payment or payments.

(2) Where the amount of the interim payment or payments is less than the total amount awarded by the judge, the total amount shall then be reduced by the total amount of any interim payments, and the judgment shall then provide for entry of judgment and payment of the balance.

(3) Where the amount of the interim payment or payments is more than the total amount awarded by the judge, an order shall be made for repayment, reimbursement,

variation or discharge under rule 7.22(2) and for interest on an overpayment under rule 7.22(5).

- (4) In this rule ‘judgment’ has the same meaning as in rule 10.18.

10.20 Preparation of deeds or documents (PD40B.2)

(1) Where a judgment or order directs any deed or document to be prepared, executed or signed, the order shall state —

- (a) the person who is to prepare the deed or document, and
(b) if the deed or document is to be approved, the person who is to approve it.

(2) If the parties are unable to agree the form of the deed or document, any party may apply for the form of the deed or document to be settled.

- (3) In such case the judge may —
(a) settle the deed or document himself, or
(b) refer it to an advocate to settle.

10.21 Declaratory judgments (40.20)

The court may make binding declarations whether or not any other remedy is claimed.

CHAPTER 2: DEFAULT JUDGMENT

10.22 Meaning of ‘default judgment’ (12.1)

In these Rules ‘default judgment’ means judgment without trial where a defendant —

- (a) has failed to file an acknowledgment of service; or
(b) has failed to file a defence.

10.23 Claims in which default judgment may not be obtained (12.2, 57.10)

A claimant may not obtain a default judgment —

- (a) where the claim is allocated to the chancery procedure; or
(b) in a probate claim (within the meaning of Chapter 4 of Part 13).

10.24 Conditions to be satisfied (12.3)

(1) The claimant may obtain judgment in default of an acknowledgment of service only if —

- (a) the defendant has not filed an acknowledgment of service or a defence to the claim (or any part of the claim); and
(b) the relevant time for doing so has expired.

(2) The claimant may obtain judgment in default of defence only if —

- (a) an acknowledgement of service has been filed but a defence has not been filed;
(b) in a counterclaim made under rule 6.48, a defence has not been filed,

and, in either case, the relevant time limit for doing so has expired.

(3) The claimant may not obtain a default judgment —

- (a) where the defendant has applied —
(i) to have the claimant’s statement of case struck out under rule 7.3; or
(ii) for summary judgment under Chapter 6,

and, in either case, that application has not been disposed of;

- (b) where the defendant has satisfied the whole claim (including any claim for costs) on which the claimant is seeking judgment; or
- (c) where —
 - (i) the claimant is seeking judgment on a claim for money; and
 - (ii) the defendant has filed or served on the claimant an admission under rule 6.21 or 6.22 admitting liability to pay all of the money claimed together with a request for time to pay.

10.25 Procedure for obtaining default judgment (12.4)

(1) Subject to paragraph (2), a claimant may obtain a default judgment by filing a request where the claim is for —

- (a) a specified amount of money;
- (b) an amount of money to be decided by the court;
- (c) delivery of goods where the claim form gives the defendant the alternative of paying their value; or
- (d) any combination of these remedies.

(2) The claimant must make an application if he wishes to obtain a default judgment —

- (a) on a claim which consists of or includes a claim for any other remedy; or
- (b) where rule 10.30 or 10.31 so provides,

and where the defendant is an individual, the claimant must in the application notice either provide the defendant's date of birth (if known) or state that the defendant is aged under, or of or over, the age of 18.

(3) Where the claimant seeks judgment in default of acknowledgment of service, he must file with his request under paragraph (1) or his application notice —

- (a) a copy of the coroner's notice under rule 2.38(1), or
 - (b) where the claim form was served by the claimant or any person on his behalf, a certificate of service.
- (4) Where a claimant —
- (a) claims any other remedy in his claim form in addition to those specified in paragraph (1); but
 - (b) abandons that claim in his request for judgment,

he may still obtain a default judgment by filing a request under paragraph (1).

10.26 Nature of judgment where default judgment obtained by filing a request (12.5)

(1) Where the claim is for a specified sum of money, the claimant may specify in a request filed under rule 10.25(1) —

- (a) the date by which the whole of the judgment debt is to be paid; or
- (b) the times and rate at which it is to be paid by instalments.

(2) Except where paragraph (4) applies, a default judgment on a claim for a specified amount of money obtained on the filing of a request shall be judgment for the amount of the claim (less any payments made) and costs —

- (a) where the request specifies a date under paragraph (1)(a), to be paid by that date; or
- (b) if none is specified, immediately.

(3) Where the claim is for an unspecified amount of money, a default judgment obtained on the filing of a request shall be for an amount to be decided by the court and costs.

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(4) Where the claim is for delivery of goods and the claim form gives the defendant the alternative of paying their value, a default judgment obtained on the filing of a request shall be judgment requiring the defendant —

- (a) to deliver the goods or (if he does not do so) to pay the value of the goods as decided by the court (less any payments made); and
- (b) to pay costs.

(5) The claimant's right to enter judgment requiring the defendant to deliver goods is subject to rule 10.17.

10.27 Default judgment for interest (12.6)

(1) A default judgment on a claim for a specified amount of money obtained on the filing of a request may include the amount of interest claimed to the date of judgment if —

- (a) the particulars of claim include the details required by rule 6.12(2);
- (b) where interest is claimed under section 41 of the High Court Act 1991, the rate is no higher than the rate of interest payable on judgment debts at the date when the claim form was issued; and
- (c) the claimant's request for judgment includes a calculation of the interest claimed for the period from the date up to which interest was stated to be calculated in the claim form to the date of the request for judgment.

(2) In any case where paragraph (1) does not apply, judgment shall be entered for an amount of interest to be decided by the court.

10.28 Procedure for deciding an amount or value (12.7)

(1) This rule applies where the claimant obtains a default judgment on the filing of a request under rule 10.25(1) and judgment is for —

- (a) an amount of money to be decided by the court;
- (b) the value of goods to be decided by the court; or
- (c) an amount of interest to be decided by the court.

(2) Where the court enters judgment it shall —

- (a) give any directions it considers appropriate; and
- (b) if it considers it appropriate, transfer the claim to another procedure.

10.29 Claim against more than one defendant (12.8)

(1) A claimant may obtain a default judgment on request under this Chapter on a claim for money or a claim for delivery of goods against one of 2 or more defendants, and proceed with his claim against the other defendants.

(2) Where a claimant applies for a default judgment against one of 2 or more defendants —

- (a) if the claim can be dealt with separately from the claim against the other defendants —
 - (i) the court may enter a default judgment against that defendant; and
 - (ii) the claimant may continue the proceedings against the other defendants;
- (b) if the claim cannot be dealt with separately from the claim against the other defendants —
 - (i) the court shall not enter default judgment against that defendant; and

- (ii) the court shall deal with the application at the same time as it disposes of the claim against the other defendants.

(3) A claimant may not enforce against one of 2 or more defendants any judgment obtained under this Chapter for possession of land or for delivery of goods unless

- (a) he has obtained a judgment for possession or delivery (whether or not obtained under this Chapter) against all the defendants to the claim; or
- (b) the court gives permission.

10.30 Procedure for obtaining a default judgment for costs only (12.9)

- (1) Where a claimant wishes to obtain a default judgment for costs only —
 - (a) if the claim is for fixed costs, he may obtain it by filing a request;
 - (b) if the claim is for any other type of costs, he must make an application.
- (2) Where an application is made under this rule for costs only, judgment shall be entered for an amount to be decided by the court.

10.31 Default judgment to be obtained on application (12.10, RHC 8.5)

- (1) Default judgment may be obtained only on an application where —
 - (a) the claim is —
 - (i) against a minor or patient;
 - (ii) in tort by one spouse against the other; or
 - (iii) for possession of land; or
 - (b) the claim is —
 - (i) against a State;
 - (ii) against any person who enjoys immunity from civil jurisdiction by virtue of any statutory provision;
- and the defendant has failed to file an acknowledgment of service.
- (2) Subject to paragraph (3), an application under this rule may be made without notice.
 - (3) Unless the court otherwise directs, where the claim is for possession of land, the defendant must be given at least 7 days' notice of the date fixed for the hearing of an application under this rule.

10.32 Application for default judgment — supplementary (12.11)

- (1) Where the claimant makes an application for a default judgment, there shall be entered such judgment as appears to the court that the claimant is entitled to on his statement of case.
- (2) Any evidence relied on by the claimant in support of his application need not be served on a party who has failed to file an acknowledgment of service.
- (3) An application for a default judgment on a claim against a minor or patient or a claim in tort between spouses must be supported by evidence.
- (4) Where an application is made against a State for a default judgment where the defendant has failed to file an acknowledgment of service —
 - (a) the court may direct that a copy of the application notice be served on the State;
 - (b) if the court —
 - (i) grants the application; or

(ii) directs that a copy of the application notice be served on the State, the judgment or application notice (and the evidence in support) may be served out of the jurisdiction without any further order.

(5) Where paragraph (4)(b) permits a judgment or an application notice to be served out of the jurisdiction, the procedure for serving the judgment or the application notice is the same as for serving a claim form under Chapter 9 of Part 2 except where an alternative method of service has been agreed under section 12(6) of the State Immunity Act 1978 (an Act of Parliament).

(6) In this rule 'State' has the meaning given by section 14 of the said Act of 1978.

10.33 Default judgment on additional claim (other than counterclaim or contribution or indemnity notice) (20.11)

(1) This rule applies if —

(a) an additional claim, other than —

(i) a counterclaim; or

(ii) a claim by a defendant for contribution or indemnity against another defendant under rule 6.50;

is served; and

(b) the party against whom the additional claim is made fails to file an acknowledgment of service or defence in respect of the additional claim.

(2) The party against whom the additional claim is made —

(a) is deemed to admit the additional claim, and is bound by any judgment or decision in the main proceedings in so far as it is relevant to any matter arising in the additional claim;

(b) subject to paragraph (3), if default judgment under this Chapter is given against the person who makes an additional claim, the person who makes an additional claim may obtain judgment in respect of the additional claim by filing a request.

(3) A person who makes an additional claim may not enter judgment under paragraph (2)(b) without the court's permission if —

(a) he has not satisfied the default judgment which has been given against him; or

(b) he wishes to obtain judgment for any remedy other than a contribution or indemnity .

(4) An application for the court's permission under paragraph (3) may be made without notice unless the court directs otherwise.

(5) The court may at any time set aside or vary a judgment entered under paragraph (2)(b).

10.34 Cases where court must set aside default judgment (13.2)

The court shall set aside a judgment entered under this Chapter if judgment was wrongly entered because —

(a) in the case of a judgment in default of an acknowledgment of service, any of the conditions in rule 10.24(1) and (3) was not satisfied;

(b) in the case of a judgment in default of a defence, any of the conditions in rule 10.24(1) and (2) was not satisfied; or

(c) the whole of the claim was satisfied before judgment was entered.

10.35 Cases where court may set aside or vary default judgment (13.3, 13.4)

(1) In any other case, the court may set aside or vary a judgment entered under this Chapter if —

- (a) the defendant has a real prospect of successfully defending the claim; or
- (b) it appears to the court that there is some other good reason why —
 - (i) the judgment should be set aside or varied; or
 - (ii) the defendant should be allowed to defend the claim.

(2) In considering whether to set aside or vary a judgment entered under this Chapter, the matters to which the court must have regard include whether the person seeking to set aside the judgment made an application to do so promptly.

(3) An application under this rule must be supported by evidence.

10.36 Abandoned claim restored where default judgment set aside (13.6)

Where —

- (a) the claimant claimed a remedy in addition to one specified in rule 10.25(1);
- (b) the claimant abandoned his claim for that remedy in order to obtain default judgment on request in accordance with rule 10.25(4); and
- (c) that default judgment is set aside under rule 10.34 or 10.35,

the abandoned claim is restored when the default judgment is set aside.

CHAPTER 3: SMALL CLAIMS

10.37 Small claims — entry of award (RHC 26A.6)

(1) Where the award of the judicial officer on a reference under rule 5.7 is filed, the award shall forthwith be entered as a judgment of the court.

(2) The judgment shall be stayed where —

- (a) the court office is notified by the judicial officer that the award has been set aside, or
- (b) application is made to set aside the award under section 16(4) of the High Court Act 1991.

CHAPTER 4: JUDGMENT WITHOUT TRIAL AFTER STRIKING OUT

10.38 Judgment without trial after striking out (3.5)

(1) This rule applies where —

- (a) the court makes an order which includes a term that the statement of case, or part of the statement of case, of a party shall be struck out if the party does not comply with the order; and
- (b) the party against whom the order was made does not comply with it.

(2) A party may obtain judgment with costs by filing a request for judgment if —

- (a) the order referred to in paragraph (1)(a) relates to the whole of a statement of case; and
- (b) where the party wishing to obtain judgment is the claimant, the claim is for —
 - (i) a specified amount of money;
 - (ii) an amount of money to be decided by the court;
 - (iii) delivery of goods where the claim form gives the defendant the alternative of paying their value; or

(iv) any combination of these remedies.

(3) Where judgment is obtained under this rule in a case to which paragraph (2)(b)(iii) applies, it shall be a judgment requiring the defendant to deliver goods, or (if he does not do so) pay the value of the goods as decided by the court (less any payments made).

(4) The request shall state that the right to enter judgment has arisen because the court's order has not been complied with.

(5) Judgment under this rule may be obtained on an application in a case to which paragraph (2) does not apply.

10.39 Setting aside judgment entered after striking out (3.6)

(1) A party against whom the court has entered judgment under rule 10.38 may apply to the court to set the judgment aside.

(2) An application under paragraph (1) must be made not more than 14 days after the judgment has been served on the party making the application.

(3) If the right to enter judgment had not arisen at the time when judgment was entered, the court must set aside the judgment.

(4) If the application to set aside is made for any other reason, rule 2.59 (relief from sanctions) shall apply.

CHAPTER 5: JUDGMENT ON ADMISSION

10.40 Application for judgment on admission (14.3)

(1) Where a party makes an admission under rule 6.19(2) (admission by notice in writing), any other party may apply for judgment on the admission.

(2) There shall be entered such judgment as appears to the court that the applicant is entitled to on the admission.

10.41 Judgment on admission of whole or part of claim for specified amount (14.4, 14.5)

(1) Where a defendant has admitted a claim under rule 6.21(1) or (3) (admission of whole or part of claim), the claimant may obtain judgment by filing a request.

(2) In the case of an admission under rule 6.21(1) (admission of whole of claim), judgment shall be entered for the amount of the claim (less any payments made) and costs.

(3) In the case of an admission under rule 6.21(3) (admission of part of claim), where the claimant accepts the amount admitted in satisfaction of the claim, judgment shall be entered for the amount admitted (less any payments made) and costs.

(4) Subject to paragraphs (5) and (6), judgment shall be entered for the amount of the claim, or the amount admitted, as the case may be, (less any payments made) and costs, to be paid immediately.

(5) Where —

(a) the defendant requests time to pay under rule 6.23 and offers to pay the amount of the claim, or the amount admitted, in full by a specified date; and

(b) the request for judgment states that the claimant accepts that offer,

judgment shall be entered for the amount of the claim, or the amount admitted, as the case may be, (less any payments made) and costs, to be paid by the date specified.

(6) Where —

(a) the defendant does not request time to pay under rule 6.23, and

(b) the claimant specifies in his request for judgment the date by which the whole of the judgment debt is to be paid,

judgment shall be entered for the amount of the claim, or the amount admitted, as the case may be, (less any payments made) and costs, to be paid by the date specified.

10.42 Interest (14.14)

(1) Judgment under rule 10.41(2) (admission of whole of claim for specified amount) shall include the amount of interest claimed to the date of judgment if —

- (a) the particulars of claim include the details required by rule 6.12(2);
- (b) where interest is claimed under section 41 of the High Court Act 1991, the rate is no higher than the rate of interest payable on judgment debts at the date when the claim form was issued; and
- (c) the claimant's request for judgment includes a calculation of the interest claimed for the period from the date up to which interest was stated to be calculated in the claim form to the date of the request for judgment.

(2) In any case where judgment is entered under rule 10.41(2) and the conditions in paragraph (1) are not satisfied, judgment shall be entered for an amount of interest to be decided by the court.

(3) Where judgment is entered for an amount of interest to be decided by the court, the court shall give any directions it considers appropriate.

10.43 Admission of liability to pay claim for unspecified amount (14.6, 14.7)

(1) Where the defendant has admitted a claim for an unspecified amount under rule 6.22(2) or (4), the claimant may obtain judgment by filing a request.

(2) Where the defendant has admitted the claim under rule 6.22(2) (admission without offer of specified amount), judgment shall be entered for an amount to be decided by the court and costs.

(3) Where the defendant has admitted the claim under rule 6.22(4) (admission with offer of specified amount in satisfaction) —

- (a) if the request for judgment states that the claimant accepts the defendant's offer, judgment shall be entered for the amount offered by the defendant (less any payments made) and costs;
- (b) if the request states that the claimant does not accept the defendant's offer, judgment shall be entered for an amount to be decided by the court and costs.

10.44 Directions in relation to outstanding matters (14.8)

Where the court enters judgment under rule 10.43 for an amount to be decided by the court it shall —

- (a) give any directions it considers appropriate; and
- (b) if it considers it appropriate, allocate the case to another procedure.

CHAPTER 6: SUMMARY JUDGMENT

10.45 Scope of this Chapter (24.1)

This Chapter sets out a procedure by which the court may decide a claim or a particular issue without a trial.

10.46 Grounds for summary judgment (24.2)

The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if —

- (a) it considers that —

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- (i) that claimant has no real prospect of succeeding on the claim or issue; or
 - (ii) that defendant has no real prospect of successfully defending the claim or issue; and
- (b) there is no other compelling reason why the case or issue should be disposed of at a trial.

10.47 Types of proceedings in which summary judgment is available (24.3)

- (1) The court may give summary judgment against a claimant in any type of proceedings.
- (2) The court may give summary judgment against a defendant in any type of claim except —
 - (a) a claim for possession of residential premises against a tenant; or
 - (b) an admiralty claim in rem.

10.48 Procedure (24.4)

- (1) A claimant may not apply for summary judgment until the defendant against whom the application is made has filed —
 - (a) an acknowledgement of service; or
 - (b) a defence,unless the court gives permission.
- (2) If a claimant applies for summary judgment before a defendant against whom the application is made has filed a defence, that defendant need not file a defence before the hearing.
- (3) Where a hearing of an application for summary judgment is fixed, the respondent (or the parties where the hearing is fixed on the court's own initiative) must be given at least 14 days' notice of —
 - (a) the date fixed for the hearing; and
 - (b) the issues which it is proposed that the court will decide at the hearing.

10.49 Evidence for purposes of hearing (24.5)

- (1) If the respondent to an application for summary judgment wishes to rely on written evidence at the hearing, he must —
 - (a) file the written evidence; and
 - (b) serve copies on every other party to the application,at least 7 days before the hearing.
- (2) If the applicant wishes to rely on written evidence in reply, he must —
 - (a) file the written evidence; and
 - (b) serve a copy on the respondent,at least 3 days before the hearing.
- (3) Where a hearing to consider whether to give summary judgment is fixed by the court of its own initiative —
 - (a) any party who wishes to rely on written evidence at the hearing must —
 - (i) file the written evidence; and
 - (ii) unless the court orders otherwise, serve copies on every other party to the proceedings,at least 7 days before the date of the hearing;

- (b) any party who wishes to rely on written evidence at the hearing in reply to any other party's written evidence must —
 - (i) file the written evidence in reply; and
 - (ii) unless the court orders otherwise serve copies on every other party to the proceedings,

at least 3 days before the date of the hearing.

- (4) This rule does not require written evidence —
 - (a) to be filed if it has already been filed; or
 - (b) to be served on a party on whom it has already been served.

10.50 Court's powers on application for summary judgment (24.6)

When the court determines an application for summary judgment it may —

- (a) give directions as to the filing and service of a defence;
- (b) give further directions about the management of the case.

CHAPTER 7: *INSTALMENT ORDERS*

10.51 Meaning of 'instalment order'

In this Chapter 'instalment order' means an order for payment of the amount of a judgment or order by instalments under —

- (a) rule 10.52 (default judgment),
- (b) rule 10.53 (judgment on admission), or
- (c) rule 10.54 (order on application);

and includes such an order as varied under rule 10.56.

10.52 Instalment order on default judgment (12.5)

Where —

- (a) a claim is for a specified sum of money, and
- (b) the claimant specifies under rule 10.26(1) the times and rate at which it is to be paid by instalments, .

the court shall on entering judgment make an order for payment of the amount of the judgment by instalments at the times and rate specified.

10.53 Instalment order where judgment entered on admission

- (1) This rule applies where judgment is entered —
 - (a) under rule 10.41(4) for the amount of a claim or an amount admitted under rule 6.21(2), or
 - (b) under rule 10.43(3)(a) for an amount offered under rule 6.22(4).
- (2) Where —
 - (a) the defendant requests time to pay under rule 6.23 and offers to pay the amount of the claim, or the amount admitted, at the times and rate specified in the admission; and
 - (b) the defendant's statement of means is set out in the admission form or in any other written notice of the admission which is filed,

the court shall on entering judgment make an order for payment of the amount of the judgment by instalments at the times and rate specified.

- (3) Where —

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- (a) the defendant does not request time to pay under rule 6.23, and
- (b) the request for judgment specifies the times and rate of the instalments by which the claimant wishes the amount to be paid,

the court shall on entering judgment make an order for payment of the amount of the judgment by instalments at the times and rate specified.

- (4) Where —
 - (a) the defendant requests time to pay under rule 6.23 and offers to pay the amount of the claim, or the amount admitted, at the times and rate specified in the admission; and
 - (b) the request for judgment states that the claimant does not accept the defendant's proposal,

the court may on entering judgment, if it thinks fit, make an order for payment of the amount of the judgment by instalments at such times and rate as it thinks fit.

(5) In deciding whether to make an order under paragraph (4) and, if so, the times and rate of payment, the court shall take into account —

- (a) the defendant's statement of means set out in the admission form or in any other written notice of the admission filed,
- (b) the claimant's objections to the defendant's request set out in the claimant's notice, and
- (c) any other relevant factors.

10.54 Application for instalment order (RHC 51A.2-4)

- (1) Where —
 - (a) a judgment or order has been made for the payment of a specified amount, or
 - (b) a judgment or order has been made for the payment of an amount to be decided by the court and the court has decided on a specified amount,

the judgment debtor or judgment creditor, or a coroner with the consent of the judgment creditor, may apply for an order that the amount (less any payments made) be paid by instalments.

- (2) An application under paragraph (1) may be made either —
 - (a) without notice, on the judgment or order being made; or
 - (b) with notice to the respondent to the application, at any time after the making of the judgment or order.
- (3) An application under paragraph (2)(b) shall state —
 - (a) the amount payable under the judgment or order;
 - (b) the amount of any payments made;
 - (c) the times and rate at which the amount is to be paid by instalments; and
 - (d) in the case of an application by a judgment debtor, the means of a debtor.
- (4) On an application under this rule the court may make an order that —
 - (a) the amount payable under the judgment or order (less any payments made), or
 - (b) such part of that amount as the court thinks fit,

shall be paid by instalments at such times and rate as the court thinks fit.

10.55 Stay of enforcement (RHC 51A.4)

(1) Where an instalment order is in force in respect of a judgment or order, no step shall be taken for the enforcement of the judgment or order without the permission of the court, unless the judgment debtor has failed to comply with the terms of the instalment order.

(2) Paragraph (1) does not apply to a judgment or order so far as it provides for any matter other than the payment of an amount of money.

10.56 Variation or revocation of instalment order (RHC 51A.5)

(1) The judgment creditor or judgment debtor may at any time apply to the court for the variation or revocation of an instalment order, and rule 10.54(2), (3) and (4) applies to an application under this rule as it applies to an application under rule 10.54(2)(b).

(2) An application under paragraph (1) must state —

- (a) the amount payable under the judgment or order;
- (b) the amount of any payments made;
- (c) the times and rate of the instalments specified in the instalment order;
- (d) where appropriate, the times and rate of the instalments to be paid under the order as varied; and
- (e) in the case of an application by the judgment debtor, the means of a debtor.

(3) On an application under paragraph (1) the court may vary or revoke the instalment order.

10.57 Exercise of court's functions (14.11-13)

(1) A court officer may exercise any power of the court —

- (a) to make an instalment order under —
 - (i) rule 10.26 (default judgment),
 - (ii) rule 10.53(2) or (3),
 - (iii) rule 10.53(4) or 10.54, where the amount outstanding (including costs) is not more than £50,000; and
- (b) to vary or revoke an instalment order where the amount outstanding (including costs) is not more than £50,000.

(2) Where a court officer makes, varies or revokes an instalment order, he shall do so without a hearing.

(3) Where a judge is to make, vary or revoke an instalment order, he may do so without a hearing.

(4) If there is to be a hearing, the court must give each party at least 7 days' notice of the hearing.

(5) Where —

- (a) a court officer has made an instalment order under rule 10.53(4) or 10.54, or varied or revoked an instalment order; or
- (b) a judge has made an instalment order under rule 10.53(4) or 10.54, or varied or revoked an instalment order, without a hearing,

either party may apply for the decision to be re-determined by a judge.

(6) An application for re-determination must be made within 14 days after service of the instalment order on the applicant.

CHAPTER 8: PROVISIONAL DAMAGES

10.58 Application and definitions (41.1)

(1) This Chapter applies to proceedings to which section 33 of the High Court Act 1991 applies.

(2) In this Chapter ‘award of provisional damages’ means an award of damages for personal injuries under which —

- (a) damages are assessed on the assumption referred to in section 33 that the injured person will not develop the disease or suffer the deterioration; and
- (b) the injured person is entitled to apply for further damages at a future date if he develops the disease or suffers the deterioration.

10.59 Order for award of provisional damages (41.2)

(1) The court may make an order for an award of provisional damages if —

- (a) the particulars of claim include a claim for provisional damages; and
- (b) the court is satisfied that section 33 of the High Court Act 1991 applies.

(2) An order for an award of provisional damages —

- (a) must specify the disease or type of deterioration in respect of which an application may be made at a future date;
- (b) must specify the period within which such an application may be made; and
- (c) may be made in respect of more than one disease or type of deterioration and may, in respect of each disease or type of deterioration, specify a different period within which a subsequent application may be made.

(3) The claimant may make more than one application to extend the period specified under paragraph (2)(b) or (2)(c).

10.60 Application for further damages (41.3)

(1) The claimant may not make an application for further damages after the end of the period specified under rule 10.59(2), or such period as extended by the court.

(2) Only one application for further damages may be made in respect of each disease or type of deterioration specified in the award of provisional damages.

(3) The claimant must give at least 28 days’ written notice to the defendant of his intention to apply for further damages.

(4) If the claimant knows —

- (a) that the defendant is insured in respect of the claim; and
- (b) the identity of the defendant’s insurers,

he must also give at least 28 days’ written notice to the insurers.

(5) Within 21 days after the end of the 28 day notice period referred to in paragraphs (3) and (4), the claimant must apply for directions.

10.61 Apportionment of damages (41.3A)

(1) Where—

(a) a claim includes claims arising under—

- (i) the Fatal Accidents Act 1981; and
- (ii) the Law Reform (Miscellaneous Provisions) Act 1938; and

(b) a single sum of money is ordered or agreed to be paid in satisfaction of the claims,

the court shall apportion the money between the different claims.

(2) Where, in an action in which a claim under the Fatal Accidents Act 1981 is made by or on behalf of more than one person, a single sum of money is ordered or agreed to be paid in satisfaction of the claim, the court will apportion it between the persons entitled to it.

(3) Unless it has already been apportioned by the court, a jury or agreement between the parties, the court shall apportion money under paragraphs (1) and (2) —

- (a) when it gives directions under rule 3.23 (control of money received by minor or patient); or
- (b) if rule 3.23 does not apply, on application by one of the parties .

CHAPTER 9: ACCOUNTS, INQUIRIES ETC.

10.62 Accounts and inquiries: general (PD40.1, 9, 10)

(1) Where the court orders any account to be taken or any inquiry to be made, it may, by the same or a subsequent order, give directions as to the manner in which the account is to be taken and verified or the inquiry is to be conducted.

(2) In particular, the court may direct that, in taking an account, the relevant books of account shall be evidence of their contents but that any party may take such objections to the contents as he may think fit.

(3) Any party may apply to the court for —

- (a) directions as to the taking of an account or the conduct of an inquiry, or
- (b) the variation of directions already made.

(4) Unless the court orders otherwise, an account or inquiry shall be taken or made by a judge.

(5) The court may —

- (a) direct any necessary advertisement; and
- (b) fix the time within which the advertisement should require a reply.

10.63 Further provision as to accounts and inquiries

Schedule 10.1 makes further provision as to accounts and inquiries.

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SCHEDULE 10.1 — ACCOUNTS AND INQUIRIES

Rule 10.63

1. *Verifying the account (PD40.2)*

Subject to any order to the contrary —

- (a) the accounting party must make out his account and verify it by an affidavit or witness statement to which the account is exhibited;
- (b) the accounting party must file the account with the court and at the same time notify the other parties that he has done so and of the filing of any affidavit or witness statement verifying or supporting the account.

2. *Objections (PD40.3)*

(1) Any party who wishes to contend —

- (a) that an accounting party has received more than the amount shown by the account to have been received,
- (b) that the accounting party should be treated as having received more than he has actually received,
- (c) that any item in the account is erroneous in respect of amount, or
- (d) that in any other respect the account is inaccurate,

must, unless the court directs otherwise, give written notice to the accounting party of his objections.

(2) The written notice referred to in sub-paragraph (1) must, so far as the objecting party is able to do so —

- (a) state the amount by which it is contended that the account understates the amount received by the accounting party,
- (b) state the amount which it is contended that the accounting party should be treated as having received in addition to the amount he actually received,
- (c) specify the respects in which it is contended that the account is inaccurate, and
- (d) in each case, give the grounds on which the contention is made.

(3) The contents of the written notice must, unless the notice contains a statement of truth, be verified by either an affidavit or a witness statement to which the notice is an exhibit.

3. *Allowances (PD40.4)*

In taking any account all proper allowances shall be made without any express direction to that effect.

4. *Hearing (PD40.5)*

(1) The court may at any stage in the taking of an account or in the course of an inquiry direct a hearing in order to resolve an issue that has arisen.

(2) For that purpose the court may —

- (a) order that points of claim and points of defence be served, and
- (b) give any necessary directions.

5. *Delay (PD40.6)*

If it appears to the court that there is undue delay in the taking of any account or the progress of any inquiry, it may —

- (a) require the accounting party or the party with the conduct of the inquiry, as the case may be, to explain the delay, and

- (b) make such order for the management of the proceedings (including a stay) and for costs as the circumstances may require.

6. *Distribution (PD40.7)*

Where —

- (a) some of the persons entitled to share in a fund are known, but
- (b) there is, or is likely to be, difficulty or delay in ascertaining other persons so entitled,

the court may direct or allow immediate payment of their shares to the known persons without reserving any part of those shares to meet the subsequent costs of ascertaining the other persons.

7. *Guardian's accounts (PD40.8)*

The accounts of a person appointed guardian of the property of a minor under rule 3.25 must be verified and approved in such manner as the court may direct.

8. *Examination of claims (PD40.11)*

(1) Where the court orders an account of debts or other liabilities to be taken, it may direct any party within a specified time —

- (a) to examine the claims of persons claiming to be owed money out of the estate or fund in question;
- (b) to determine, so far as he is able, which of them are valid; and
- (c) to file written evidence —
 - (i) stating his findings and his reasons for them; and
 - (ii) listing any other debts which are or may be owed out of the estate or fund.

(2) Where the court orders an inquiry for other unascertained claimants to an estate or fund, it may direct any party within a specified time —

- (a) to examine the claims that are made;
- (b) to determine, so far as he is able, which of them are valid; and
- (c) to file written evidence stating his findings and his reasons for them.

(3) If the personal representatives or trustees concerned are not the parties directed by the court to examine claims, the court may direct them to join with the party directed to examine claims in producing the written evidence required by this rule.

9. *Consideration of claims by court (PD40.12)*

For the purpose of considering a claim the court may —

- (a) direct it to be investigated in any manner;
- (b) direct the person making the claim to give further details of it; and
- (c) direct that person —
 - (i) to file written evidence; or
 - (ii) to attend court to give evidence,

to support his claim.

10. *Notice of decision (PD40.13)*

Where —

- (a) the court has allowed or disallowed any claim or part of a claim; and
- (b) the person making the claim was not present when the decision was made,

the court shall serve on that person a notice informing him of its decision.

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11. Interest on debts (PD40.14)

(1) Where a judgment or order directs an account of the debts of a deceased person, unless the deceased's estate is insolvent or the court orders otherwise, interest shall be allowed —

- (a) on any debt which carries interest, at the rate it carries, and
- (b) on any other debt, from the date of the judgment, at the rate payable on judgment debts at that date.

(2) Where interest on a debt is allowed under sub-paragraph (1)(b), it shall be paid out of any assets of the estate which remain after payment of —

- (a) any costs of the proceedings directed to be paid out of the estate;
 - (b) all the debts which have been established; and
 - (c) the interest on such of those debts as by law carry interest.
- (3) For the purpose of this rule —
- (a) 'debt' includes funeral, testamentary or administration expenses; and
 - (b) in relation to any expenses incurred after the judgment, paragraph (1)(b) applies as if, instead of the date of the judgment, it referred to the date when the expenses became payable.

12. Interest on legacies (PD40.15)

Where an account of legacies is directed by any judgment, then, subject to —

- (a) any directions contained in the will or codicil in question; and
- (b) any order made by the court,

interest shall be allowed on each legacy at the basic rate payable for the time being on funds in court or at such other rate as the court shall direct, beginning one year after the testator's death.

PART 11 : COSTS**CHAPTER 1: COSTS — GENERAL****11.1 Definitions and application (43.2-3)**

(1) In this Part —

‘charges’ includes an advocate’s fees;

‘costs’ includes charges, disbursements, expenses, remuneration, and reimbursement allowed to a litigant in person under rule 11.45;

‘detailed assessment’ means the procedure by which the amount of costs is decided by a costs officer in accordance with Chapter 4, and ‘detailed assessment proceedings’ means proceedings for such an assessment;

‘fixed costs’ means the amounts which are to be allowed in respect of advocates’ charges in the circumstances set out in Chapter 2;

‘fund’ includes any estate or property held for the benefit of any person or class of person and any fund to which a trustee or personal representative is entitled in his capacity as such;

‘receiving party’ means a party entitled to be paid costs;

‘paying party’ means a party liable to pay costs;

‘summary assessment’ means the procedure by which the court, when making an order about costs, orders payment of a sum of money instead of fixed costs or detailed assessment;

‘wasted costs order’ means an order under section 53(3) of the High Court Act 1991 (court’s power to disallow, or order advocate to meet, wasted costs).

(2) The costs to which this Part applies include —

(a) the following costs where those costs may be assessed by the court —

- (i) costs of proceedings before an arbitrator or umpire;
- (ii) costs of proceedings before a tribunal or other statutory body; and
- (iii) costs payable by a client to his advocate; and

(b) costs which are payable by one party to another party under the terms of a contract, where the court makes an order for an assessment of those costs.

(3) The following table sets out the effect of certain orders for costs commonly made —

<i>Term</i>	<i>Effect</i>
Costs in any event	The party in whose favour the order is made is entitled to the costs in respect of the part of the proceedings to which the order relates, whatever other costs orders are made in the proceedings.
Costs in the case Costs in the application	The party in whose favour the court makes a costs order at the end of the proceedings is entitled to his costs of the part of the proceedings to which the order relates.
Costs reserved	The decision about costs is deferred to a later occasion, but if no later order is made the costs will be costs in the case.

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<i>Term</i>	<i>Effect</i>
[Claimant's][Defendant's] costs in the [case][application]	<p>If the party in whose favour the order is made is awarded costs at the end the proceedings, that party is entitled to his costs of the part of the proceedings to which the order relates.</p> <p>If any other party is awarded costs at the end of the proceedings, the party in whose favour the final costs order is made is not liable to pay the costs of any other party in respect of the part of the proceedings to which the order relates.</p>
Costs thrown away	<p>Where, for example, a judgment or order is set aside, the party in whose favour the costs order is made is entitled to the costs which have been incurred as a consequence. This includes the costs of —</p> <p>(a) preparing for and attending any hearing at which the judgment or order which has been set aside was made;</p> <p>(b) preparing for and attending any hearing to set aside the judgment or order in question;</p> <p>(c) preparing for and attending any hearing at which the court orders the proceedings or the part in question to be adjourned;</p> <p>(d) any steps taken to enforce a judgment or order which has subsequently been set aside.</p>
Costs of and caused by	Where, for example, the court makes this order on an application to amend a statement of case, the party in whose favour the costs order is made is entitled to the costs of preparing for and attending the application and the costs of any consequential amendment to his own statement of case.
Costs here and below	The party in whose favour the costs order is made is entitled not only to his costs in respect of the proceedings in which the court makes the order but also to his costs of the proceedings in the lower Division, court or tribunal
No order as to costs Each party to pay his own costs	Each party is to bear his own costs of the part of the proceedings to which the order relates, whatever costs order the court makes at the end of the proceedings.

11.2 Advocate's duty to notify client (44.2)

Where —

- (a) the court makes a costs order against a legally represented party; and
- (b) the party is not present when the order is made,

the party's advocate must notify his client in writing of the costs order no later than 7 days after the advocate receives notice of the order.

