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STATUTORY INSTRUMENTS

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**2001 No. 4015 (L.32)**

**SUPREME COURT OF ENGLAND AND WALES  
COUNTY COURTS, ENGLAND AND WALES**

**The Civil Procedure (Amendment No. 5) Rules 2001**

*Made - - - - 13th December 2001*

*Laid before Parliament 20th December 2001*

*Coming into force in accordance with rule 1*

The Civil Procedure Rule Committee, having power under section 2 of the Civil Procedure Act 1997<sup>(1)</sup> to make rules of court under section 1 of that Act, after consulting in accordance with section 2(6)(a) of that Act, make the following Rules—

**Citation, commencement and interpretation**

1. These Rules may be cited as the Civil Procedure (Amendment No. 5) Rules 2001 and shall come into force—

- (a) for the purposes of rules 2, 37, 38 and 40, and this rule, on 14th January 2002;
- (b) for the purposes of rules 4 to 6, 9, 10, 13, 14, 18, 35 and 41, on 1st March 2002; and
- (c) for all other purposes, on 25th March 2002.

2. In these Rules—

- (a) a reference to a Part or rule by number alone means the Part or rule so numbered in the Civil Procedure Rules 1998<sup>(2)</sup>;
- (b) a reference to an Order by number and prefixed by “RSC” means the RSC Order so numbered in Schedule 1 to those Rules; and
- (c) a reference to an Order by number and prefixed by “CCR” means the CCR Order so numbered in Schedule 2 to those Rules.

**Amendments to the Civil Procedure Rules 1998**

3. In rule 2.3, in paragraph (2), for “relevant” substitute “rule or”.

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<sup>(1)</sup> 1997 c. 12.

<sup>(2)</sup> S.I. 1998/3132, as amended by S.I. 1999/1008, S.I. 2000/221, S.I. 2000/940, S.I. 2000/1317, S.I. 2000/2092, S.I. 2001/256, S.I. 2001/1388, S.I. 2001/1769 and S.I. 2001/2792.

4. In rule 6.18—

(a) for sub-paragraph (g), substitute—

“(g) “domicile” is to be determined—

(i) in relation to a Convention territory, in accordance with sections 41 to 46 of the 1982 Act;

(ii) in relation to a Regulation State, in accordance with the Judgments Regulation and paragraphs 9 to 12 of Schedule 1 to the Civil Jurisdiction and Judgments Order 2001;”;

(b) at the end of sub-paragraph (h), delete “and”; and

(c) after sub-paragraph (i), insert—

“(j) “the Judgments Regulation” means Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; and

(k) “Regulation State” in any provision, in the application of that provision in relation to the Regulation, has the same meaning as “Member State” in the Judgments Regulation, that is all Member States except Denmark.”.

5. In rule 6.19(1)(a), for “any part of the United Kingdom”, substitute “any other part of the United Kingdom”.

6. After rule 6.19(1) insert—

“(1A) A claim form may be served on a defendant out of the jurisdiction where each claim included in the claim form made against the defendant to be served is a claim which the court has power to determine under the Judgments Regulation and—

(a) no proceedings between the parties concerning the same claim are pending in the courts of any other part of the United Kingdom or any other Regulation State; and

(b) (i) the defendant is domiciled in the United Kingdom or in any Regulation State;

(ii) Article 22 of the Judgments Regulation refers to the proceedings; or

(iii) the defendant is a party to an agreement conferring jurisdiction to which Article 23 of the Judgments Regulation refers.”.

7. In rule 6.20—

(a) omit the cross-reference after paragraph (15); and

(b) after the cross-reference after paragraph (17), insert—

“**Admiralty claims**

(17A) a claim is—

(a) in the nature of salvage and any part of the services took place within the jurisdiction; or

(b) to enforce a claim under section 153, 154 or 175 of the Merchant Shipping Act 1995(3).”.

8. In rule 6.21, after paragraph (4), insert—

“(The second practice direction to this Part sets out how the periods referred to in paragraphs (a), (b) and (c) are calculated.)”.

- 9.** In rule 6.22—
- (a) in paragraph (2)—
    - (i) after “6.19(1)” insert “or (1A)”; and
    - (ii) after “Contracting State” insert “or Regulation State”; and
  - (b) in paragraph (4), after “6.19(1)” insert “or (1A)”.
- 10.** In rule 6.23—
- (a) in paragraph (2)—
    - (i) after “6.19(1)” insert “or (1A)”; and
    - (ii) after “Contracting State” insert “or Regulation State”; and
  - (b) in paragraph (4), after “6.19(1)” insert “or (1A)”.
- 11.** In rule 8.3, omit paragraph (4).
- 12.** In Part 11—
- (a) in rule 11(4), for paragraph (a), substitute—
    - “(a) be made within 14 days after filing an acknowledgment of service; and”;
  - (b) after rule 11(4), omit the cross-reference;
  - (c) in rule 11(5), for “for filing a defence” substitute “specified in paragraph (4)”;
  - (d) for rule 11(9) substitute—
    - “(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) in a Part 7 claim, a defence; or
      - (b) in a Part 8 claim, any other written evidence.”; and
  - (e) omit rule 11(10).
- 13.** In rule 12.10—
- (a) in paragraph (b)(i)—
    - (i) after “6.19(1)” insert “or (1A)”; and
    - (ii) omit “under the Civil Jurisdiction and Judgments Act 1982(4)”; and
  - (b) in paragraph (b)(ii), after “Convention territory” insert “or Regulation State”.
- 14.** In rule 12.11—
- (a) in paragraph (4), for sub-paragraph (a) substitute—
    - “(a) the claim under the Civil Jurisdiction and Judgments Act 1982 or the Judgments Regulation, was served in accordance with rules 6.19(1) or 6.19(1A) as appropriate;”; and
  - (b) in paragraph (6)—
    - (i) for sub-paragraph (a) substitute—
      - “(a) “domicile” is to be determined—
        - (i) in relation to a Convention territory, in accordance with sections 41 to 46 of the Civil Jurisdiction and Judgments Act 1982;

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(4) 1982 c. 27, as amended by the Civil Jurisdiction and Judgments Act 1991 (c. 12) and by S.I. 1989/1346, S.I. 1990/2591, S.I. 1993/603 and S.I. 2000/1824. The Civil Jurisdiction and Judgments Order 2001 will make further amendments when it comes into force on 1st March 2002.

- (ii) in relation to a Regulation State, in accordance with the Judgments Regulation and paragraphs 9 to 12 of Schedule 1 to the Civil Jurisdiction and Judgments Order 2001;”;
  - (ii) at the end of sub-paragraph (c), delete “and”; and
  - (iii) after sub-paragraph (d), insert—
    - “(e) “the Judgments Regulation” means Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; and
    - (f) “Regulation State” has the same meaning as “Member State” in the Judgments Regulation, that is all Member States except Denmark.”
- 15.** In rule 20.6—
- (a) at the beginning, insert “(1)”;
  - (b) after paragraph (1), insert—
    - “(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.”.
- 16.** In rule 22.1, in paragraph (1)—
- (a) at the end of sub-paragraph (d), delete “and”; and
  - (b) at the end of sub-paragraph (e), insert—
    - “; and
    - (f) any other document where a rule or practice direction requires.”.
- 17.** In rule 25.10, in sub-paragraph (a), after “interim injunction<sup>(g1)</sup>”, insert “other than a freezing injunction”.
- 18.** In rule 25.13(2), in sub-paragraphs (a)(ii) and (b)(ii), after “Lugano Convention” insert “or the Regulation”.
- 19.** In rule 26.3, after paragraph (6), insert—
- “(6A) The date for filing the completed allocation questionnaire may not be varied by agreement between the parties.”.
- 20.** In rule 31.14—
- (a) at the beginning, insert “(1)”;
  - (b) at the end of sub-paragraph (c), insert “or”;
  - (c) at the end of sub-paragraph (d), for “; or” substitute “.”;
  - (d) omit sub-paragraph (e); and
  - (e) after paragraph (1), but before the cross-reference, insert—
    - “(2) Subject to rule 35.10(4), 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.”.