11.3 Court's discretion as to costs (44.3)

- (1) The court has discretion as to —
 - (a) whether costs are payable by one party to another;
 - (b) the amount of those costs; and
 - (c) when they are to be paid.
 - (2) If the court decides to make an order about costs —
 - (a) the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party; but
 - (b) the court may make a different order.
 - (3) The general rule does not apply to the following proceedings —
 - (a) family proceedings;
 - (b) proceedings in the Appeal Division on an application or appeal made in connection with family proceedings; or
 - (c) proceedings in the Appeal Division from a judgment, direction, decision or order given or made in probate proceedings or family proceedings.
 - (4) In paragraph (3)—
 - ‘family proceedings’ means —
 - (a) any proceedings under any inherent jurisdiction of the court in relation to wardship, maintenance or the upbringing of children;
 - (b) any proceedings under any of the following enactments —
 - (i) Part 1, 2, 4 or 5 or section 89 of the Children and Young Persons Act 2001;
 - (ii) the Adoption Act 1984;
 - (iii) Part 1, 2, 3, 4 or 5 of the Matrimonial Proceedings Act 2003;
 - ‘probate proceedings’ means proceedings relating to —
 - (a) the grant of probate of the will, or letters of administration of the estate, of a deceased person;
 - (b) the revocation of such a grant; or
 - (c) a declaration as to the validity of an alleged will;
- not being non-contentious or common form probate business.
- (5) In deciding what order (if any) to make about costs, the court must have regard to all the circumstances, including —
 - (a) the conduct of all the parties;
 - (b) whether a party has succeeded on part of his case, even if he has not been wholly successful; and
 - (c) 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 Chapter 6 of Part 7 apply.
- (6) The conduct of the parties includes —
 - (a) conduct before, as well as during, the proceedings and in particular the time when and the extent to which each party has disclosed his case to the other party or parties;
 - (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

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- (c) the manner in which a party has pursued or defended his case or a particular allegation or issue; and
- (d) whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim.
- (7) The orders which the court may make under this rule include an order that a party must pay —
 - (a) a proportion of another party's costs;
 - (b) a stated amount in respect of another party's costs;
 - (c) costs from or until a certain date only;
 - (d) costs incurred before proceedings have begun;
 - (e) costs relating to particular steps taken in the proceedings;
 - (f) costs relating only to a distinct part of the proceedings; and
 - (g) interest on costs from or until a certain date, including a date before judgment.
- (8) Where the court would otherwise consider making an order under paragraph (7)(f), it must instead, if practicable, make an order under paragraph (7)(a) or (c).
- (9) Where the court has ordered a party to pay costs, it may order an amount to be paid on account before the costs are assessed.
- (10) Where a party entitled to costs is also liable to pay costs the court may assess the costs which that party is liable to pay and either —
 - (a) set off the amount assessed against the amount the party is entitled to be paid and direct him to pay any balance; or
 - (b) delay the issue of a certificate for the costs to which the party is entitled until he has paid the amount which he is liable to pay.

11.4 Basis of assessment (44.4)

- (1) Where the amount of costs is to be assessed (whether by summary or detailed assessment) they shall be assessed either —
 - (a) on the standard basis; or
 - (b) on the indemnity basis,but in either case costs which have been unreasonably incurred or are unreasonable in amount shall not be allowed.
- (2) Where the amount of costs is to be assessed on the standard basis —
 - (a) only costs which are proportionate to the matters in issue shall be allowed; and
 - (b) any doubt which it may have as to whether costs were reasonably incurred or reasonable and proportionate in amount shall be resolved in favour of the paying party.
- (3) Where the amount of costs is to be assessed on the indemnity basis, any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party.
- (4) Where —
 - (a) the court makes an order about costs without indicating the basis on which the costs are to be assessed; or
 - (b) the court makes an order for costs to be assessed on a basis other than the standard basis or the indemnity basis,the costs shall be assessed on the standard basis.

(5) Where the amount of an advocate's remuneration in respect of any proceedings would (apart from any order about costs) be limited by section 20(1)(b) of the Advocates Act 1995, the amount of the costs to be allowed in respect of the proceedings shall not exceed the amount chargeable in accordance with that section.

(6) Where the amount of an advocate's remuneration in respect of non-contentious business is prescribed by regulations under section 21 of the Advocates Act 1995, the amount of the costs to be allowed in respect of any such business which falls to be assessed by the court shall be decided in accordance with those regulations rather than this rule and rule 11.5.

11.5 Factors to be taken into account in deciding the amount of costs (44.5)

(1) The court shall have regard to all the circumstances in deciding whether costs were —

- (a) if it is assessing costs on the standard basis —
 - (i) proportionately and reasonably incurred; or
 - (ii) proportionate and reasonable in amount, or
 - (b) if it is assessing costs on the indemnity basis —
 - (i) unreasonably incurred; or
 - (ii) unreasonable in amount.
- (2) In particular the court must give effect to any orders which have already been made.
- (3) The court must also have regard to —
- (a) the conduct of all the parties, including in particular —
 - (i) conduct before, as well as during, the proceedings; and
 - (ii) the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;
 - (b) the amount or value of any money or property involved;
 - (c) the importance of the matter to all the parties;
 - (d) the particular complexity of the matter or the difficulty or novelty of the questions raised;
 - (e) the skill, effort, specialised knowledge and responsibility involved;
 - (f) the time spent on the case; and
 - (g) the place where and the circumstances in which work or any part of it was done.

11.6 Fixed costs (44.6)

A party may recover the fixed costs specified in Chapter 2 in accordance with that Chapter.

11.7 Procedure for assessing costs (44.7)

Where the court orders a party to pay costs to another party (other than fixed costs) it may either —

- (a) make a summary assessment of the costs; or
 - (b) order detailed assessment of the costs by a costs officer,
- unless any rule or other enactment provides otherwise.

11.8 Summary assessment (PD 44.13)

(1) Whenever a court makes an order about costs which does not provide for fixed costs to be paid, the court shall consider whether to make a summary assessment of costs.

(2) The general rule is that the court shall make a summary assessment of the costs —

- (a) at the conclusion of the trial of a claim allocated to the summary procedure, in which case the order shall deal with the costs of the whole claim, and
- (b) at the conclusion of any other hearing which has lasted not more than one day, in which case the order shall deal with the costs of the application or matter to which the hearing related;

unless there is good reason not to do so, eg. where —

- (i) the paying party shows substantial grounds for disputing the sum claimed for costs that cannot be dealt with summarily, or
- (ii) there is insufficient time to carry out a summary assessment.

(3) If the hearing referred to in paragraph (2)(b) disposes of the claim, the order may deal with the costs of the whole claim;

(4) Schedule 11.1 provides for the summary assessment of costs.

11.9 Time for complying with a costs order (44.8)

A party must comply with an order for the payment of costs within 14 days of —

- (a) the date of the judgment or order if it states the amount of those costs;
- (b) if the amount of those costs (or part of them) is decided later in accordance with Chapter 4, the date of the certificate which states the amount; or
- (c) in either case, such later date, or the happening of such later event, as the court may specify.

11.10 Costs following re-allocation (44.11)

Where the court transfers a claim from one procedure to another, then unless the court orders otherwise —

- (a) any special rules about costs applying to the first procedure shall apply to the claim up to the date of transfer; and
- (b) any special rules about costs applying to the second procedure shall apply from the date of transfer.

11.11 Cases where costs orders deemed to have been made (44.12)

(1) Where a right to costs arises under —

- (a) rule 2.60 (claim etc. struck out for non-payment of fee);
- (b) rule 7.61(1) or (2) (acceptance of offer to settle); or
- (c) rule 7.78 (discontinuance),

a costs order shall be deemed to have been made on the standard basis.

(2) Interest payable pursuant to section 9 of the Administration of Justice Act 1981 on the costs deemed to have been ordered under paragraph (1) shall begin to run from the date on which the event which gave rise to the entitlement to costs occurred.

11.12 Costs-only proceedings (44.12A)

(1) This rule sets out a procedure which may be followed where —

- (a) the parties to a dispute have reached an agreement on all issues (including which party is to pay the costs) which is made or confirmed in writing; but
- (b) they have failed to agree the amount of those costs; and
- (c) no proceedings have been started.
- (2) Either party to the agreement may start proceedings under this rule by issuing a claim form.
- (3) The claim shall be allocated to the chancery procedure.
- (4) The claim form must contain or be accompanied by the agreement or confirmation.
- (5) The court may either —
 - (a) make an order for costs to be determined by detailed assessment; or
 - (b) dismiss the claim.

11.13 Special situations (44.13)

- (1) Where the court makes an order which does not mention costs —
 - (a) subject to paragraphs (2) and (3), the general rule is that no party is entitled to costs in relation to that order; but
 - (b) this does not affect any entitlement of a party to recover costs out of a fund held by him as trustee or personal representative, or pursuant to any lease, mortgage or other security.
- (2) Where the court makes —
 - (a) an order giving permission to appeal; or
 - (b) any other order or direction sought by a party on an application without notice,

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

(3) Any party affected by a deemed costs order under paragraph (2) may apply at any time to vary the order.

(4) The court hearing an appeal may, unless it dismisses the appeal, make orders about the costs of the proceedings giving rise to the appeal as well as the costs of the appeal.

11.14 Court's powers in relation to misconduct (44.14)

- (1) The court may make an order under this rule where —
 - (a) a party or his advocate, in connection with a summary or detailed assessment, fails to comply with a rule, practice direction or court order; or
 - (b) it appears to the court that the conduct of a party or his advocate, before or during the proceedings which gave rise to the assessment proceedings, was unreasonable or improper.
- (2) The court may —
 - (a) disallow all or part of the costs which are being assessed; or
 - (b) order the party at fault or his advocate to pay costs which he has caused any other party to incur.
- (3) Where —
 - (a) the court makes an order under paragraph (2) against a legally represented party; and
 - (b) the party is not present when the order is made,

the party's advocate must notify his client in writing of the order no later than 7 days after the advocate receives notice of the order.

11.15 Legal aid (44.17)

This Part does not apply to the assessment of costs in proceedings to the extent that

—

- (a) regulations under Part I of the Legal Aid Act 1986, or
- (b) any order under Schedule 2 to that Act,

makes different provision.

CHAPTER 2: FIXED COSTS

11.16 Fixed costs — general (45.1)

- (1) This Chapter sets out the amounts which, unless the court otherwise orders (and subject to rule 11.15), are to be allowed in respect of advocates' charges in the cases to which this Chapter applies.
- (2) This Chapter applies where —
 - (a) the only claim is a claim for a specified sum of money and —
 - (i) judgment in default is obtained under rule 10.25(1);
 - (ii) judgment is obtained under rule 10.38(2)(b)(i) after a statement of case is struck out;
 - (iii) judgment on admission of the whole of the claim is obtained under rule 10.41(2);
 - (iv) judgment on admission on part of the claim is obtained under rule 10.41(3);
 - (v) summary judgment is given under Chapter 6 of Part 10 without a hearing;

[Subs (v) amended by SD 686/09]

- (vi) the court has made an order to strike out a defence under rule 7.3(2)(a) as disclosing no reasonable grounds for defending the claim; or
 - (vii) rule 11.18 applies; or
 - (b) the only claim is a claim where the court gave a fixed date for the hearing when it issued the claim and judgment is given for the delivery of goods, and in either case the value of the claim exceeds £25.
- (3) The following shall be allowed in addition to the costs set out in this Chapter —
 - (a) any appropriate court fee;
 - (b) any coroner's fee for service of the claim form.

11.17 Amount of fixed costs for starting claim (45.2)

- (1) The claim form may include a claim for fixed costs for starting the claim.
- (2) The amount of fixed costs for starting the claim which the claim form may include shall be calculated by reference to the following table (Table 1).
- (3) Additional costs may also be claimed in the circumstances specified in Table 3 in rule 11.20.
- (4) The amount claimed, or the value of the goods claimed if specified, in the claim form is to be used for determining the band in the table that applies to the claim.

TABLE 1 FIXED COSTS FOR STARTING CLAIM		
<i>Where claim form is to be served —</i>	<i>within the jurisdiction</i>	<i>outside the jurisdiction</i>
Where value of claim exceeds £25 but does not exceed £1,000	£100	£125
Where value of the claim exceeds £1,000 but does not exceed £3,000	£250	£300
Where value of the claim exceeds £3,000 but does not exceed £5,000; or the only claim is for delivery of goods and no value is specified or stated on claim form	£400	£450
Where value of claim exceeds £5,000 but does not exceed £10,000	£450	£500
Where value of the claim exceeds £10,000 but does not exceed £50,000	£600	£650
Where value of the claim exceeds £50,000 but does not exceed £100,000	£800	£850
Where value of the claim exceeds £100,000 but does not exceed £150,000	£1,000	£1,050
Where value of the claim exceeds £150,000 but does not exceed £200,000	£1,200	£1,250
Where value of the claim exceeds £200,000 but does not exceed £250,000	£1,400	£1,450
Where value of the claim exceeds £250,000 but does not exceed £300,000	£1,600	£1,650
Where value of the claim exceeds £300,000	£1,800	£1,850

[table 1 updated by SD222/10]

11.18 When defendant liable only for fixed costs for starting claim (45.3)

Where —

- (a) the only claim is for a specified sum of money; and
- (b) the defendant pays the money claimed within 14 days after service of particulars of claim on him, together with the fixed costs for starting the claim as stated in the claim form,

the defendant is not liable for any further costs unless the court orders otherwise.

11.19 Costs on entry of judgment (45.4)

Where —

- (a) the claimant has claimed fixed costs for starting the claim under rule 11.17; and
- (b) judgment is entered in the circumstances specified in the table in this rule (Table 2),

the amount to be included in the judgment in respect of the claimant's advocate's charges is the aggregate of —

- (i) the fixed costs; and
- (ii) the relevant amount shown in Table 2.

TABLE 2 FIXED COSTS ON ENTRY OF JUDGMENT		
<i>Amount of judgment exceeds — but does not exceed —</i>	<i>£25 £5,000</i>	<i>£5,000 —</i>
Where claim is for money only and judgment in default of acknowledgement of service is entered under rule 10.24(1)	£30	£50
Where claim is for money only and judgment in default of a defence is entered under rule 10.24(2)	£40	£60
Where judgment is obtained under rule 10.38(2)(b)(i) (statement of case struck out)	£125	£175
Where judgment is entered under rule 10.40 (admission) with or without an instalment order, but court does not decide date or times of payment	£30	£50
Where judgment is entered under rule 10.40 (admission) with or without an instalment order, and court decides date or times of payment	£50	£75
Where summary judgment is given under rule 10.46 on application	£125	£175

11.20 Miscellaneous fixed costs (45.5)

The table in this rule (Table 3) shows the amount to be allowed in respect of an advocate's charges in the circumstances mentioned.

TABLE 3 MISCELLANEOUS FIXED COSTS	
For service by a party of any document required to be served personally, including preparing and copying a certificate of service	£25 for the first or only person served £10 for each additional

	person served
Where service by an alternative method is permitted by an order under rule 2.30	£75 for each person served
Where a document is served out of the jurisdiction —	
(a) in England and Wales, Scotland, Northern Ireland or the Channel Islands	(a) £75
(b) in any other place	(b) £90
Where an arrestment order is made under rule 12.27 in respect of a judgment for an amount —	
(a) exceeding £25 but not exceeding £5,000	(a) £125
(b) exceeding £5,000	(b) £175

CHAPTER 3: SMALL CLAIMS PROCEDURE

11.21 Restriction on allowance of costs (27.14)

(1) This rule applies to any claim which is allocated to the small claims procedure, unless paragraph (4) applies.

(2) The court may not order a party to pay a sum to another party in respect of that other party's costs, fees and expenses, except —

- (a) the fixed costs attributable to issuing the claim which are payable under Chapter 2, or would be payable under that Chapter if it applied to the claim;
- (b) in proceedings which included a claim for an injunction or an order for specific performance, a sum determined under paragraph (3) for legal advice and assistance relating to that claim;
- (c) in proceedings which included a claim for personal injuries, a sum determined under paragraph (3) for legal advice and assistance relating to that claim;
- (d) any court fees paid by that other party;
- (e) expenses which a party or witness has reasonably incurred in travelling to and from a hearing or in staying away from home for the purposes of attending a hearing;
- (f) a sum not exceeding £50 per day for any loss of earnings or loss of leave by a party or witness due to attending a hearing;
- (g) a sum determined under paragraph (3) for the fees of an expert; and
- (h) such further costs as the court may determine by summary assessment and order to be paid by a party who has behaved unreasonably.

(3) The sums referred to in paragraph (2)(b), (c) and (g) shall be —

- (a) those prescribed, or determined in such manner as may be prescribed, by a practice direction, or
- (b) in the case of the sum referred to in paragraph (2)(g), that directed by the court to be paid in the special circumstances of the case.

(3A) A party's rejection of an offer in settlement does not of itself constitute unreasonable behaviour under paragraph (2)(h) but the court may take it into consideration when deciding whether he has behaved unreasonably.

[subs (3), (a), (b) and (3A) amended by SD222/10]

- (4) Where —
 - (a) the financial value of a claim exceeds the small claims limit; but
 - (b) the claim has been allocated to the small claims procedure in accordance with rule 5.5(3),

the costs provisions applicable to the small claims procedures shall apply unless the parties agree that costs provisions applicable to the summary procedure are to apply.

(5) Where the parties agree that the costs provisions applicable to the summary procedure are to apply, the claim and any appeal will be treated for the purposes of costs as if it were allocated to the summary procedure.

CHAPTER 4: DETAILED ASSESSMENT

11.22 Time when detailed assessment may be carried out (47.1)

(1) The general rule is that the costs of any proceedings or any part of the proceedings are not to be assessed by the detailed procedure until the conclusion of the proceedings, but the court may order them to be assessed immediately.

(2) The court shall not, unless in the circumstances it considers it just to do so, order the costs of an application to be assessed immediately.

(3) Paragraph (2) does not apply to an application —

- (a) under Part 10 for —
 - (i) judgment on admission;
 - (ii) summary judgment; or
 - (iii) an instalment order; or
- (b) under Part 12.

(4) No order for costs to be assessed immediately may be made where the paying party is an assisted person.

11.23 No stay of detailed assessment where there is an appeal (47.2)

Detailed assessment is not stayed pending an appeal unless the court so orders.

11.24 Powers of costs officer (47.3)

A costs officer has all the powers of the court when making a detailed assessment.

11.25 Start of detailed assessment proceedings (47.6)

(1) Detailed assessment proceedings are started by the receiving party filing and serving on the paying party —

- (a) notice of the proceedings; and
- (b) a copy of the bill of costs.

(2) The receiving party must also serve a copy of the notice and the bill on —

- (a) any person who has taken part in the proceedings which gave rise to the assessment and who is directly liable under a costs order made against him;
- (b) any other person whom the court orders to be treated as a party to the detailed assessment proceedings.

(3) A person on whom a copy of the notice is served under paragraph (2) is a party to the detailed assessment proceedings (in addition to the paying party and the receiving party).

(4) Schedule 11.2 provides for the form and content of a bill of costs.

11.26 Period for starting detailed assessment proceedings (47.7)

The following table shows the period for starting detailed assessment proceedings.

TABLE 4	
<i>Source of right to detailed assessment</i>	<i>Time by which detailed assessment proceedings are to be started</i>
Judgment, direction, order, award or other determination	3 months after the date of the judgment etc. Where detailed assessment is stayed pending an appeal, 3 months after the date of the order lifting the stay
Acceptance of offer to settle under Chapter 6 of Part 7	3 months after the date when the right to costs arose
Discontinuance under Chapter 8 of Part 7	3 months after the date of service of notice of discontinuance under rule 7.75; or 3 months after the date of the dismissal of application to set the notice of discontinuance aside under rule 7.76

11.27 Sanction for delay in starting detailed assessment proceedings (47.8)

(1) Where the receiving party fails to commence detailed assessment proceedings within the period specified —

- (a) in rule 11.26; or
- (b) by any direction of the court,

the paying party may apply for an order requiring the receiving party to commence detailed assessment proceedings within such time as the court may specify.

(2) On an application under paragraph (1), the court may direct that, unless the receiving party commences detailed assessment proceedings within the time specified by the court, all or part of the costs to which the receiving party would otherwise be entitled shall be disallowed.

- (3) If —
- (a) the paying party has not made an application in accordance with paragraph (1); and
- (b) the receiving party commences the proceedings later than the period specified in rule 11.26,

the court may disallow all or part of the interest otherwise payable to the receiving party under section 9 of the Administration of Justice Act 1981, but must not impose any other sanction except in accordance with rule 11.14 (powers in relation to misconduct).

(4) Where the costs to be assessed in a detailed assessment are payable by the Treasury under Part I of the Legal Aid Act 1986, this rule applies as if the receiving party were the advocate to whom the costs are payable and the paying party were the Treasury.

11.28 Points of dispute and consequence of not serving (47.9)

(1) The paying party and any other party to the detailed assessment proceedings may dispute any item in the bill of costs by filing points of dispute and serving them on —

- (a) the receiving party, and
- (b) every other party to the detailed assessment proceedings.

(2) The period for serving points of dispute is 21 days after the date of service of the notice under rule 11.25.

(3) If a party serves points of dispute after the period set out in paragraph (2), he may not be heard further in the detailed assessment proceedings unless the court or costs officer gives permission.

11.29 Procedure where costs are agreed (47.10)

If the paying party and the receiving party agree the amount of costs, either party may apply for a costs certificate (either interim or final) in the amount agreed.

11.30 Default costs certificate (47.9, 47.11)

(1) Where —

(a) the period set out in rule 11.28(2) for serving points of dispute has expired; and

(b) he has not been served with any points of dispute,

the receiving party may file a request for a default costs certificate.

(2) On the filing of a request under paragraph (1) the court shall issue a default costs certificate to the receiving party, unless any party (including the paying party) serves points of dispute before it is issued.

(3) A default costs certificate shall include an order to pay the costs to which it relates.

(4) Where a receiving party obtains a default costs certificate, the costs payable to him for the start of detailed assessment proceedings shall be £150.

11.31 Setting aside default costs certificate (47.12)

(1) The court must set aside a default costs certificate if the receiving party was not entitled to it.

(2) In any other case, the court may set aside or vary a default costs certificate if it appears to the court that there is some good reason why the detailed assessment proceedings should continue.

(3) Where —

(a) the receiving party has purported to serve the notice under rule 11.25 on the paying party;

(b) a default costs certificate has been issued; and

(c) the receiving party subsequently discovers that the notice did not reach the paying party at least 21 days before the default costs certificate was issued,

the receiving party must —

(i) file a request for the default costs certificate to be set aside; or

(ii) apply to the court for directions.

(4) Where paragraph (3) applies, the receiving party may take no further step in

—

(a) the detailed assessment proceedings; or

(b) the enforcement of the default costs certificate,

until the certificate has been set aside or the court has given directions.

11.32 Optional reply (47.13)

(1) Where any party to the detailed assessment proceedings serves points of dispute, the receiving party may serve a reply on the other parties to the assessment proceedings.

(2) He may do so within 21 days after service on him of the points of dispute to which his reply relates.

11.33 Detailed assessment hearing (47.14)

(1) Where points of dispute are served in accordance with rule 11.28, the receiving party must file —

- (a) a request for a detailed assessment hearing,
- (b) the bill of costs,
- (c) a copy of the points of dispute and any reply, and
- (d) a file or series of files comprising the following documents, arranged in chronological order —
 - (i) all statements of case, with any orders or directions of the court in the proceedings;
 - (ii) all legal aid certificates and amendments to them, notices of discharge or revocation and specific legal aid authorisations;
 - (iii) accounts for disbursements;
 - (iv) reports and opinions of medical and other experts;
 - (v) the advocate's correspondence and attendance notes;
 - (vi) any relevant terms of business agreement between the advocate and his client; and
 - (vii) any other relevant papers.

(2) Items (i) and (iv) in paragraph (1)(d) may, and shall if a costs officer so directs, be lodged as separate bundles, arranged in chronological order.

(3) Where the receiving party fails to file a request under paragraph (1)(a) and the documents specified in paragraph (1)(b) to (d) within 3 months of the expiry of the period for commencing detailed assessment proceedings as specified —

- (a) in rule 11.26; or
- (b) by any direction of the court or costs officer,

the paying party may apply for an order requiring the receiving party to file the request within such time as the court may specify.

(4) On an application under paragraph (3), the court may direct that, unless the receiving party requests a detailed assessment hearing within the time specified by the court, all or part of the costs to which the receiving party would otherwise be entitled shall be disallowed.

- (5) If —
 - (a) the paying party has not made an application in accordance with paragraph (3); and
 - (b) the receiving party files a request for a detailed assessment hearing later than the period specified in that paragraph,

the court may disallow all or part of the interest otherwise payable to the receiving party under section 9 of the Administration of Justice Act 1981, but must not impose any other sanction except in accordance with rule 11.14 (misconduct).

(6) Subject to any direction under paragraph (4), on the filing of a request and documents under paragraph (1), a costs officer shall hold a detailed assessment hearing.

(7) No party other than —

(a) the receiving party;

(b) the paying party; and

(c) any party who has served points of dispute under rule 11.28,

may be heard at the detailed assessment hearing unless the court or the costs officer gives permission.

(8) Only items specified in the points of dispute may be raised at the hearing, unless the court or the costs officer gives permission.

11.34 Power to issue interim certificate (47.15)

(1) A costs officer may, on application, at any time after the receiving party has filed a request for a detailed assessment hearing —

(a) issue an interim costs certificate for such sum as he considers appropriate;

(b) amend or cancel an interim certificate.

(2) An interim certificate shall include an order to pay the costs to which it relates, unless the costs officer orders otherwise.

(3) A costs officer may order the costs certified in an interim certificate to be paid into court.

11.35 Final costs certificate (47.16)

(1) In this rule a ‘completed bill’ means a bill calculated to show the amount due following the detailed assessment of the costs.

(2) The period for filing the completed bill is 14 days after the end of the detailed assessment hearing.

(3) When a completed bill is filed the court shall issue a final costs certificate and serve it on the parties to the detailed assessment proceedings.

(4) Paragraph (3) is subject to any order made by the court that a certificate is not to be issued until other costs have been paid.

(5) A final costs certificate shall include an order to pay the costs to which it relates, unless the costs officer orders otherwise.

(6) Where a court fee is payable for the detailed assessment of the costs, a final costs certificate shall not be issued unless the fee has been paid.

11.36 Liability for costs of detailed assessment proceedings (47.18)

(1) The receiving party is entitled to his costs of the detailed assessment proceedings except where —

(a) any rule or other statutory provision provides otherwise; or

(b) the costs officer makes some other order in relation to all or part of the costs of the detailed assessment proceedings.

(2) In deciding whether to make some other order, the costs officer must have regard to all the circumstances, including —

(a) the conduct of all the parties;

(b) the amount, if any, by which the bill of costs has been reduced; and

(c) whether it was reasonable for a party to claim the costs of a particular item or to dispute that item.

11.37 Offers to settle without prejudice save as to costs of detailed assessment proceedings (47.19)

- (1) Where —
- (a) a party (whether the paying party or the receiving party) makes a written offer to settle the costs of the proceedings which gave rise to the assessment proceedings; and
- (b) the offer is expressed to be without prejudice save as to the costs of the detailed assessment proceedings,

the costs officer shall take the offer into account in deciding who should pay the costs of those proceedings.

(2) The fact of the offer must not be communicated to the costs officer until the question of costs of the detailed assessment proceedings falls to be decided.

(3) This rule does not apply where the receiving party is an assisted person, unless the court orders otherwise.

11.38 Action where more than half of charges are disallowed

(1) This rule applies where in detailed assessment proceedings the costs officer allows less than half of the total amount of the advocate's charges claimed in the bill of costs.

(2) The final costs certificate shall contain a statement to that effect, specifying the percentage of the amount claimed which has been allowed.

(3) The court or costs officer shall send a copy of the completed bill and a copy of the certificate to the Advocates Disciplinary Tribunal —

- (a) where an appeal is made against the decision of the costs officer, on the determination or withdrawal of the appeal (subject to any order made on appeal);
- (b) where no such appeal is made, on the expiry of the period specified in rule 11.39(3).

(4) Subject to any order made on appeal, the costs of the detailed assessment proceedings (including any court fee) shall be paid by the advocate.

11.39 Appeal from costs officer (47.20-23)

(1) This rule applies to an appeal against a decision of a costs officer in detailed assessment proceedings.

(2) An appeal shall be determined by a judge.

(3) The appellant must file an appeal notice within 21 days after the date of the decision he wishes to appeal against.

(4) On receipt of the appeal notice, the court shall —

- (a) serve a copy of the notice on the parties to the detailed assessment proceedings; and
- (b) give notice of the appeal hearing to those parties.

(5) On an appeal from a costs officer the court shall —

- (a) re-hear the proceedings which gave rise to the decision appealed against; and
 - (b) make any order and give any directions as it considers appropriate.
- (6) No appeal, except on a point of law, shall lie from the decision of the judge.

CHAPTER 5: SPECIAL CASES

11.40 Disclosure before start of proceedings etc. (48.1)

- (1) This rule applies where a person applies for an order under —
 - (a) section 34 of the High Court Act 1991 (powers exercisable before start of proceedings); or
 - (b) section 35 of that Act (order against a non-party for disclosure of documents, inspection of property etc.).
- (2) The general rule is that the court shall award the person against whom the order is sought his costs —
 - (a) of the application; and
 - (b) of complying with any order made on the application.
- (3) The court may however make a different order, having regard to all the circumstances, including the extent to which it was reasonable for the person against whom the order was sought to oppose the application.

11.41 Costs orders in favour of or against non-parties (48.2)

- (1) Where the court is considering whether to exercise its power under section 53 of the High Court Act 1991 to make a costs order in favour of or against a person who is not a party to proceedings —
 - (a) that person must be added as a party to the proceedings for the purposes of costs only; and
 - (b) he must be given a reasonable opportunity to attend a hearing at which the court shall consider the matter further.
- (2) This rule does not apply —
 - (a) where the court is considering whether —
 - (i) to make an order under section 6 of the Legal Aid Act 1986 (award of costs to unassisted party), or
 - (ii) to make a wasted costs order under rule 11.47; and
 - (b) in proceedings to which rule 11.40 applies (disclosure before start of proceedings etc.).

11.42 Amount of costs where costs are payable pursuant to a contract (48.3)

- (1) Where costs which are payable by the paying party to the receiving party under the terms of a contract are assessed (whether by summary or detailed assessment), the costs payable under those terms are, unless the contract expressly provides otherwise, to be presumed to be costs which —

- (a) have been reasonably incurred; and
 - (b) are reasonable in amount,

and shall be assessed accordingly.

- (2) This rule does not apply where the contract is between an advocate and his client.

11.43 Limitations on court's power to award costs in favour of trustee or personal representative (48.4)

- (1) This rule applies where —
 - (a) a person is or has been a party to any proceedings in the capacity of trustee or personal representative; and

(b) rule 11.42 does not apply.

(2) The general rule is that he is entitled to be paid the costs of those proceedings, insofar as they are not recovered from or paid by any other person, out of the relevant trust fund or estate.

(3) Where he is entitled to be paid any of those costs out of the fund or estate, those costs shall be assessed on the indemnity basis.

11.44 Costs where money is payable by or to a minor or patient (48.5)

(1) This rule applies to any proceedings where a party is a minor or patient and

—

(a) money is ordered or agreed to be paid to, or for the benefit of, that party; or

(b) money is ordered to be paid by him or on his behalf.

(2) The general rule is that —

(a) the court must order a detailed assessment of the costs payable by, or out of money belonging to, any party who is a minor or patient to his advocate; and

(b) on an assessment under paragraph (a), the costs officer must also assess any costs payable to that party in the proceedings, unless the costs officer has issued a default costs certificate in relation to those costs under rule 11.30.

(3) The court need not order detailed assessment of costs in the following cases

—

(a) where there is no need to do so to protect the interests of the minor or patient or his estate;

(b) where another party has agreed to pay a specified sum in respect of the costs of the minor or patient and the advocate acting for the minor or patient has waived the right to claim further costs;

(c) where the court has decided the costs payable to the minor or patient by way of summary assessment and the advocate acting for the minor or patient has waived the right to claim further costs;

(d) where an insurer or other person is liable to discharge the costs which the minor or patient would otherwise be liable to pay to his advocate and the court is satisfied that the insurer or other person is financially able to discharge those costs.

(4) Where —

(a) a claimant is a minor or patient; and

(b) a detailed assessment has taken place under paragraph (2)(a),

the only amount payable by the minor or patient to his advocate is the amount which the costs officer certifies as payable.

11.45 Litigants in person (48.6)

(1) This rule applies where the court orders (whether by summary or detailed assessment) that the costs of a litigant in person are to be paid by any other person.

(2) The costs allowed under this rule must not exceed, except in the case of a disbursement, two-thirds of the amount which would have been allowed if the litigant in person had been represented by an advocate.

(3) The litigant in person shall be allowed —

(a) costs for the same categories of —

(i) work; and

(ii) disbursements,

which would have been allowed if the work had been done or the disbursements had been made by an advocate on the litigant in person's behalf;

(b) the payments reasonably made by him for legal services relating to the conduct of the proceedings; and

(c) the costs reasonably incurred by him of obtaining expert assistance in assessing the costs claim.

(4) The amount of costs to be allowed to the litigant in person for any item of work claimed shall be —

(a) where the litigant can prove financial loss, the amount that he can prove he has lost for time reasonably spent on doing the work; or

(b) where the litigant cannot prove financial loss, an amount for the time reasonably spent on doing the work at the rate specified in paragraph (5).

(5) The rate referred to in paragraph (4)(b) is one-tenth of the rate for the time being prescribed under section 20(1)(b) of the Advocates Act 1995 (or, if 2 or more such rates are so prescribed, the lowest such rate).

(6) A litigant who is allowed costs for attending at court to conduct his case is not entitled to a witness allowance in respect of such attendance in addition to those costs.

(7) For the purposes of this rule, a litigant in person includes —

(a) a company or other corporation which is acting without an advocate; and

(b) an advocate or an advocate's employee who is acting for himself;

but does not include an advocate who, instead of acting for himself, is represented in the proceedings by his firm or by himself in his firm name.

11.46 Costs where court has made group litigation order (48.6A)

(1) This rule applies where the court has made a group litigation order under rule 3.33.

(2) In this rule —

'individual costs' means costs incurred in relation to an individual claim on the group register;

'common costs' means —

(a) costs incurred in relation to the group issues;

(b) individual costs incurred in a claim while it is proceeding as a test claim, and

(c) costs incurred by the lead advocate in administering the group litigation; and

'group litigant' means a claimant or defendant, as the case may be, whose claim is entered on the group register.

(3) Unless the court orders otherwise, any order for common costs against group litigants imposes on each group litigant several liability for an equal proportion of those common costs.

(4) The general rule is that where a group litigant is the paying party, he shall, in addition to any costs he is liable to pay to the receiving party, be liable for —

(a) the individual costs of his claim; and

(b) an equal proportion, together with all the other group litigants, of the common costs.

(5) Where the court makes an order about costs in relation to any application or hearing which involved —

(a) one or more group issues; and

(b) issues relevant only to individual claims,

the court shall direct the proportion of the costs that is to relate to common costs and the proportion that is to relate to individual costs.

(6) Where common costs have been incurred before a claim is entered on the group register, the court may order the group litigant to be liable for a proportion of those costs.

(7) Where a claim is removed from the group register, the court may make a costs order in that claim which includes a proportion of the common costs incurred up to the date on which the claim is removed from the group register.

11.47 Personal liability of advocate for costs — wasted costs orders (48.7)

(1) This rule applies where the court is considering whether to make a wasted costs order.

(2) The court must give the advocate a reasonable opportunity to attend a hearing to give reasons why it should not make such an order.

(3) When the court makes a wasted costs order, it must —

- (a) specify the amount to be disallowed or paid; or
- (b) direct a judge or costs officer to decide the amount of costs to be disallowed or paid.

(4) The court may direct that notice must be given to the advocate's client, in such manner as the court may direct —

- (a) of any proceedings under this rule; or
- (b) of any order made under it against his advocate.

(5) Before making a wasted costs order, the court may direct a judge or costs officer to inquire into the matter and report to the court.

(6) The court may refer the question of wasted costs to a judge or costs officer, instead of making a wasted costs order.

11.48 Basis of detailed assessment of advocate and client costs (48.8)

(1) This rule applies to every assessment of an advocate's bill to his client except a bill which is to be paid by the Treasury under section 5 of the Legal Aid Act 1986.

(2) Costs are to be assessed on the indemnity basis but are to be presumed —

- (a) to have been reasonably incurred if they were incurred with the express or implied approval of the client;
- (b) to be reasonable in amount if their amount was expressly or impliedly approved by the client;
- (c) to have been unreasonably incurred if —
 - (i) they are of an unusual nature or amount; and
 - (ii) the advocate did not tell his client that as a result he might not recover all of them from the other party.

(3) Where an advocate's fees are limited by section 20(1)(b) of the Advocates Act 1995, the amount of the fees allowed under this rule shall not exceed the fees chargeable in accordance with that section.

11.49 Assessment procedure (48.10)

(1) This rule sets out the procedure to be followed where an application is made under section 23(1)(a) of the Advocates Act 1995 for the assessment of costs payable to an advocate by his client.

(2) The application shall be made by letter addressed to the Chief Registrar.

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(3) An application for permission under section 23(3) of the 1995 Act (application out of time) may be made by letter addressed to the Chief Registrar, setting out the grounds of the application, and shall be determined by a judge.

(4) The advocate must serve a breakdown of costs within 28 days of service of a copy of the letter of application under paragraph (2) on him.

(5) The client must serve points of dispute within 14 days after service on him of the breakdown of costs.

(6) If the advocate wishes to serve a reply, he must do so within 14 days of service on him of the points of dispute.

(7) Either party may file a request for a hearing date —

(a) after points of dispute have been served; but

(b) no later than 3 months after the date on which the application under paragraph (2) is made.

(8) This procedure applies subject to any contrary order made by the court.

SCHEDULE 11.1 — SUMMARY ASSESSMENT

(Rule 11.8(4))

1. *Duty of parties*

It is the duty of the parties and their advocates to assist the judge in making a summary assessment of costs in any case to which rule 11.8(2) applies, in accordance with the following paragraphs.

2. *Statement of costs*

(1) Each party who intends to claim costs must prepare a written statement of the costs he intends to claim showing separately in the form of a schedule:

- (a) the number of hours to be claimed,
- (b) the hourly rate to be claimed,
- (c) the grade of fee earner;
- (d) the amount and nature of any disbursement to be claimed;
- (e) the amount of costs claimed for preparing for and appearing at the hearing,
- (f) any value added tax (VAT) to be claimed on these amounts.

(2) The statement of costs must be filed and copies of it served on any party against whom an order for payment of those costs is intended to be sought. The statement of costs should be filed and the copies of it should be served as soon as possible and in any event not less than 24 hours before the date fixed for the hearing.

(3) The failure by a party, without reasonable excuse, to comply with this paragraph shall be taken into account by the court in deciding what order to make about the costs of the claim, hearing or application, and about the costs of any further hearing or detailed assessment hearing that may be necessary as a result of that failure.