21. In rule 35.12, in paragraph (1), for sub-paragraphs (a) and (b) substitute—
- “(a) identify and discuss the expert issues in the proceedings; and
  - (b) where possible, reach an agreed opinion on those issues.”.
22. In rule 35.14—
- (a) for paragraph (2) substitute—
    - “(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.”; and
  - (b) in paragraph (3)—
    - (i) after “served with” insert “a copy of the directions.”; and
    - (ii) omit sub-paragraphs (a) and (b).
23. After rule 37.4, insert—
- “Payment into court under enactments**
- 37.5. A practice direction may set out special provisions with regard to payments into court under various enactments.”.
24. In rule 44.13, for paragraph 1 substitute—
- “(1) Where the court makes an order which does not mention costs—
  - (a) 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.”.
25. In rule 45.1—
- (a) in paragraph (2)(a), after “sum of money”, insert “where the value of the claim exceeds £25”;
  - (b) at the end of paragraph (2)(b), insert “and the value of the claim exceeds £25; or”; and
  - (c) after paragraph (2)(b)—
    - (i) omit “and in either case the value of the claim exceeds £25.”; and
    - (ii) insert—
      - “(c) a judgment creditor has taken steps under Parts 70 to 73 to enforce a judgment or order.”
26. After rule 45.5, insert rule 45.6, as set out in Schedule 1 to these Rules.
27. In rule 48.4, for paragraphs (2) and (3) substitute—
- “(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 will be assessed on the indemnity basis.”.
28. In Part 49, in paragraph (2), omit sub-paragraphs (a), (b), (c) and (e).

**29.** After Part 57, insert—

- (a) Part 58 (Commercial Court) as set out in Schedule 2 to these Rules;
- (b) Part 59 (Mercantile Courts) as set out in Schedule 3;
- (c) Part 60 (Technology and Construction Court claims) as set out in Schedule 4;
- (d) Part 61 (Admiralty claims) as set out in Schedule 5; and
- (e) Part 62 (Arbitration claims) as set out in Schedule 6.

**30.** In rule 70.5—

- (a) in the note after paragraph (2), at the end insert—

“;

(v) judgments to which Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters applies”; and

- (b) in paragraph (8), for “Value Added Tax tribunal” substitute “VAT and duties tribunal”.

**31.** In rule 71.8, in paragraph (4)(b), for “attend court at that time and place” substitute “comply with any term on which the committal order is suspended”.

**32.** In rule 72.1, in paragraph (2), for “which is a deposit-taking business for the purposes of the Banking Act 1987”, substitute “in the course of which he lawfully accepts deposits in the United Kingdom”.

**33.** In rule 72.6, in paragraph (2)(c)—

- (a) at the end of sub-paragraph (i) omit “and”; and
- (b) after sub-paragraph (ii) insert—

“; and

(iii) whether the bank or building society 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.”.

**34.** In RSC Order 62, in Part III of Appendix 3, omit paragraphs 3 and 4.

**35.** In RSC Order 71—

- (a) in rule 32(2), after “6.25” insert “, 6.26”;
- (b) for rule 33, substitute—

“**Rule 33.**—(1) An appeal under Article 37 or Article 40 of Schedule 1 or 3C to the Act of 1982 must be made in accordance with CPR Part 52, except that—

- (a) permission is not required; and

(b) the appellant’s notice must be served—

(i) in the case of an appeal under Article 37 of Schedule 1 or 3C to the Act of 1982, within one month of service of notice of registration of the judgment, or two months of service of such notice where that notice was served on a party not domiciled within the jurisdiction;

(ii) in the case of an appeal under Article 40 of Schedule 1 or 3C to the Act of 1982, within one month of the determination of the application under rule 27.

(2) If—

- (a) the party against whom judgment was given is not domiciled in a Convention territory, and
  - (b) an application to extend the time for appealing is made within two months of service of notice of registration,  
the court may extend the period within which an appeal may be made against the order for registration, except on the grounds of distance.”;
  - (c) in rule 36, in paragraph (2)(b), for the words from “any document” to the end, substitute—  
“any document showing that for these proceedings the applicant is an assisted person or an LSC funded client, as defined in CPR rule 43.2(1)(h) and (i)”;
  - (d) after Part IV, insert Part V as set out in Schedule 7 to these Rules.
- 36.** RSC Order 74 is revoked.
- 37.** In RSC Order 92, omit rule 3A.
- 38.** In RSC Order 93—
- (a) in rule 22—
    - (i) in the heading and in paragraph (1), for “the Financial Services Act 1986” substitute “the Financial Services and Markets Act 2000(5)”;
    - (ii) in paragraph (3), for “the Secretary of State or a designated agency under section 72” substitute “the Financial Services Authority under section 367”;
    - (iii) for paragraph (4) substitute—  
“(4) Where there is a question of the construction of any rule or other instrument made by or with the approval or consent of the Financial Services Authority under the Act, that Authority may make representations to the court.”; and
  - (b) omit rule 23.
- 39.** In CCR Order 28—
- (a) after rule 1(2), insert—  
“(3) The judgment creditor must file with the request all written evidence on which he intends to rely.”;
  - (b) in rule 2—
    - (i) for paragraph (3)(b), substitute—  
“(b) it is made under section 110(2) of the Act.”; and
    - (ii) for paragraph (4), substitute—  
“(4) The written evidence on which the judgment creditor intends to rely must be served with the judgment summons.”
- ;
- (c) in rule 3(1), for “A judgment summons shall”, substitute “The judgment summons and written evidence must”;
  - (d) after rule 4(1), insert—  
“(1A) An order made under section 110(1) of the Act must be served personally on the judgment debtor.  
(1B) Copies of—
    - (a) the judgment summons; and

- (b) the written evidence,  
must be served with the order.”;
- (e) for rule 5, substitute—

**“Evidence**

**5.—(1)** No person may be committed on an application for a judgment summons unless—

- (a) the order is made under section 110(2) of the Act; or
- (b) the judgment creditor proves that the debtor—
  - (i) has or has had since the date of the judgment or order the means to pay the sum in respect of which he has made default; and
  - (ii) has refused or neglected or refuses or neglects to pay that sum.
- (2) The debtor may not be compelled to give evidence.”; and
- (f) omit rule 10(3).

**40.** In CCR Order 34, in paragraph (a) of rule 1—

- (a) for “section 14 or 92” substitute “section 14, 92 or 118”; and
- (b) after “seized in execution,” insert “or by wilfully insulting a judge, juror, witness or any officer of the court,”.

**41.** In CCR Order 35—

- (a) in rule 3, in paragraph (2)(b), for the words from “any document” to the end, substitute—  
“any document showing that for these proceedings the applicant is an assisted person or an LSC funded client, as defined in CPR rule 43.2(1)(h) and (i);”; and
- (b) after rule 3, insert—

**“Application under Article 54 of the Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters**

**3A.—(1)** An application to the court by an interested party for a certificate under Article 54 of Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be made—

- (a) without notice being served on any other party; and
- (b) on witness statement or affidavit.
- (2) A witness statement or affidavit under paragraph (1)(b) must—
  - (a) give particulars of the proceedings in which the judgment was obtained;
  - (b) contain evidence of service of the claim form by which the proceedings were begun where judgment was given in default of appearance by the defendant; and
  - (c) where appropriate, include any document showing that for these proceedings the applicant is an assisted person or an LSC funded client, as defined in CPR rule 43.2(1)(h) and (i).

(3) A sealed copy of the judgment shall be issued together with a sealed certificate, in the form of Annex V to the Council Regulation, signed by the district judge.”.

42. In CCR Order 38, in Appendix B—

(a) in Part I—

(i) in the heading, omit “, APPLICATIONS TO ENFORCE AN AWARD”; and

(ii) in paragraph 1, omit sub-paragraph (e);

(b) in Part II, for paragraph (d)(ii) in column 1 of the Table, substitute—

“(ii) possession of land, where one of the grounds for possession is arrears of rent (whether or not the order for possession is suspended on terms) and the defendant has neither delivered a defence, admission or counterclaim, nor otherwise denied liability”; and

(c) in Part III, in the Table, omit items 7, 8 and 11.

### **Transitional provisions and Savings**

43.—(1) Where proceedings for the possession of land are issued before 25th March 2002, rule 42(b) shall not apply, and CCR Order 38 shall apply as if it had not been amended.

(2) Where on or after 25th March 2002 fixed costs are to be awarded in enforcement proceedings which, pursuant to rule 24 of the Civil Procedure (Amendment No. 4) Rules 2001(6), continue to be governed by rules in Schedule 1 or Schedule 2 to the Civil Procedure Rules 1998 rather than rules in Parts 70 to 73, the rules governing enforcement costs in force immediately before 25th March 2002 shall continue to apply as if they had not been revoked.

*Phillips of Worth Matravers, M.R.  
Andrew Morritt, V-C.  
Anthony May, L.J.  
Richard Holman  
Carlos Dabezies  
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Ahmad Butt*

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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I allow these Rules

Dated 13th December 2001

*Irvine of Lairg, C.*

## SCHEDULE 1

Rule 26

**Fixed enforcement costs**

**45.6.** The table in this rule (Table 4) shows the amount to be allowed in respect of solicitors' costs in the circumstances mentioned. The amounts shown in Table 3 are to be allowed in addition, if applicable.