3. *Adjournment*

(1) If a summary assessment of costs is appropriate but the court awarding costs is unable to do so on the day, the court shall give directions as to a further hearing before the same judge.

(2) The court may not make an order for a summary assessment of costs by a costs officer.

4. *Breakdown of costs*

Where the court makes a summary assessment of costs at the conclusion of proceedings, the court shall specify separately the advocate's charges, disbursements and any VAT.

5. *Special cases*

(1) The court may not make a summary assessment of the costs of a receiving party who is an assisted person.

(2) The court may not make a summary assessment of the costs of a receiving party who is a minor or patient unless the advocate acting for the minor or patient has waived the right to further costs.

(3) The court may make a summary assessment of costs payable by a minor or patient.

SCHEDULE 11.2 — FORM AND CONTENTS OF BILL OF COSTS (PD47)

(Rule 11.25(4))

1. General

(1) A bill of costs must consist of such of the following sections as may be appropriate —

- (a) a title page;
- (b) a summary of the claim and any additional claim;
- (c) background information;
- (d) items of costs claimed, arranged in chronological order and identified by reference to the headings specified in paragraph 5;
- (e) a summary showing the total costs claimed on each page of the bill; and
- (f) schedules of time spent on attendances.

(2) In this Schedule —

‘communications’ means letters in and out and telephone calls made and received;

‘letters’ includes faxes, telex messages and e-mails;

‘routine communications’ means communications which by reason of their simplicity should not be regarded as letters of substance or telephone calls which properly amount to an attendance.

2. Division of bill into parts

(1) Where it is necessary or convenient to do so, a bill of costs may be divided into 2 or more parts, each part containing sections (b), (c) and (d) above. A division into parts is necessary or convenient in the following circumstances —

- (a) where the receiving party acted in person during the course of the proceedings (whether or not he also had an advocate at that time) the bill should be divided into different parts so as to distinguish between —
 - (i) the costs claimed for work done by the advocate; and
 - (ii) the costs claimed for work done by the receiving party in person;
- (b) where the receiving party was represented by different advocates during the course of the proceedings, the bill should be divided into different parts so as to distinguish between the costs payable in respect of each advocate;
- (c) where the receiving party obtained legal aid in respect of part of the proceedings the bill should be divided into separate parts so as to distinguish between —
 - (i) costs claimed before legal aid was granted;
 - (ii) costs claims when legal aid was granted; and
 - (iii) costs claimed after legal aid ceased.
- (d) where value added tax (VAT) is claimed and there was a change in the rate of VAT during the course of the proceedings, the bill should be divided into separate parts so as to distinguish between —
 - (i) costs claimed at the old rate of VAT; and
 - (ii) costs claimed at the new rate of VAT;
- (e) where the bill covers costs payable under 2 or more orders under which there are different paying parties the bill should be divided into parts so as to deal separately with the costs payable by each paying party.

3. Title page

(1) The title page of the bill of costs must set out —

- (a) the full title of the proceedings;
 - (b) the name of the party whose bill it is and a description of the document showing the right to assessment;
 - (c) if VAT is included as part of the claim for costs, the VAT number of the advocate or other person in respect of whom VAT is claimed.
 - (d) details of all legal aid certificates and amendment certificates in respect of which claims for costs are included in the bill.
- (2) Where the party whose bill it is is an assisted person, additional notes on the title page of the bill must clearly indicate —
- (a) the date of the court order under which the costs are to be assessed in accordance with Schedule 2 to the Legal Aid Act 1986, and
 - (b) where appropriate, details of any court order to the effect that any of the costs of the assisted person be paid by another party to the proceedings.

4. Background information

The background information included in the bill of costs should set out —

- (a) a brief description of the proceedings up to the date of the notice under rule 11.25(1)(a);
- (b) the status of the advocate or advocate's employee in respect of whom costs are claimed and (if those costs are calculated on the basis of hourly rates) the hourly rates claimed for each such person ;
- (c) a brief explanation of any agreement or arrangement between the receiving party and his advocates which affects the costs claimed in the bill.

5. Heads of costs

(1) The bill of costs may consist of items under such of the following heads as may be appropriate —

- (a) attendances on the court up to the date of the notice under rule 11.25(1)(a);
- (b) attendances on and communications with the receiving party;
- (c) attendances on and communications with witnesses including any expert witness;
- (d) attendances to inspect any property or place for the purposes of the proceedings;
- (e) searches and enquiries made at the General Registry or the Companies Registry and similar searches and enquiries;
- (f) attendances on and communications with other persons;
- (g) communications with the court;
- (h) work done in connection with arithmetical calculations of compensation or interest or both;
- (i) work done on documents: preparing and considering documentation which was of and incidental to the proceedings, including time spent before the start of proceedings where appropriate and time spent collating documents;
- (j) work done in connection with mediation, alternative dispute resolution and negotiations with a view to settlement if not already covered in the heads listed above;
- (k) other work done which was of or incidental to the proceedings and which is not already covered in the heads listed above.

- (2) In respect of each of the heads of costs:-

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- (a) communications which are not routine communications must be set out in chronological order;
- (b) routine communications should be set out either —
 - (i) as a single item at the end of the bill, or
 - (ii) if they can conveniently be divided by reference to periods or stages in the claim, as a series of single items at the end of the parts of the bill relating to those periods or stages.

6. Items

- (1) Each item claimed in the bill of costs must be consecutively numbered.
- (2) In each part of the bill of costs which claims items under head (a) (attendances on court) a note should be made of —
 - (a) all relevant events, including events which do not constitute chargeable items;
 - (b) any orders for costs which the court made (whether or not a claim is made in respect of those costs in this bill of costs).
- (3) The numbered items of costs must be set out on paper divided into five columns, of which the last two columns should be left blank. The five columns should be headed as follows:

Item no. Description Time claimed Time deducted Time allowed

- (4) The bill of costs must not contain any claims in respect of costs or court fees which relate solely to the detailed assessment proceedings other than costs claimed for preparing and checking the bill.

7. Summary

- (1) The summary must show the total profit costs and disbursements claimed separately from the total VAT claimed. Where the bill of costs is divided into parts the summary must also give totals for each part. If each page of the bill gives a page total the summary must also set out the page totals for each page.

- (2) The summary must include the following certificate:

I certify that value added tax on the legal costs in this case [is] [is not] recoverable by the party in whose favour the costs order has been made.

8. Work done by advocates

- (1) The following provisions relate to work done by advocates.
- (2) Routine letters and telephone calls shall in general be allowed as follows —
 - (a) letters out and telephone calls made or received on a unit basis of 6 minutes each,
 - (b) perusing letters in on a unit basis of 3 minutes each,and the charge being calculated by reference to the appropriate hourly rate.

- (3) Local travelling expenses incurred by advocates shall not be allowed. The definition of 'local' is a matter for the discretion of the court, but 'local' shall in general be taken to mean within, or in the vicinity of, the town where the advocate practises.

- (4) The cost of postage, couriers, out-going telephone calls, fax and telex messages (except for the purpose of serving a document) will in general not be allowed but the court may exceptionally in its discretion allow such expenses in unusual circumstances or where the cost is unusually heavy.

- (5) The cost of making copies of documents (except documents for use by the court or witnesses at a trial or hearing) will not in general be allowed but the court may exceptionally in its discretion make an allowance for copying in unusual circumstances or

where the documents copied are unusually numerous in relation to the nature of the case. Where this discretion is invoked the number of copies made, their purpose and the costs claimed for them must be set out in the bill.

9. *Costs of preparing the bill*

In head (k) in paragraph 5(1) (other work done) a claim may be made for the reasonable costs of preparing and checking the bill of costs.

PART 12 : ENFORCEMENT

CHAPTER 1: ENFORCEMENT — GENERAL

12.1 Scope of this Chapter and interpretation (70.1)

(1) This Chapter contains general rules about enforcement of judgments and orders.

(2) In this Part —

‘the 1981 Act’ means the Administration of Justice Act 1981;

‘arrestment order’ means an order for the arrestment of debts under section 14 of the 1981 Act;

‘charging order’ means an order under section 14A of the 1981 Act.

‘execution’ means execution against the goods or land of a judgment debtor in accordance with Schedule 1 or 2 to the 1981 Act;

‘judgment creditor’ means a person who has obtained or is entitled to enforce a judgment or order;

‘judgment debtor’ means a person against whom a judgment or order was given or made;

‘judgment or order’ includes an award which the court has —

(a) registered for enforcement;

(b) ordered to be enforced; or

(c) given permission to enforce as if it were a judgment or order of the court,

and in relation to such an award, ‘the court which made the judgment or order’ means the court which registered the award or made such an order; and

‘judgment or order for the payment of money’ includes a judgment or order for the payment of costs, but does not include a judgment or order for the payment of money into court.

(3) A reference in this order to a specified amount of money includes a reference to a specified amount of damages.

12.2 Methods of enforcing judgments or orders (70.2, PD70.1)

(1) A judgment creditor may enforce a judgment or order for the payment of money by any of the following methods —

(a) execution;

(b) the appointment of a receiver.

(c) an arrestment order;

(d) a charging order;

(e) an attachment of earnings order.

(2) In addition the court may make an order of imprisonment against a judgment debtor in accordance with —

(a) section 17 of the Bankruptcy Procedure Act 1892; and

(b) the Imprisonment for Debt Act 1928.

(3) A judgment creditor may, except where a statutory provision or rule provides otherwise —

(a) use any method of enforcement which is available; and

- (b) use more than one method of enforcement, either at the same time or one after another.

12.3 Enforcement of judgment or order by or against non-party (70.4)

If a judgment or order is given or made in favour of or against a person who is not a party to proceedings, it may be enforced by or against that person by the same methods as if he were a party.

12.4 Enforcement of awards of bodies other than the court (70.5, PD70.4-5)

- (1) This rule applies, subject to paragraph (2), if —
 - (a) an award of a sum of money or other decision is made by any court, tribunal, body or person other than the court; and
 - (b) a statutory provision provides that the award may be enforced as if payable under a court order, or that the decision may be enforced as if it were a court order.
- (2) This rule does not apply to —
 - (a) any judgment to which Chapter 8 applies;
 - (b) any order to which Chapter 11 applies; or
 - (c) an arbitration award.
- (3) If the statutory provision provides that an award of a sum of money is enforceable if a court so orders, an application for such an order must be made in accordance with paragraphs (4) to (7) of this rule.
- (4) An application for an order that an award may be enforced as if payable under a court order may be made without notice
- (5) The application notice must state —
 - (a) the name and address of the person against whom it is sought to enforce the award; and
 - (b) how much of the award remains unpaid.
- (6) A copy of the award must be filed with the application notice.
- (7) The application may be dealt with by a court officer without a hearing.
- (8) If a statutory provision provides that an award or decision may be enforced in the same manner as an order of the court if it is registered, any application to the court for registration must —
 - (a) specify the statutory provision under which the application is made;
 - (b) state the name and address of the person against whom it is sought to enforce the award or decision;
 - (c) if the award or decision requires that person to pay a sum of money, state the amount which remains unpaid.

12.5 Effect of setting aside judgment or order (70.6)

If a judgment or order is set aside, any enforcement of the judgment or order shall cease to have effect unless the court otherwise orders.

12.6 Register of judgments

For the purposes of section 15 of the 1981 Act (register of judgments) ‘default action’ means any claim for —

- (a) a specified amount of money;
- (b) an amount of money to be decided by the court;

- (c) delivery of goods where the claim form gives the defendant the alternative of paying their value; or
- (d) any combination of these remedies.

12.7 Enforcement of judgment or order against firm (RHC 36.8)

(1) Subject to paragraph (2), a judgment or order against a firm may be enforced against —

- (a) any property of the firm;
- (b) any person who admitted in the proceedings that he was a partner or was adjudged to be a partner;
- (c) any person who was served as a partner with the claim form if —
 - (i) judgment was entered under Chapter 2 or Chapter 5 of Part 10; or
 - (iii) the person so served did not appear at the trial or hearing of the proceedings.

(2) Except as provided by paragraph (1)(a), a judgment or order obtained against a firm shall not render liable, release or otherwise affect a member of the firm who was out of the jurisdiction when the claim form was issued.

(3) A judgment creditor who claims to be entitled to enforce a judgment or order against any other person as a partner may apply to the court for permission to do so.

(4) An application notice under paragraph (3) shall be served on the alleged partner not less than 3 days before the hearing of the application.

(5) On the hearing of the application —

- (a) if the alleged partner does not dispute his liability, the court may, subject to paragraph (2), give permission to enforce the judgment or order against him;
- (b) if he disputes liability, the court may order that the question of his liability be tried and determined in such a manner as the court thinks fit.

CHAPTER 2: EXECUTION

12.8 Execution on entry of default judgment or judgment on admission

Where —

- (a) judgment for a specified amount of money is entered under Chapter 2 (default judgment) or Chapter 5 (judgment on admission) of Part 10;
- (b) the judgment is for immediate payment;
- (c) the court is not required by rule 10.52 or 10.53 to make an instalment order; and
- (d) the request filed under rule 10.25(1) or 10.43(1) includes a request for execution,

the court shall on entering judgment grant execution for the amount of the judgment, including costs and interest (if any).

12.9 Execution on application

(1) Where —

- (a) judgment is entered or given for, or an order is made for the payment of, a specified amount of money; or
- (b) judgment is entered or given for, or an order is made for the payment of, an amount of money to be decided by the court, and the amount or value is determined or agreed; or

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- (c) judgment is entered or given or an order is made for the delivery up of goods, with the option of paying the value of the goods or the agreed value, and the amount or value is determined or agreed;

the court shall (subject to rule 10.55) on the application of the judgment creditor grant execution for the amount or value, including costs and interest (if any).

- (2) Where judgment is entered or given or an order is made —
 - (a) for the delivery up of goods, without the option of paying the value of the goods or the agreed value, or
 - (b) for the recovery or possession of land;

the court shall on the application of the judgment creditor grant execution in respect of the goods or land.

- (3) An application under paragraph (1) or (2) may be made —
 - (a) by filing a request, or
 - (b) where the judgment or determination is given in the course or at the conclusion of a trial or hearing, orally at the trial or hearing.
- (4) An application under paragraph (1) or (2) may be made without notice.

12.10 Enforcing judgment between a firm and its members (RHC 36.9)

- (1) Execution to enforce a judgment or order given or made in —
 - (a) proceedings by or against a firm, in the name of the firm against or by a member of the firm; or
 - (b) proceedings by a firm in the name of the firm against a firm in the name of the firm where those firms have one or more members in common,

shall not issue without the permission of the court.

(2) On an application for permission the court may give such directions, including directions as to the taking of accounts and the making of inquiries, as may be just.

12.11 Enforcing judgment for contribution (RHC 10.7(2))

Where judgment is given for the payment of any contribution or indemnity to a person who is under a liability to make a payment in respect of the same debt or damage, execution shall not issue on the judgment without the permission of the court until that liability has been discharged.

12.12 Enforcing judgment for possession of land (RHC 8.5, RSC 45.11)

(1) In a claim for possession of land, where there is more than one defendant, execution shall not issue on a judgment or order for possession unless and until a judgment or order for possession has been obtained against all the defendants.

(2) Where a judgment or order for possession of land has been obtained, the defendant may apply to the court for a stay of execution of the judgment or order or other relief, on the ground of matters which have occurred since the date of the judgment or order.

(3) On an application under paragraph (2) the court may by order stay the execution or grant such other relief, on such terms, as it thinks just.

12.13 Execution against land

(1) This rule applies to an application by a coroner for permission to enter premises forcibly under paragraph 2 of Schedule 2 to the 1981 Act.

- (2) The application notice must —
 - (a) give particulars of —

- (i) the land to be arrested (stating whether or not it is or includes residential premises);
 - (ii) all occupiers of the land, so far as known to the judgment creditor or the coroner;
 - (iii) any charges secured on the land, so far as known to the judgment creditor or the coroner;
 - (iv) the amount of the judgment remaining unsatisfied (including costs and interest, if any); and
 - (v) the estimated value of the land; and
- (b) be served on all adult persons who were in occupation of the premises at the date when the application is filed, not less than 7 days before the date fixed for the hearing of the application.
- (3) Any person on whom notice of the application is served under paragraph (2)(b) may appear and be heard at the hearing of the application.

12.14 Power to stay enforcement (RSC 47.1)

- (1) This rule applies to a judgment or order for the payment of money.
- (2) Where the court is satisfied, on an application made by the judgment debtor at the time of the judgment or order, or at any time afterwards, —
- (a) that there are special circumstances which render it inexpedient to enforce the judgment or order; or
 - (b) that the judgment debtor is unable for any reason to pay the money,
- the court may by order stay the enforcement of the judgment or order either absolutely or for such period and subject to such conditions as the court thinks fit.
- (3) An application under this rule may be made even though the judgment debtor did not —
- (a) acknowledge service of the claim form,
 - (b) serve a defence, or
 - (c) take any previous part in the proceedings.
- (4) The grounds on which the application is made must be set out in the application notice and verified by a statement of truth.
- (5) Where the application is made on the ground that the judgment debtor is unable to pay, the application notice must set out —
- (a) his income,
 - (b) the nature and value of any property of his, and
 - (c) the amount of any other liabilities of his.
- (6) An order staying enforcement under this rule may be varied or discharged by a subsequent order.

CHAPTER 3: APPOINTMENT OF RECEIVER

12.15 Scope of this Chapter (69.1)

- (1) This Chapter contains provisions about the court's power to appoint a receiver under any statutory provision except Part 1 of the Proceeds of Crime Act 2008.
- (2) In this Chapter 'receiver' includes a manager.

12.16 Court's power to appoint receiver (69.2)

(1) The court may appoint a receiver under section 42 of the High Court Act 1991 —

- (a) before proceedings have started;
- (b) in existing proceedings; or
- (c) on or after judgment.

(2) A receiver must be an individual.

(3) The court may at any time —

- (a) terminate the appointment of a receiver; and
- (b) appoint another receiver in his place.

12.17 How to apply for the appointment of a receiver (69.3)

An application for the appointment of a receiver —

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

12.18 Service of order appointing receiver (69.4)

An order appointing a receiver must be served by the party who applied for it on —

- (a) the person appointed as receiver;
- (b) unless the court orders otherwise, every other party to the proceedings; and
- (c) such other persons as the court may direct.

12.19 Security (69.5)

(1) The court may direct that before a receiver begins to act or within a specified time he must either —

- (a) give such security as the court may determine; or
- (b) file and serve on all parties to the proceedings evidence that he already has in force sufficient security,

to cover his liability for his acts and omissions as a receiver.

(2) The court may terminate the appointment of the receiver if he fails —

- (a) to give the security; or
- (b) to satisfy the court as to the security he has in force,

by the date specified.

12.20 Receiver's application for directions (69.6)

(1) The receiver may apply to the court at any time for directions to assist him in carrying out his function as a receiver.

(2) The court, when it gives directions, may also direct the receiver to serve on any person —

- (a) the directions; and
- (b) the application for directions.

12.21 Receiver's remuneration (69.7)

(1) A receiver may only charge for his services if the court —

- (a) so directs; and
- (b) specifies the basis on which the receiver is to be remunerated.

- (2) The court may specify —
 - (a) who is to be responsible for paying the receiver; and
 - (b) the fund or property from which the receiver is to recover his remuneration.
- (3) If the court directs that the amount of a receiver's remuneration is to be determined by the court —
 - (a) the receiver may not recover any remuneration for his services without a determination by the court; and
 - (b) the receiver or any party may apply at any time for such a determination to take place.
- (4) Unless the court orders otherwise, in determining the remuneration of a receiver the court shall award such sum as is reasonable and proportionate in all the circumstances and which takes into account —
 - (a) the time properly given by him and his staff to the receivership;
 - (b) the complexity of the receivership;
 - (c) any responsibility of an exceptional kind or degree which falls on the receiver in consequence of the receivership;
 - (d) the effectiveness with which the receiver appears to be carrying out, or to have carried out, his duties; and
 - (e) the value and nature of the subject matter of the receivership.
- (5) The court may refer the determination of a receiver's remuneration to a costs officer.

12.22 Accounts (69.8, PD69)

- (1) The court may order a receiver to prepare and serve accounts.
- (2) When the court makes an order under paragraph (1), it may —
 - (a) direct the receiver to prepare and serve accounts either by a specified date or at specified intervals; and
 - (b) specify the persons on whom he must serve the accounts.
- (3) A party served with such accounts may apply for an order permitting him to inspect any document in the possession of the receiver relevant to those accounts.
- (4) Any party may, within 14 days of being served with the accounts, serve notice on the receiver—
 - (a) specifying any item in the accounts to which he objects;
 - (b) giving the reason for such objection; and
 - (c) requiring the receiver, within 14 days of receipt of the notice, either —
 - (i) to notify all the parties who were served with the accounts that he accepts the objection; or
 - (ii) if he does not accept the objection, to apply for an examination of the accounts in relation to the contested item.
- (5) When the receiver applies for the examination of the accounts he must at the same time file —
 - (a) the accounts; and
 - (b) a copy of the notice served on him under this rule.
- (6) If the receiver fails to comply with paragraph (4)(c), any party may apply to the court for an examination of the accounts in relation to the contested item.

(7) At the conclusion of its examination of the accounts the court shall certify the result.

12.23 Non-compliance by receiver (69.9)

(1) If a receiver fails to comply with any rule or direction of the court the court may order him to attend a hearing to explain his non-compliance.

(2) At the hearing the court may make any order it considers appropriate, including —

- (a) terminating the appointment of the receiver;
- (b) reducing the receiver's remuneration or disallowing it altogether; and
- (c) ordering the receiver to pay the costs of any party.

(3) Where —

- (a) the court has ordered a receiver to pay a sum of money into court; and
- (b) the receiver has failed to do so,

the court may order him to pay interest on that sum for the time he is in default at such rate as it considers appropriate.

12.24 Application for discharge of receiver (69.10)

(1) The receiver or any party may apply for the receiver to be discharged on completion of his duties.

(2) The application notice must be served on the persons who were required under rule 12.18 to be served with the order appointing the receiver.

12.25 Order discharging or terminating appointment of receiver (69.11)

(1) An order discharging or terminating the appointment of a receiver may —

- (a) require him to pay into court any money held by him; or
- (b) specify the person to whom he must pay any money or transfer any assets still in his possession; and
- (c) make provision for the discharge or cancellation of any guarantee given by the receiver as security.

(2) The order must be served on the persons who were required under rule 12.18 to be served with the order appointing the receiver.

CHAPTER 4: ARRESTMENT ORDERS

12.26 Scope of this Chapter (72.1)

(1) This Chapter contains rules which provide for a judgment creditor to obtain an order (an 'arrestment order') in the exercise of the jurisdiction of the court to attach debts for the purpose of satisfying judgments or orders for the payment of money.

(2) In this Chapter —

'bank' includes any person carrying on a business in the course of which he lawfully accepts deposits in the Island;

references to a judgment creditor include, where appropriate, references to a coroner acting with the consent of the judgment creditor pursuant to section 14 of the 1981 Act.

(3) A firm carrying on business within the jurisdiction shall be treated for the purpose of this Chapter as within the jurisdiction even though one or more members of the firm may be resident out of the jurisdiction.

12.27 Arrestment order (72.2)

(1) Upon the application of a judgment creditor, the court may make an order (a ‘final arrestment order’) requiring a third party to pay to the judgment creditor —

- (a) the amount of any debt due or accruing due to the judgment debtor from the third party; or
- (b) so much of that debt as is sufficient to satisfy the judgment debt and the judgment creditor’s costs of the application.

(2) The court shall not make an order under paragraph (1) without first making an order (an ‘interim arrestment order’) as provided by rule 12.29(2).

(3) In deciding whether money standing to the credit of the judgment debtor in an account to which section 46 of the High Court Act 1991 relates may be made the subject of an arrestment order, any condition applying to the account that a receipt for money deposited in the account must be produced before any money is withdrawn shall be disregarded.

12.28 Application for arrestment order (72.3, PD72)

- (1) An application for an arrestment order may be made without notice.
- (2) The application notice must contain the following information —
 - (a) the name and address of the judgment debtor;
 - (b) particulars of the judgment or order sought to be enforced;
 - (c) the amount of money remaining due under the judgment or order;
 - (d) if an instalment order is in force, the amount of any instalments which have fallen due and remain unpaid;
 - (e) the name and address of the third party;
 - (f) if the third party is a bank —
 - (i) its name and the address of the branch at which the judgment debtor’s account is believed to be held; and
 - (ii) the account number;

or, if the judgment creditor does not know all or part of this information, a statement to that effect;

- (g) a statement that to the best of the judgment creditor’s knowledge or belief the third party —
 - (i) is within the jurisdiction; and
 - (ii) owes money to or holds money to the credit of the judgment debtor;
 - (h) if the judgment creditor knows or believes that any person other than the judgment debtor has any claim to the money owed by the third party —
 - (i) his name and (if known) his address; and
 - (ii) such information as is known to the judgment creditor about his claim;
 - (i) details of any other applications for arrestment orders issued by the judgment creditor in respect of the same judgment debt; and
 - (j) the sources or grounds of the judgment creditor’s knowledge or belief of the matters referred to in (g), (h) and (i).
- (3) The application notice must be verified by a statement of truth.

12.29 Interim arrestment order (72.4)

(1) An application for an arrestment order shall initially be dealt with by a judge without a hearing.

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- (2) The judge may make an interim arrestment order —
 - (a) fixing a hearing to consider whether to make a final arrestment order; and
 - (b) directing that until that hearing the third party must not make any payment which reduces the amount he owes the judgment debtor to less than the amount specified in the order.
- (3) An interim arrestment order shall specify the amount of money which the third party must retain, which shall be the total of —
 - (a) the amount of money remaining due to the judgment creditor under the judgment or order; and
 - (b) an amount for the judgment creditor's fixed costs of the application, as specified in rule 11.19.
- (4) An interim arrestment order becomes binding on a third party when it is served on him.
- (5) The date of the hearing to consider the application shall be not less than 28 days after the interim arrestment order is made.

12.30 Service of interim order (72.5)

- (1) Copies of an interim arrestment order, the application notice and any documents filed in support of it must be served —
 - (a) on the third party, not less than 21 days before the date fixed for the hearing; and
 - (b) on the judgment debtor not less than —
 - (i) 7 days after a copy has been served on the third party; and
 - (ii) 7 days before the date fixed for the hearing.
- (2) If the judgment creditor serves the order, he must either —
 - (a) file a certificate of service not less than 2 days before the hearing; or
 - (b) produce a certificate of service at the hearing.

12.31 Obligations of third party served with interim order (72.6)

- (1) A bank served with an interim arrestment order must carry out a search to identify all accounts held with it by the judgment debtor.
- (2) The bank must disclose to the court and the creditor within 7 days of being served with the order, in respect of each account held by the judgment debtor —
 - (a) the number of the account;
 - (b) whether the account is in credit; and
 - (c) if the account is in credit —
 - (i) whether the balance of the account is sufficient to cover the amount specified in the order;
 - (ii) the amount of the balance at the date it was served with the order, if it is less than the amount specified in the order; and
 - (iii) whether the bank asserts any right to the money in the account, whether pursuant to a right of set-off or otherwise, and if so giving details of the grounds for that assertion.
- (3) If —
 - (a) the judgment debtor does not hold an account with the bank; or
 - (b) the bank is unable to comply with the order for any other reason (for example, because it has more than one account holder whose details match

the information contained in the order, and cannot identify which account the order applies to),

the bank must inform the court and the judgment creditor of that fact within 7 days of being served with the order.

(4) Any third party other than a bank served with an interim arrestment order must notify the court and the judgment creditor in writing within 7 days of being served with the order, if he claims —

- (a) not to owe any money to the judgment debtor; or
- (b) to owe less than the amount specified in the order.

12.32 Arrangements for debtors in hardship (72.7)

- (1) If —
 - (a) a judgment debtor is an individual;
 - (b) he is prevented from withdrawing money from his account with a bank as a result of an interim arrestment order; and
 - (c) as a result he or his family is suffering hardship in meeting ordinary living expenses or legal expenses relating to the proceedings in question,

the court may, on an application by the judgment debtor, make an order permitting the bank to make a payment or payments out of the account ('a hardship payment order').

- (2) An application notice seeking a hardship payment order must —
 - (a) include detailed evidence explaining why the judgment debtor needs a payment of the amount requested; and
 - (b) be verified by a statement of truth.
- (3) Unless the court orders otherwise, the application notice —
 - (a) must be served on the judgment creditor at least 2 days before the hearing; but
 - (b) does not need to be served on the third party.
- (4) A hardship payment order may —
 - (a) permit the third party to make one or more payments out of the account; and
 - (b) specify to whom the payments may be made.

12.33 Further consideration of the application (72.8)

(1) If the judgment debtor or the third party objects to the court making a final arrestment order, he must file and serve written evidence stating the grounds for his objections.

(2) If the judgment debtor or the third party knows or believes that a person other than the judgment debtor has any claim to the money specified in the interim order, he must file and serve written evidence stating his knowledge of that matter.

- (3) If —
 - (a) the third party has given notice under rule 12.31 that he does not owe any money to the judgment debtor, or that the amount which he owes is less than the amount specified in the interim order; and
 - (b) the judgment creditor wishes to dispute this,

the judgment creditor must file and serve written evidence setting out the grounds on which he disputes the third party's case.

(4) Written evidence under paragraph (1), (2) or (3) must be filed and served on each other party as soon as possible, and in any event not less than 3 days before the hearing.

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(5) If the court is notified that some person other than the judgment debtor may have a claim to the money specified in the interim order, it will serve on that person notice of the application and the hearing.

(6) At the hearing the court may —

- (a) make a final arrestment order;
- (b) discharge the interim arrestment order and dismiss the application;
- (c) decide any issues in dispute between the parties, or between any of the parties and any other person who has a claim to the money specified in the interim order; or
- (d) direct a trial of any such issues, and if necessary give directions.

12.34 Effect of final arrestment order (72.9)

(1) A final arrestment order shall be enforceable as an order to pay money.

(2) If —

- (a) the third party pays money to the judgment creditor in compliance with an arrestment order; or
- (b) the order is enforced against him,

the third party shall, to the extent of the amount paid by him or realised by enforcement against him, be discharged from his debt to the judgment debtor.

(3) Paragraph (2) applies even if the arrestment order, or the original judgment or order against the judgment debtor, is later set aside.

12.35 Money in court (72.10)

(1) If money is standing to the credit of the judgment debtor in court —

- (a) the judgment creditor may not apply for an arrestment order in respect of that money; but
- (b) he may apply for an order that the money in court, or so much of it as is sufficient to satisfy the judgment or order and the costs of the application, be paid to him.

(2) An application notice seeking an order under this rule must be served on —

- (a) the judgment debtor, and
- (b) any other person appearing to the judgment creditor to have an interest in the money in court.

(3) If an application notice has been issued under this rule, the money in court must not be paid out until the application has been disposed of.

12.36 Costs (72.11)

If the judgment creditor is awarded costs on an application for an order under rule 12.27 or 12.35 —

- (a) he shall, unless the court otherwise directs, retain those costs out of the money recovered by him under the order; and
- (b) the costs shall be deemed to be paid first out of the money he recovers, in priority to the judgment debt.

CHAPTER 5: CHARGING ORDERS

12.37 Scope of this Chapter (73.1)

(1) This Chapter contains rules which provide for a judgment creditor to enforce a judgment by obtaining a charging order over or against the judgment debtor's interest in an asset pursuant to section 14A of the 1981 Act.

(2) In this Chapter —

‘funds in court’ includes securities held in court;

‘securities’ means securities of any of the kinds specified in paragraph 1(3) of Schedule 2A to the 1981 Act;

references to a judgment creditor include, where appropriate, references to a coroner acting with the consent of the judgment creditor.

12.38 Application for charging order (73.3)

(1) An application for a charging order may be made without notice.

(2) A judgment creditor may apply for a single charging order in respect of more than one judgment or order against the same debtor.

(3) The application notice must contain the following information —

(a) the name and address of the judgment debtor;

(b) particulars of the judgment or order sought to be enforced;

(c) the amount of money remaining due under the judgment or order;

(d) if an instalment order is in force, the amount of any instalments which have fallen due and remain unpaid;

(e) if the judgment creditor knows of the existence of any other creditors of the judgment debtor, their names and (if known) their addresses;

(f) particulars of the asset or assets which it is intended to charge; and

(g) particulars of the judgment debtor's interest in the asset.

[Subs (3) amended by SD 686/09]

(4) The application notice must be verified by a statement of truth.

12.39 Interim charging order (73.4)

(1) An application for a charging order shall initially be dealt with by a judge without a hearing.

(2) The judge may make an order (an ‘interim charging order’) —

(a) imposing a charge over the judgment debtor's interest in the asset to which the application relates; and

(b) fixing a hearing to consider whether to make a final charging order as provided by rule 12.43(2)(a).

12.40 Service of interim order (73.5)

(1) Copies of the interim charging order, the application notice and any documents filed in support of it must, not less than 21 days before the hearing, be served on the following persons —

(a) the judgment debtor;

(b) such other creditors as the court directs;

(c) if the order relates to an interest under a trust, on such of the trustees as the court directs;

- (d) if the interest charged is in securities other than securities held in court —
 - (i) in the case of government stock, the Treasury;
 - (ii) in the case of stock of any body incorporated in the Island, that body;
 - (iii) in the case of stock of any body incorporated outside the Island, which is registered in a register kept in the Island, the keeper of that register;
 - (iv) in the case of units of any unit trust in respect of which a register of the unit holders is kept in the Island, the keeper of that register.
- (2) The judgment creditor must either —
 - (a) file a certificate of service not less than 2 days before the hearing; or
 - (b) produce a certificate of service at the hearing.

12.41 Effect of interim order in relation to securities (73.6)

(1) If a judgment debtor disposes of his interest in any securities, while they are subject to an interim charging order which has been served on him, that disposition shall not, so long as that order remains in force, be valid as against the judgment creditor.

(2) A person served under rule 12.40(1)(d) with an interim charging order relating to securities must not, unless the court gives permission —

- (a) permit any transfer of any of the securities; or
 - (b) pay any dividend, interest or redemption payment relating to them.
- (3) If a person acts in breach of paragraph (2), he is liable to pay to the judgment creditor —
- (a) the value of the securities transferred or the amount of the payment made (as the case may be); or
 - (b) if less, the amount necessary to satisfy the debt in relation to which the interim charging order was made.

12.42 Effect of interim order in relation to funds in court (73.7)

If a judgment debtor disposes of his interest in funds in court while they are subject to an interim charging order which has been served on him in accordance with rule 12.40(1), that disposition shall not, so long as that order remains in force, be valid as against the judgment creditor.

12.43 Further consideration of the application (73.8)

(1) If any person objects to the court making a final charging order, he must file, and serve on the applicant, written evidence stating the grounds of his objection, not less than 7 days before the hearing.

- (2) At the hearing the court may —
 - (a) make a final charging order confirming that the charge imposed by the interim charging order shall continue, with or without modification;
 - (b) discharge the interim charging order and dismiss the application;
 - (c) decide any issues in dispute between the parties, or between any of the parties and any other person who objects to the court making a final charging order; or
 - (d) direct a trial of any such issues, and if necessary give directions.
- (3) Without prejudice to paragraph 2(2) (service of charging order) of Schedule 2A to the 1981 Act, any order made at the hearing must be served on all the persons on whom the interim charging order was required to be served.

12.44 Discharge or variation of order (73.9)

- (1) The judgment debtor or any interested person may apply to the court for an order discharging or varying a charging order.
- (2) The court may direct that —
 - (a) any interested person be joined as a party to such an application; or
 - (b) the application notice be served on any such person.
- (3) An order discharging or varying a charging order must be served on all the persons on whom the charging order was required to be served.

12.45 Enforcement of charging order by sale etc. (73.10)

- (1) This rule applies to an application under paragraph 2(4) (order authorising disposal of asset) of Schedule 2A to the 1981 Act.
- (2) The application notice must contain the following information —
 - (a) the name and address of the judgment debtor;
 - (b) particulars of the charging order;
 - (c) particulars of the property sought to be disposed of;
 - (d) the proposed manner of disposal;
 - (e) the amount in respect of which the charge was imposed and the amount due at the date of the application;
 - (f) so far as known to the judgment creditor —
 - (i) the judgment debtor's title to the property;
 - (ii) the names and addresses of any other creditors who have a prior charge or other security over the property; and
 - (iii) the amount owed to each such creditor;
 - (g) the estimated amount which would be realised on the disposal of the property;
 - (h) if the property is land, particulars of every person who to the best of the judgment creditor's knowledge is in possession of the property.
- (3) The application notice must be verified by a statement of truth.

12.46 Application for permission to register transfer etc.

Where an application is made for permission to take any step mentioned in paragraph 3 of Schedule 2A to the 1981 Act, a copy of the application notice must be served on —

- (a) the judgment creditor;
- (b) the judgment debtor;
- (c) any other person on whom the charging order was required to be served.

CHAPTER 6: ATTACHMENT OF EARNINGS ORDERS

12.47 Interpretation

In this Chapter —

‘instalment order’ means an order made by the court under rule 10.52, 10.53 or 10.54;

‘maintenance order’ means a maintenance order (within the meaning of the 1981 Act) made by the court;

references to a judgment creditor include, where appropriate, references to a coroner acting with the consent of the judgment creditor pursuant to section 28(1)(a) of the 1981 Act.

12.48 Application for attachment of earnings order (RHC 51B.2)

(1) Where application is made for an attachment of earnings order, the application notice must include —

- (a) particulars of the instalment order or maintenance order sought to be enforced;
- (b) the date of service of the instalment order or maintenance order on the judgment debtor, or the reason why it has not been served;
- (c) the amount of any arrears due to the judgment creditor under the order;
- (d) particulars of any steps which have been taken for the enforcement of the order;
- (e) the name and address of the person believed to be the judgment debtor's employer;
- (f) the following particulars of the judgment debtor (or, in the case of an application by the judgment creditor, such of them as are known to him) —
 - (i) the judgment debtor's full name and address;
 - (ii) his age;
 - (iii) his national insurance number;
 - (iv) his place of work;
 - (v) the nature of his work and his works number, if any;
- (g) any other facts relevant to the means of the judgment debtor (or, in the case of an application by the judgment creditor, such facts relevant to those means as are known to him).