**TABLE 4***FIXED ENFORCEMENT COSTS*


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For an application under rule 70.5(4) that an award may be enforced as if payable under a court order, where the amount outstanding under the award:	
exceeds £25 but does not exceed £250	£30.75
exceeds £250 but does not exceed £600	£41.00
exceeds £600 but does not exceed £2,000	£69.50
exceeds £2,000	£75.50
On attendance to question a judgment debtor (or officer of a company or other corporation) who has been ordered to attend court under rule 71.2 where the questioning takes place before a court officer, including attendance by a responsible representative of the solicitor:	for each half-hour or part, £15.00
	(When the questioning takes place before a judge, he may summarily assess any costs allowed.)
On the making of a final third party debt order under rule 72.8(6)(a) or an order for the payment to the judgment creditor of money in court under rule 72.10(1)(b):	
if the amount recovered is less than £150	one-half of the amount recovered
otherwise	£98.50
On the making of a final charging order under rule 73.8(2)(a):	£110.00
	The court may also allow reasonable disbursements in respect of search fees and the registration of the order.

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## SCHEDULE 2

Rule 29

**PART 58**  
**COMMERCIAL COURT**

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**Scope of this Part and interpretation**

**58.1.**—(1) This Part applies to claims in the Commercial Court of the Queen's Bench Division.

(2) In this Part and its practice direction, “commercial claim” means any claim arising out of the transaction of trade and commerce and includes any claim relating to—

- (a) a business document or contract;
- (b) the export or import of goods;
- (c) the carriage of goods by land, sea, air or pipeline;
- (d) the exploitation of oil and gas reserves or other natural resources;
- (e) insurance and re-insurance;
- (f) banking and financial services;
- (g) the operation of markets and exchanges;
- (h) the purchase and sale of commodities;
- (i) the construction of ships;
- (j) business agency; and
- (k) arbitration.

### **Specialist list**

- 58.2.**—(1) The commercial list is a specialist list for claims proceeding in the Commercial Court.  
(2) One of the judges of the Commercial Court shall be in charge of the commercial list.

### **Application of the Civil Procedure Rules**

**58.3.** These Rules and their practice directions apply to claims in the commercial list unless this Part or a practice direction provides otherwise.

### **Proceedings in the commercial list**

- 58.4.**—(1) A commercial claim may be started in the commercial list.  
(2) Rule 30.5(3) applies to claims in the commercial list, except that a Commercial Court judge may order a claim to be transferred to any other specialist list.

(Rule 30.5(3) provides that an application for the transfer of proceedings to or from a specialist list must be made to a judge dealing with claims in that list)

### **Claim form and particulars of claim**

- 58.5.**—(1) If, in a Part 7 claim, particulars of claim are not contained in or served with the claim form—
- (a) the claim form must state that, if an acknowledgment of service is filed which indicates an intention to defend the claim, particulars of claim will follow;
  - (b) when the claim form is served, it must be accompanied by the documents specified in rule 7.8(1);
  - (c) the claimant must serve particulars of claim within 28 days of the filing of an acknowledgment of service which indicates an intention to defend; and
  - (d) rule 7.4(2) does not apply.
- (2) A statement of value is not required to be included in the claim form.  
(3) If the claimant is claiming interest, he must—
- (a) include a statement to that effect; and
  - (b) give the details set out in rule 16.4(2),
- in both the claim form and the particulars of claim.

### **Acknowledgment of service**

- 58.6.**—(1) A defendant must file an acknowledgment of service in every case.  
(2) Unless paragraph (3) applies, the period for filing an acknowledgment of service is 14 days after service of the claim form.  
(3) Where the claim form is served out of the jurisdiction, or on the agent of a defendant who is overseas, the time periods provided by rules 6.16(4), 6.21(4) and 6.22 apply after service of the claim form.

### **Disputing the court's jurisdiction**

- 58.7.**—(1) Part 11 applies to claims in the commercial list with the modifications set out in this rule.

(2) An application under rule 11(1) must be made within 28 days after filing an acknowledgment of service.

(3) If the defendant files an acknowledgment of service indicating an intention to dispute the court's jurisdiction, the claimant need not serve particulars of claim before the hearing of the application.

### **Default judgment**

**58.8.**—(1) If, in a Part 7 claim in the commercial list, a defendant fails to file an acknowledgment of service, the claimant need not serve particulars of claim before he may obtain or apply for default judgment in accordance with Part 12.

(2) Rule 12.6(1) applies with the modification that paragraph (a) shall be read as if it referred to the claim form instead of the particulars of claim.

### **Admissions**

**58.9.**—(1) Rule 14.5 does not apply to claims in the commercial list.

(2) If the defendant admits part of a claim for a specified amount of money, the claimant may apply under rule 14.3 for judgment on the admission.

(3) Rule 14.14(1) applies with the modification that paragraph (a) shall be read as if it referred to the claim form instead of the particulars of claim.

### **Defence and Reply**

**58.10.**—(1) Part 15 (defence and reply) applies to claims in the commercial list with the modification to rule 15.8 that the claimant must—

- (a) file any reply to a defence; and
- (b) serve it on all other parties,

within 21 days after service of the defence.

(2) Rule 6.23 (period for filing a defence where the claim form is served out of the jurisdiction) applies to claims in the commercial list, except that if the particulars of claim are served after the defendant has filed an acknowledgment of service the period for filing a defence is 28 days from service of the particulars of claim.

### **Statements of case**

**58.11.** The court may at any time before or after the issue of the claim form order a claim in the commercial list to proceed without the filing or service of statements of case.

### **Part 8 claims**

**58.12.** Part 8 applies to claims in the commercial list, with the modification that a defendant to a Part 8 claim who wishes to rely on written evidence must file and serve it within 28 days after filing an acknowledgment of service.

### **Case management**

**58.13.**—(1) All proceedings in the commercial list are treated as being allocated to the multi-track and Part 26 does not apply.

(2) The following parts only of Part 29 apply—

- (a) rule 29.3(2) (legal representative to attend case management conferences and pre-trial reviews);
- (b) rule 29.5 (variation of case management timetable) with the exception of rule 29.5(1)(c).
- (3) As soon as practicable the court will hold a case management conference which must be fixed in accordance with the practice direction.
- (4) At the case management conference or at any hearing at which the parties are represented the court may give such directions for the management of the case as it considers appropriate.

#### **Disclosure—ships papers**

**58.14.**—(1) If, in proceedings relating to a marine insurance policy, the underwriters apply for specific disclosure under rule 31.12, the court may—

- (a) order a party to produce all the ships papers; and
- (b) require that party to use his best endeavours to obtain and disclose documents which are not or have not been in his control.

(2) An order under this rule may be made at any stage of the proceedings and on such terms, if any, as to staying the proceedings or otherwise, as the court thinks fit.

#### **Judgments and orders**

**58.15.**—(1) Except for orders made by the court on its own initiative and unless the court orders otherwise, every judgment or order will be drawn up by the parties, and rule 40.3 is modified accordingly.

(2) An application for a consent order must include a draft of the proposed order signed on behalf of all the parties to whom it relates.

(3) Rule 40.6 (consent judgments and orders) does not apply.

### SCHEDULE 3

Rule 29

## PART 59

### MERCANTILE COURTS

#### **Contents of this Part**

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### Scope of this Part and interpretation

- 59.1.**—(1) This Part applies to claims in Mercantile Courts.
- (2) A claim may only be started in a Mercantile Court if it—
- (a) relates to a commercial or business matter in a broad sense; and
  - (b) is not required to proceed in the Chancery Division or in another specialist list.
- (3) In this Part and its practice direction—
- (a) “Mercantile Court” means a specialist list established within—
    - (i) the district registries listed in the practice direction; and
    - (ii) the Central London County Court, to hear mercantile claims;
  - (b) “mercantile claim” means a claim proceeding in a Mercantile Court; and
  - (c) “Mercantile judge” means a judge authorised to sit in a Mercantile Court.

### Application of the Civil Procedure Rules

**59.2.** These Rules and their practice directions apply to mercantile claims unless this Part or a practice direction provides otherwise.

### Transfer of proceedings

- 59.3.** Rule 30.5(3) applies with the modifications that—
- (a) a Mercantile judge may transfer a mercantile claim to another Mercantile Court; and
  - (b) a Commercial Court judge may transfer a claim from the Commercial Court to a Mercantile Court.

(Rule 30.5(3) provides that an application for the transfer of proceedings to or from a specialist list must be made to a judge dealing with claims in that list)

### Claim form and particulars of claim

- 59.4.**—(1) If particulars of claim are not contained in or served with the claim form—
- (a) the claim form must state that, if an acknowledgment of service is filed which indicates an intention to defend the claim, particulars of claim will follow;
  - (b) when the claim form is served, it must be accompanied by the documents specified in rule 7.8(1);
  - (c) the claimant must serve particulars of claim within 28 days of the filing of an acknowledgment of service which indicates an intention to defend; and
  - (d) rule 7.4(2) does not apply.
- (2) If the claimant is claiming interest, he must—
- (a) include a statement to that effect; and

(b) give the details set out in rule 16.4(2),  
in both the claim form and the particulars of claim.