(2) The application notice, with a copy of any document accompanying it, must be served on the respondent to the application at least 7 days before the court is to deal with the application.

(3) The respondent may, within 4 days after service of notice of the application on him, file a reply to the application, and must serve a copy on the judgment creditor or judgment debtor, as the case may be, within 24 hours after filing it.

(4) The court shall, when fixing the date when it is to deal with the application, give such directions under section 32(1)(a) and (b) of the 1981 Act as appear to it to be necessary for determining the application.

(5) The powers of the court under section 32(1) of the 1981 Act may be exercised by a court officer.

12.49 Content of order (RHC 51B.3)

- (1) An attachment of earnings order shall include —
 - (a) the name and address of the judgment debtor's employer to whom the order is directed;
 - (b) such of the following particulars of the judgment debtor as are known to the court —
 - (i) the judgment debtor's full name and address;
 - (ii) his age;
 - (iii) his national insurance number;
 - (iv) his place of work;
 - (v) the nature of his work and his works number, if any;

- (c) the date of the instalment order or maintenance order to be enforced, and the amount and frequency of the instalments or periodical payments payable under that order;
- (d) the amount and frequency of the amounts normally to be deducted under the attachment of earnings order;
- (e) the minimum amount of earnings to be paid to the judgment debtor.
- (2) The order shall provide for the sums deducted under the order to be paid —
 - (a) in the case of an order to enforce a maintenance order, to the Chief Registrar;
 - (b) in any other case, such coroner as appears to the court to be appropriate.
- (3) The judgment creditor or judgment debtor, as the case may be, shall serve a copy of the order on —
 - (a) the person to whom it is directed, and
 - (b) the respondent to the application,and, in the case within paragraph (2)(b), send a copy to the coroner.

12.50 Suspension and revival of order (RHC 51B.4)

- (1) Where an attachment of earnings order is suspended under section 29(2) of the 1981 Act, the court shall cause notice of the suspension to be given to the judgment creditor and, where the payments under the order are to be made to a coroner, to the coroner.
- (2) Where the court is informed under section 29(3) of the 1981 Act that the judgment debtor is again employed —
 - (a) it shall give notice to the judgment creditor; and
 - (b) the judgment creditor or the judgment debtor may apply to the court that the order be revived and, if appropriate, redirected in accordance with section 29(4).
- (3) On an application under paragraph (2), the application notice must include the information specified in rule 12.48(1) and be verified by a statement of truth.
- (4) The powers of the court under section 29(4) of the 1981 Act (revival and redirection of order) may be exercised by a court officer.

12.51 Deduction by employer (RHC 51B.5)

A person to whom an attachment of earnings order is directed may deduct from any payment made in accordance with the order a sum not exceeding £1.00 for the clerical and administrative costs of complying with the order.

CHAPTER 7: MISCELLANEOUS ORDERS

12.52 Order to attend before coroner (71.2, PD71. ER8-10)

- (1) This rule applies to an application to the court by a coroner for an attendance order under paragraph 3 of Schedule 3 to the 1981 Act.
- (2) The application may be made without notice.
- (3) The application notice must contain the following information —
 - (a) the name and address of the judgment debtor;
 - (b) particulars of the judgment or order which the coroner is seeking to enforce;
 - (c) if the application is to enforce a judgment or order for the payment of money, the amount presently owed by the judgment debtor under the judgment or order;
 - (d) if the judgment debtor is a company or other corporation —

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- (i) the name and address of the officer of the corporation whom the coroner wishes to examine; and
 - (ii) his position in the corporation;
- (e) where a person is required to provide information as to the means of the judgment debtor —
 - (i) the name and address of that person, and
 - (ii) why it appears to the coroner that he may be able to give that information.
- (4) The application may be dealt with by a court officer without a hearing.
- (5) If the application notice complies with paragraph (3), an order shall be issued requiring the judgment debtor, officer or other person —
 - (a) to appear to be examined by the coroner, or to provide information, as to the means of the judgment debtor in accordance with Schedule 3 to the 1981 Act at a time and place specified in the order; and
 - (b) in the case of the judgment debtor or an officer, to produce all books, documents and things in his possession or under his control relevant to the means of the judgment debtor; or
 - (c) in the case of a person required to provide information, to produce all books, documents and things in his possession or under his control relevant to that information.
- (6) The order shall contain a notice in the following terms —
‘You must obey this order. If you do not, you may be sent to prison for contempt of court.’
- (7) An order which requires a person to appear to be examined must be served on the person to whom it is addressed not less than 7 days before the date fixed for the examination, and at the same time a copy must be served on the judgment creditor.
- (8) The depositions of persons examined on oath in connection with an inquiry under Schedule 3 to the 1981 Act shall contain the following information —
 - (a) the name and address of the person making the statement and the fact that the person was on oath;
 - (b) the date upon which and the place at which the statement was made,
 - (c) the details of the execution order upon which the inquiry is held; and
 - (d) the signature of the person making the statement at the end of the statement.
- (9) The record of findings under paragraph 6 of Schedule 3 to the 1981 Act shall be retained by the coroner for not less than 3 years and shall contain the following information —
 - (a) particulars of the judgment or order to be enforced;
 - (b) the date and place of the inquiry;
 - (c) the name and address of every person examined in the course of the inquiry; and
 - (d) the findings of the coroner after holding the inquiry.

12.53 Sequestration of benefice

- (1) This rule applies to an application for an order for the sequestration of an ecclesiastical benefice to enforce a judgment or order for the payment of money.
- (2) The application notice must contain the following information —
 - (a) the name and address of the judgment debtor;

- (b) particulars of the judgment or order sought to be enforced;
- (c) the amount of money remaining due under the judgment or order;
- (d) if an instalment order is in force, the amount of any instalments which have fallen due and remain unpaid;
- (e) particulars of the ecclesiastical benefice, the profits of which are sought to be sequestered;
- (f) particulars of the steps taken to enforce the judgment or order against other assets of the judgment debtor.
- (3) Notice of the application must be given to —
 - (a) the judgment debtor,
 - (b) the Bishop,
 - (c) the Diocesan Registrar, and
 - (d) the Sodor and Man Diocesan Board of Finance.
- (4) The order shall be issued to the Bishop directing him to sequester the profits of the benefice until the amount due under the judgment or order, including costs and interest (if any), is paid or the order is discharged.
- (5) The judgment creditor shall serve a copy of the order on the Diocesan Registrar.

12.54 Order under Partnership Act 1909 section 25 (PD73)

- (1) This rule relates to orders under section 25 of the Partnership Act 1909 ('section 25').
- (2) Where an application for such an order is made by a judgment creditor of a partner, the application notice and every order made following the application must be served on the judgment debtor and on any of the other partners who are within the jurisdiction.
- (3) Where an application for any order is made by a partner of the judgment debtor in consequence of any application made by the judgment creditor under section 25, the application notice and every order made following the application must be served on —
 - (a) the judgment creditor,
 - (b) the judgment debtor; and
 - (c) the other partners of the judgment debtor who are not joined in the application and are within the jurisdiction.
- (4) An application notice or order served under this rule on one or more, but not all, of the partners of a partnership shall be deemed to have been served on all the partners of that partnership.

CHAPTER 8: ENFORCEMENT OF OVERSEAS JUDGMENTS

12.55 Scope of this Chapter and interpretation (74.1, 74.2)

- (1) This Chapter applies to the enforcement in the Island of judgments of overseas courts.
- (2) In this Chapter —
 - 'the 1968 Act' means the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968;
 - 'country of origin', in relation to any judgment, means the country or territory in which that judgment was given.

12.56 Applications for registration (74.3, 74.4)

(1) This rule applies to applications under section 2 of the 1968 Act in respect of judgments to which Part I of that Act applies.

(2) The application must be made by a claim form, and may be made without notice.

(3) The application must be supported by written evidence exhibiting —

(a) the judgment or a verified or certified or otherwise authenticated copy of it; and

(b) where the judgment is not in English, a translation of it into English —

(i) certified by a notary public or other qualified person; or

(ii) accompanied by written evidence confirming that the translation is accurate.

(4) The written evidence in support of the application must state —

(a) the name of the judgment creditor and his address for service within the jurisdiction;

(b) the name of the judgment debtor and his address or place of business, if known;

(c) the grounds on which the judgment creditor is entitled to enforce the judgment;

(d) that the judgment is a money judgment;

(e) the amount in respect of which it remains unsatisfied; and

(f) where interest is recoverable on the judgment under the law of the country of origin —

(i) the amount of interest which has accrued up to the date of the application, or

(ii) the rate of interest, the date from which it is recoverable, and the date on which it ceases to accrue.

(5) Written evidence in support of the application under the 1968 Act must also —

(a) confirm that the judgment can be enforced by execution in the country of origin;

(b) confirm that the registration could not be set aside under section 4 of the 1968 Act;

(c) confirm that the judgment is not a judgment to which section 5 of the Protection of Trading Interests Act 1980 (an Act of Parliament) applies;

(d) where the judgment contains different provisions, some but not all of which can be registered for enforcement, set out those provisions in respect of which it is sought to register the judgment; and

(e) be accompanied by any further evidence as to —

(i) the enforceability of the judgment in the country of origin, and

(ii) the law of that country under which any interest has become due under the judgment, which may be required under the relevant order extending Part I of the 1968 Act to that country.

12.57 Security for costs (74.5)

(1) Subject to paragraph (2), Chapter 4 of Part 7 applies to an application for security for the costs of —

- (a) the application for registration;
- (b) any proceedings brought to set aside the registration; and
- (c) any appeal against the granting of the registration,

as if the judgment creditor were a claimant.

(2) Paragraph (1) does not apply to an application where the relevant order extending Part I of the 1968 Act to the country of origin otherwise provides.

12.58 Registration orders (74.6)

(1) An order granting permission to register a judgment ('a registration order') must be drawn up by the judgment creditor and served on the judgment debtor —

- (a) by delivering it to him personally;
- (b) as provided by section 335 or 335A of the Companies Act 1931; or
- (c) in such other manner as the court may direct.

(2) Permission is not required to serve a registration order out of the jurisdiction, and rules 2.43, 2.44, 2.45 and 2.48 apply to such an order as they apply to a claim form.

(3) A registration order must state —

- (a) full particulars of the judgment registered;
- (b) the name of the judgment creditor and his address for service within the jurisdiction;
- (c) the right of the judgment debtor to apply to have the registration set aside;
- (d) the period within which such an application or appeal may be made; and
- (e) that no measures of enforcement will be taken before the end of that period, other than measures ordered by the court to preserve the property of the judgment debtor.

12.59 Applications to set aside registration (74.7)

(1) An application to set aside registration under the 1968 Act must be made within the period set out in the registration order.

(2) The court may extend that period; but an application for such an extension must be made before the end of the period as originally fixed or as subsequently extended.

(3) The court hearing the application may order any issue between the judgment creditor and the judgment debtor to be tried.

12.60 Enforcement (74.9)

(1) No steps may be taken to enforce a judgment —

- (a) before the end of the period specified under rule 12.58(3)(d), or that period as extended by the court; or
- (b) where there is an application under rule 12.59, until the application has been determined.

(2) Any party wishing to enforce a judgment must file evidence of the service on the judgment debtor of —

- (a) the registration order; and
- (b) any other relevant order of the court.

(3) Nothing in this rule prevents the court from making orders to preserve the property of the judgment debtor pending final determination of any issue relating to the enforcement of the judgment.

CHAPTER 9: COMMITTAL FOR CONTEMPT OF COURT

12.61 Committal for contempt of court (RSC 52.1)

(1) The power of the court to punish for contempt of court may be exercised by an order of committal.

(2) Where contempt of court —

(a) is committed in connection with —

(i) any proceedings before the court; or

(ii) proceedings in a Court of General Gaol Delivery, except where the contempt is committed in the face of the court or consists of disobedience to an order of the court or a breach of an undertaking to the court; or

(iii) proceedings in an inferior court; or

(b) is committed otherwise than in connection with any proceedings,
an order of committal may be made only by a Deemster.

12.62 Application for committal order (RSC 52.3)

(1) An application for a committal order must be made —

(a) by an application notice, in existing proceedings;

(b) by a claim form, in any other case.

(2) The application must be accompanied by an affidavit in support setting out

—

(a) the name and description of the applicant,

(b) the name, description and address of the person sought to be committed, and

(c) the grounds on which his committal is sought,.

(3) There must be at least 14 clear days between the service of the notice or claim form and the hearing date.

(4) Unless the court otherwise directs, a copy of the notice or claim form, accompanied by a copy of the affidavit in support of the application, must be served personally on the person sought to be committed.

12.63 Hearing of application (RSC 52.6)

(1) Subject to paragraph (2), the court hearing an application for an order of committal may sit in private in the following cases —

(a) where the application arises out of proceedings relating to the wardship or adoption of an minor, or wholly or mainly to —

(i) the guardianship, maintenance or upbringing of a minor,

(ii) the arrangements to be made as to the person with whom a minor is to live, or

(iii) rights of contact with a minor;

(b) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder within the meaning of the Mental Health Act 1998;

(c) where the application arises out of proceedings in which a secret process, discovery or invention was in issue;

- (d) where it appears to the court that in the interests of the administration of justice or for reasons of national security the application should be heard in private;

but otherwise the application must be heard in public.

(2) If the court hearing an application in private by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, it shall in public state —

- (a) the name of that person;
- (b) in general terms the nature of the contempt of court in respect of which the order of committal is being made; and
- (c) the length of the period for which he is being committed.

(3) Except with the permission of the court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the affidavit under rule 12.62.

(4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf, he is entitled to do so.

12.64 Power to suspend execution of committal order (RSC 52.7)

(1) Where the court has made an order of committal, it may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as it may specify.

(2) Where execution of an order of committal is suspended by an order under paragraph (1), the applicant for the order of committal must, unless the court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.

12.65 Warrant for arrest (RSC 52.7A)

A warrant for the arrest of a person against whom an order of committal has been made shall not, without further order of the court, be enforced more than 2 years after the date on which the warrant is issued.

12.66 Discharge of person committed (RSC 52.8)

The court may, on the application of any person committed to an institution for any contempt of court, discharge him.

12.67 Savings (RSC 52.5, 9)

(1) Nothing in this Chapter shall be taken as affecting the power of the court to make an order of committal of its own initiative against a person guilty of contempt of court.

(2) Nothing in this Chapter shall be taken as affecting the power of the court to make an order requiring —

- (a) a person guilty of contempt of court, or
- (b) a person punishable by virtue of any statutory provision in like manner as if he had been guilty of contempt of the court,

to pay a fine or to give security for his good behaviour; and rules 12.61 to 12.64, so far as applicable and with the necessary modifications, apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

12.68 Committal for non-payment of judgment debt etc.

The foregoing provisions of this Chapter apply, with any necessary modifications, to the committal of a person under —

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- (a) section 17 of the Bankruptcy Procedure Act 1892, or
 - (b) section 2 of the Imprisonment for Debt Act 1928,
- as they apply to committal for contempt of court.

CHAPTER 10: ENFORCEMENT OF JUDGMENTS ABROAD

12.69 Scope of Chapter

- (1) This Chapter applies to applications to the court under section 9 of the 1968 Act.
- (2) In this Chapter ‘the 1968 Act’ means the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968.

12.70 Application for a certified copy of judgment (74.12)

- (1) A judgment creditor who wishes to enforce, in a country to which Part I of the 1968 Act applies, a judgment entered in the court must apply for a certified copy of the judgment.
- (2) The application may be made by letter without notice.

12.71 Evidence in support (74.13)

- (1) An application under rule 12.70 must be supported by written evidence exhibiting copies of —
 - (a) the claim form in the proceedings in which judgment was given;
 - (b) evidence that it was served on the defendant;
 - (c) the statements of case; and
 - (d) where relevant, a document showing that for those proceedings the applicant was an assisted person.
- (2) The written evidence must —
 - (a) identify the grounds on which the judgment was obtained;
 - (b) state whether the defendant objected to the jurisdiction and, if he did, the grounds of his objection;
 - (c) show that the judgment —
 - (i) has been served in accordance with Chapter 7 of Part 2 and rule 10.5, and
 - (ii) is not subject to a stay of enforcement;
 - (d) state the amount in respect of which the judgment remains unsatisfied;
 - (e) state whether interest is recoverable on the judgment, and if so, either —
 - (i) the amount of interest which has accrued up to the date of the application, or
 - (ii) the rate of interest, the date from which it is recoverable, and the date on which it ceases to accrue.

CHAPTER 11: FORFEITURE AND CIVIL RECOVERY

12.72 Forfeiture

Schedule 12.1 makes provision for proceedings in the court for —

- (a) the forfeiture of property used for the purposes of terrorism;
- (b) the enforcement of fines, forfeitures and other orders imposed or made by the International Criminal Court; and

- (c) the enforcement of orders made overseas which are enforceable in the Island by virtue of an order under section 32 of the Criminal Justice Act 1991.

12.73 Civil recovery

Schedule 12.2 makes provision for proceedings under —

- (a) Part 1 of the Proceeds of Crime Act 2008 (civil recovery orders); and
- (b) Part 4 of that Act (investigations).

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SCHEDULE 12.1 — FORFEITURE

Rule 12.72

1. Interpretation

In this Schedule —

‘the 2003 Act’ means the Anti-Terrorism and Crime Act 2003;

‘ICC order’ means —

- (a) a fine or forfeiture ordered by the International Criminal Court; or
- (b) an order by the International Criminal Court against a person convicted by that Court specifying a reparation to, or in respect of, a victim;

‘the ICC Regulations’ means the International Criminal Court (Enforcement) Regulations 2004.

2. General

(1) Proceedings under this Schedule shall be allocated to the chancery procedure.

(2) The title of any proceedings under this Schedule shall be ‘*Proceedings under the Anti-Terrorism and Crime Act 2003* [or as the case may be] *against [name of defendant]*’.

(3) Where a defendant is believed to have absconded, any requirement under this Schedule that a document be served on the defendant is satisfied if it is sent or transmitted to, or left at, his usual or last known residence.

3. Application for restraint order (RSC 115.3, 26)

(1) An application for a restraint order under paragraph 5 of Schedule 2 to the 2003 Act may be made by the prosecutor by the issue of a claim form, which need not be served on any other party.

(2) An application under sub-paragraph (1) must be supported by a witness statement or affidavit, which must —

(a) state either —

- (i) that proceedings have been instituted against a person for an offence under any of sections 7 to 10 of the 2003 Act and that they have not been concluded; or
- (ii) that a criminal investigation has been started in the Island with regard to such an offence,

and in either case give details of the alleged or suspected offence and of the defendant’s involvement;

(b) where proceedings have been instituted, state that a forfeiture order has been made in the proceedings or the grounds for believing that such an order may be made, as the case may be;

(c) where proceedings have not been instituted —

- (i) indicate the state of progress of the investigation and when it is anticipated that a decision will be taken on whether to institute proceedings against the defendant;
- (ii) state the grounds for believing that a forfeiture order may be made in any proceedings against the defendant; and
- (iii) verify that the prosecutor is to have the conduct of any such proceedings;

(d) to the best of the witness’s ability, give full particulars of the property in respect of which the order is sought and specify the person or persons holding such property and any other persons having an interest in it.

(3) Unless the court otherwise directs, a witness statement or affidavit under sub-paragraph (2) may contain statements of information or belief with the sources and grounds of it.

4. *Restraint order (RSC 115.4, 27)*

(1) A restraint order may be made subject to conditions and exceptions, including but not limited to —

- (a) conditions relating to the indemnifying of third parties against expenses incurred in complying with the order, and
- (b) exceptions relating to living expenses and legal expenses of the defendant,

but the prosecutor shall not be required to give an undertaking to abide by any order as to damages sustained by the defendant as a result of the restraint order.

(2) Unless the court otherwise directs, a restraint order made where notice of it has not been served on any person shall have effect until a day which shall be fixed for the hearing where all parties may attend on the application.

(3) Where a restraint order is made the prosecutor must —

- (a) serve copies of the order and of the witness statement or affidavit in support on the defendant and on all other named persons restrained by the order, and
- (b) notify all other persons or bodies affected by the order or its terms.

5. *Discharge or variation of order (RSC 115.5, 28)*

(1) The prosecutor, or any person or body on whom a restraint order is served or who is notified of the order, may make an application to discharge or vary the order.

(2) The application notice and any witness statement or affidavit in support must be filed and served on —

- (a) the prosecutor (if not the applicant),
- (b) the defendant (if not the applicant), and
- (c) any other person restrained or otherwise affected by the order,

not less than 2 clear days before the date fixed for the hearing of the application.

(3) Where a restraint order has been made and has not been discharged, the prosecutor must notify the court when proceedings for the offence have been concluded, and the court shall thereupon discharge the restraint order.

(4) The court may also discharge a restraint order upon receiving notice from the prosecutor that it is no longer appropriate for the order to remain in place.

(5) Where an order is made discharging or varying a restraint order, the applicant must serve copies of the order of discharge or variation on all persons restrained by the restraint order and must notify all other persons affected of the terms of the order of discharge or variation.

6. *Application for registration of overseas order (RSC 115.12, 13, 15, 30, 31)*

(1) An application for —

- (a) registration of a British Islands order under paragraph 13 of Schedule 2 to the 2003 Act, or
- (b) registration of an ICC order under regulation 2 of the ICC Regulations,

may be made without notice.

(2) An application under sub-paragraph (1)(a) may be made without notice, and must be supported by a witness statement or affidavit —

- (a) exhibiting the order or a certified copy of it; and

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- (b) stating, to the best of the witness's ability, particulars of such property in respect of which the order was made as is in the Island, and the person or persons holding the property.
- (3) An application under sub-paragraph (1)(b) must be supported by a witness statement or affidavit —
 - (a) exhibiting the order or a verified or certified or otherwise duly authenticated copy of it and, where the order is not in the English language, a translation of it into English certified by a notary public or authenticated by witness statement or affidavit; and
 - (b) stating —
 - (i) that the order is in force and is not subject to appeal;
 - (ii) where the person against whom the order was made did not appear in the proceedings, that he received notice thereof in sufficient time to enable him to defend them;
 - (iii) in the case of money, either that at the date of the application the sum payable under the order has not been paid or the amount which remains unpaid, as may be appropriate, or, in the case of other property, the property which has not been recovered; and
 - (iv) to the best of the witness's knowledge, particulars of what property the person against whom the order was made holds in the Island, giving the source of the witness's knowledge.
- (4) Unless the court otherwise directs, a witness statement or affidavit under sub-paragraph (2) or (3) may contain statements of information or belief with the sources and grounds of it.

(5) The powers conferred on the court by regulation 2 of the ICC Regulations may be exercised by a court officer.

7. Register of orders (RSC 115.16)

- (1) There shall be kept in the court office under the direction of the Chief Registrar —
 - (a) a register of British Islands orders registered under Schedule 2 to the 2003 Act; and
 - (b) a register of ICC orders registered under regulation 2 of the ICC Regulations.
- (2) There shall be included in the register particulars of any variation or setting aside of a registration and of any execution issued on a registered order.

8. Notice of registration (RSC 115.17, 33)

- (1) Notice of the registration of an ICC order must be served on the person against whom it was obtained —
 - (a) by delivering it to him personally,
 - (b) by sending it to him at his usual or last known address or place of business, or
 - (c) in such other manner as the court may direct.
- (2) Notice of the registration of a British Islands order must be served on the person or persons holding the property referred to in paragraph 6(2)(b) and any other persons appearing to have an interest in that property.
- (3) Permission is not required to serve the notice out of the jurisdiction and rules 2.43, 2.44, 2.45 and 2.48 apply to such a notice as they apply to a claim form.

9. Application to vary or set aside registration (RSC 115.18, 19, 34, 35)

- (1) An application —

- (a) by the person against whom an ICC order was made to vary or set aside the registration of the order, or
- (b) to vary or set aside the registration of a British Islands order (except under paragraph 10)

must be made to a judge and be supported by witness statement or affidavit.

(2) If an application is made under sub-paragraph (1), the order shall not be enforced until after the application is determined.

(3) Sub-paragraph (2) does not apply to the taking of steps under paragraph 7 or 8 of Schedule 2 to the 2003 Act, as applied by paragraph 13(6) of that Schedule.

10. Variation, satisfaction and discharge of registered order (RSC 115.20)

Upon the court being notified by the applicant for registration that an order which has been registered has been varied, satisfied or discharged, particulars of the variation, satisfaction or discharge, as the case may be, shall be entered in the register.

11. Variation and cancellation of registration (RSC 115.36)

(1) If effect has been given (whether in the Island or elsewhere) to a British Islands order, or the order has been varied or discharged by the court by which it was made, the applicant for registration must inform the court.

(2) If such effect has been given in respect of all the money or other property to which the order applies, or if the order has been discharged by the court by which it was made, registration of the order shall be cancelled.

(3) If such effect has been given in respect of only part of the money or other property, or if the order has been varied by the court by which it was made, registration of the order shall be varied accordingly.

12. External forfeiture orders (RSC 115.21A)

(1) In this rule 'external forfeiture order' means an order made by a court in a country or territory outside the Island which is enforceable in the Island by virtue of an order under section 32 of the Criminal Justice Act 1991.

(2) Paragraphs 6 to 10 apply, with such modifications as are necessary and subject to the provisions of any order under the said section 32, to proceedings for the registration and enforcement of external forfeiture orders as they apply to such proceedings in relation to ICC orders.

SCHEDULE 12.2 — CIVIL RECOVERY

Rule 12.73

1. Interpretation

In this Schedule –

- (a) ‘the Act’ means the Proceeds of Crime Act 2008;
- (b) ‘appropriate officer’ has the meaning given in section 195 of the Act;
- (c) ‘civil recovery proceedings’ means proceedings under Part 1 of the Act;
- (d) ‘interim receiving order’ has the meaning given in section 13 of the Act;
- (e) ‘management receiving order’ means an order to appoint a receiver under section 10 of the Act;
- (f) ‘property freezing order’ has the meaning given in section 6 of the Act;
- (g) other expressions have the same meaning as in the Act.

2. Claim for a recovery order

(1) A claim by the Attorney General for a recovery order must be allocated to the chancery procedure.

(2) The claim form must –

- (a) identify the property in relation to which a recovery order is sought;
- (b) state, in relation to each item or description of property –
 - (i) whether the property is alleged to be recoverable property or associated property; and
 - (ii) either who is alleged to hold the property or, where the Attorney General is unable to identify who holds the property, the steps that have been taken to try to establish their identity;
- (c) set out the matters relied upon in support of the claim; and
- (d) give details of the person nominated by the Attorney General to act as trustee for civil recovery in accordance with section 23 of the Act.

(3) The evidence in support of the claim must include the signed written consent of the person nominated by the Attorney General to act as trustee for civil recovery if appointed by the court.

3. Application for property freezing order or receiving order

(1) An application for a property freezing order, an interim receiving order or a management receiving order must be made to a judge in accordance with Chapter 2 of Part 7.

(2) Rule 7.12 and Chapter 3 of Part 7 do not apply to applications for property freezing orders, interim receiving orders and management receiving orders.

(3) The application may be made without notice in the circumstances set out in section 6(3), 10(3) or 13(3) of the Act, as the case may be.

(4) An application for a property freezing order must be supported by written evidence which must –

- (a) set out the grounds on which the order is sought;
- (b) give details of each item or description of property in respect of which the order is sought, including an estimate of the value of the property; and
- (c) state in relation to each item or description of property in respect of which the order is sought –

- (i) whether the property is alleged to be recoverable property or associated property, and the facts relied upon in support of that allegation; and
 - (ii) in the case of any associated property, who is believed to hold the property or, if the Attorney General is unable to establish who holds the property, the steps that have been taken to establish his identity.
- (5) Chapter 3 of Part 12 applies to an application for an interim receiving order with the modifications that the Attorney General's written evidence must —
 - (a) in addition to the grounds of the application, state the matters specified in sub-paragraph (4)(c);
 - (b) identify an individual whom the court is to be asked to appoint as receiver ('the nominee'); and
 - (c) be accompanied by written consent, signed by the nominee, to act as receiver if appointed.
- 4. *Property freezing order or interim receiving order made before commencement of claim for recovery order*

A property freezing order or interim receiving order which is made before a claim for a recovery order has been commenced shall –

- (a) specify a period within which the Attorney General must either start the claim or apply for the continuation of the order while he carries out his investigation; and
 - (b) provide that the order will be set aside if the Attorney General does not start the claim or apply for its continuation before the end of that period.
- 5. *Exclusions when making property freezing order or interim receiving order*
 - (1) Where the court makes a property freezing order or interim receiving order on an application without notice, it shall normally make an initial exclusion from the order for the purpose of enabling the respondent to meet his reasonable legal costs so that he may –
 - (a) take advice in relation to the order;
 - (b) prepare a statement of assets in accordance with paragraph 8(3); and
 - (c) if so advised, apply for the order to be varied or set aside.
 - (2) The total amount specified in the initial exclusion shall not normally exceed £3,000.

(3) When it makes a property freezing order or interim receiving order before a claim for a recovery order has been commenced, the court may also make an exclusion to enable the respondent to meet his reasonable legal costs so that (for example) when the claim is commenced –

- (a) he may file an acknowledgment of service and any written evidence on which he intends to rely; or
 - (b) he may apply for a further exclusion for the purpose of enabling him to meet his reasonable costs of the proceedings.
- 6. *Interim receiving order or management receiving order: application for directions*
 - (1) An application for directions as to the exercise of the functions of –
 - (a) an interim receiver under section 17 of the Act; or
 - (b) a management receiver under section 12 of the Act,may be made at any time by –
 - (i) the interim receiver or management receiver, as appropriate;

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- (ii) any party to the proceedings; and
- (iii) any person affected by any action taken, or proposed to be taken, by the interim receiver or management receiver.

(2) The application must be made by application notice, which must be served on

–

- (a) the interim receiver or management receiver, as appropriate (unless he is the applicant);
- (b) every party to the proceedings; and
- (c) any other person who may be interested in the application.

7. Application to vary or set aside an order

(1) An application to vary or set aside a property freezing order, an interim receiving order or a management receiving order (including an application for, or relating to, an exclusion from the order) may be made at any time by –

- (a) the Attorney General; or
- (b) any person affected by the order.

(2) Unless the court otherwise directs or exceptional circumstances apply, a copy of the application notice must be served on –

- (a) every party to the proceedings;
- (b) in the case of an application to vary or set aside an interim receiving order or management receiving order, the interim receiver or management receiver (as appropriate); and
- (c) any other person who may be affected by the court's decision.

(3) The evidence in support of an application for an exclusion from a property freezing order or interim receiving order for the purpose of enabling a person to meet his reasonable legal costs must –

- (a) contain full details of the stage or stages in civil recovery proceedings in respect of which the costs in question have been or will be incurred;
- (b) include an estimate of the costs which the person has incurred and will incur in relation to each stage to which the application relates;
- (c) include a statement of assets containing the information set out in paragraph 8(3) (unless the person has previously filed such a statement in the same civil recovery proceedings and there has been no material change in the facts set out in that statement);
- (d) where the court has previously made an exclusion in respect of any stage to which the application relates, explain why the person's costs will exceed the amount specified in the exclusion for that stage; and
- (e) state whether the terms of the exclusion have been agreed with the Attorney General.

8. Exclusions for the purpose of meeting legal costs: general provisions

(1) Subject to sub-paragraph (2), when the court makes an order or gives directions in civil recovery proceedings it shall at the same time consider whether it is appropriate to make or vary an exclusion for the purpose of enabling any person affected by the order or directions to meet his reasonable legal costs.

(2) The court shall not make an exclusion for the purpose of enabling a person to meet his reasonable legal costs, other than an exclusion to meet the costs of taking any of the steps referred to in paragraph 5(1), unless he has made and filed a statement of assets.

(3) A statement of assets is a witness statement which sets out all the property which the maker of the statement owns, holds or controls, or in which he has an interest, giving the value, location and details of all such property.

(4) Information given in a statement of assets under this Schedule may be used only for the purpose of the civil recovery proceedings.

(5) The court –

(a) shall not make an exclusion for the purpose of enabling a person to meet his reasonable legal costs (including an initial exclusion under paragraph 5(1); and

(b) may set aside any exclusion which it has made for that purpose or reduce any amount specified in such an exclusion,

if it is satisfied that the person has property to which the property freezing order or interim receiving order does not apply from which he may meet those costs.

(6) The court shall normally refer to a costs officer any question relating to the amount which an exclusion should allow for reasonable legal costs in respect of proceedings or a stage in proceedings.

(7) An exclusion made for the purpose of enabling a person to meet his reasonable legal costs shall specify –

(a) the stage or stages in civil recovery proceedings to which it relates;

(b) the maximum amount which may be released in respect of legal costs for each specified stage; and

(c) the total amount which may be released in respect of legal costs pursuant to the exclusion.

(8) A person who becomes aware that his legal costs –

(a) in relation to any stage in civil recovery proceedings have exceeded or will exceed the maximum amount specified in the exclusion for that stage; or

(b) in relation to all the stages to which the exclusion relates have exceeded or will exceed the total amount that may be released pursuant to the exclusion,

must apply for a further exclusion or a variation of the existing exclusion as soon as reasonably practicable.

9. *Investigations: application for order or warrant*

(1) An application for an order or warrant under Part 4 of the Act in connection with a civil recovery investigation or (where applicable) a detained cash investigation must be made to a judge by filing an application notice.

(2) The application may be made without notice.

10. *Confidentiality of court documents*

(1) Rules 2.20 and 2.21 do not apply to an application under Part 4 of the Act, and sub-paragraphs (2) and (3) have effect in their place.

(2) When an application is issued, the court file will be marked ‘Not for disclosure’ and, unless a judge grants permission, the court records relating to the application (including the application notice, documents filed in support, and any order or warrant that is made) shall not be made available by the court for any person to inspect or copy, either before or after the hearing of the application.

(3) An application for permission under sub-paragraph (2) must be made in accordance with Chapter 2 of Part 7.

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11. Application notice and evidence

(1) The application must be supported by written evidence, which must be filed with the application notice.

(2) The evidence must set out all the matters on which the appropriate officer relies in support of the application, including any matters required to be stated by the relevant sections of the Act, and all material facts of which the court should be made aware.

12. Hearing of the application

The application shall be heard and determined in private, unless the judge hearing it directs otherwise.

13. Variation or discharge of order or warrant

(1) An application to vary or discharge an order or warrant may be made by –

- (a) the appropriate officer; or
- (b) any person affected by the order or warrant.

(2) An application under sub-paragraph (1) to stop an order or warrant from being executed must be made immediately upon it being served.

(3) A person applying to vary or discharge a warrant must first inform the appropriate officer that he is making the application.

(4) The application must, if practicable, be made to the judge who made the order or issued the warrant.

14. Production order

(1) The application notice must name as a respondent the person believed to be in possession or control of the material in relation to which a production order is sought.

(2) The application notice must specify –

- (a) whether the application is for an order under paragraph (a) or (b) of section 162(4) of the Act;
- (b) the material, or description of material, in relation to which the order is sought; and
- (c) the person who is believed to be in possession or control of the material.

(3) An application under section 164 of the Act for an order to grant entry may be made either –

- (a) together with an application for a production order; or
- (b) by separate application, after a production order has been made.

(4) An application notice for an order to grant entry must –

- (a) specify the premises in relation to which the order is sought; and
- (b) be supported by written evidence explaining why the order is needed.

(5) A production order, or an order to grant entry, must contain a statement of the right of any person affected by the order to apply to vary or discharge the order.

15. Search and seizure warrant

(1) The application notice must name as the respondent the occupier of the premises to be subject to the warrant, if known.

(2) The evidence in support of the application must state –

- (a) the matters relied on by the appropriate officer to show that one of the requirements in section 169(6) of the Act for the issue of a warrant is satisfied;

- (b) details of the premises to be subject to the warrant, and of the possible occupier or occupiers of those premises;
- (c) the name and official position (if any) of the person who it is intended will execute the warrant.
- (3) There must be filed with the application notice drafts of –
 - (a) the warrant; and
 - (b) a written undertaking by the person who is to execute the warrant to comply with sub-paragraph (7).
- (4) A search and seizure warrant must –
 - (a) specify the statutory power under which it is issued and, unless the court orders otherwise, give an indication of the nature of the investigation in respect of which it is issued;
 - (b) state the address or other identification of the premises to be subject to the warrant;
 - (c) state the name and official position (if any) of the person who is authorised to execute the warrant;
 - (d) set out the action which the warrant authorises the person executing it to take under the relevant sections of the Act;
 - (e) give the date on which the warrant is issued;
 - (f) include a statement that the warrant continues in force until the end of the period of one month beginning with the day on which it is issued;
 - (g) contain a statement of the right of any person affected by the order to apply to discharge or vary the order.
- (5) Rule 10.2 applies to a search and seizure warrant.
- (6) Upon the issue of a warrant the court shall provide to the appropriate officer –
 - (a) the sealed warrant; and
 - (b) a copy of it for service on the occupier or person in charge of the premises subject to the warrant.
- (7) A person attending premises to execute a warrant must, if the premises are occupied, produce the warrant on arrival at the premises, and as soon as possible thereafter personally serve a copy of the warrant and an explanatory notice on the occupier or the person appearing to him to be in charge of the premises.
- (8) The person executing the warrant must also comply with any order which the court may make for service of any other documents relating to the application.

16. Disclosure order

- (1) The application notice must, if practicable, name as respondents the persons on whom the appropriate officer intends to serve notices under the disclosure order sought.
- (2) A disclosure order must –
 - (a) give an indication of the nature of the investigation for the purposes of which the order is made;
 - (b) set out the action which the order authorises the appropriate officer to take in accordance with section 174(4) of the Act;
 - (c) contain a statement of –
 - (i) the offences relating to disclosure orders under section 176 of the Act; and

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- (ii) the right of any person affected by the order to apply to discharge or vary the order.

(3) Where, pursuant to a disclosure order, the appropriate officer gives to any person a notice under section 174(4) of the Act, he must also at the same time serve on that person a copy of the disclosure order.

17. Customer information order

(1) The application notice must, unless it is impracticable to do so because they are too numerous, name as respondents the financial institution or institutions to which it is proposed that an order should apply.

(2) A customer information order must –

- (a) specify the financial institution, or description of financial institutions, to which it applies;
- (b) state the name of the person in relation to whom customer information is to be given, and any other details to identify that person;
- (c) contain a statement of –
 - (i) the offences relating to disclosure orders under section 183 of the Act; and
 - (ii) the right of any person affected by the order to apply to discharge or vary the order.

(3) Where, pursuant to a customer information order, the appropriate officer gives to a financial institution a notice to provide customer information, he must also at the same time serve a copy of the order on that institution.

18. Account monitoring order

(1) The application notice must name as a respondent the financial institution against which an account monitoring order is sought.

(2) The application notice must –

- (a) state the matters required by section 187(3) and (4) of the Act; and
- (b) give details of –
 - (i) the person whose account or accounts the application relates to;
 - (ii) each account or description of accounts in relation to which the order is sought, including if known the number of each account and the branch at which it is held;
 - (iii) the information sought about the account or accounts;
 - (iv) the period for which the order is sought;
 - (v) the manner in which, and the frequency with which, it is proposed that the financial institution should provide account information during that period.

(3) An account monitoring order must contain a statement of the right of any person affected by the order to apply to vary or discharge the order.

PART 13 : SPECIAL TYPES OF CLAIM

CHAPTER 1: CLAIMS FOR POSSESSION OF LAND

13.1 Interpretation (55.1)

In this Chapter —

‘possession claim’ means a claim for the recovery of possession of land (including buildings or parts of buildings);

‘possession claim against trespassers’ means a claim for the recovery of land which the claimant alleges is occupied only by a person or persons who entered or remained on the land without the consent of a person entitled to possession of that land, but does not include a claim against a tenant or sub-tenant whether his tenancy has been terminated or not.

13.2 Possession of land (PD55)

(1) Where the claimant seeks possession of land, the particulars of claim must be filed and served with the claim form, and must state —

- (a) whether the claim relates to residential property;
- (b) the grounds of the claim for possession,
- (c) the nature of any tenancy (eg. weekly, monthly or yearly or for a fixed term),
- (d) the date of its commencement and, if for a fixed term, the date of expiration of the term;
- (e) the date of any instrument in writing setting out the terms of the tenancy,
- (f) the date of expiry of any notice to quit served on the defendant.

(2) Where the claimant claims possession against trespassers, the particulars of claim must state —

- (a) the claimant’s interest in the land or the basis of his right to claim possession, and
- (b) the circumstances in which it has been occupied without licence or consent.

13.3 Hearing date (55.5)

(1) The court shall fix a date for the hearing when it issues the claim form.

(2) In a possession claim against trespassers the defendant must be served with the claim form, particulars of claim and any witness statements —

- (a) in the case of residential property, not less than 5 days; and
- (b) in the case of other land, not less than 2 days,

before the hearing date.

(3) In all other possession claims —

- (a) the hearing date shall be not less than 28 days from the date of issue of the claim form;
- (b) the defendant must be served with the claim form and particulars of claim not less than 21 days before the hearing date.

13.4 Service of claims against trespassers (55.6)

(1) This rule applies where, in a possession claim against trespassers, the claim has been issued against ‘persons unknown’.

(2) The claim form, any particulars of claim and any witness statements must be served on those persons by —

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- (a) either —
 - (i) attaching copies of those documents to the main door or some other part of the land so that they are clearly visible; and
 - (ii) if practicable, inserting copies of those documents in a sealed transparent envelope addressed to 'the occupiers' through the letter box; or
- (b) placing stakes in the land in places where they are clearly visible and attaching to each stake copies of those documents in a sealed transparent envelope addressed to 'the occupiers'.
- (3) The claimant must file a certificate of service (stating the method or methods by which those documents were served) before the hearing date.

13.5 Defendant's response (55.7)

- (1) An acknowledgment of service is not required and Chapter 3 of Part 4 does not apply.
- (2) In a possession claim against trespassers rule 6.24 does not apply and the defendant need not file a defence.
- (3) Where, in any other possession claim, the defendant does not file a defence within the time specified in rule 6.26, he may take part in any hearing but the court may take his failure to do so into account when deciding what order to make about costs.

13.6 The hearing (55.8)

- (1) At the hearing fixed in accordance with rule 13.3(1) or at any adjournment of that hearing, the court may —
 - (a) decide the claim; or
 - (b) give case management directions.
- (2) Where the claim is genuinely disputed on grounds which appear to be substantial, directions given under paragraph (1)(b) shall include the allocation of the claim to a procedure or directions to enable it to be allocated.
- (3) Except where —
 - (a) the claim is allocated to the summary procedure or the ordinary procedure, or
 - (b) the court orders otherwise,

any fact that needs to be proved by the evidence of witnesses at a hearing referred to in paragraph (1) may be proved by evidence in writing.

- (4) Subject to paragraph (5), all witness statements must be filed and served at least 10 days before the hearing.
- (5) In a possession claim against trespassers all witness statements on which the claimant intends to rely must be filed and served with the claim form.

13.7 Allocation (55.9)

- (1) When the court decides the procedure for a possession claim, the matters to which it shall have regard include —
 - (a) the amount of any arrears of rent;
 - (b) the importance to the defendant of retaining possession of the land;
 - (c) the importance of vacant possession to the claimant; and
 - (d) if applicable, the alleged conduct of the defendant
- (2) The court shall allocate possession claims to the small claims procedure only if all the parties agree.

(3) Where a possession claim has been allocated to the small claims procedure the claim shall be treated, for the purposes of costs, as if it were allocated to the summary procedure.

CHAPTER 2: OTHER CLAIMS RELATING TO LAND

13.8 Application of this Chapter

- (1) This Chapter applies to claims relating to —
 - (a) a dispute concerning —
 - (i) the boundaries of land;
 - (ii) the title to land;
 - (iii) access to land, or
 - (iv) an easement or profit à prendre;
 - (b) the enforcement or construction of a covenant of a kind specified in section 30(4) of the Law Reform Act 1997 (covenants affecting freehold land);
 - (c) the enforcement or construction of any term of a lease or tenancy;
 - (d) the discharge or modification of a restriction affecting land;
 - (e) the cancellation or release of an encumbrance pursuant to section 20 of the Registration of Deeds Act 1961;
 - (f) the annulment or rectification of a registration made pursuant to section 31 of that Act.
- (2) This Chapter does not apply to a claim —
 - (a) which includes a possession claim (within the meaning of Chapter 1);
 - (b) for the recovery of rent only; or
 - (c) to which rule 13.84 applies.

13.9 Directions for disposal of claim

- (1) Where a defence to the claim is filed, any party may apply to the court for directions.
- (2) The application notice must specify the directions which the applicant requests the court to make.
- (3) Directions given on an application under this rule shall —
 - (a) where appropriate, deal with —
 - (i) disclosure of documents,
 - (ii) service of witness statements, and
 - (iii) expert evidence;
 - (iv) the return of a pre-trial checklist;
 - (b) set a timetable for the steps to be taken between the giving of the directions and the trial; and
 - (c) unless the court considers it inappropriate, fix the trial date.
- (4) Directions for disclosure of documents may be —
 - (a) that standard disclosure (as defined in rule 7.35).take place,
 - (b) that no disclosure take place; or
 - (c) that specified documents or specified classes of documents be disclosed.
- (5) Directions under this rule shall be given without a hearing, unless the court thinks it necessary in the special circumstances of the case to hold a hearing.

(6) In giving directions under this rule the court's first concern shall be to ensure that —

- (a) the issues between the parties are identified, and
- (b) the necessary evidence is prepared and disclosed.

CHAPTER 3: INTERPLEADER

13.10 Right to interplead (RSC 17.1)

Where —

- (a) a person —
 - (i) is under a liability in respect of a debt or in respect of any money or goods, and
 - (ii) is, or expects to be, sued for or in respect of that debt or money or those goods by 2 or more persons making adverse claims to it or them; or
- (b) claim is made to any money or goods taken or intended to be taken by a coroner in execution, or to the proceeds or value of any such goods, by a person other than the person against whom the execution is granted,

the person under liability as mentioned in paragraph (a) or (subject to rule 13.11) the coroner may apply to the court for relief by way of interpleader.

13.11 Claim to goods etc. taken in execution (RSC 17.2)

(1) Any person making a claim to or in respect of any money or goods taken or intended to be taken in execution, or to the proceeds or value of any such goods, must —

- (a) give notice of his claim to the coroner charged with the execution, and
- (b) include in his notice a statement of his address for service.

(2) On receipt of a claim under this rule the coroner must forthwith give notice of it to the judgment creditor, who must, within 7 days after receiving the notice, give notice to the coroner informing him whether he admits or disputes the claim.

(3) Where —

- (a) a judgment creditor —
 - (i) gives notice disputing a claim in accordance with paragraph (2), or
 - (ii) fails within the period mentioned in that paragraph to give notice admitting or disputing the claim, and
- (b) the claim under this rule is not withdrawn,

the coroner may apply to the court under rule 13.10.

(4) Where a judgment creditor gives notice admitting a claim in accordance with paragraph (2) —

- (a) the judgment creditor is only liable to the coroner for fees and expenses incurred by the coroner before receipt of the notice; and
- (b) the coroner —
 - (i) must withdraw from possession of the money or goods claimed, and
 - (ii) may apply to the court for an order restraining the bringing of a claim against him having taken possession of the money or goods.

13.12 Claim in respect of goods protected from arrest (RSC 17.2A)

(1) Where a judgment debtor whose goods have been arrested, or are intended to be arrested, by a coroner claims that the goods are not liable to execution by virtue of

paragraph 2 of Schedule 1 to the Administration of Justice Act 1981, he must within 5 days of the seizure give notice in writing to the coroner —

- (a) identifying all those goods in respect of which he makes such a claim, and
- (b) the grounds of such claim in respect of each item.

(2) On receipt of a notice under paragraph (1), the coroner must forthwith give notice of it to —

- (a) the judgment creditor, and
- (b) any person who has made a claim to or in respect of the goods under rule 13.11(1).

(3) The judgment creditor and any person who has made such a claim must, within 7 days of receipt of a notice under paragraph (2), inform the coroner in writing whether he admits or disputes the judgment debtor's claim in respect of each item.

(4) Where the judgment creditor and any person who is given notice under paragraph (2)(b) —

- (a) give notice admitting the judgment debtor's claim, or
- (b) fail within the period mentioned in paragraph (3) to give notice admitting or disputing the claim,

the coroner must withdraw from possession of any goods in respect of which the judgment debtor's claim is admitted or is not disputed and must so inform the parties in writing.

(5) Where the judgment creditor or any person who is given notice under paragraph (2)(b) gives notice disputing the judgment debtor's claim, the coroner —

- (a) must forthwith apply to the court for directions, and
- (b) may also apply for an order restraining the bringing of any claim against him for having seized any of those goods or having failed so to do.

(6) On an application under paragraph (5)(a) the court may —

- (a) determine the judgment debtor's claim summarily; or
- (b) give such directions for the determination of any issue raised by the claim as may be just.

13.13 Mode of application (RSC 17.3)

(1) An application for relief under this Chapter must be made —

- (a) in accordance with Chapter 2 of Part 7 if made in an existing claim;
- (b) otherwise by a claim form, in which case it shall be allocated to the chancery procedure.

(2) Where a coroner has withdrawn from possession of money or goods taken in execution and applies for relief under rule 13.11(4)(b)(ii) or rule 13.12(5)(b), the claim form or application notice must be served on any person who made a claim under rule 13.11 to or in respect of the money or goods, and that person may attend the hearing of the application.

(3) Subject to paragraph (5), a claim form or application notice under this rule must be supported by evidence that the applicant —

- (a) claims no interest in the subject-matter in dispute other than for charges or costs;
- (b) does not collude with any of the claimants to that subject-matter; and
- (c) is willing to pay or transfer that subject-matter into court or to dispose of it as the court may direct.

(4) Any person who makes a claim under rule 13.11 and who is served with a claim form under this rule must within 14 days serve on the judgment creditor and the coroner

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a witness statement or affidavit specifying any money and describing any goods and chattels claimed and setting out the grounds upon which such claim is based.

- (5) Where the applicant is a coroner —
 - (a) he shall not provide such evidence as is referred to in paragraph (3) unless directed by the court to do so;
 - (b) a claim form under this rule must give notice of the requirement in paragraph (4).

13.14 Powers of court (RSC 17.5)

(1) Where on the hearing of a claim under this Chapter all the persons by whom adverse claims to the subject-matter in dispute ('the interpleader claimants') appear, the court may order —

- (a) that any interpleader claimant be made a defendant in any claim pending with respect to the subject-matter in dispute in substitution for or in addition to the applicant for relief under this order; or
 - (b) that an issue between the interpleader claimants be stated and tried and may direct which of the interpleader claimants is to be claimant and which defendant.
- (2) Where —
- (a) the applicant under this order is a coroner;
 - (b) all the interpleader claimants consent or any of them so requests; or
 - (c) the question at issue between the interpleader claimants is a question of law and the facts are not in dispute,

the court may summarily determine the question at issue between the interpleader claimants and make an order accordingly on such terms as may be just.

(3) Where an interpleader claimant, having been duly served with a claim form under this Chapter —

- (a) does not appear at the hearing, or
- (b) having appeared, fails or refuses to comply with an order made in the proceedings,

the court may make an order declaring the interpleader claimant, and all persons claiming under him, for ever barred from prosecuting his claim against the applicant for such relief and all persons claiming under him.

(4) An order under paragraph (3) shall not affect the rights of the interpleader claimants as between themselves.

13.15 Power to order sale of goods taken in execution (RSC 17.6)

Where —

- (a) an application for relief under this order is made by a coroner who has taken possession of any goods in execution under any process, and
- (b) an interpleader claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods by way of security for debt,

the court may —

- (i) order the goods or any part of them to be sold, and
- (ii) direct that the proceeds of sale be applied in such manner and on such terms as are just and are specified in the order.

13.16 Powers of court (RSC 17.7, 8, 11)

(1) Where a defendant to a claim applies for relief under this Chapter in the claim, the court may by order stay all further proceedings in the claim.

(2) Where the court determines any issue in proceedings under this Chapter, it may give such judgment or make such order as finally to dispose of all questions arising in the proceedings.

(3) Subject to the foregoing rules of this Chapter, the court may in or for the purposes of any proceedings under this Chapter make such order as to costs or any other matter as it thinks just.

CHAPTER 4: PROBATE, WILLS, ESTATES AND TRUSTS

13.17 Scope of this Chapter (57.1)

- (1) This Chapter contains rules about —
 - (a) probate claims;
 - (b) claims for the rectification of wills;
 - (c) claims and applications —
 - (i) to substitute another person for a personal representative; or
 - (ii) to remove a personal representative; and
 - (d) claims under the Inheritance (Provision for Family and Dependents) Act 1982;
 - (e) claims for the court to determine, or for its opinion, advice or direction on, any question arising in —
 - (i) the administration of the estate of a deceased person; or
 - (ii) the management, administration or execution of a trust;
 - (f) claims for the administration of the estate of a deceased person, or the execution of a trust, to be carried out under the direction of the court;
 - (g) claims under the Variation of Trusts Act 1961;
 - (h) claims under the Charities Act 1962; and
 - (i) claims under section 51 of the High Court Act 1991 (action authorised in reliance on counsel's opinion).

(2) In this Chapter —

‘the 1990 Act’ means the Administration of Estates Act 1990 ;

‘probate claim’ means a claim for —

- (a) the grant of probate of the will, or letters of administration of the estate, of a deceased person;
- (b) the revocation of such a grant; or
- (c) a decree pronouncing for or against the validity of an alleged will;

not being a claim which is non-contentious or common form probate business;

‘testamentary document’ means a will, a draft of a will, written instructions for a will made by or at the request of, or under the instructions of, the testator, and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed;

‘will’ includes a codicil.

13.18 Allocation of probate claim etc. (57.2, PD57.2)

- (1) A probate claim shall be allocated to the ordinary procedure.

(2) The title of a probate claim shall be *'In the estate of [name] deceased (Probate)'*.

13.19 Acknowledgment of service and defence (57.4)

(1) In a probate claim, a defendant who is served with a claim form must file an acknowledgment of service.

(2) Subject to paragraph (3), the period for filing an acknowledgment of service is —

(a) if the defendant is served with a claim form which states that particulars of claim are to follow, 28 days after service of the particulars of claim; and

(b) in any other case, 28 days after service of the claim form.

(4) Rule 6.26 (period for filing defence) applies with the omission of the words 'under Chapter 3 of Part 4' in paragraph (1)(b).

13.20 Filing of testamentary documents and evidence (57.5)

(1) In a probate claim any testamentary document of the deceased person in the possession or control of any party must be filed.

(2) The claimant and every defendant who acknowledges service of the claim form must in written evidence —

(a) describe any testamentary document of the deceased of which he has any knowledge or, if he does not know of any such testamentary document, state that fact, and

(b) if any testamentary document of which he has knowledge is not in his possession or under his control —

(i) give the name and address of the person in whose possession or under whose control it is or

(ii) if he does not know the name or address of that person, state that fact.

(3) Unless the court directs otherwise, the testamentary documents and the written evidence required by paragraph (2) must be filed —

(a) by the claimant when the claim form is issued; and

(b) by a defendant when he acknowledges service.

(4) Except with the permission of the court, a party shall not be allowed to inspect the testamentary documents or written evidence lodged or filed by any other party until he himself has lodged his testamentary documents and filed his evidence.

(5) The written evidence about testamentary documents must be signed by the party personally and not by his advocate (except that, if the party is a minor or patient, the written evidence must be signed by his litigation friend).

(6) Where there is urgent need to commence a probate claim and it is not possible for the claimant to lodge the testamentary documents or to file the evidence about testamentary documents at the same time as the claim form is issued, the court may direct that the claimant may issue the claim form upon his giving an undertaking to the court to lodge the documents and file the evidence within such time as the court specifies.

13.21 Revocation of existing grant (57.6)

(1) In a probate claim which seeks the revocation of a grant of probate or letters of administration, every person who is entitled, or claims to be entitled, to administer the estate under that grant must be made a party to the claim.

(2) If the claimant is the person to whom the grant was made, he must file the probate or letters of administration when the claim form is issued.

(3) If a defendant has the probate or letters of administration under his control, he must file it or them when he acknowledges service.

(4) Paragraphs (2) and (3) do not apply where the grant has already been filed.

13.22 Contents of statements of case (57.7)

(1) In a probate claim the claim form must contain a statement of the nature of the interest of the claimant and of each defendant in the estate.

(2) If a party disputes another party's interest in the estate he must state this in his statement of case and set out his reasons.

(3) Any party who contends that at the time when a will was executed the testator did not know of and approve its contents must give particulars of the facts and matters relied on.

(4) Any party who wishes to contend that —

(a) a will was not duly executed;

(b) at the time of the execution of a will the testator was not of sound mind, memory and understanding; or

(c) the execution of a will was obtained by undue influence or fraud,

must set out the contention specifically and give particulars of the facts and matters relied on.

(5) A defendant may give notice in his defence that he does not raise any positive case, but insists on the will being proved in solemn form and, for that purpose, will cross-examine the witnesses who attested the will.

(6) If a defendant gives a notice under paragraph (5), the court shall not make an order for costs against him unless it considers that there was no reasonable ground for opposing the will.

13.23 Counterclaim (57.8)

(1) A defendant to a probate claim who contends that he has any claim or is entitled to any remedy relating to the grant of probate of the will or letters of administration of the estate of the deceased person must serve a counterclaim making that contention.

(2) If the claimant fails to serve particulars of claim within the time allowed, the defendant may, with the permission of the court, serve a counterclaim and the probate claim shall then proceed as if the counterclaim were the particulars of claim.

13.24 Probate counterclaim in other proceedings (57.9)

(1) In this rule 'probate counterclaim' means a counterclaim in any claim other than a probate claim, by which the defendant claims any such remedy as is mentioned in rule 13.17(2).

(2) Subject to the following paragraphs of this rule, this Chapter applies with the necessary modifications to a probate counterclaim as it applies to a probate claim.

(3) A probate counterclaim must contain a statement of the nature of the interest of each of the parties in the estate of the deceased to which the probate counterclaim relates.

13.25 Failure to acknowledge service or to file a defence (57.10)

(1) A default judgment cannot be obtained in a probate claim, and rule 4.14(1) and Chapter 2 of Part 10 do not apply.

(2) If any of several defendants fails to acknowledge service the claimant may —

(a) after the time for acknowledging service has expired; and

- (b) upon filing written evidence of service of the claim form and (if no particulars of claim were contained in or served with the claim form) the particulars of claim on that defendant;

proceed with the probate claim as if that defendant had acknowledged service.

(3) If no defendant acknowledges service or files a defence then, unless on the application of the claimant the court orders the claim to be discontinued, the claimant may, after the time for acknowledging service or for filing a defence (as the case may be) has expired, apply to the court for an order that the claim is to proceed to trial.

(4) When making an application under paragraph (3) the claimant must file written evidence of service of the claim form and (if no particulars of claim were contained in or served with the claim form) the particulars of claim on each of the defendants.

(5) Where the court makes an order under paragraph (3), it may direct that the claim be tried on written evidence.

13.26 Probate claims: case management (PD57.4)

In giving directions in a probate claim the court shall give consideration to the questions —

- (a) whether any person who may be affected by the claim and who is not joined as a party should be joined as a party or given notice of the claim, whether under rule 3.27 or otherwise; and
- (b) whether to make a representation order under rule 3.28 or 3.29.

13.27 Discontinuance and dismissal of probate claim (57.11)

(1) Chapter 8 of Part 7 does not apply to probate claims.

(2) At any stage of a probate claim the court, on the application of the claimant or of any defendant who has acknowledged service, may order that —

- (a) the claim be discontinued or dismissed on such terms as to costs or otherwise as it thinks just; and
- (b) a grant of probate of the will, or letters of administration of the estate, of the deceased person be made to the person entitled to the grant.

13.28 Summary judgment (PD57.5)

(1) If an order pronouncing for a will in solemn form is sought on an application for summary judgment under Chapter 6 of Part 10, the evidence in support of the application must include written evidence proving due execution of the will.

(2) If a defendant has given notice in his defence under rule 13.22(5) that he raises no positive case but —

- (a) he insists that the will be proved in solemn form; and
- (b) for that purpose he will cross-examine the witnesses who attested the will;

any application by the claimant for summary judgment is subject to the right of that defendant to require those witnesses to attend court for cross-examination.

13.29 Settlement of a probate claim (PD57.6)

(1) If at any time the parties agree to settle a probate claim, the court may —

- (a) order the trial of the claim on written evidence, which shall lead to a grant in solemn form;
- (b) order that the claim be discontinued or dismissed under rule 13.27, which shall lead to a grant in common form; or

- (c) pronounce for or against the validity of one or more wills under section 34 of the 1990 Act.

(2) An application under section 34 of the 1990 Act must be supported by written evidence identifying the relevant beneficiaries and exhibiting the written consent of each of them, in addition to the written evidence of testamentary documents required by rule 13.20.

13.30 Application for an order to bring in a will, etc. (PD57.7)

(1) Any party applying for an order under section 13 of the 1990 Act must serve the application notice on the person against whom the order is sought.

(2) An application for the issue of a witness summons under section 14 of the 1990 Act —

- (a) may be made without notice; and
- (b) must be supported by written evidence setting out the grounds of the application.

(3) A person against whom a witness summons is issued under section 14 of the 1990 Act who denies that the testamentary document referred to in the witness summons is in his possession or under his control must file written evidence to that effect.

13.31 Administration pending determination of probate claim (PD57.8)

(1) An application under section 22 of the 1990 Act for an order for the grant of administration pending the determination of a probate claim must be made by application notice in the probate claim.

(2) If an order for a grant of administration is made under section 22 of the 1990 Act —

- (a) rules 12.18 to 12.21 apply as if the administrator were a receiver appointed by the court;
- (b) if the court allows the administrator remuneration under rule 12.21, it may make an order under section 33 of the 1990 Act assigning the remuneration out of the estate of the deceased; and
- (c) every application relating to the conduct of the administration shall be made by application notice in the probate claim.

(3) The appointment of an administrator to whom letters of administration are granted following an order under section 22 of the 1990 Act shall cease automatically when a final order in the probate claim is made but shall continue pending any appeal.

13.32 Rectification of wills (57.12, PD57.10)

(1) This rule applies to an application for rectification of a will under section 20 of the Wills Act 1985.

(2) Every personal representative of the estate must be joined as a party.

(3) If the claimant is the person to whom the grant was made in respect of the will of which rectification is sought, he must, unless the court orders otherwise, file the probate or letters of administration with the will annexed when the claim form is issued.

(4) If a defendant has the probate or letters of administration in his possession or under his control, he must, unless the court orders otherwise, file it within 14 days after the service of the claim form on him.

13.33 Substitution and removal of personal representatives (57.13, PD57.13, 14)

(1) This rule applies to claims and applications for the substitution or removal of a personal representative under section 8 of the 1990 Act.

(2) Every personal representative of the estate must be joined as a party.

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- (3) The claim form or application notice must be accompanied by —
 - (a) written evidence containing the grounds of the claim, and
 - (b) the following information so far as it is known to the claimant —
 - (i) brief details of the property comprised in the estate, with an approximate estimate of its capital value and any income that is received from it;
 - (ii) brief details of the liabilities of the estate;
 - (iii) the names and addresses of the persons who are in possession of the documents relating to the estate;
 - (iv) the names of the beneficiaries and their respective interests in the estate; and
 - (v) the name, address and occupation of any proposed substituted personal representative.
- (4) If the claim or application is for the appointment of a substituted personal representative, the claim form or application notice must be accompanied by —
 - (a) a signed or sealed consent to act; and
 - (b) written evidence as to the fitness of the proposed substituted personal representative, if an individual, to act.
- (5) On the hearing of the claim or application the personal representative must produce to the court the grant of representation to the deceased's estate.

13.34 Family provision claims (57.14, PD57.16)

- (1) This rule applies to claims under the Inheritance (Provision for Family and Dependents) Act 1982 ('the 1982 Act').
- (2) A claim under section 1 of the 1982 Act must be made by issuing a claim form, and shall be allocated to the chancery procedure.
- (3) The written evidence filed and served by the claimant with the claim form must —
 - (a) include details of the income, outgoings, assets and liabilities of the claimant, and
 - (b) have exhibited to it an official copy of —
 - (i) the grant of probate or letters of administration in respect of the deceased's estate; and
 - (ii) every testamentary document in respect of which probate or letters of administration were granted.
- (4) The time within which a defendant must file and serve —
 - (a) an acknowledgment of service; and
 - (b) any written evidence,is 21 days after service of the claim form on him.
- (5) A defendant who is a personal representative of the deceased must file and serve written evidence, which must include the following information —
 - (a) full details of the value of the deceased's net estate, as defined in section 24 of the 1982 Act;
 - (b) the person or classes of persons beneficially interested in the estate, and —
 - (i) the names and (unless they are parties to the claim) addresses of all living beneficiaries; and

- (ii) the value of their interests in the estate so far as they are known;
- (c) whether any living beneficiary (and if so, naming him) is a minor or patient; and
- (d) any facts which might affect the exercise of the court's powers under the Act.
- (6) After the expiration of 21 days from service of the claim form, any party may apply to the court for directions.

13.35 Administration of estates and trusts (64.2-4)

- (1) This rule applies to claims —
 - (a) for the court to determine, or for its opinion, advice or direction on, any question arising in —
 - (i) the administration of the estate of a deceased person; or
 - (ii) the management, administration or execution of a trust;
 - (b) for an administration order;
 - (c) under the Variation of Trusts Act 1961;
 - (d) relating to a charitable trust; and
 - (e) under section 51 of the High Court Act 1991 (action authorised in reliance on counsel's opinion).
- (2) In this rule —
 - 'administration order' means an order for the administration of the estate of a deceased person, or the execution of a trust, to be carried out under the direction of the court;
 - 'trustees' includes executors and administrators.
- (3) Any claim under this rule must be made by issuing a claim form, and shall be allocated to the chancery procedure.
- (4) In a claim to which this rule applies, other than an application under section 51 of the High Court Act 1991 —
 - (a) all the trustees must be parties;
 - (b) if the claim is made by trustees, any of them who does not consent to being a claimant must be made a defendant; and
 - (c) the claimant may make parties to the claim any persons with an interest in or claim against the estate, or an interest under the trust, who it is appropriate to make parties having regard to the nature of the order sought;
 - (d) in the case of a charitable trust, the Attorney General (if not the claimant) must be made a defendant.
- (5) In addition, in a claim under the Variation of Trusts Act 1961, unless the court directs otherwise any person who —
 - (a) created the trust; or
 - (b) provided property for the purposes of the trust,must, if still alive, be made a party to the claim.
- (6) Where an application is made for an order under section 1 of the Charities Act 1962 relating to a charitable trust—
 - (a) there must be filed with the claim form —
 - (i) a copy of any trust instrument relating to the trust;
 - (ii) a summary of the assets (distinguishing between permanent endowments and other assets) and liabilities of the trust; and

- (iii) a draft of the order sought; and
- (b) the court shall, when the claim form is issued —
 - (i) fix a hearing at which directions shall be given as to publicity for the application and any other matter appearing to the court to be expedient; and
 - (ii) give notice of the time and place of the hearing to the claimant, any defendant and the Attorney General.
- (7) Paragraph (6) applies with any necessary modifications to an application for approval of a scheme under —
 - (a) Schedule 3 to the Church Act 1992;
 - (b) Part 1 of Schedule 1 to the National Health Service Act 2001; or
 - (c) Schedule 8 to the Education Act 2001.

CHAPTER 5: ADMIRALTY PROCEEDINGS

13.36 Scope and interpretation (61.1)

- (1) This Chapter applies to admiralty claims.
- (2) In this Chapter —
 - ‘admiralty claim’ means a claim within the Admiralty jurisdiction of the court as set out in Schedule 1 to the High Court Act 1991;
 - ‘claim in rem’ means a claim in an admiralty action in rem, and ‘claim in rem form’ means a claim form in a claim in rem;
 - ‘collision claim’ means a claim within paragraph 3(b) of Schedule 1 to the High Court Act 1991;
 - ‘limitation claim’ means a claim within paragraph 3(c) of that Schedule;
 - ‘salvage claim’ means a claim —
 - (a) for or in the nature of salvage;
 - (b) for special compensation under Article 14 of Schedule 11 to the Merchant Shipping Act 1995 (an Act of Parliament);
 - (c) for the apportionment of salvage; and
 - (d) arising out of or connected with any contract for salvage services;
 - ‘caution against arrest’ means a caution entered in the Register under rule 13.42;
 - ‘caution against release’ means a caution entered in the Register under rule 13.43;
 - ‘the register’ means the register of cautions maintained under rule 13.41;
 - ‘ship’ includes any vessel used in navigation

13.37 Claims in rem (61.3)

- (1) This rule applies to claims in rem.
- (2) The title of the proceedings shall begin with the words ‘*Admiralty claim in rem against*’ and brief particulars of the property against which the claim is made (including, in the case of a ship, her name and port of registry).
- (3) Subject to rule 13.38, the particulars of claim must be —
 - (a) contained in or served with the claim form; or
 - (b) served on the defendant by the claimant within 75 days after service of the claim form.

- (4) An acknowledgment of service must be filed within 14 days after service of the claim form.
- (5) The claim form must be served in one of the following ways —
 - (a) on the property against which the claim is brought by fixing a copy of the claim form —
 - (i) on the outside of the property in a position which may reasonably be expected to be seen; or
 - (ii) where the property is freight, either on the cargo in respect of which the freight was earned; or on the ship on which the cargo was carried;
 - (b) if the property to be served is in the custody of a person who will not permit access to it, by leaving a copy of the claim form with that person;
 - (c) where the property has been sold by the coroner, by filing the claim form at the court;
 - (d) where there is a notice against arrest, on the person named in the notice as being authorised to accept service;
 - (e) on any advocate authorised to accept service;
 - (f) in accordance with any agreement providing for service of proceedings; or
 - (g) in any other manner as the court may direct under rule 2.30, provided that the property against which the claim is brought or part of it is within the jurisdiction of the court.
- (6) The claim form must be served within 12 months after the date of issue.
- (7) If a claim form has been issued (whether served or not), any person who wishes to defend the claim may file an acknowledgment of service.

13.38 Special provisions relating to collision claims (61.4)

- (1) This rule applies to collision claims.
- (2) A claim form need not contain or be followed by particulars of claim, and rule 4.6 does not apply.
- (3) An acknowledgment of service must be filed.
- (4) A party who wishes to dispute the court's jurisdiction must make an application under rule 4.16 within 2 months after filing his acknowledgment of service.
- (5) Every party must —
 - (a) within 2 months after the defendant files the acknowledgment of service; or
 - (b) where the defendant applies under rule 4.16, within 2 months after the defendant files the further acknowledgment of service,file a completed collision statement of case.
- (6) A collision statement of case must be verified by a statement of truth.
- (7) A claim form in a collision claim may not be served out of the jurisdiction unless —
 - (a) the case falls within paragraph 19(a), (b) or (c) of Schedule 1 to the High Court Act 1991; or
 - (b) the defendant has submitted to or agreed to submit to the jurisdiction;and the court gives permission in accordance with Chapter 9 of Part 2.
- (8) Where permission to serve a claim form out of the jurisdiction is given, the court shall specify the period within which the defendant may file an acknowledgment of service and, where appropriate, a collision statement of case.

- (9) Where, in a collision claim in rem ('the original claim') —
 - (a) an additional claim, or a cross-claim in rem, arising out of the same collision or occurrence is made;
 - (b) the party bringing the original claim has caused the arrest of a ship or has obtained security in order to prevent such arrest; and
 - (c) the party bringing the additional claim or cross-claim is unable to arrest a ship or otherwise obtain security,

the party bringing the additional claim or cross-claim may apply to the court to stay the original claim until sufficient security is given to satisfy any judgment that may be given in favour of that party.

(10) The consequences set out in paragraph (11) apply where a party to a claim to establish liability for a collision claim (other than a claim for personal injuries) —

- (a) makes an offer to settle in the form set out in paragraph (12) not less than 21 days before the start of the trial;
- (b) that offer is not accepted; and
- (c) the maker of the offer obtains at trial an apportionment equal to or more favourable than his offer.

(11) Where paragraph (10) applies the parties will, unless the court considers it unjust, be entitled to the following costs —

- (a) the maker of the offer will be entitled to —
 - (i) all his costs from 21 days after the offer was made; and
 - (ii) his costs before then in the percentage to which he would have been entitled had the offer been accepted; and
- (b) all other parties to whom the offer was made —
 - (i) will be entitled to their costs up to 21 days after the offer was made in the percentage to which they would have been entitled had the offer been accepted; but
 - (ii) will not be entitled to their costs thereafter.

(12) An offer under paragraph (10) must be in writing and must contain —

- (a) an offer to settle liability at stated percentages;
- (b) an offer to pay costs in accordance with the same percentages;
- (c) a term that the offer remain open for 21 days after the date it is made; and
- (d) a term that, unless the court orders otherwise, on expiry of that period the offer remains open on the same terms except that the offeree should pay all the costs from that date until acceptance.

13.39 Arrest (61.5)

- (1) In a claim in rem —
 - (a) a claimant; and
 - (b) a judgment creditor,

may apply to have the property proceeded against arrested.

- (2) A party making an application for arrest must —
 - (a) request a search to be made in the register before the warrant is issued to determine whether there is a caution against arrest in force with respect to that property; and

- (b) file a declaration (which shall include an undertaking to pay the fees and expenses of the coroner in executing the warrant of arrest).
- (3) The declaration required by paragraph (2)(b) must be verified by a statement of truth and must state —
 - (a) in every case —
 - (i) the nature of the claim or counterclaim and that it has not been satisfied and if it arises in connection with a ship, her name;
 - (ii) the nature of the property to be arrested and, if the property is a ship, her name and port of registry; and
 - (iii) the amount of the security sought, if any;
 - (b) in a claim against a ship by virtue of paragraph 13 of Schedule 1 to the High Court Act 1991 —
 - (i) the name of the person who would be liable on the claim if it were not commenced in rem;
 - (ii) that the person referred to in (i) was, when the right to bring the claim arose the owner or charterer of; or in possession or in control of, the ship in connection with which the claim arose; and
 - (iii) that at the time the claim form was issued the person referred to in (i) was either the beneficial owner of all the shares in the ship in respect of which the warrant is required, or the charterer of it under a charter by demise;
 - (c) in the cases set out in paragraphs (5) and (6), that the relevant notice has been sent or served, as appropriate; and
 - (d) in the case of a claim in respect of liability incurred under section 153 of the Merchant Shipping Act 1995 (an Act of Parliament), the facts relied on as establishing that the court is not prevented from considering the claim by reason of section 166(2) of that Act.
- (4) A warrant of arrest may not be issued as of right in the case of property in respect of which the beneficial ownership, as a result of a sale or disposal by any court in any jurisdiction exercising admiralty jurisdiction in rem, has changed since the claim form was issued.
- (5) A warrant of arrest may not be issued against a ship owned by a State where, by any convention or treaty extending to the Island, the United Kingdom has undertaken to minimise the possibility of arrest of ships of that State until —
 - (a) notice has been served on a consular officer at the consular office of that State in London or the port at which it is intended to arrest the ship; and
 - (b) a copy of that notice is attached to any declaration under paragraph (3)(b).
- (6) Except —
 - (a) with the permission of the court; or
 - (b) where notice has been given under paragraph (5),a warrant of arrest may not be issued in a claim in rem against a foreign ship belonging to a port of a State in respect of which an Order in Council has been made under section 4 of the Consular Relations Act 1968 (an Act of Parliament), until the expiration of 2 weeks from appropriate notice to the consul.
- (7) A warrant of arrest is valid for 12 months but may only be executed if the claim form —
 - (a) has been served; or
 - (b) remains valid for service at the date of execution.

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- (8) Property may be arrested only by the coroner.
- (9) Property under arrest —
 - (a) may not be moved unless the court orders otherwise; and
 - (b) may be immobilised or prevented from sailing in such manner as the coroner may consider appropriate.
- (10) Where an in rem claim form has been issued and security sought, any person who has filed an acknowledgment of service may apply for an order specifying the amount and form of security to be provided.