(3) Rules 12.6(1)(a) and 14.14(1)(a) apply with the modification that references to the particulars of claim shall be read as if they referred to the claim form.

### **Acknowledgment of service**

**59.5.**—(1) A defendant must file an acknowledgment of service in every case.

(2) Unless paragraph (3) applies, the period for filing an acknowledgment of service is 14 days after service of the claim form.

(3) Where the claim form is served out of the jurisdiction, or on the agent of a defendant who is overseas, the time periods provided by rules 6.16(4), 6.21(4) and 6.22 apply after service of the claim form.

### **Disputing the court's jurisdiction**

**59.6.**—(1) Part 11 applies to mercantile claims with the modifications set out in this rule.

(2) An application under rule 11(1) must be made within 28 days after filing an acknowledgment of service.

(3) If the defendant files an acknowledgment of service indicating an intention to dispute the court's jurisdiction, the claimant need not serve particulars of claim before the hearing of the application.

### **Default judgment**

**59.7.**—(1) Part 12 applies to mercantile claims, except that rules 12.10 and 12.11 apply as modified by paragraphs (2) and (3) of this rule.

(2) If, in a Part 7 claim—

- (a) the claim form has been served but no particulars of claim have been served; and
- (b) the defendant has failed to file an acknowledgment of service,

the claimant must make an application if he wishes to obtain a default judgment.

(3) The application may be made without notice, but the court may direct it to be served on the defendant.

### **Admissions**

**59.8.**—(1) Rule 14.5 does not apply to mercantile claims.

(2) If the defendant admits part of a claim for a specified amount of money, the claimant may apply under rule 14.3 for judgment on the admission.

### **Defence and Reply**

**59.9.**—(1) Part 15 (Defence and Reply) applies to mercantile claims with the modification to rule 15.8 that the claimant must—

- (a) file any reply to a defence; and
- (b) serve it on all other parties,

within 21 days after service of the defence.

(2) Rule 6.23 (period for filing a defence where the claim form is served out of the jurisdiction) applies to mercantile claims, except that if the particulars of claim are served after the defendant has filed an acknowledgment of service the period for filing a defence is 28 days from service of the particulars of claim.

### Statements of case

**59.10.** The court may at any time before or after issue of the claim form order a mercantile claim to proceed without the filing or service of statements of case.

### Case management

**59.11.**—(1) All mercantile claims are treated as being allocated to the multi-track, and Part 26 does not apply.

(2) The following parts only of Part 29 apply—

(a) rule 29.3(2) (appropriate legal representative to attend case management conferences and pre-trial reviews); and

(b) rule 29.5 (variation of case management timetable) with the exception of rule 29.5(1)(c).

(3) As soon as practicable the court will hold a case management conference which must be fixed in accordance with the practice direction.

(4) At the case management conference or at any hearing at which the parties are represented the court may give such directions for the management of the case as it considers appropriate.

### Judgments and orders

**59.12.**—(1) Except for orders made by the court of its own initiative and unless the court otherwise orders every judgment or order will be drawn up by the parties, and rule 40.3 is modified accordingly.

(2) An application for a consent order must include a draft of the proposed order signed on behalf of all the parties to whom it relates.

(3) Rule 40.6 (consent judgments and orders) does not apply.

## SCHEDULE 4

Rule 29

## PART 60

### TECHNOLOGY AND CONSTRUCTION COURT CLAIMS

#### Contents of this Part

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General	Rule 60.1
Specialist list	Rule 60.2
Application of the Civil Procedure Rules	Rule 60.3
Issuing a TCC claim	Rule 60.4
Reply	Rule 60.5

Case management

Rule 60.6

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**General**

- 60.1.**—(1) This Part applies to Technology and Construction Court claims (“TCC claims”).
- (2) In this Part and its practice direction—
- (a) “TCC claim” means a claim which—
    - (i) satisfies the requirements of paragraph (3); and
    - (ii) has been issued in or transferred into the specialist list for such claims;
  - (b) “Technology and Construction Court” means any court in which TCC claims are dealt with in accordance with this Part or its practice direction; and
  - (c) “TCC judge” means any judge authorised to hear TCC claims.
- (3) A claim may be brought as a TCC claim if—
- (a) it involves issues or questions which are technically complex; or
  - (b) a trial by a TCC judge is desirable.

(The practice direction gives examples of types of claims which it may be appropriate to bring as TCC claims.)