13.40 Security in claim in rem (61.6)

- (1) This rule applies if, in a claim in rem, security has been given —
 - (a) to obtain the release of property under arrest; or
 - (b) to prevent the arrest of property.
- (2) The court may order that —
 - (a) the amount of security be reduced and may stay the claim until the order is complied with; or
 - (b) the claimant may arrest or re-arrest the property proceeded against to obtain further security.
- (3) The court may not make an order under paragraph (2)(b) if the total security to be provided would exceed the value of the property —
 - (a) at the time of the original arrest; or
 - (b) at the time security was first given (if the property was not arrested).

13.41 Register of cautions

A register of cautions against arrest and release shall be maintained at the court office, and may be inspected by any person at any time when the court office is open for business.

13.42 Cautions against arrest (61.7)

- (1) Any person may file a request for a caution against arrest.
- (2) The court shall enter the caution in the register if —
 - (a) the person filing the request undertakes —
 - (i) to file an acknowledgment of service; and
 - (ii) to give sufficient security to satisfy the claim with interest and costs; or
 - (b) where the person filing the request has constituted a limitation fund in accordance with Article 11 of the Convention on Limitation of Liability for Maritime Claims 1976, he —
 - (i) states that such a fund has been constituted; and
 - (ii) undertakes that the claimant will acknowledge service of the claim form by which any claim may be begun against the property described in the request.
- (3) A caution against arrest —
 - (a) is valid for 12 months after the date it is entered in the register; but
 - (b) may be renewed for a further 12 months by filing a further request.
- (4) Paragraphs (1) and (2) apply to a further request under paragraph (3)(b).

(5) Property may be arrested if a caution against arrest has been entered in the register but the court may order that —

- (a) the arrest be discharged; and
- (b) the party procuring the arrest pays compensation to the owner of or other persons interested in the arrested property.

13.43 Release and cautions against release (61.8)

(1) Where property is under arrest —

- (a) an in rem claim form may be served upon it; and
- (b) it may be arrested by any other person claiming to have an in rem claim against it.

(2) Any person who —

- (a) claims to have a right in rem against any property under arrest; and
- (b) wishes to be given notice of any application in respect of that property or its proceeds of sale,

may file a request for a caution against release.

(3) When a request under paragraph (2) is filed, a caution against release shall be entered in the register.

(4) Property shall be released from arrest if —

- (a) it is sold by the court;
- (b) the court orders release on an application made by any party;
- (c) the arresting party and all persons who have entered cautions against release file a request for release; or

(d) any party files —

- (i) a request for release (containing an undertaking); and
- (ii) consents to the release of the arresting party and all persons who have entered cautions against release.

(5) Where the release of any property is delayed by the entry of a caution against release under this rule any person who has an interest in the property may apply for an order that the person who entered the caution pay damages for losses suffered by the applicant because of the delay.

(6) The court may not make an order under paragraph (5) if satisfied that there was good reason to request the entry of, and to maintain, the caution.

(7) Any person —

- (a) interested in property under arrest or in the proceeds of sale of such property; or
- (b) whose interests are affected by any order sought or made,

may be made a party to any claim in rem against the property or proceeds of sale.

(8) Where —

(a) a ship —

- (i) is not under arrest but cargo on board her is; or
- (ii) is under arrest but cargo on board her is not; and

(b) a person interested in the ship or cargo wishes to discharge the cargo,

he may, without being made a party, request the coroner to authorise steps to discharge the cargo.

- (9) If —
 - (a) the coroner considers a request under paragraph (8) reasonable; and
 - (b) the applicant gives an undertaking in writing acceptable to the coroner to pay —
 - (i) his fees; and
 - (ii) all expenses to be incurred by him or on his behalf on demand,

the coroner must apply to the court for an order to permit the discharge of the cargo.

(10) Where a person interested in the ship or cargo is unable or unwilling to give an undertaking as referred to in paragraph (9)(b), he may —

- (a) be made a party to the claim; and
- (b) apply to the court for an order for —
 - (i) discharge of the cargo; and
 - (ii) directions as to the fees and expenses of the coroner with regard to the discharge and storage of the cargo.

13.44 Judgment in default (61.9)

(1) In a claim in rem (other than a collision claim) the claimant may obtain judgment in default of an acknowledgment of service only if —

- (a) the defendant has not filed an acknowledgment of service; and
- (b) the time for doing so set out in rule 13.37(4) has expired.

(2) In a claim in rem (other than a collision claim) the claimant may obtain judgment in default of defence only if —

- (a) a defence has not been filed; and
- (b) the relevant time limit for doing so has expired.

(3) In a collision claim, a party who has filed a collision statement of case within the time specified by rule 13.38(5) may obtain judgment in default of a collision statement of case only if —

- (a) the party against whom judgment is sought has not filed a collision statement of case; and
- (b) the time for doing so set out in rule 13.38(5) has expired.

(4) An application for judgment in default —

- (a) under paragraph (1), (2) or (3) in a claim in rem must be made by filing —
 - (i) an application notice;
 - (ii) a certificate proving service of the claim form; and
 - (iii) evidence proving the claim to the satisfaction of the court; and
- (b) under paragraph (3) in any other claim must be made in accordance with Chapter 2 of Part 10 with any necessary modifications.

(5) An application notice seeking judgment in default and, unless the court orders otherwise, all evidence in support, must be served on all persons who have entered cautions against release on the register.

(6) The court may set aside or vary any judgment in default entered under this rule.

(7) The claimant may apply to the court for judgment against a party at whose instance a notice against arrest was entered where —

- (a) the claim form has been served on that party;

- (b) the sum claimed in the claim form does not exceed the amount specified in the undertaking given by that party in accordance with rule 13.42(2)(a)(ii); and
- (c) that party has not fulfilled that undertaking within 14 days after service on him of the claim form.

13.45 Sale by the court, priorities and payment out (61.10)

(1) An application for an order for the survey, appraisalment or sale of a ship may be made in a claim in rem at any stage by any party.

(2) If the court makes an order for sale, it may —

(a) set a time within which notice of claims against the proceeds of sale must be filed; and

(b) the time and manner in which such notice must be advertised.

(3) Any party with a judgment against the property or proceeds of sale may at any time after the time referred to in paragraph (2) apply to the court for the determination of priorities.

(4) An application notice under paragraph (3) must be served on all persons who have filed a claim against the property.

(5) Payment out of the proceeds of sale may be made only to judgment creditors and —

(a) in accordance with the determination of priorities; or

(b) as the court orders.

13.46 Limitation claims (61.11, PD61.11)

(1) This rule applies to limitation claims.

(2) A claim is started by the issue of a limitation claim, accompanied by a declaration —

(a) setting out the facts upon which the claimant relies,

(b) stating the names and addresses (if known) of all persons who, to the knowledge of the claimant, have claims against him in respect of the occurrence to which the claim relates (other than named defendants), and

(c) verified by a statement of truth.

(3) The claimant and at least one defendant must be named in the claim form, but all other defendants may be described.

(4) The claim form —

(a) must be served on all named defendants and any other defendant who requests service upon him; and

(b) may be served on any other defendant.

(5) Subject to paragraph (6)(b), an acknowledgment of service is not required.

(6) Every defendant upon whom a claim form is served must —

(a) within 28 days of service file —

(i) a defence; or

(ii) a notice that he admits the right of the claimant to limit liability; or

(b) if he wishes —

(i) to dispute the jurisdiction of the court; or

(ii) to argue that the court should not exercise its jurisdiction,

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file within 14 days of service an acknowledgment of service.

(7) If a defendant files an acknowledgment of service under paragraph (6)(b) he shall be treated as having accepted that the court has jurisdiction to hear the claim unless he applies under rule 4.16 within 14 days after filing the acknowledgment of service.

(8) Where one or more named defendants admits the right to limit —

(a) the claimant may apply for a restricted limitation decree; and

(b) the court shall issue a decree limiting liability only against those named defendants who have admitted the claimant's right to limit liability.

(9) A restricted limitation decree —

(a) may be obtained against any named defendant who fails to file a defence within the time specified for doing so; and

(b) need not be advertised, but a copy must be served on the defendants to whom it applies.

(10) Where all the defendants upon whom the claim form has been served admit the claimant's right to limit liability —

(a) the claimant may apply to the court for a general limitation decree; and

(b) the court shall issue a limitation decree.

(11) Where one or more of the defendants upon whom the claim form has been served do not admit the claimant's right to limit, the claimant may apply for a general limitation decree.

(12) When a limitation decree is granted the court —

(a) may —

(i) order that any proceedings relating to any claim arising out of the occurrence be stayed;

(ii) order the claimant to establish a limitation fund (if one has not been established) or to make such other arrangements for payment of claims against which liability is limited; or

(iii) if the decree is a restricted limitation decree, distribute the limitation fund; and

(b) shall, if the decree is a general limitation decree, give directions as to advertisement of the decree and set a time within which notice of claims against the fund must be filed or an application made to set aside the decree.

(13) When the court grants a general limitation decree the claimant must —

(a) advertise it in such manner and within such time as the court directs; and

(b) file —

(i) a declaration that the decree has been advertised in accordance with paragraph (a); and

(ii) copies of the advertisements.

(14) No later than the time set in the decree for filing claims, each of the defendants who wishes to assert a claim must file and serve his statement of case on —

(a) the limiting party; and

(b) all other defendants except where the court orders otherwise.

(15) Any person other than a defendant upon whom the claim form has been served may apply to the court within the time fixed in the decree to have a general limitation decree set aside.

(16) An application under paragraph (15) must be supported by a declaration —

- (a) stating that the applicant has a claim against the claimant arising out of the occurrence; and
- (b) setting out grounds for contending that the claimant is not entitled to the decree, either in the amount of limitation or at all.
- (17) The claimant may constitute a limitation fund by making a payment into court.
- (18) A limitation fund may be established before or after a limitation claim has been started.
- (19) If a limitation claim is not commenced within 75 days after the date the fund was established —
 - (a) the fund will lapse; and
 - (b) all money in court (including interest) will be repaid to the person who made the payment into court.
- (20) Money paid into court under paragraph (17) will not be paid out except under an order of the court.

13.47 Stay of proceedings (61.12)

Where the court orders a stay of any claim in rem —

- (a) any property under arrest in the claim remains under arrest; and
 - (b) any security representing the property remains in force,
- unless the court orders otherwise.

13.48 Assessors (61.13)

The court may sit with assessors when hearing —

- (a) collision claims; or
 - (b) other claims involving issues of navigation or seamanship;
- the parties shall not be permitted to call expert witnesses unless the court orders otherwise.

CHAPTER 6: ARBITRATION CLAIMS

13.49 Interpretation (62.11)

- (1) In this Chapter —
 - ‘the 1976 Act’ means the Arbitration Act 1976;
 - ‘arbitration claim’ means an application to the court under the 1976 Act.
- (2) This Chapter does not apply to a claim on an arbitration award.

13.50 Starting the claim (62.13)

- (1) An arbitration claim must be started —
 - (a) if made in existing proceedings, by an application notice;
 - (b) otherwise, by the issue of a claim form.
- (2) The claim, unless made in existing proceedings, shall be allocated to the chancery procedure.

13.51 Time limits and other special provisions about arbitration claims (62.15)

- (1) An arbitration claim —
 - (a) to remit an award under section 23 of the 1976 Act; or
 - (b) to set aside an award under section 24(2) of the 1976 Act or otherwise;

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must be made, and the claim form or application notice served, within 21 days after the award has been made and published to the parties.

- (2) In an arbitration claim to which paragraph (1) applies —
 - (a) the claim form or application notice must state the grounds of the claim;
 - (b) where the claim is based on written evidence, a copy of that evidence must be served with the claim form; and
 - (c) where the claim is made with the consent of the arbitrator, the umpire or the other parties, a copy of every written consent must be served with the claim form.

13.52 Service out of the jurisdiction (62.16)

- (1) Subject to paragraph (2) —
 - (a) the claim form or application notice in an arbitration claim; or
 - (b) any order made in an arbitration claim,

may be served out of the jurisdiction with the permission of the court if the arbitration to which the claim relates —

- (i) is governed by the law of the Island; or
- (ii) has been, is being, or will be, held within the jurisdiction.

(2) A claim form or application notice seeking permission to enforce an award may be served out of the jurisdiction with the permission of the court, whether or not the arbitration is governed by the law of the Island.

(3) An application for permission under paragraph (1) or (2) must be supported by written evidence —

- (a) stating the grounds on which the application is made; and
- (b) showing in what place or country the person to be served is, or probably may be found.

(4) An order giving permission under paragraph (1) or (2) must specify the period within which the defendant may file an acknowledgment of service.

13.53 Enforcement of awards (62.18)

(1) An application for permission under section 27 of the 1976 Act to enforce an award in the same manner as a judgment or order may be made without notice in a claim form.

(2) The court may specify parties to the arbitration on whom the claim form must be served.

(3) The parties on whom the claim form is served must acknowledge service and the enforcement proceedings shall continue as if they were an arbitration claim under this Chapter.

(4) With the permission of the court the claim form may be served out of the jurisdiction irrespective of where the award is, or is treated as, made.

- (5) An application for permission must be supported by written evidence —
 - (a) exhibiting the arbitration agreement and the original award (or copies);
 - (b) stating the name and the usual or last known place of residence or business of the claimant and of the person against whom it is sought to enforce the award; and
 - (c) stating either —
 - (i) that the award has not been complied with; or

- (ii) the extent to which it has not been complied with at the date of the application.
- (6) An order giving permission must —
 - (a) be drawn up by the claimant; and
 - (b) be served on the defendant by —
 - (i) delivering a copy to him personally; or
 - (ii) sending a copy to him at his usual or last known place of residence or business.
- (7) An order giving permission may be served out of the jurisdiction —
 - (a) without permission; and
 - (b) in accordance with rules 2.43 to 2.48 as if the order were a claim form.
- (8) Within 14 days after service of the order or, if the order is to be served out of the jurisdiction, within such other period as the court may set —
 - (a) the defendant may apply to set aside the order; and
 - (b) the award must not be enforced until —
 - (i) the end of that period; or
 - (ii) after any application made by the defendant within that period has been finally disposed of.
- (9) The order must contain a statement of —
 - (a) the right to make an application to set the order aside; and
 - (b) the restrictions on enforcement under paragraph (8)(b).
- (10) Where a body corporate is a party, any reference in this rule to place of residence or business is a reference to the registered or principal address of the body corporate.

13.54 Interest on awards (62.19)

Where an applicant seeks to enforce an award of interest the whole or any part of which relates to a period after the date of the award, he must file a statement giving the following particulars —

- (a) whether simple or compound interest was awarded;
- (b) the date from which interest was awarded;
- (c) where rests were provided for, specifying them;
- (d) the rate of interest awarded; and
- (e) a calculation showing —
 - (i) the total amount claimed up to the date of the statement; and
 - (ii) any sum which will become due on a daily basis.

13.55 Registration of awards under the Arbitration (International Investment Disputes) Act 1983 (62.21)

- (1) In this rule —

‘the 1983 Act’ means the Arbitration (International Investment Disputes) Act 1983;

‘award’ means an award under the Convention;

‘the Convention’ means the Convention on the settlement of investment disputes between States and nationals of other States which was opened for signature in Washington on 18th March 1965;

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‘judgment creditor’ means the person seeking recognition or enforcement of an award;

‘judgment debtor’ means the other party to the award.

(2) Subject to the provisions of this rule, the following provisions apply with such modifications as may be necessary in relation to an award as they apply in relation to a judgment to which Part I of the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968 applies —

- (a) rule 12.56(1), (2), (3), (4)(a) to (e) and (5);
- (b) rule 12.58 (except paragraph (3)(c) to (e)); and
- (c) rule 12.60(2).

(3) An application to have an award registered in the court under section 1 of the 1983 Act shall be allocated to the chancery procedure.

(4) The written evidence required by rule 12.56 in support of an application for registration must —

- (a) exhibit the award certified under the Convention instead of the judgment (or a copy of it); and
- (b) in addition to stating the matters referred to in rule 12.56(4)(a) to (e) state whether —
 - (i) at the date of the application the enforcement of the award has been stayed (provisionally or otherwise) under the Convention; and
 - (ii) any, and if so what, application has been made under the Convention, which, if granted, might result in a stay of the enforcement of the award.

(5) Where, on granting permission to register an award or an application made by the judgment debtor after an award has been registered, the court considers —

- (a) that the enforcement of the award has been stayed (whether provisionally or otherwise) under the Convention; or
- (b) that an application has been made under the Convention which, if granted, might result in a stay of the enforcement of the award,

the court may stay the enforcement of the award for such time as it considers appropriate.

(6) This rule applies, with the necessary modifications, in relation to an award rendered pursuant to the Convention referred to in the Multilateral Investment Guarantee Agency Act 1989 as it applies in relation to an award.

CHAPTER 7: COMPANIES

13.56 General

- (1) This Chapter applies to applications to the court under —
 - (a) the 1931 Act, the 1982 Act, the 1992 Act, the 2006 Act or the 2009 Act;
 - (b) Schedule 2 to the Insurance Act 2008 (transfer of long-term insurance business).
- (2) In this Chapter —
 - ‘the 1931 Act’ means the Companies Act 1931 and includes that Act as applied to limited liability companies by the Limited Liability Companies Act 1996;
 - ‘the 1982 Act’ means the Companies Act 1982;
 - ‘the 1992 Act’ means the Companies Act 1992;
 - ‘the 2006 Act’ means the Companies Act 2006;

'the 2009 Act' means the Company Officers (Disqualification) Act 2009;

'disqualification application' means an application for a disqualification order;

'disqualification order' means an order referred to in section 1(1) of the 2009 Act;

'disqualification proceedings' means proceedings on a disqualification application.

(3) All proceedings under this Chapter shall be allocated to the chancery procedure.

(4) Where proceedings under this Chapter are begun by a claim form, the title of the proceedings shall be —

(a) in the case of disqualification proceedings, '*Proceedings under the Company Officers (Disqualification) Act 2009*' followed by the description of the parties in accordance with Schedule 3.1;

(b) in any other case, '*Proceedings under the Companies Act 1931* (or as the case may be) *relating to* [name of company]'.

13.57 Start of proceedings

(1) Any application under the 1931 Act, the 1982 Act, the 1992 Act, the 2006 Act or the 2009 Act must be made —

(a) in accordance with Chapter 2 of Part 7, where there are pending proceedings relating to the company in the court, and

(b) otherwise, by the issue of a claim form.

(2) Any application under Schedule 2 to the Insurance Act 1986 must be made by the issue of a claim form.

13.58 Special procedure for certain applications

(1) This rule applies to applications under the following provisions of the 1931 Act —

(a) section 5 (cancellation of alteration of company's objects);

(b) section 46 (reduction of share premium account);

(c) section 46A (reduction of capital redemption reserve);

(e) section 57 (reduction of share capital);

(f) section 62 (cancellation of variation etc. of rights attached to class of shares);

(g) section 85 (rectification of register of charges);

(h) section 101 (rectification of register);

(i) section 152 (compromise or arrangement with creditors or members);

(j) section 252 (disclaimer of onerous property);

(k) section 272 (avoidance of dissolution);

(l) section 273 (restoration of name of company to register);

(m) section 303 (cancellation of alteration of form of constitution);

(n) section 337 (relief from liability of officer or auditor).

(2) This rule applies to applications under the following provisions of the 2006 Act —

(a) section 51 (relief in respect of distribution when insolvent);

(b) section 54 (order restraining purchase etc. of shares);

(c) section 64 (rectification of register of members);

(d) section 99 (relief from liability of director);

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- (e) section 123 (dispute as to liability etc. in respect of cell);
- (f) section 126 (receivership in respect of cell);
- (g) section 160 (application by dissenting shareholder as to transfer);
- (h) section 175 (leave to bring or intervene in proceedings);
- (i) section 180 (order as to oppressive or prejudicial conduct);
- (j) section 188 (restoration of company to register);
- (k) section 217 (declaration as to interpretation of Act etc.).
- (3) This rule also applies to applications under —
 - (a) sections 8(2) and 21(1) (cancellation of certain special resolutions) of the 1992 Act; and
 - (b) Schedule 2 to the Insurance Act 1986 (sanction of transfer of long term insurance business).
- (4) On or after the filing of an application to which this rule applies, the applicant must apply for directions by filing an application notice.
- (5) At the directions hearing the court may give such directions for the hearing of the application as it thinks fit including, in particular, directions for the publication of notices and the making of any inquiry.
- (6) Where the application is to confirm a reduction of the share capital, the share premium account, or the capital redemption reserve, of a company the court may give directions —
 - (a) for an inquiry to be made as to the debts of, and claims against, the company or as to any class or classes of such debts or claims,
 - (b) as to the proceedings to be taken for settling the list of creditors entitled to object to the reduction and fixing the date by reference to which the list is to be made,
- (7) The power of the court under section 57(3) of the 1931 Act to direct that section 57(2) shall not apply as regards any class of creditors may be exercised at any directions hearing.
- (8) The consent of a creditor to a reduction mentioned in paragraph (6) may be proved in such manner as the court thinks sufficient.
- (9) The evidence in support of an application to confirm a reduction of capital need not show as regards any issue of shares made for a consideration other than cash that the statutory requirements as to registration were complied with, and it is sufficient to state in the application the extent to which any issued shares are or are deemed to be paid up.

13.59 Disqualification — general

- (1) Subject to rule 13.66, rules 13.60 to 13.65 apply to a disqualification application.
- (2) Rule 6.9(2) does not apply to a disqualification application.

13.60 Contents of claim form or application notice

There must be included in the claim form or application notice statements as follows—

- (a) that the application is made in accordance with this Chapter;
- (b) whether the application is for an order under section 4, 5 or 9 of the 2009 Act;

- (c) except in the case of an application by the Financial Supervision Commission, the status of the claimant (for example, the liquidator or a present creditor of a company of which the defendant is or was an officer);
- (d) the maximum period and (where appropriate) minimum period for which the court may make a disqualification order, that is —
 - (i) where the application is for an order under section 4 or 5 of that Act, a period of not less than 2, and not more than 15, years; and
 - (ii) where the application is for an order under section 9 of that Act, a period of not more than 15 years;
- (e) that the application for a disqualification order may, in accordance with this Chapter, be heard and determined summarily, without further or other notice to the defendant, and that, if it is so heard and determined, the court may impose disqualification for a period of up to 5 years;
- (f) that if at the hearing of the application the court, on the evidence then before it, is minded to impose, in the defendant's case, disqualification for any period longer than 5 years, it will not make a disqualification order on that occasion but will adjourn the application to be heard (with further evidence, if any) at a later date to be notified; and
- (g) that any evidence which the defendant wishes to be taken into consideration by the court must be filed in court in accordance with the time limits imposed under rule 13.63 (the provisions of which shall be set out on the claim form or application notice).

13.61 Case against defendant

(1) The claimant must, when the claim form is issued or the application notice is served, file evidence in support of the application for a disqualification order; and copies of the evidence must be served with the claim form or application notice on the defendant.

(2) The evidence must be by one or more affidavits, except where the claimant is the official receiver, in which case it may be in the form of a written report (with or without affidavits by other persons) which shall be treated as if it had been verified by affidavit by him and shall be prima facie evidence of any matter contained in it.

13.62 Response to application

(1) Where the application is made by a claim form, the acknowledgement of service must include the statement referred to in paragraph (3), and rule 4.11(1)(c) does not apply.

(2) Where the application is made by an application notice, the notice must include the statement referred to in paragraph (3).

- (3) The statement is that the defendant should indicate —
 - (a) whether he contests the application on the grounds, that in case of any particular company—
 - (i) he was not an officer of the company at a time when conduct of his, or of other persons, in relation to that company is in question, or
 - (ii) his conduct as officer of that company was not as alleged in the evidence filed in support of the application,
 - (b) whether, in the case of any conduct of his, he disputes the allegation that such conduct makes him unfit to be concerned in the management of a company, and
 - (c) whether he, while not resisting the application, intends to adduce mitigating factors with a view to justifying only a short period of disqualification.

13.63 Evidence

- (1) The affidavits or official receiver's report in support of the application must include —
 - (a) a statement of the matters by reference to which it is alleged that a disqualification order should be made against the defendant; and
 - (b) a statement of the steps taken to comply with any requirements imposed by section 3(2) of the 2009 Act.
- (2) The defendant must, within 28 days from the date of service of the claim form or application notice file any affidavit evidence in opposition to the application that he wishes the court to take into consideration, and must forthwith serve upon the claimant a copy of such evidence.
- (3) The claimant must, within 14 days from receiving the copy of the defendant's evidence, file any further evidence in reply that he wishes the court to take into consideration, and must forthwith serve a copy of that evidence upon the defendant.
- (4) Rules 8.21(2) and 8.22 do not apply.

13.64 Hearing of application

- (1) When the claim form is issued or application notice filed, the court shall fix a date for the first hearing of the application, which shall not be less than 8 weeks from the date of issue of the claim form or filing of the application notice.
- (2) The hearing shall in the first instance be before a judge in open court.
- (3) The judge shall either determine the case on the date fixed or adjourn it.
- (4) Where the case is not adjourned —
 - (a) the application may be heard and determined summarily, without further or other notice to the defendant; and
 - (b) if it is so heard and determined, the court may impose disqualification for a period of not more than 5 years
- (5) The judge shall adjourn the case for further consideration if—
 - (a) he forms the provisional opinion that a disqualification order ought to be made, and that a period of disqualification longer than 5 years is appropriate, or
 - (b) he is of opinion that questions of law or fact arise which are not suitable for summary determination.
- (6) If the judge adjourns the case for further consideration he shall—
 - (a) direct whether the case is to be heard and determined by a Deemster;
 - (b) state the reasons for the adjournment; and
 - (c) give directions as to the following matters—
 - (i) the manner in which and the time within which notice of the adjournment and the reasons for it are to be given to the defendant,
 - (ii) the filing in court and the service of further evidence (if any) by the parties,
 - (iii) the inspection and disclosure of documents;
 - (iv) such other matters as the judge thinks necessary or expedient with a view to an expeditious disposal of the application, and
 - (v) the time and place of the adjourned hearing.

(7) Where the case is adjourned, the application may (subject to any direction under paragraph (6)(a)) be heard and determined by the judge who originally dealt with the case or by another judge.

13.65 Making and setting aside of disqualification order

(1) The court may make a disqualification order against the defendant whether or not he appears, and whether or not he has completed and returned the acknowledgement of service of the claim form, or filed evidence in accordance with rule 13.63.

(2) Any disqualification order made in the absence of the defendant may be set aside or varied by the court on such terms as it thinks just.

(3) Unless the court in exceptional circumstances otherwise orders, an application for the setting aside or variation of a disqualification order made in the absence of the defendant must be made not later than 42 days after the making of the order.

13.66 Summary disposal by consent

(1) This rule applies where the parties decide to invite the court to deal with a disqualification application summarily, and rules 13.60 to 13.65 have effect subject to this rule.

(2) The claimant must notify the court in writing of the parties' decision when or as soon as possible after filing the claim form or application notice.

(3) The claimant must file a written statement —

(a) containing, except where the court otherwise directs, any material facts which, for the purposes of the application, are either agreed or not opposed (by either party); and

(b) specifying —

(i) the period of disqualification which the parties accept that the agreed or unopposed facts justify, or

(ii) the band of years (for example, 6 to 10 years) into which they will submit the case falls.

(4) Unless the court otherwise orders, the hearing of the application shall be in private, but any disqualification order shall be made in public.

(5) Unless the court otherwise orders, the written statement referred to in paragraph (3) shall be annexed to the disqualification order.

(6) If the court refuses to deal with the application summarily, it shall give directions in accordance with rule 13.64(6) as if the case had been adjourned under rule 13.64(5).

CHAPTER 8: INTELLECTUAL PROPERTY CLAIMS

13.67 Scope of this Chapter and interpretation (63.1)

(1) This Part applies to all intellectual property claims including those relating to —

(a) registered intellectual property rights such as —

(i) patents;

(ii) registered designs;

(iii) registered trade marks;

(iv) Community trade marks; and

(v) supplementary protection certificates;

(b) unregistered intellectual property rights such as —

- (i) copyright;
- (ii) design right;
- (iii) rights in performances;
- (iv) moral rights;
- (v) rights to prevent circumvention of copy-protection;
- (vi) plant variety rights;
- (vii) database rights;
- (viii) rights to trade secrets;
- (ix) rights to prevent passing off;
- (x) rights to geographical indications.

(2) In this Chapter —

‘the 1977 Act’ means the Patents Act 1977 (an Act of Parliament);

‘the 1991 Act’ means the Copyright Act 1991;

‘the 1994 Act’ means the Trade Marks Act 1994 (an Act of Parliament);

‘the Comptroller’ means the Comptroller General of Patents, Designs and Trade Marks;

‘patent’ means a patent under the 1977 Act and includes a supplementary protection certificate;

‘the register’ means whichever of the following registers is appropriate —

- (a) the register of patents maintained by the Comptroller under section 32 of the 1977 Act;
- (b) the register of designs maintained by the registrar under section 17 of the Registered Designs Act 1949;
- (c) the register of trade marks maintained by the registrar under section 63 of the 1994 Act;

‘the registrar’ means —

- (a) the registrar of trade marks; or
- (b) the registrar of registered designs,

whichever is appropriate.

13.68 Starting intellectual property claim (63.5, 63.13)

(1) Claims to which this Part applies must be started —

- (a) by issuing a claim form; or
- (b) as an additional claim in existing proceedings.

(2) Claims relating to —

- (a) patents,
- (b) registered designs, and
- (c) supplementary protection certificates;

shall be allocated to the ordinary procedure.

(3) Claims relating to —

- (a) copyright;
- (b) design right;
- (c) rights in performances;
- (d) moral rights;

- (e) rights to prevent circumvention of copy-protection;
- (f) registered trade marks;
- (g) Community trade marks;
- (h) plant variety rights;
- (i) database rights;
- (j) rights to trade secrets;
- (k) rights to prevent passing off; and
- (l) rights to geographical indications;

shall be allocated to the chancery procedure.

13.69 Patents and registered designs

Schedule 13.1 has effect with respect to claims relating to patents and registered designs.

13.70 Trade marks: service of claim form on registrar (63.14)

In a claim under the 1994 Act, the claim form or application notice must be served on the registrar where the relief sought would, if granted, affect an entry in the register.

13.71 Claim for infringement of registered trade mark (63.15)

- (1) In a claim for infringement of a registered trade mark the defendant may —
 - (a) in his defence, challenge the validity of the registration of the trade mark; and
 - (b) apply by an additional claim for —
 - (i) revocation of the registration;
 - (ii) a declaration that the registration is invalid; or
 - (iii) rectification of the register.

(2) Where a defendant applies under paragraph (1)(b) and the relief sought would, if granted, affect an entry in the register, he must serve on the registrar a copy of his claim form.

13.72 Service (63.16)

A claim form relating to a registered right may be served on a party who has registered the right at the address for service given for that right in the register, provided that the address is within the Isle of Man or the United Kingdom.

CHAPTER 9: REVIEW OF DETENTION

13.73 Scope

This Chapter applies to a claim to review the lawfulness of the detention of any person ('the detainee').

13.74 Starting claim (RSC 54.1)

(1) The claim shall be started by an application in accordance with Chapter 2 of Part 7 for an order requiring the defendant to produce the detainee and to show cause why the detainee should not be released from detention (an 'order to produce').

(2) Subject to paragraph (3), the application notice must be accompanied by a witness statement or affidavit by the detainee showing that the claim is made at his instance and setting out the nature of the detention.

(3) Where the detainee is unable for any reason to make the witness statement or affidavit required by paragraph (2), it may be made by some other person on his behalf, and

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must state that the detainee is unable to make the witness statement or affidavit himself and for what reason.

(4) The application may be made without notice to any other party.

(5) If the court office is open, the application notice and witness statement or affidavit must be filed, and the court office must forthwith refer them to a Deemster.

(6) In case of emergency, if the court office is closed the application may be made to a Deemster.

13.75 Power of court where application made without notice (RSC 54.2)

(1) Where an application under rule 13.74 is made without notice being served on any other party, the court may —

- (a) forthwith make an order to produce,
- (b) where the application is made to a Deemster otherwise than in court, direct that an application for an order to produce be made to the court by claim form;
- (c) where the application is made to a Deemster in court, adjourn the application so that notice thereof may be given, or direct that an application be made to the court by claim form.

(2) The claim form must be served on the defendant and on such other persons as the court or Deemster may direct, and, unless the court otherwise directs, there must be at least 5 clear days between the service of the claim form and the date named therein for the hearing of the application.

13.76 Copies of witness statements or affidavits to be supplied (RSC 54.3)

Every party to an application under rule 13.74 must supply to every other party copies of the witness statements or affidavits which he proposes to use at the hearing of the application.

13.77 Directions as to hearing etc. (RSC 54.5)

An order to produce shall include —

- (a) a notice of the time and place of a hearing of the matter, and
- (b) a direction requiring the defendant to file, not later than 3 days before the date of the hearing, a statement showing all the causes of the detention of the detainee, and
- (c) a direction requiring the defendant to bring the detainee to the hearing and to show cause why he should not be released from detention.

13.78 Service of order (RSC 54.6)

(1) Subject to paragraphs (2) and (3), an order under rule 13.74 must be served personally on the person to whom it is directed.

(2) If it is not possible to serve the order personally, or if it is directed to a governor of an institution or other public official, it must be served by leaving it with an employee or agent of the person to whom the order is directed, or a member of the staff of the institution or official, at the place where the detainee is detained.

(3) There must be served with the order a notice stating that in default of obedience proceedings for committal of the party disobeying will be taken.

13.79 Power to order release of detainee (RSC 54.4)

(1) Without prejudice to rule 13.75(1), the court hearing an application under rule 13.74 may in its discretion order that the detainee be released.

(2) At a hearing pursuant to an order to produce the court may order that the detainee be released

(3) An order under this rule shall be a sufficient warrant to any governor of an institution, constable or other person for the release of the detainee.

CHAPTER 10: MISCELLANEOUS CLAIMS

13.80 Defamation: summary disposal under Law Reform Act 1997 Part 2 (53.2)

(1) This rule provides for summary disposal in accordance with Part 2 of the Law Reform Act 1997 ('the Act')

(2) In proceedings for summary disposal under sections 14 and 15 of the Act, rules 10.48 (procedure), 10.49 (evidence) and 10.50 (directions) apply.

(3) An application for summary judgment under Chapter 6 of Part 10 may not be made if —

- (a) an application has been made for summary disposal in accordance with the Act, and that application has not been disposed of; or
- (b) summary relief has been granted on an application for summary disposal under the Act.

(4) The court may on any application for summary disposal direct the defendant to elect whether or not to make an offer to make amends under section 9 of the Act.

(5) When it makes a direction under paragraph (4), the court shall specify the time by which and the manner in which —

- (a) the election is to be made; and
- (b) notification of it is to be given to the court and the other parties.

13.81 Defamation: sources of information (53.3)

In a claim for defamation, a party shall not be required to provide further information about the identity of the defendant's sources of information, unless the court orders otherwise.

13.82 Applications under Mental Health Act 1998 Part 2

(1) In this rule —

- (a) 'the Act' means the Mental Health Act 1998;
- (b) expressions which are defined in the Act have the same meanings as they have in the Act.

(2) Where an application is made under section 40 of the Act for an order that the functions of the nearest relative of the patient are to be exercisable by some other person —

- (a) the nearest relative must be made a respondent, unless —
 - (i) 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
 - (ii) the court orders otherwise; and
- (b) the court may order that any other person shall be made a respondent.

(3) Subject to paragraph (4), the court may accept as evidence of the facts relied upon in support of the application, any report made —

- (a) by a medical practitioner; or
- (b) by any of the following acting in the course of their official duties —
 - (i) a probation officer;
 - (ii) an officer of the Department;

- (iii) an officer of a voluntary body exercising statutory functions on behalf of the Department; or
- (iv) an officer of the managers of a hospital.
- (4) 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.
- (5) An application under Part 2 of the Act shall be heard in private unless the court orders otherwise.
- (6) 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.

13.83 Applications for injunctions — planning and conservation

- (1) This rule relates to applications under —
 - (a) section 37 of the Town and Country Planning Act 1999, and
 - (b) section 6 of the Tree Preservation Act 1993.
- (2) In this rule—
 - (a) ‘injunction’ means an injunction under one of those sections;
 - (b) ‘the defendant’ is the person against whom the injunction is sought.
- (3) An injunction may be granted against a person whose identity is unknown to the applicant.
- (4) Where paragraph (3) applies —
 - (a) the claim form must describe the defendant by reference to —
 - (i) a photograph;
 - (ii) a thing belonging to or in the possession of the defendant; or
 - (iii) any other evidence;but the description of the defendant must be sufficiently clear to enable the defendant to be served with the proceedings;
 - (b) the application must be accompanied by a witness statement, which must state —
 - (i) that the applicant was unable to ascertain the defendant’s identity within the time reasonably available to him;
 - (ii) the steps taken by him to ascertain the defendant’s identity;
 - (iii) the means by which the defendant has been described in the claim form; and
 - (iv) that the description is the best the applicant is able to provide.
- (5) When the court issues the claim form it shall fix a date for the hearing.
- (6) The claim form must be served not less than 21 days, or such shorter period as the court may direct, before the hearing date.
- (7) Notice of the hearing date must be served at the same time as the claim form, unless the hearing date is specified in the claim form.
- (8) The court may on the hearing date —
 - (a) proceed to hear the case and dispose of the claim; or
 - (b) give directions.

13.84 Applications under Access to Neighbouring Land Act 1993

(1) An application under the Access to Neighbouring Land Act 1993 ('the 1993 Act') shall be allocated to the chancery procedure.

(2) Expressions in this rule which are defined in the 1993 Act have the same meaning in this rule as they have in the 1993 Act.

(3) An application for an access order must be supported by written evidence, and the claim form must —

- (a) identify the dominant land and the servient land and state whether the dominant land is or includes residential land;
- (b) specify the works alleged to be necessary for the preservation of the whole or a part of the dominant land;
- (c) state why entry upon the servient land is required and specify the area to which access is required by reference, if possible, to a plan annexed to the claim form;
- (d) give the name of the person who will be carrying out the works, if it is known at the time claim is started;
- (e) state the proposed date on which, or the dates between which, the works are to be started and their approximate duration; and
- (f) state what (if any) provision has been made by way of insurance in the event of possible injury to persons or damage to property arising out of the proposed works.

(4) The defendants shall be the owner and the occupier of the servient land.

(5) The court may direct that notice of the application shall be given to any other person who may be affected by the proposed entry.

(6) In the circumstances specified in section 4(3)(a) of the 1993 Act the application may, with the permission of the court, make a person defendant by description instead of by name; and notice of the application may in that case be served on that person by —

- (a) affixing a copy of the claim form to the main door or other conspicuous part of the servient land and, if practicable, inserting through the letter-box on the land a copy of the notice in an envelope addressed to 'the owner' or 'the occupier' (or as the case may be); or
 - (b) placing stakes in the ground at conspicuous part of the servient land, to each of which shall be affixed a copy of the claim form.
- (7) The application may, if the court thinks fit, be dealt with in private.

13.85 Financial restrictions proceedings

Schedule 13.2 makes provision for financial restrictions proceedings within the meaning of the Terrorism (Finance) Act 2009.

[rule 13.85 added by SD 222/10]

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SCHEDULE 13.1 — PATENTS AND REGISTERED DESIGNS

Rule 13.69

1. *Scope and interpretation*

- (1) This Schedule applies to any claim relating to matters arising out of —
 - (a) the Patents Act 1977 (an Act of Parliament) ('the 1977 Act'), or
 - (b) the Registered Designs Act 1949 (an Act of Parliament).

2. *Starting the claim (63.5)*

Claims to which this Schedule applies must be started —

- (a) by issuing a claim form; or
- (b) as an additional claim in existing proceedings.

3. *Defence and reply (63.6)*

- (1) Chapter 5 of Part 6 applies with the following modifications.
- (2) In a claim for infringement under paragraph 5, the defence must be filed within 42 days of service of the claim form,
- (3) The claimant must —
 - (a) file any reply to a defence; and
 - (b) serve it on all other parties,within 21 days of service of the defence.

4. *Disclosure and inspection (PD63.5)*

- (1) Chapter 5 of Part 7 is modified as follows.
- (2) Standard disclosure does not require the disclosure of documents where the documents relate to —
 - (a) the infringement of a patent by a product or process if, before or at the same time as serving a list of documents, the defendant has served on the claimant and any other party —
 - (i) full particulars of the product or process alleged to infringe; and
 - (ii) drawings or other illustrations, if necessary;
 - (b) any ground on which the validity of a patent is put in issue, except documents which came into existence within the period —
 - (i) beginning 2 years before the earliest claimed priority date; and
 - (ii) ending 2 years after that date; and
 - (c) the issue of commercial success.
- (3) Where the issue of commercial success arises, the patentee must, within such time limit as the court may direct, serve a schedule containing —
 - (a) where the commercial success relates to an article or product —
 - (i) an identification of the article or product (for example by product code number) which the patentee asserts has been made in accordance with the claims of the patent;
 - (ii) a summary by convenient periods of sales of any such article or product;
 - (iii) a summary for the equivalent periods of sales, if any, of any equivalent prior article or product marketed before the article or product in sub-paragraph (a); and

- (iv) a summary by convenient periods of any expenditure on advertising and promotion which supported the marketing of the articles or products in (i) and (iii) above; or
 - (b) where the commercial success relates to the use of a process —
 - (i) an identification of the process which the patentee asserts has been used in accordance with the claims of the patent;
 - (ii) a summary by convenient periods of the revenue received from the use of such process;
 - (iii) a summary for the equivalent periods of the revenues, if any, received from the use of any equivalent prior art process; and
 - (iv) a summary by convenient periods of any expenditure which supported the use of the process in (i) and (iii) above.
5. *Claim for infringement and challenge to validity (63.9, PD63.11)*
- (1) In a claim for infringement, the statement of case must —
 - (a) show which of the claims in the specification of the patent are alleged to be infringed; and
 - (b) give at least one example of each type of infringement alleged;and a copy of each document referred to in the statement of case, and where necessary a translation of the document, must be served with the statement of case.
 - (2) In a claim for infringement, the period for service of the defence or additional claim is 42 days after service of the claim form.
 - (3) Where the validity of a patent or registered design is challenged —
 - (a) the statement of case must contain particulars of —
 - (i) the relief sought; and
 - (ii) the issues except those relating to validity of the patent or registered design;
 - (b) the statement of case must have a separate document annexed to it headed ‘Grounds of Invalidity’ specifying the grounds on which validity of the patent is challenged;
 - (c) a copy of each document referred to in the grounds of invalidity, and where necessary a translation of the document, must be served with the grounds of invalidity; and
 - (d) the Comptroller must be sent a copy of the grounds of invalidity, and where the grounds of invalidity are amended, a copy of the amended document, at the same time as the grounds of invalidity are served or amended.
 - (4) Where, in an application in which validity of a patent or a registered design is challenged, the grounds of invalidity include an allegation —
 - (a) that the invention is not a patentable invention because it is not new or does not involve an inventive step, the particulars must specify such details of the matter in the state of art relied on, as set out in sub-paragraph (5);
 - (b) that the specification of the patent does not disclose the invention clearly enough and completely enough for it to be performed by a person skilled in the art, the particulars must state, if appropriate, which examples of the invention cannot be made to work and in which respects they do not work or do not work as described in the specification; or
 - (c) that the registered design is not new, the particulars must specify such details of the matter in the state of art relied on, as set out in sub-paragraph (5).

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- (5) The details required under sub-paragraph (4)(a) and (c) are —
 - (a) in the case of matter or a design made available to the public by written description the date on which and the means by which it was so made available, unless this is clear from the face of the matter; and
 - (b) in the case of matter or a design made available to the public by use —
 - (i) the date or dates of such use;
 - (ii) the name of all persons making such use;
 - (iii) any written material which identifies such use;
 - (iv) the existence and location of any apparatus employed in such use; and
 - (v) all facts and matters relied on to establish that such matter was made available to the public.
 - (6) In any proceedings in which the validity of a patent is challenged —
 - (a) on the ground that the invention did not involve an inventive step, a party who wishes to rely on the commercial success of the patent must state the grounds on which he so relies in his statement of case; and
 - (b) the court may order inspection of machinery or apparatus where a party alleges such machinery or apparatus was used before the priority date of the claim.
6. *Application to amend a patent specification in existing proceedings (63.10)*
- (1) An application under section 75 of the 1977 Act for permission to amend the specification of a patent by the proprietor of the patent must be made by application notice.
 - (2) The application notice must —
 - (a) give particulars of —
 - (i) the proposed amendment sought; and
 - (ii) the grounds upon which the amendment is sought;
 - (b) state whether the applicant will contend that the claims prior to amendment are valid; and
 - (c) be served by the applicant on all parties and the Comptroller within 7 days of its issue.
 - (3) The application notice must, if it is reasonably possible, be served on the Comptroller electronically.
 - (4) Within 14 days of the first appearance of the Comptroller's advertisement in the journal of the application to amend, any person who wishes to oppose the application must file and serve on all parties and the Comptroller a notice opposing the application which must include the grounds relied on.
 - (5) Within 28 days of the first appearance of the advertisement the applicant must apply to the court for directions.
 - (6) Unless the court otherwise orders, the applicant must within 7 days serve on the Comptroller any order of the court on the application.
 - (7) In this rule, 'the journal' means the journal published pursuant to rules made under section 123(6) of the 1977 Act.
7. *Court's determination of question or application (63.11)*
- Where the Comptroller —
- (a) declines to deal with a question under section 8(7), 12(2), 37(8) or 61(5) of the 1977 Act;

- (b) declines to deal with an application under section 40(5) of the 1977 Act; or
- (c) certifies under section 72(7)(b) of the 1977 Act that the court should determine the question whether a patent should be revoked,

any person seeking the court's determination of that question or application must issue a claim form within 14 days of the Comptroller's decision.

8. *Application by employee for compensation (63.12, PD63.13)*

(1) An application by an employee for compensation under section 40(1) or (2) of the 1977 Act must be made —

- (a) in a claim form; and
- (b) within the period prescribed by paragraphs (2) and (3).

(2) The prescribed period begins on the date of the grant of the patent and ends one year after the patent has ceased to have effect.

(3) Where a patent has ceased to have effect as a result of failure to pay the renewal fees within the period prescribed under rule 39 of the Patents Rules 1995, and an application for restoration is made to the Comptroller under section 28 of the 1977 Act, the period prescribed under paragraph (2) —

- (a) if restoration is ordered, continues as if the patent had remained continuously in effect; or
 - (b) if restoration is refused, is treated as expiring one year after the patent ceased to have effect, or six months after the refusal, whichever is the later.
- (4) On the application the court shall give directions as to —
- (a) the manner in which the evidence, including any accounts of expenditure and receipts relating to the claim, is to be given at the hearing of the claim and if written evidence is to be given, specify the period within which witness statements or affidavits must be filed; and
 - (b) the provision to the claimant by the defendant or a person deputed by him, of reasonable facilities for inspecting and taking extracts from the accounts by which the defendant proposes to verify the accounts in (a) or from which those accounts have been derived.

9. *Order affecting entry in the register of patents or designs (PD63.15)*

(1) Where any order of the court affects the validity of an entry in the register, the court and the party in whose favour the order is made, must serve a copy of such order on the Comptroller within 14 days.

(2) Where the order is in favour of more than one party, a copy of the order must be served by such party as the court directs.

10. *Claim for rectification of the register of patents or designs (PD63.16)*

(1) Where a claim is made for the rectification of the register of patents or designs, the claimant must at the same time as serving the other parties, serve a copy of —

- (a) the claim form; and
 - (b) accompanying documents
- on the Comptroller or registrar, as appropriate.

(2) Where documents are served on the Comptroller or registrar under subparagraph (1), he shall be entitled to take part in the proceedings.

**SCHEDULE 13.2 — FINANCIAL RESTRICTIONS PROCEEDINGS UNDER
TERRORISM (FINANCE) ACT 2009**

Rule 13.85

1. Interpretation (79.1)

In this Schedule —

- (a) ‘the 2009 Act’ means the Terrorism (Finance) Act 2009;
- (b) ‘financial restrictions decision’ means a decision to which section 23 of the 2009 Act applies;
- (c) ‘financial restrictions proceedings’ means proceedings in the court on an application under section 23 of the 2009 Act or on a claim arising from any matter to which such an application relates;
- (d) ‘closed material’ means –
 - (i) material, evidence or submissions to the court upon which the Treasury wish to rely in proceedings;
 - (ii) material which adversely affects the Treasury’s case or supports another party’s case; or
 - (iii) information which the Treasury is required to file pursuant to an order under paragraph 9(7), but which the Treasury objects to disclosing to another party and that party’s legal representative;
- (e) ‘legal representative’, in relation to a party, means the advocate for the party, other than a special advocate;
- (f) ‘material’ means anything in which information of any description is recorded;
- (g) ‘party’ includes the Treasury unless otherwise stated or the context otherwise requires;
- (h) ‘special advocate’ means a person appointed under section 27 of the 2009 Act; and
- (i) ‘specially represented party’ means a party, other than the Treasury, whose interests a special advocate represents.

2. Modification of overriding objective (79.2)

- (1) In financial restrictions proceedings the overriding objective in rule 1.2, and so far as relevant any other rule, must be read and given effect in a way which is compatible with the duty set out in sub-paragraph (2).
- (2) The court shall ensure that information is not disclosed contrary to the public interest.
- (3) Without prejudice to sub-paragraph (2), the court shall satisfy itself that the material available to it enables it properly to determine the proceedings.

3. Procedure on application to set aside financial restrictions decision (79.3-5)

- (1) An application to set aside a financial restrictions decision shall be allocated to the chancery procedure.
- (2) The following rules do not apply —
 - (a) rule 4.14 (consequence of not filing an acknowledgment of service);
 - (b) rules 5.3 and 5.4 (allocation or transfer of claims to other procedure by court officer or court);
 - (c) rule 5.20 (issue of claim form without naming defendants);
 - (d) rule 5.21 (objection to use of chancery procedure);
 - (e) rule 8.21 (evidence – general); and

- (f) rule 8.22 (filing and serving written evidence).

4. *Start of proceedings (79.6)*

- (1) An application to set aside a financial restrictions decision must be started by a claim form.
- (2) The claim form must set out –
 - (a) the details of the financial restrictions decision;
 - (b) details of how the claimant is affected by the financial restrictions decision; and
 - (c) the grounds on which the claimant seeks to set aside the decision.
- (3) The claimant must file with the claim form –
 - (a) a copy of –
 - (i) the written notice of the relevant financial restrictions decision made by the Treasury; or
 - (ii) where relevant, any direction, order or licence made under the Schedule to the Act or any freezing order made under Part VII of the Anti-terrorism and Crime Act 2003; and
 - (b) any evidence, including witness statements, on which the claimant relies at that stage.

5. *Fixing of directions hearing date (79.7)*

- (1) When the court issues the claim form it will fix a date for a directions hearing.
- (2) Unless the court directs otherwise, the directions hearing will be not less than 14 days but not more than 28 days after the date of issue of the claim form.

6. *Service of the claim form and accompanying documents (79.8)*

The court will –

- (a) serve on the Treasury and any special advocate (if one has been appointed) –
 - (i) the claim form; and
 - (ii) the documents specified in paragraph 4(3); and
- (b) send to all parties and any special advocate a notice of the directions hearing date (where such date is not endorsed on the claim form).

7. *Acknowledgment of service (79.9)*

Where a special advocate has been appointed, the Treasury must serve on that special advocate a copy of the acknowledgment of service filed under Chapter 3 of Part 4.

8. *Directions hearing (79.10)*

At the directions hearing the court may give case management directions, in particular –

- (a) for the holding of a further hearing to determine the application;
- (b) fixing a date, time and place for the further hearing at which the parties, their legal representatives (if any) and any special advocate can be present; and
- (c) as to the order in which, and the time within which, the following are to be filed and served –
 - (i) any response to the application to be filed and served by the Treasury under paragraph 9(1), (2) and (4);
 - (ii) any application to be made under paragraph 9(5);
 - (iii) any information to be filed and served by the Treasury pursuant to an order under paragraph 9(7);

- (iv) any evidence to be filed and served by the claimant under paragraph 10(1);
- (v) any evidence to be filed and served by the Treasury under paragraph 10(2);
- (vi) any application by the Treasury under paragraph 9(3) or (8) or 10(3); and
- (vii) any further evidence, including witness statements, written submissions or skeleton arguments, to be filed and served by the parties and any special advocate.

9. *Response by the Treasury (79.11)*

- (1) Where the Treasury intends to oppose the application to set aside the financial restrictions decision, it must file –
 - (a) the grounds for contesting the application; and
 - (b) any relevant evidence of which they are aware at that stage.
- (2) Unless the Treasury objects to the grounds and evidence in sub-paragraph (1) being disclosed to the claimant and the claimant's legal representative, the Treasury must serve a copy of the grounds and evidence on the claimant at the same time as filing the grounds.
- (3) Where the Treasury objects to the grounds and evidence in sub-paragraph (1) being disclosed to the claimant and the claimant's legal representative, the Treasury must make an application in accordance with paragraph 20.
- (4) Where a special advocate has been appointed, the Treasury must serve on that special advocate a copy of the grounds and evidence filed under sub-paragraph (1).
- (5) The claimant and any special advocate may apply to the court for an order directing the Treasury to file and serve further information about the Treasury's grounds filed under sub-paragraph (1)(a).
- (6) The application under sub-paragraph (5) must set out –
 - (a) what information is sought; and
 - (b) why the information sought is necessary for the determination of the application to set aside the financial restrictions decision.
- (7) The court may make an order on an application under sub-paragraph (5) where it considers that the information sought is –
 - (a) necessary for the determination of the application to set aside the financial restrictions decision; and
 - (b) may be provided without disproportionate cost, time or effort.
- (8) Where the Treasury objects to serving on the claimant and the claimant's legal representative the information sought under sub-paragraph (5), the Treasury must make an application in accordance with paragraph 20.

10. *Filing and service of evidence (79.12)*

- (1) Where the claimant wishes to rely on evidence in support of the application to set aside the financial restrictions decision and –
 - (a) such evidence was not filed with the claim form; or
 - (b) such evidence was filed with the claim form but the claimant wishes to rely on further evidence, the claimant must file and serve that evidence, including any witness statement, on the Treasury and any special advocate.
- (2) Where the claimant serves evidence in support of the application, the Treasury must file and serve, subject to sub-paragraph (3), any further evidence, including any witness statement, on the claimant and any special advocate.

- (3) Where the Treasury seeks to withhold disclosure of any closed material from the claimant and the claimant's legal representative, the Treasury must make an application in accordance with paragraph 20.
 - (4) The Treasury must serve any closed material upon the special advocate.
 - (5) The parties and, where relevant, any special advocate must file and serve any further evidence, including witness statements, written submissions or skeleton arguments as directed by the court.
11. *Notification of hearing (79.16)*

Unless the court orders otherwise, the court will serve any notice of the date, time and place fixed for a hearing on –

 - (a) every party, whether or not a party is entitled to attend that hearing; and
 - (b) if one has been appointed for the purposes of the proceedings, the special advocate or those instructing the special advocate.
12. *Hearings (79.17)*
 - (1) All financial restrictions proceedings must be determined at a hearing except where –
 - (a) the claimant withdraws the claim or application;
 - (b) the Treasury consents to the claim or application being allowed; or
 - (c) the parties agree to a determination without a hearing.
 - (2) Where the court considers it necessary for a party other than the Treasury and that party's legal representative to be excluded from a hearing or part of a hearing in order to secure that information is not disclosed contrary to the public interest, the court will –
 - (a) direct accordingly; and
 - (b) conduct the hearing, or that part of it from which the party and that party's legal representative are excluded, in private but attended by a special advocate to represent the interests of the excluded party.
13. *Appointment of a special advocate (79.18)*
 - (1) Subject to sub-paragraph (2), the Treasury must immediately give notice of the proceedings to the Attorney General –
 - (a) upon being served with any claim form, application notice or appeal notice; or
 - (b) where the Treasury intends to file an appeal notice, in financial restrictions proceedings.
 - (2) Sub-paragraph (1) applies unless –
 - (a) the Treasury does not intend to –
 - (i) oppose the claim, application or appeal; or
 - (ii) apply for permission to withhold closed material from a party and that party's legal representative; or
 - (b) a special advocate has already been appointed to represent the interests of a party other than the Treasury and that special advocate is not prevented from communicating with that party by virtue of paragraph 15.
 - (3) Where any financial restrictions proceedings are pending but no special advocate has been appointed, any party may request the Attorney General to appoint a special advocate.
14. *Function of a special advocate (79.19)*

The function of a special advocate is to represent the interests of a party other than the Treasury by, for example –

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- (a) making submissions to the court at any hearing from which the party and that party's legal representative are excluded;
 - (b) adducing evidence and cross-examining witnesses at such a hearing;
 - (c) making applications to the court or seeking directions from the court where necessary; and
 - (d) making written submissions to the court.
- 15. *Special advocate: communicating about proceedings (79.20)*
 - (1) The special advocate may communicate with the specially represented party or that party's legal representative at any time before the Treasury serves closed material on the special advocate.
 - (2) After the Treasury serves closed material on the special advocate, the special advocate must not communicate with any person about any matter connected with the proceedings, except in accordance with sub-paragraph (3) or a direction of the court pursuant to a request under sub-paragraph (4).
 - (3) The special advocate may, without directions from the court, communicate about the proceedings with –
 - (a) the court;
 - (b) the Treasury and any persons acting for the Treasury;
 - (c) the Attorney General and any persons acting for the Attorney General; and
 - (d) any other person, except for –
 - (i) the specially represented party and that party's legal representative; and
 - (ii) any other party to the proceedings (other than the Treasury) and that party's legal representative, with whom it is necessary for administrative purposes for the special advocate to communicate about matters not connected with the substance of the proceedings.
 - (4) The special advocate may request directions from the court authorising the special advocate to communicate with the specially represented party or that party's legal representative or with any other person.
 - (5) Where the special advocate makes a request for directions under sub-paragraph (4) –
 - (a) the court will notify the Treasury of the request; and
 - (b) the Treasury must, within a period specified by the court, file and serve on the special advocate notice of any objection which it has to the proposed communication, or to the form in which it is proposed to be made.
 - (6) Sub-paragraph (2) does not prohibit the specially represented party from communicating with the special advocate after the Treasury has served closed material on the special advocate as mentioned in sub-paragraph (1), but –
 - (a) that party may only communicate with the special advocate through a legal representative in writing; and
 - (b) the special advocate must not reply to the communication other than in accordance with directions given by the court, except that the special advocate may without such directions send a written acknowledgment of receipt to the specially represented party's legal representative.
- 16. *Consideration of the Treasury's objection (79.21)*
 - (1) Where the Treasury objects under paragraph 15(5)(b) to a proposed communication by the special advocate the court will fix a hearing for the Treasury and the special advocate to make oral representations, unless –

- (a) the special advocate gives notice to the court that the special advocate does not challenge the objection;
 - (b) the court –
 - (i) has previously considered an objection under paragraph 15(5)(b) to the same or substantially the same communication; and
 - (ii) is satisfied that it would be just to uphold or dismiss that objection without a hearing; or
 - (c) the Treasury and the special advocate consent to the court deciding the issue without a hearing.
- (2) If the special advocate does not challenge the objection, the special advocate must give notice of that fact to the court and to the Treasury –
- (a) within 14 days after the Treasury serves on the special advocate a notice under paragraph 15(5)(b); or
 - (b) within such other period as the court may direct.
- (3) Where the court fixes a hearing under sub-paragraph (1) –
- (a) the special advocate may file and serve on the Treasury a reply to the Treasury's objection;
 - (b) the Treasury may file and serve on the special advocate a response to the special advocate's reply; and
 - (c) the Treasury and the special advocate must file at least 7 days before the hearing a schedule identifying the issues which cannot be agreed between them and which must –
 - (i) give brief reasons for their contentions on each issue in dispute; and
 - (ii) set out any proposals for the court to resolve the issues in dispute.
- (4) A hearing under this rule must take place in the absence of the specially represented party and that party's legal representative.
17. *Modification of the general rules of evidence and disclosure (79.22)*
- (1) Chapter 5 of Part 7 (disclosure and inspection of documents), Chapter 1 of Part 8 (evidence) and Chapter 3 of Part 8 (Hearsay evidence) do not apply to financial restrictions proceedings.
 - (2) Subject to the other provisions of this Schedule, and to any directions of the court, the evidence of a witness may be given either –
 - (a) orally before the court; or
 - (b) in a witness statement.
 - (3) The court may also receive evidence in documentary or any other form.
 - (4) A party is entitled to adduce evidence and to cross-examine witnesses during any part of a hearing from which a party and that party's legal representative are not excluded.
 - (5) A special advocate is entitled to adduce evidence and to cross – examine witnesses.
 - (6) The court may require a witness to give evidence on oath or by affirmation.
18. *Search for, filing of and service of material (79.23)*
- (1) A party (the disclosing party) must –
 - (a) make a reasonable search for material relevant to the matters under consideration in financial restrictions proceedings; and
 - (b) file and serve on the other party and any special advocate material other than closed material –
 - (i) on which the disclosing party relies;

- (ii) which adversely affects the disclosing party's case;
 - (iii) which adversely affects the other party's case; or
 - (iv) which supports the other party's case.
 - (2) The factors relevant in deciding the reasonableness of a search under sub-paragraph (1)(a) include –
 - (a) the amount of material involved;
 - (b) the nature and complexity of the proceedings;
 - (c) whether the material is in the control of the party making the search;
 - (d) the ease and expense of retrieval of any material; and
 - (e) the significance of any material which is likely to be located during the search.
 - (3) The duty to search for, file and serve material under sub-paragraph (1) continues until the financial restrictions proceedings have been determined.
 - (4) Where material, other than closed material, to which the duty under sub-paragraph (1) extends comes to a party's attention before the financial restrictions proceedings have been determined, that party must immediately file it and serve it on the other party and on any special advocate.
19. *Redacted material (79.24)*
- Where the Treasury serves on another party any evidence (including a witness statement) or material which has been redacted on grounds other than those of legal professional privilege, the Treasury must –
- (a) notify the party that the evidence or material has been redacted and on what grounds it has been redacted;
 - (b) file the evidence or material in an unredacted form together with an explanation of the redaction.
20. *Application to withhold closed material (79.25)*
- (1) The Treasury –
 - (a) must apply to the court for permission to withhold closed material from another party and that party's legal representative in accordance with this rule; and
 - (b) may not rely on closed material at a hearing unless a special advocate has been appointed and attends the hearing to represent the interests of that party.
 - (2) The Treasury must file and serve, at such time as the court directs, on the special advocate –
 - (a) the closed material;
 - (b) a statement of the reasons for withholding that material from the specially represented party; and
 - (c) if the Treasury considers it possible to summarise that material without disclosing information contrary to the public interest, a summary of that material in a form which can be served on the specially represented party or that party's legal representative.
 - (3) Where the Treasury serves on the special advocate any closed material which has been redacted on grounds other than those of legal professional privilege –
 - (a) the Treasury must file the material in an unredacted form together with an explanation of the redactions; and
 - (b) the court will give a direction to the Treasury as to what may be redacted and what, if any, must be served on the special advocate in an unredacted form.

- (4) The Treasury may at any time amend or supplement material filed under this rule, but only with –
 - (a) the agreement of the special advocate; or
 - (b) the permission of the court.
- 21. *Consideration of the Treasury's application (79.26)*
 - (1) Where the Treasury applies in accordance with paragraph 20 for permission to withhold closed material the court will fix a hearing for the Treasury and the special advocate to make oral representations, unless –
 - (a) the special advocate gives notice to the court that the special advocate does not challenge the application;
 - (b) the court –
 - (i) has previously considered an application for permission to withhold the same or substantially the same material; and
 - (ii) is satisfied that it would be just to give permission without a hearing; or
 - (c) the Treasury and the special advocate consent to the court deciding the issue without a hearing.
 - (2) If the special advocate does not challenge the application, the special advocate must give notice of that fact to the court and to the Treasury –
 - (a) within 14 days after the Treasury serves on the special advocate the material under paragraph 20(2); or
 - (b) within such other period as the court may direct.
 - (3) Where the court fixes a hearing under sub-paragraph (1) –
 - (a) the special advocate may file and serve on the Treasury a reply to the Treasury's application;
 - (b) the Treasury may file and serve on the special advocate a response to the special advocate's reply; and
 - (c) the Treasury and the special advocate must file at least 7 days before the hearing a schedule identifying the issues which cannot be agreed between them and which must –
 - (i) give brief reasons for their contentions on each issue in dispute; and
 - (ii) set out any proposals for the court to resolve the issues in dispute.
 - (4) A hearing under this paragraph must take place in the absence of the specially represented party and that party's legal representative.
 - (5) The court will give permission to the Treasury to withhold closed material where it considers that disclosure of that material would be contrary to the public interest.
 - (6) Where the court gives permission to the Treasury to withhold closed material, the court will –
 - (a) consider whether to direct the Treasury to serve a summary of that material on the specially represented party or that party's legal representative; but
 - (b) ensure that such a summary does not contain material, the disclosure of which would be contrary to the public interest.
 - (7) Where the court does not give permission to the Treasury to withhold closed material from, or directs the Treasury to serve a summary of that material on, the specially represented party or that party's legal representative –
 - (a) the Treasury is not required to serve that material or summary; but
 - (b) if it does not do so, at a hearing on notice, the court may –

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- (i) where it considers that the material or anything that is required to be summarised might adversely affect the Treasury's case or supports the case of the specially represented party, direct that the Treasury must not rely on such material in its case, or must make such concessions or take such other steps, as the court may specify; or
- (ii) in any other case, direct that the Treasury do not rely on the material or (as the case may be) on that which is required to be summarised.

22. Failure to comply with directions (79.27)

- (1) Where a party or special advocate fails to comply with a direction of the court, the court may serve on that party or the special advocate a notice which states –
 - (a) the respect in which that party or special advocate has failed to comply with the direction;
 - (b) a time limit for complying with the direction; and
 - (c) that the court may proceed to determine the proceedings before it, on the material available to it, if the party or special advocate fails to comply with the relevant direction within the time specified.
- (2) Where a party or special advocate fails to comply with such a notice, the court may proceed in accordance with sub-paragraph (1)(c).

23. Judgments (79.28)

- (1) When the court gives judgment in any financial restrictions proceedings, it may withhold all or some of its reasons if and to the extent that it is not possible to give reasons without disclosing information contrary to the public interest.
- (2) Where the judgment of the court does not include the full reasons for its decision, the court will serve on the Treasury and the special advocate a separate written judgment including those reasons.
- (3) Where the court serves a separate written judgment under sub-paragraph (2), the special advocate may apply to the court to amend that judgment and the judgment under sub-paragraph (1) on the grounds that the separate written judgment under sub-paragraph (2) contains material not in the judgment under sub-paragraph (1) the disclosure of which would not be contrary to the public interest.
- (4) The special advocate must serve a copy of the application under sub-paragraph (3) on the Treasury.
- (5) The court will give the special advocate and the Treasury an opportunity to file written submissions and may determine the application with or without a hearing.

24. Application by Treasury for reconsideration of order, direction or judgment (79.29)

- (1) This rule applies where the court proposes, in any financial restrictions proceedings, to serve on a party other than the Treasury –
 - (a) notice of any order or direction made or given in the absence of the Treasury; or
 - (b) any written judgment.
- (2) Before the court serves any such notice or judgment on a party other than the Treasury, it will first serve notice on the Treasury of its intention to do so.
- (3) The Treasury may, within 5 days of being served with notice under sub-paragraph (2), apply to the court to reconsider the terms of the order or direction or to review the terms of the proposed judgment if the Treasury considers –
 - (a) its compliance with the order or direction; or
 - (b) the notification to another party of any matter contained in the judgment, order or direction, would cause information to be disclosed contrary to the public interest.

- (4) Where the Treasury makes an application under sub-paragraph (3), it must at the same time serve on a special advocate, if one has been appointed –
 - (a) a copy of the application;
 - (b) a copy of the relevant document referred to in sub-paragraph (1)(a) or (b); and
 - (c) a copy of the notice served on the Treasury pursuant to sub-paragraph (2).
 - (5) If a special advocate has been appointed, paragraph 21 (except sub-paragraphs (6) and (7)) applies with any necessary modifications to the consideration of an application under sub-paragraph (3).
 - (6) The court will not serve notice on a party other than the Treasury as mentioned in sub-paragraph (1) before the time for the Treasury to make an application under sub-paragraph (3) has expired.
25. *Supply of court documents (79.30)*
- Unless the court directs otherwise, rule 2.20 (register of claims) and rule 2.21 (supply of documents from court records) do not apply to any financial restrictions proceedings or to any document relating to such proceedings.
26. *Audio recordings*
- Unless the court directs otherwise, nothing in rule 9.8 entitles any person, whether or not a party, to obtain a recording of any part of financial restrictions proceedings which is held in private.
27. *Appeals (79.13-14)*
- (1) Chapter 1 of Part 14 applies to an appeal to the Appeal Division against an order under the preceding provisions of this Schedule subject to —
 - (a) paragraph 2, and
 - (b) sub-paragraphs (2) and (3).
 - (2) The following provisions apply to such an appeal —
 - (a) paragraph 1;
 - (b) paragraph 11;
 - (c) paragraph 12, with the substitution for sub-paragraph (1)(a) and (b) of the following —
 - "(a) the appellant withdraws the appeal against a decision of the Civil Division;
 - (b) the respondent to the appeal consents to the appeal being allowed;" and
 - (d) paragraphs 13 to 26.

and all references in those provisions to this Schedule and to financial restrictions proceedings shall be construed as references to Chapter 1 of Part 14 as modified by this paragraph and to the appeal proceedings.
 - (3) The appellant must serve a copy of the appellant's appeal notice on any special advocate.
- [Schedule 13.2 'Financial Restrictions Proceedings under Terrorism (Finance) Act 2009' added by SD 222/10]

PART 14 : APPEALS ETC.

CHAPTER 1: APPEALS

14.1 Scope and interpretation (52.1)

(1) The rules in this Chapter apply to appeals to the Civil Division and the Appeal Division.

(2) This Chapter does not apply to an appeal from the decision of a costs officer under rule 11.39.

(3) In this Chapter —

‘appeal’ includes an appeal by way of case stated;

‘the appeal court’ means the Division to which an appeal is made;

‘appeal notice’ means a notice by which an appeal is brought;

‘appellant’ means a person who brings or seeks to bring an appeal;

‘the lower court’ means the Division, court, tribunal or other person or body from whose decision an appeal is brought;

‘respondent’ means —

(i) a person other than the appellant who was a party to the proceedings in the lower court and who is affected by the appeal; and

(ii) a person who is permitted or directed by the appeal court to be a party to the appeal;

‘respondent’s notice’ means an appeal notice filed by a respondent under rule 14.7.

(4) This Chapter is subject to any rule or other statutory provision with regard to any particular category of appeal.

(5) This Chapter applies to appeals relating to financial restrictions proceedings within the meaning of the Terrorism (Finance) Act 2009 subject to the modifications in paragraph 27 of Schedule 13.2.

[subs (5) added by SD 222/10]

14.2 Appeal notice

(1) An appeal is brought by filing an appeal notice.

(2) An appeal notice filed by an appellant must state —

(a) the Division to which the appeal is brought;

(b) the Division, court, tribunal or other person or body from whose decision the appeal is brought;

(c) the nature and title (if any) of the proceedings in the lower court;

(d) the decision appealed against (including the date of the decision);

(e) whether the whole or only part of the decision is appealed from, and in the latter case which part;

(f) the name of the appellant, and his status in the proceedings in the lower court;

(g) the grounds of the appeal;

(h) whether the permission of the lower court is required for the appeal, and if so, whether such permission has been granted; and

(i) whether the permission of the appeal court is sought.

(3) A respondent’s notice must —

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- (a) identify the appeal proceedings in which it is filed by reference to the appellant's appeal notice;
- (b) state the name of the respondent, and his status in the proceedings in the lower court; and
- (c) specify the matters referred to in paragraph (2)(d), (e), (g), (h) and (i).

14.3 Division to which appeal lies

(1) This rule is subject to any provision of an Act specifying the Division to which an appeal lies.

(2) Where an appeal to the court (other than an appeal by way of case stated) lies from a decision of any of the following, it shall be heard and determined by the Appeal Division —

- (a) the Civil Division;
- (b) a court of summary jurisdiction;
- (c) the Land Court;
- (d) a Social Security Commissioner;
- (e) the Mental Health Review Tribunal;
- (f) the tribunal established under the Heath Burning Act 2003.

(3) Any other appeal to the court shall be heard and determined by the Civil Division.

14.4 Second appeals to the court (52.13)

(1) Permission is required from the Appeal Division for any appeal to that Division from a decision of the Civil Division which was itself made on appeal.

- (2) The Appeal Division shall not give permission unless it considers that —
- (a) the appeal would raise an important point of principle or practice; or
 - (b) there is some other compelling reason for the Appeal Division to hear it.

14.5 Security for costs of appeal (25.15)

- (1) The court may order security for costs of an appeal against —
- (a) an appellant;
 - (b) a respondent who also appeals,

on the same grounds as it may order security for costs against a claimant under Chapter 4 of Part 7.

(2) The court may also make an order under paragraph (1) where the appellant, or the respondent who also appeals, is a limited company or limited liability company and there is reason to believe it will be unable to pay the costs of the other parties to the appeal should its appeal be unsuccessful.

14.6 Appellant's appeal notice (52.4)

(1) Where the appellant seeks permission from the appeal court it must be requested in the appellant's appeal notice.

- (2) The appellant must file the appeal notice within —
- (a) such period as may be allowed by a relevant statutory provision;
 - (b) where there is no such provision, such period as may be directed by the lower court; or
 - (c) where the lower court makes no such direction, the following period after the date of the decision of the lower court that the appellant wishes to appeal —

- (i) 42 days, in the case of a final judgment or order;
 - (ii) 14 days, in any other case.
- (3) Unless the appeal court orders otherwise, an appeal notice must be served on each respondent —
 - (a) as soon as practicable; and
 - (b) in any event not later than 7 days after it is filed.

14.7 Respondent's appeal notice (52.5)

- (1) A respondent may file and serve an appeal notice.
- (2) A respondent who —
 - (a) is seeking permission to appeal from the appeal court; or
 - (b) wishes to ask the appeal court to uphold the order of the lower court for reasons different from or additional to those given by the lower court,must file a respondent's notice.

(3) Where the respondent seeks permission from the appeal court it must be requested in the respondent's notice.

- (4) A respondent's notice must be filed within —
 - (a) such period as may be directed by the lower court; or
 - (b) where the court makes no such direction, 14 days after —
 - (i) the date the respondent is served with the appellant's appeal notice where permission to appeal was given by the lower court, or permission to appeal is not required;
 - (ii) the date the respondent is served with notification that the appeal court has given the appellant permission to appeal; or
 - (iii) the date the respondent is served with notification that the application for permission to appeal and the appeal itself are to be heard together.
- (5) Unless the appeal court orders otherwise a respondent's notice must be served on the appellant and any other respondent —
 - (a) as soon as practicable; and
 - (b) in any event not later than 7 days,after it is filed.

14.8 Directions for hearing (RHC 45.5-7)

- (1) After the filing of a notice of appeal the appeal court shall give directions for the hearing of the appeal.
- (2) Directions under this rule shall be given at a hearing, unless the appeal court thinks it unnecessary to hold a hearing.
- (3) Directions under this rule may order the appeal to be heard —
 - (a) at a sitting of the appeal court commencing on a date specified in the directions, or
 - (b) at a sitting of the appeal court commencing on a date to be fixed by that court.
- (4) Where a direction is given under paragraph (3)(b), the appeal court shall, as soon as practicable after such a date has been fixed, notify the date to the appellant and every respondent.
- (5) The appeal court may direct that a copy of the notice of appeal be served on any other person; and that person shall be a respondent to the appeal.

14.9 Variation of time (52.6)

(1) An application to vary the time limit for filing an appeal notice must be made to the appeal court.

(2) The parties may not agree to extend any date or time limit set by —

(a) this Part, or

(b) an order of the appeal court or the lower court.

14.10 Stay (52.7)

Unless the appeal court or the lower court orders otherwise, an appeal shall not operate as a stay of any order or decision of the lower court.

14.11 Amendment of appeal notice (52.8)

An appeal notice may not be amended without the permission of the appeal court where —

(a) permission has been given for the appeal, or

(b) the appeal notice has been served.

14.12 Striking out appeal notices and setting aside or imposing conditions on permission to appeal (52.9)

(1) The appeal court may —

(a) strike out the whole or part of an appeal notice;

(b) set aside permission to appeal in whole or in part;

(c) impose or vary conditions upon which an appeal may be brought.

(2) The appeal court shall only exercise its powers under paragraph (1) where there is a compelling reason for doing so.

(3) Where a party was present at the hearing at which permission was given he may not subsequently apply for an order that the appeal court exercise its powers under paragraph (1)(b) or (c).

14.13 Appeal court's powers (52.10)

(1) In relation to an appeal the appeal court has all the powers of the lower court.

(2) The appeal court has power —

(a) to affirm, set aside or vary any order or judgment made or given by the lower court;

(b) to refer any claim or issue for determination by the lower court;

(c) to order a new trial or hearing;

(d) to make orders for the payment of interest;

(e) to make a costs order.

(3) In an appeal from a claim tried with a jury the Appeal Division may, instead of ordering a new trial —

(a) make an order for damages; or

(b) vary an award of damages made by the jury.

(4) The appeal court may exercise its powers in relation to the whole or part of an order of the lower court.

(5) If the appeal court —

(a) refuses an application for permission to appeal;

(b) strikes out an appellant's notice; or

(c) dismisses an appeal,
and it considers that the application, the appellant's notice or the appeal is totally without merit —

- (i) the appeal court's order must record the fact that it considers the application, the appellant's notice or the appeal to be totally without merit; and
- (ii) the appeal court must at the same time consider whether it is appropriate to make a civil restraint order.

14.14 Hearing of appeals (52.11, PD52.9, RHC 45.1A)

(1) An appeal to the Appeal Division may be either by way of a review of the decision of the lower court or by way of rehearing.

(2) An appeal to the Civil Division shall be limited to a review of the decision of the lower court unless —

- (a) the statutory provision under which the appeal is brought requires it to be by way of rehearing;
- (b) the appeal is from the decision of, or of a person appointed by, a Minister, Department or Statutory Board —
 - (i) who did not hold a hearing to come to that decision; or
 - (ii) who held a hearing to come to that decision, but the procedure adopted did not provide for the consideration of evidence; or
- (c) the appeal court considers that in the circumstances of the particular appeal it would be in the interests of justice to hold a re-hearing.

(3) Unless it orders otherwise, the appeal court shall not in the course of a review or rehearing receive —

- (a) oral evidence; or
- (b) evidence which was not before the lower court.

(4) The appeal court shall allow an appeal where the decision of the lower court was —

- (a) wrong; or
- (b) unjust because of a serious procedural or other irregularity in its proceedings.

(5) The appeal court may draw any inference of fact which it considers justified on the evidence.

(6) At the hearing of the appeal a party may not rely on a matter not contained in his appeal notice unless the appeal court gives permission.

14.14A Criminal appeals – evidence by live link

(1) In this rule "section 30 direction" means a direction under section 30 of the Criminal Justice, Police and Courts Act 2007 that a witness may give evidence by live link (within the meaning of Part 9 of that Act).

(2) An application for a section 30 direction must be made by giving notice in writing to the Chief Registrar, which must include —

- (a) the name of the applicant;
- (b) the name of the witness;
- (c) the nature of the evidence to be given by the witness (eg. expert evidence as to hand writing, evidence as to character, evidence in support of an alibi, or as the case may be);
- (d) the age of the witness and, if the witness is under the age of 17 —

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(i) the name and occupation of the person who it is proposed shall accompany the witness; and

(ii) the relationship (if any) of that person to the witness; and

(e) the grounds for the application, including details of the matters specified in section 30(6) of that Act and any other relevant circumstances.

(3) An application for a section 30 direction must be made not less than 21 days before the date of the sitting of the appeal court at which the evidence is to be given.

(4) A copy of the notice under paragraph (1) must be sent by the applicant to every other party to the appeal.

(5) A party who opposes an application for a section 30 direction must within 7 days of receiving a copy of a notice under paragraph (1) notify the applicant and the Chief Registrar in writing of his opposition, giving his reasons for doing so.

(6) An application for a section 30 direction —

(a) if unopposed, may be determined by a single judge in chambers with or without a hearing; and

(b) if opposed, shall be determined by a single judge in chambers at a hearing.

(7) If the application is to be determined at a hearing, the Chief Registrar must notify the parties of the time and place of the hearing.

(8) The Chief Registrar must notify all the parties of the decision of the appeal court on the application and, if the application has been refused, of the time and place at which the reasons for refusing the application will be stated in open court.

(9) A witness under the age of 17 may not give evidence by a live link unless, at the time the evidence is given, the witness is accompanied —

(a) by a person approved for the purpose by the court and named in the section 30 direction, and

(b) unless the court otherwise directs, by no other person.

(10) Where an application for a section 30 direction in respect of a witness has been refused, no further application for such a direction may be made in respect of that witness unless there has been a material change of circumstances (which must be specified in the application).

(11) An application for rescission under section 31(3) of the Act of a section 30 direction must be made by giving notice in writing to the Chief Registrar, which must include the grounds for the application, including details of the material change of circumstances justifying the rescission.

(12) An application under paragraph (11) must be made not less than 14 days before the date of the sitting of the appeal court at which the evidence is to be given.

(13) Paragraphs (4) to (6) apply to an application under paragraph (11) as they apply to an application for a section 30 direction.

(14) The Chief Registrar must notify all the parties of the decision of the appeal court on an application under paragraph (11) and of the time and place at which the reasons for the decision will be stated in open court.

14.4B Criminal appeals — evidence by video recording

(1) In this rule "section 36 direction" means a direction under section 36(1)(f) of the Criminal Justice, Police and Courts Act 2007 that a video recording should be admitted as evidence in chief of a witness.

(2) An application for a section 36 direction must be made by giving notice in writing to the Chief Registrar, which must include —

- (a) the name of the applicant;
 - (b) the name and date of birth of the witness;
 - (c) the date on which the video recording was made;
 - (d) a statement complying with paragraph (7) of the circumstances in which the video recording was made;
 - (e) the date on which the video recording was disclosed to the other party or parties;
- and
- (f) a statement that the applicant believes that the witness is willing and able to attend the hearing of the appeal for cross examination.

(3) Where it is proposed to tender part only of a video recording of an account made by the witness —

- (a) the notice under paragraph (2) must specify that part; and
- (b) the statement under paragraph (2)(d) must relate to the circumstances in which the entire recording was made.

(4) The application must be accompanied by the entire video recording.

(5) The application must be made not less than 21 days before the date of the sitting of the appeal court at which the evidence is to be given.

(6) A copy of —

- (a) the notice under paragraph (2); and
- (b) the entire video recording,

must be sent by the applicant to every other party to the proceedings.

(7) The statement under paragraph (2)(d) must include the following information, except so far as it is contained in the video recording itself —

(a) the times at which the recording began and finished, including details of any interruption;

(b) the place at which the recording was made and the usual function of the place;

(c) the following particulars of any person present at any point during the recording -

- (i) his name, age and occupation;
- (ii) the time or times he was present; and
- (iii) his relationship (if any) to the witness and to the defendant;

(d) a description of the equipment used, including —

- (i) the number of cameras used, and whether fixed or mobile;
- (ii) the number and location of microphones;
- (iii) the video format used; and
- (iv) whether there were single or multiple recording facilities;

(e) if the recording is a copy, the location of the master tape, disc or other record and details of when any by whom the copy was made.

(8) A party who receives a notice under paragraph (2) must, within 7 days of receiving the notice, notify the applicant and the Chief Registrar in writing —

(a) whether he objects to the admission of the whole or any part of the video recording, giving his reasons (which must state in particular why it would not be in the interests of justice for it to be admitted); and

(b) whether he would agree to the admission of part of the video recording and, if so, which part or parts.

(9) After the expiry of the period referred to in paragraph (8), the appeal court shall decide whether the application should be dealt with at a hearing or without a hearing; and the Chief Registrar must notify the applicant and, where necessary, the other party or party or parties of the time and place of any hearing.

(10) The application shall be dealt with by a single judge in chambers, and shall be dealt with at a hearing where any party notifies the Chief Registrar that he objects to the admission of the whole or any part of the video recording.

(11) The Chief Registrar must notify all the parties of the appeal court's decision on any application for a section 36 direction, stating whether the whole or specified parts only of the video recording are to be admitted in evidence.

[Rule 14.14A and 14.14B inserted by SD1025/10]

14.15 Non-disclosure of offers to settle and payments into court (52.12)

(1) The fact that an offer to settle (within the meaning of Chapter 6 of Part 7) or a payment into court has been made must not be disclosed to any judge of the appeal court who is to hear or determine —

- (a) an application for permission to appeal; or
- (b) an appeal,

until all questions (other than costs) have been determined.

(2) Paragraph (1) does not apply if the offer to settle or payment into court is relevant to the substance of the appeal.

(3) Paragraph (1) does not prevent disclosure in any application in the appeal proceedings if disclosure of the fact that an offer to settle or payment into court has been made is properly relevant to the matter to be decided.

14.16 Appeals by way of case stated (RHC 45B)

(1) This rule applies where, under any statutory provision, a court or other tribunal ('the tribunal') is required to state a case on a question of law for determination by the court.

(2) If the tribunal has been required to state a case but fails or refuses to do so, the party by whom the requirement was made may —

- (a) within 21 days of being notified of the refusal, or
- (b) if no such notification is given, within 42 days after the requirement was made,

apply to the appeal court for an order requiring the tribunal to state a case.

(3) Unless the appeal court determines to make the order without a hearing, it shall give directions for the hearing of the application.

(4) On an application under paragraph (2) the claim form must state —

- (a) in general terms the grounds of the application,
- (b) the question of law on which it is desired that a case be stated, and
- (c) any reasons given by the tribunal for its refusal.

(5) At least 7 days before the hearing date the applicant must serve a copy of the claim form, with a copy of the directions for a hearing, on —

- (a) the tribunal or its clerk, and
- (b) every other party to the proceedings before the tribunal.

(6) Where a tribunal is ordered to state a case under this rule, the tribunal must state and sign the case and send it to the applicant within the time directed by the order.

(7) Where the tribunal states a case (whether or not pursuant to an order under this rule), the appellant must, within 21 days after receiving the case, file —

- (a) the case, and
- (b) an appeal notice setting out his contentions on the question of law.

(8) When serving the appeal notice under rule 14.6(3), the appellant must also serve a copy of the case.

(9) When giving directions under rule 14.8 or at the hearing, the appeal court may —

- (a) amend the case,
- (b) order it to be sent back to the tribunal for amendment, or
- (c) order it to be sent back to the tribunal for it to hear further evidence.

(10) The appeal court may draw inferences of fact from the facts set out in the case.

(11) The appeal court shall notify —

- (a) the tribunal,
- (b) the appellant, and
- (c) every other person who appeared at the hearing,

of the decision of the appeal court on the case and of any directions given by the appeal court.

14.17 Statutory appeals – court’s power to hear any person (52.12A)

(1) This rule applies to any appeal to the court from the decision of any tribunal, body or person (other than a court) in exercise of a right of appeal conferred by a statutory provision.

(2) In an appeal to which this rule applies, any person may apply for permission —

- (a) to file evidence; or
 - (b) to make representations at the appeal hearing.
- (3) An application under paragraph (2) must be made promptly.

14.18 Domestic proceedings (RHC 45.25)

(1) This rule applies to an appeal referred to in section 104 of the Summary Jurisdiction Act 1989 (appeal against decision of court of summary jurisdiction in domestic proceedings).

(2) The appeal court shall not be bound to allow the appeal on the ground merely of misdirection or improper reception or rejection of evidence, unless in its opinion it has caused a substantial wrong or miscarriage of justice.

(3) Sections 50(2), (3) and (4) and 51(1) and (4) of the Summary Jurisdiction Act 1989 apply to the appeal with the substitution for reference to a court of summary jurisdiction of references to the appeal court.

14.19 Appeals from Isle of Man Copyright Tribunal (RHC 45D)

(1) In this rule —

‘appeal’ means an appeal on a point of law from the Tribunal under section 147 of the Copyright Act 1991 (including that section as applied by section 35 of the Design Right Act 1991);

‘the Tribunal’ means the Isle of Man Copyright Tribunal;

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‘the Tribunal Rules’ means the Copyright Tribunal Rules 1989, as applied by the Copyright Tribunal Rules 1996 or the Copyright Tribunal (Design Right) Rules 1992, as the case may be.

- (2) There shall be filed with the notice of appeal —
 - (a) a copy of the decision of the Tribunal;
 - (b) a copy of the notice of appeal under rule 42(2) of the Tribunal Rules.
- (3) The respondents to the appeal shall be all other parties to the proceedings before the Tribunal in which the decision was given.
- (4) The bringing of the appeal shall not suspend the operation of any order of the Tribunal unless —
 - (a) the Tribunal has refused an application under rule 43 of the Tribunal Rules, and
 - (b) the appeal court, on an application made after the decision of the Tribunal on the application, orders that it shall be suspended.
- (5) The appeal court on determining an appeal may —
 - (a) make any order which might have been made by the Tribunal;
 - (b) make such further or other order as the case may require; or
 - (c) remit the matter with the opinion of the appeal court for rehearing and determination by the Tribunal.
- (6) The court office shall send a copy of —
 - (a) any order under paragraph (4)(b), and
 - (b) any decision of the appeal court,to the Secretary of the Tribunal.

14.20 Reopening of final appeals (52.17)

- (1) In this rule ‘appeal’ includes an application for permission to appeal.
- (2) The appeal court shall not reopen a final determination of any appeal unless —
 - (a) it is necessary to do so in order to avoid real injustice,
 - (b) the circumstances are exceptional and make it appropriate to reopen the appeal, and
 - (c) there is no alternative effective remedy.
- (3) Permission is needed to make an application under this rule to reopen a final determination of an appeal even in cases where permission was not needed for the original appeal; and permission under this paragraph may not be granted except by a Deemster.
- (4) There is no right to an oral hearing of an application for permission unless, exceptionally, the Deemster so directs.
- (5) A Deemster shall not grant permission without directing the application to be served on the other party to the original appeal and giving him an opportunity to make representations.
- (6) There is no right of appeal or review from the decision of a Deemster on the application for permission, which is final.

CHAPTER 2: REVIEW OF DECISIONS

14.21 Scope and interpretation (54.1)

(1) Subject to paragraph (2), this Chapter applies to a claim to review the lawfulness of a decision, action or failure to act in relation to the exercise of a public function.

(2) This Chapter does not apply to a claim —

- (a) to require a court or tribunal to state a case for the opinion of the court (to which rule 14.16 applies); or
- (b) to review the lawfulness of a person's detention (to which Chapter 9 of Part 13 applies).

(3) In this Chapter —

'doleance claim' means a claim to which this Chapter applies;

'the doleance procedure' means the chancery procedure as modified by this Chapter;

'interested party' means any person (other than the claimant and defendant) who is directly affected by the claim.

14.22 Use of doleance procedure (54.2, 3)

(1) The doleance procedure must be used in a doleance claim where the claimant is seeking —

- (a) an order directing an authority to take, or not to take, a decision or action; or
- (b) an order quashing a decision of an authority.

(2) The doleance procedure may be used in a doleance claim where the claimant is seeking —

- (a) a declaration; or
- (b) an injunction.

(3) A doleance claim may include a claim for damages, restitution or the recovery of a sum due but may not seek such a remedy alone.

(4) A doleance claim shall be allocated to the chancery procedure.

14.23 Time limit for filing claim form (54.5)

(1) The claim form must be filed —

- (a) promptly; and
- (b) in any event not later than 3 months after the grounds to make the claim first arose.

(2) The time limit in this rule may not be extended by agreement between the parties.

(3) This rule does not apply when any other enactment specifies a shorter time limit for making the doleance claim.

14.24 Claim form (54.6, PD54)

(1) In addition to the matters set out in rule 6.9 (contents of the claim form) the claimant must also state —

- (a) the name and address of any person he considers to be an interested party;
- (b) that the claim is a claim to which this Chapter applies; and
- (c) any remedy (including any interim remedy) he is claiming.

(2) The claim form must include or be accompanied by —

- (a) a detailed statement of the claimant's grounds for bringing the claim;

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- (b) a statement of the facts relied on;
- (c) any application to extend the time limit for filing the claim form;
- (d) any application for directions.
- (3) The claim form must be accompanied by —
 - (a) any written evidence in support of the claim or application to extend time;
 - (b) a copy of any order that the claimant seeks to have quashed;
 - (c) where the claim relates to a decision of a court or tribunal, a copy of the decision and an approved copy of the reasons for reaching that decision;
 - (d) copies of any documents on which the claimant proposes to rely;
 - (e) copies of any relevant statutory material; and
 - (f) a list of essential documents for advance reading by the court (with page references to the passages relied on).
- (4) Where it is not possible to file all the above documents, the claimant must indicate which documents have not been filed and the reasons why they are not available.

14.25 Service of claim form (54.7)

The claim form must be served on —

- (a) the defendant; and
- (b) unless the court otherwise directs, any person the claimant considers to be an interested party,

within 7 days after the date of issue.

14.26 Acknowledgment of service (54.8)

- (1) Any person served with the claim form who wishes to take part in the proceedings must file an acknowledgment of service in accordance with this rule.
- (2) Any acknowledgment of service must be —
 - (a) filed not more than 21 days after service of the claim form; and
 - (b) served on —
 - (i) the claimant; and
 - (ii) subject to any direction under rule 14.25(b), any other person named in the claim form,as soon as practicable and, in any event, not later than 7 days after it is filed.
- (3) The time limits under this rule may not be extended by agreement between the parties.
- (4) The acknowledgment of service —
 - (a) must —
 - (i) where the person filing it intends to contest the claim, set out a summary of his grounds for doing so; and
 - (ii) state the name and address of any person the person filing it considers to be an interested party; and
 - (b) may include or be accompanied by an application for directions.

14.27 Failure to file acknowledgment of service (54.9)

- (1) Where a person served with the claim form has failed to file an acknowledgment of service in accordance with rule 14.26, he may take part in the hearing of

the claim, provided that he complies with rule 14.28 or any other direction of the court regarding the filing and service of —

(a) detailed grounds for contesting the claim or supporting it on additional grounds; and

(b) any written evidence.

(2) Where that person takes part in the hearing of the claim, the court may take his failure to file an acknowledgment of service into account when deciding what order to make about costs.

(3) Rule 4.14(2) does not apply.

14.28 Response (54.14)

(1) A defendant and any other person served with the claim form who wishes to contest the claim or support it on additional grounds must file and serve —

(a) detailed grounds for contesting the claim or supporting it on additional grounds; and

(b) any written evidence,

within 28 days after service of the claim form.

(2) Rule 8.22(3) to (6) (filing and serving of evidence) does not apply.

14.29 Where claimant seeks to rely on additional grounds (54.15)

The court's permission is required if a claimant seeks to rely on grounds other than those specified in the claim form.

14.30 Evidence (54.16, PD54)

(1) Rule 8.21(1) does not apply.

(2) No written evidence may be relied on unless —

(a) it has been served in accordance with any rule in this Chapter or a direction of the court; or

(b) the court gives permission.

(3) Disclosure is not required unless the court orders otherwise.

14.31 Court may hear any person (54.17)

Any person may apply for permission —

(a) to file evidence; or

(b) make representations at the hearing of the claim.

14.32 Claim may be decided without a hearing (54.18)

The court may decide a doleance claim without a hearing where all the parties agree.

14.33 Court's power when quashing decision (54.19)

(1) This rule applies where the court makes a quashing order in respect of the decision to which the claim relates.

(2) The court may —

(a) remit the matter to the decision-maker; and

(b) direct it to reconsider the matter and reach a decision in accordance with the judgment of the court.

(3) Where the court considers that there is no purpose to be served in remitting the matter to the decision-maker it may, subject to any statutory provision, take the decision itself.

14.34 Transfer (54.20)

The court may —

- (a) order a claim to continue as if it had not been started under this Chapter; and
- (b) where it does so, give directions about the future management of the claim.

CHAPTER 3: REFERENCES TO THE EUROPEAN COURT

14.35 References to the European Court (68.1-4)

(1) In this rule —

‘the European Court’ means the Court of Justice of the European Communities;

‘order’ means an order referring a question to the European Court for a preliminary ruling under article 234 of the Treaty establishing the European Community.

(2) An order may be made at any stage of the proceedings —

- (a) by the court on its own initiative; or
- (b) on an application by a party.

(3) An order may not be made by a judicial officer.

(4) The request to the European Court for a preliminary ruling must be set out in a schedule to the order, and the court may give directions on the preparation of the schedule.

(5) The Chief Registrar shall send a copy of the order to the Registrar of the European Court, but, unless the court orders otherwise, shall not do so until —

- (a) the time for appealing against the order has expired; or
- (b) any appeal against the order has been determined.

(6) Where an order is made, unless the court orders otherwise the proceedings shall be stayed until the European Court has given a preliminary ruling on the question referred to it.

PART 15 : SUPPLEMENTAL

CHAPTER 1: TRANSITIONAL ARRANGEMENTS

15.1 Introductory (PD51.1-2)

(1) This Chapter deals with the application of these Rules to proceedings issued before commencement ('existing proceedings').

(2) In this Chapter 'the previous rules' means the Rules of the High Court of Justice 1952 in force immediately before commencement.

(3) The general scheme of this Chapter is —

(a) to apply the previous rules to undefended cases, allowing them to progress to their disposal, but

(b) to apply these Rules to defended cases so far as is practicable.

15.2 Where previous rules will normally apply (PD51.3)

Where an initiating step has been taken in a case before commencement, in particular one that uses forms or other documentation required by the previous rules, the case shall proceed in the first instance under the previous rules. Any step which a party must take in response to something done by another party in accordance with the previous rules must also be in accordance with those rules.

15.3 Responding to old process (PD51.4)

A party who is served with an old type of originating process (summons, petition etc.) on or after commencement is required to respond in accordance with the previous rules and the instructions on any forms received with the originating process.

15.4 Filing and service of pleadings where old process served (PD51.5)

Where a case has been begun by an old type of originating process (whether served before or after commencement), filing and service of pleadings will continue according to the previous rules.

15.5 Default judgment (PD51.7)

(1) If a party wishes default judgment to be entered in existing proceedings, he must do so in accordance with the previous rules.

(2) Where default judgment has been entered and there are outstanding issues to be resolved (e.g. damages to be assessed), the court officer may refer the proceedings to a judge, so that case management decisions about the proceedings and the conduct of the hearing can be made in accordance with the practice set out in rule 15.12.

(3) If a party needs to apply for permission to enter default judgment, he must make that application under Chapter 2 of Part 7.

(4) An application to set aside judgment entered in default must be made under Chapter 2 of Part 7, and Chapter 2 of Part 10 (setting aside or varying default judgment) applies to the proceedings as it would apply to default judgment entered under these Rules.

(5) Rule 6.29 (claim stayed if it is not defended or admitted) applies to these proceedings.

15.6 Order inconsistent with these Rules (PD51.9)

Where a court order has been made before commencement, that order must still be complied with on or after commencement.

15.7 Steps taken before commencement (PD51.10)

(1) Where a party has taken any step in the proceedings in accordance with the previous rules that step will remain valid on or after commencement.

(2) A party will not normally be required to take any action that would amount to taking that step again under these Rules. For example if discovery has been given, a party will not normally be required to provide disclosure under Chapter 5 of Part 7.

15.8 Where these Rules will normally apply (PD51.11)

Where a new step is to be taken in any existing proceedings on or after commencement, it is to be taken under these Rules.

15.9 Overriding objective to apply (PD51.12)

Rule 1.2 (overriding objective) applies to all existing proceedings from commencement onwards.

15.10 Originating process (PD51.13)

(1) Only claim forms under these Rules shall be issued by the court on or after commencement.

(2) If a request to issue an old type of originating process (summons, petition etc.) is received at the court office on or after commencement it shall be returned unissued.

(3) An application made on or after commencement to extend the validity of originating process issued before commencement must be made in accordance with Chapter 2 of Part 7, but the court shall decide whether to allow the application in accordance with the previous law.

[subs (3) updated by SD222/10]

15.11 Application to the court (PD51.14)

(1) Any application to the court made on or after commencement must be made in accordance with Chapter 2 of Part 7.

[subs (1) updated by SD222/10]

(2) Any other relevant provision of these Rules shall apply to the substance of the application, unless this Chapter provides otherwise.

For example, a party wishing to apply for summary judgment must do so having regard to the test in Chapter 6 of Part 10. A party wishing to apply for an interim remedy must do so under Chapter 3 of Part 7.

(3) Any other provision of these Rules shall apply as necessary.

(4) If the pleadings have not been filed at court, the applicant must file all pleadings served when he files his application notice.

15.12 First time before a judge on or after commencement (PD51.15)

(1) When proceedings come before a judge (whether at a hearing or otherwise) for the first time on or after commencement, he may direct how these Rules are to apply to the proceedings and may disapply certain provisions of these Rules. He may also give directions (which may include allocating the proceedings to a procedure).

(2) The general presumption shall be that these Rules will apply to the proceedings from then on unless the judge directs or this Chapter provides otherwise.

(3) If an application has been issued before commencement and the hearing of the application has been set for a date on or after commencement, the general presumption is that the application will be decided having regard to these Rules.

(4) When the first occasion on which existing proceedings are before a judge on or after commencement is a trial or hearing of a substantive issue, the general presumption is that the trial or hearing will be conducted having regard to these Rules.

15.13 Allocation of proceedings to procedure

(1) Subject to paragraph (2), existing proceedings shall in the first instance be allocated to whichever would be the normal procedure for the claim if it were started after commencement.

(2) Proceedings which were not, or would not have been, referred to arbitration under rule 2(3) of Order 26A of the previous rules, but for which the small claims procedure would be the normal procedure under these Rules, shall in the first instance be allocated to the summary procedure.

(3) Any party may apply for an order that existing proceedings be transferred to another procedure.

(4) Where no application is made under paragraph (3), the court shall nevertheless consider whether to make such an order on the first occasion after commencement on which the court gives directions.

15.14 Agreement to apply these Rules (PD51.17)

(1) The parties may agree in writing that these Rules shall apply to any proceedings from the date of the agreement.

(2) An agreement under paragraph (1) shall not have effect unless —

- (a) all those who are parties at that time agree;
- (b) it provides that these Rules apply in their entirety; and
- (c) a copy of the agreement is filed.

(3) An agreement under paragraph (1) is irrevocable.

15.15 Costs (PD51.18)

(1) Any assessment of costs that takes place on or after commencement shall be in accordance with Part 11.

(2) However, the general presumption is that no costs for work undertaken before commencement shall be disallowed if those costs would have been allowed in a taxation before commencement.

(3) The decision as to whether to allow costs for work undertaken on or after commencement shall generally be taken in accordance with Part 11.

15.16 Existing proceedings after one year (PD51.19)

(1) If any existing proceedings have not come before a judge, at a hearing or otherwise, between commencement and the first anniversary of commencement, those proceedings shall be stayed.

(2) Any party to those proceedings may apply for the stay to be lifted.

(3) Proceedings of the following types shall not be stayed as a result of this rule —

- (a) where the case has been given a fixed trial date which is after commencement,
- (b) claims for personal injuries where there is no issue on liability but the proceedings have been adjourned by court order to determine the prognosis,
- (c) where the court is dealing with the continuing administration of an estate or a trust or a receivership,

(d) applications relating to funds in court.

(4) For the purposes of this rule proceedings cease to be ‘existing proceedings’ once final judgment has been given.

15.17 Hearsay evidence: transitional provision (PD33)

(1) Except as provided for by paragraph (2), Part 2 (hearsay evidence) of the Administration of Justice Act 2008 applies to claims started before commencement.

(2) The said Part 2 does not apply to claims started before commencement if, before then, —

(a) directions were given, or orders were made, as to the evidence to be given at the trial or hearing; or

(b) the trial or hearing had begun.

15.18 Supply of documents from court records (HCD X(19))

(1) This rule applies to documents filed before commencement, and any reference in this rule to a claim form, defence or other statement of case is to the corresponding document under the previous rules.

(2) A party to proceedings may obtain from the records of the court —

(a) a copy of a claim form,

(b) any document filed with or attached to or intended by the claimant to be served with that claim form,

(c) any defence or other statement of case; and

(d) if the court gives permission, any other document filed by a party or communication between the court and a party or another person.

(3) A person who is not a party to proceedings may, if the court gives permission, obtain from the records of the court a copy of any document filed by a party or communication between the court and a party or another person.

(4) A person wishing to obtain a copy of a document under paragraph (2) or (3) must pay any prescribed fee and —

(a) if the court’s permission is required, file an application notice; or

(b) if permission is not required, file a written request for the document.

(5) An application for permission under this rule may be made without notice, but the court may direct notice to be given to any person who would be affected by its decision.

(6) On an application under paragraph (2(d) or (3), the application notice must identify the document or class of document in respect of which permission is sought and the grounds relied upon.

(7) The powers of the court under this rule may be exercised by the Chief Registrar, subject to —

(a) any general directions given by the First Deemster, or

(b) any directions given by the court in the particular case.

(8) This rule has effect subject to —

(a) section 14 (secrecy) of the Legal Aid Act 1986, and

(b) section 4 (access to public records) of the Public Records Act 1999.

CHAPTER 2: CONSEQUENTIAL AMENDMENTS AND REPEALS

15.19 Saving

This Chapter has effect subject to the transitional provisions in Chapter 1.

15.20 Amendments

The amendments of statutory provisions specified in Schedule 15.1 (which include amendments to merge the Civil Divisions of the court existing immediately before commencement) shall have effect.

15.21 Repeals and revocations

(1) The statutory provisions specified in Schedule 15.2 are repealed or, as the case may be, revoked to the extent specified in column 3 of that Schedule.

(2) Any general order or rule relating to proceedings in the Court of Chancery which was made before the passing of the Isle of Man Judicature Act 1883 and is in force immediately before commencement shall cease to have effect.

(3) With the exception of the Directives listed in Schedule 15.3, any High Court Directive which is in force immediately before commencement shall cease to have effect.

RULES OF THE HIGH COURT OF JUSTICE

SCHEDULE 15.1 — AMENDMENTS

Rule 15.20

General

1. Except as provided by paragraphs 6 and 7, in any statutory provision for ‘Civil Divisions’, ‘Chancery Division’, ‘Common Law Division’ or ‘Family Division’ substitute ‘Civil Division’.
2. In any statutory provision a reference (however expressed) to —
 - (a) the superior jurisdiction or summary jurisdiction of the court or of the Common Law Division, or
 - (b) the court or the Common Law Division exercising superior jurisdiction or summary jurisdiction,

shall be construed as a reference to the Civil Division.

3. In any statutory provision a reference to a petition of doleance shall be construed as an application to the court in accordance with —
 - (a) Chapter 9 of Part 13 (review of detention),
 - (b) rule 14.16 (appeal by way of case stated), or
 - (c) Chapter 2 of Part 14 (review of lawfulness of decision etc.),

as the case may require.

4. Where any rules of court provide that the Rules of the High Court of Justice 1952 shall apply (with or without modifications) to the commencement of, or to the practice or procedure in, any proceedings to which the rules apply, the reference to the said Rules of 1952 shall be construed as a reference to these Rules.

Action of Arrest Act 1953 (XVIII p.160)

5. In section 1 —
 - (a) for subsection (4) substitute —

"(4) The defendant shall be released from arrest on filing in the General Registry in accordance with rules of court an acknowledgment of service and an undertaking in writing to submit himself irrevocably to the jurisdiction of the court.";
 - (b) omit subsection (5).

Interpretation Act 1976 (c.20)

6. In section 3 —
 - (a) for the definition of ‘the Civil Divisions’ substitute —

‘the Civil Division’ means the Civil Division of the High Court;’;
 - (b) omit the definitions of ‘Chancery Division’, ‘Common Law Division’ and ‘Family Division’.

High Court Act 1991 (c.12)

7. (1) In section 2, for subsection (1) substitute —

‘(1) The High Court shall have the following divisions —

 - (a) the Civil Division (in this Act referred to as ‘the Civil Division’); and
 - (b) the Staff of Government Division (in this Act referred to as ‘the Appeal Division’).’

(2) In sections 19(1), 20(2) and 21(1), for ‘any of the Civil Divisions’ substitute ‘the Civil Division’.

(3) In section 58(1), for the definition of ‘Civil Divisions’ substitute —

‘the Civil Division’ means the Civil Division of the High Court;’.

SCHEDULE 15.2 — REPEALS AND REVOCATIONS

Rule 15.21

<i>Reference</i>	<i>Short title</i>	<i>Extent of repeal or revocation</i>
—	Rules of the High Court of Justice 1952	The whole Rules except Orders 44, 44A, 51D, 51E, 51F and 55
—	Action of Arrest Rules 1953	The whole Rules
—	Supplemental Rules of the High Court of Justice 1953	The whole Rules
—	Rules of the High Court of Justice 1962	The whole Rules
—	Rules of the High Court of Justice 1963	The whole Rules
—	Rules of the High Court of Justice 1968	The whole Rules
—	Rules of the High Court of Justice 1974	The whole Rules
—	Rules of the High Court of Justice 1977	The whole Rules
—	Rules of the High Court of Justice 1982	The whole Rules
GC 17/82	Enforcement Rules 1982	Rules 8 to 10 Rules 18 to 24 In the Appendix, Forms 4, 5, 7 and 8
GC 40/83	Rules of the High Court of Justice 1983	The whole Rules
GC 277/83	Rules of the High Court of Justice (No. 3) 1983	The whole Rules
GC 4/84	Rules of the High Court of Justice 1984	The whole Rules
GC 17/84	Rules of the High Court of Justice (No. 4) 1983	The whole Rules
GC 43/84	Enforcement (Amendment) Rules 1984	Rule 2. Schedules 1 and 2.
GC 74/84	Rules of the High Court of Justice (Small Claims Arbitration) 1984	The whole Rules
GC 128/85	Rules of the High Court of Justice (Acknowledgement of Service etc.) 1985	The whole Rules
GC 198/86	Rules of the High Court of Justice (Instalment Orders etc.) 1986	The whole Rules
GC 176/88	Rules of the High Court of Justice (Amendment) 1988	The whole Rules
GC 327/89	Rules of the High Court of Justice (Convention Awards) 1989	The whole Rules
GC 56/91	Rules of the High Court of Justice (Amendment) 1991	The whole Rules
GC 4/92	Rules of the High Court of Justice (Amendment) 1992	Rules 2, 3, 6 and 7 and Schedule 3

RULES OF THE HIGH COURT OF JUSTICE

<i>Reference</i>	<i>Short title</i>	<i>Extent of repeal or revocation</i>
GC 153/92	Rules of the High Court of Justice (Amendment) (No. 2) 1992	The whole Rules
GC 263/92	Rules of the High Court of Justice (Amendment) (No. 3) 1992	The whole Rules
GC 483/92	Rules of the High Court of Justice (Amendment) (No. 4) 1992	The whole Rules
SD 255/93	Rules of the High Court of Justice (Amendment) 1993	The whole Rules
SD 367/93	Rules of the High Court of Justice (Amendment) (No. 2) 1993	The whole Rules
SD 16/94	Rules of the High Court of Justice (Amendment) 1994	The whole Rules
SD 510/97	Rules of the High Court of Justice (Amendment) 1997	The whole Rules
SD 89/98	High Court of Justice (Audio Recording) Rules 1998	The whole Rules.
SD 164/98	Rules of the High Court of Justice (Small Claims Limit) (Amendment) 1998	The whole Rules
SD 145/00	Rules of the High Court (Amendment) Rules 2000	The whole Rules
SD 324/01	Rules of the High Court of Justice (Amendment) 2001	The whole Rules
SD 599/06	Small Claims Arbitration (Personal Representation) Rules 2006	The whole Rules
SD 95/07	Rules of the High Court of Justice (Amendment) 2007	The whole Rules

SCHEDULE 15.3 — DIRECTIVES REMAINING IN FORCE

Rule 15.21

<i>Number</i>	<i>Subject matter</i>
I(1)	Appeals against sentence
II(4)	General Gaol — legal aid
III(16)	Advertisement of winding-up petition
III(20)	Nomination of provisional liquidator
III(23)	Mental health — appointment of receiver
III(24)	Mental health — registration of enduring power of attorney
V(3)	Divorce — residence orders
V(5)	Divorce — personal service of application
V(13)	Divorce — transfer of property order
VIII(1)	Bankruptcy — sale of land
VIII(2)	Bankruptcy — deeds of arrangement
VIII(3)	Bankruptcy — application for distribution
VIII(4)	Bankruptcy — release of trustee
VIII(6)	Bankruptcy — forms
VIII(7)	Bankruptcy — remuneration of trustee
XI(2)	Registration of deeds
X(24)	Issue of temporary advocate's licence

MADE

2009

Her Majesty's First Deemster and Clerk of the Rolls

Second Deemster

RULES OF THE HIGH COURT OF JUSTICE

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules regulate the practice and procedure of the High Court, and replace the Rules of the High Court of Justice 1952.

Part 1 is introductory. Part 2 deals with the administration of the Court; it merges the Chancery, Common Law and Family Divisions into a single Civil Division, and makes provision for forms and documents, including the service of documents, and for the making of civil restraint orders against vexatious litigants. Part 3 deals with parties to proceedings, with special provisions for group litigation and parties under disability.

Part 4 provides for the start of proceedings by a single originating process, the ‘claim form’, and for acknowledgment of service of a claim form. Part 5 provides for four types of procedure: the small claims, summary, chancery and ordinary procedures, to one of which every claim must be allocated. Part 6 deals with the filing and service of ‘statements of case’ identifying the questions at issue in proceedings. Part 7 provides for the management of cases by the court and the steps to be taken in proceedings. Part 8 deals with evidence, including the filing of witness statements. Part 9 provides for trials and hearings.

Part 10 deals with judgments and orders of the court, and Part 11 with costs, including fixed costs, and summary and detailed assessment of costs. Part 12 provides for execution and other methods of enforcement of judgments and orders. Part 13 makes special provision for certain types of claim, relating to eg. land, interpleader, probate and trusts, admiralty, arbitration, companies and intellectual property. Part 14 deals with appeals, applications under the doleance procedure (formerly ‘petitions of doleance’) and references to the European Court. Part 15 makes transitional provisions and revokes the rules of court and directives which are superseded by the Rules.