(4) TCC claims include all official referees' business referred to in section 68(1)(a) of the Supreme Court Act 1981(7).

- (5) TCC claims will be dealt with—
- (a) in a Technology and Construction Court; and
  - (b) by a TCC judge, unless—
    - (i) this Part or its practice direction permits otherwise; or
    - (ii) a TCC judge directs otherwise.

**Specialist list**

- 60.2.**—(1) TCC claims form a specialist list.
- (2) A judge will be appointed to be the judge in charge of the TCC specialist list.

**Application of the Civil Procedure Rules**

**60.3.** These Rules and their practice directions apply to TCC claims unless this Part or a practice direction provides otherwise.

**Issuing a TCC claim**

- 60.4.** A TCC claim must be issued in—
- (a) the High Court in London;
  - (b) a district registry of the High Court; or
  - (c) a county court specified in the practice direction.

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(7) 1981 c. 54.

## Reply

**60.5.** Part 15 (Defence and Reply) applies to TCC claims with the modification to rule 15.8 that the claimant must—

- (a) file any reply to a defence; and
- (b) serve it on all other parties,

within 21 days after service of the defence.

## Case management

**60.6.—**(1) All TCC claims are treated as being allocated to the multi-track and Part 26 does not apply.

(2) Part 29 and its practice direction apply to the case management of TCC claims, except where they are varied by or inconsistent with the practice direction to this Part.

## SCHEDULE 5

Rule 29

## PART 61 ADMIRALTY CLAIMS

### Contents of this Part

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## Scope and interpretation

**61.1.—**(1) This Part applies to admiralty claims.

(2) In this Part—

- (a) “admiralty claim” means a claim within the Admiralty jurisdiction of the High Court as set out in section 20 of the Supreme Court Act 1981<sup>(8)</sup>;
  - (b) “the Admiralty Court” means the Admiralty Court of the Queen’s Bench Division of the High Court of Justice;
  - (c) “claim in rem” means a claim in an admiralty action in rem;
  - (d) “collision claim” means a claim within section 20(3)(b) of the Supreme Court Act 1981;
  - (e) “limitation claim” means a claim under the Merchant Shipping Act 1995<sup>(9)</sup> for the limitation of liability in connection with a ship or other property;
  - (f) “salvage claim” means a claim—
    - (i) for or in the nature of salvage;
    - (ii) for special compensation under Article 14 of Schedule 11 to the Merchant Shipping Act 1995;
    - (iii) for the apportionment of salvage; and
    - (iv) arising out of or connected with any contract for salvage services;
  - (g) “caution against arrest” means a caution entered in the Register under rule 61.7;
  - (h) “caution against release” means a caution entered in the Register under rule 61.8;
  - (i) “the Register” means the Register of cautions against arrest and release which is open to inspection as provided by the practice direction;
  - (j) “the Marshal” means the Admiralty Marshal;
  - (k) “ship” includes any vessel used in navigation; and
  - (l) “the Registrar” means the Queen’s Bench Master with responsibility for Admiralty claims.
- (3) Part 58 (Commercial Court) applies to claims in the Admiralty Court except where this Part provides otherwise.
- (4) The Registrar has all the powers of the Admiralty judge except where a rule or practice direction provides otherwise.

### **Admiralty claims**

- 61.2.**—(1) The following claims must be started in the Admiralty Court—
- (a) a claim—
    - (i) in rem;
    - (ii) for damage done by a ship;
    - (iii) concerning the ownership of a ship;
    - (iv) under the Merchant Shipping Act 1995;
    - (v) for loss of life or personal injury specified in section 20(2)(f) of the Supreme Court Act 1981;
    - (vi) by a master or member of a crew for wages;
    - (vii) in the nature of towage; or
    - (viii) in the nature of pilotage;
  - (b) a collision claim;

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<sup>(8)</sup> 1981 c. 54; section 20 was amended by the Merchant Shipping (Salvage and Pollution) Act 1994 (c. 28), section 1(6) and Schedule 2, paragraph 6; the Merchant Shipping Act 1995 (c. 21), section 314(2) and Schedule 13, paragraph 59 and by the Merchant Shipping and Maritime Security Act 1997 (c. 28), section 29(1) and Schedule 6, paragraph 2.

<sup>(9)</sup> 1995 c. 21.

- (c) a limitation claim; or
  - (d) a salvage claim.
- (2) Any other admiralty claim may be started in the Admiralty Court.
- (3) Rule 30.5(3) applies to claims in the Admiralty Court except that the Admiralty Court may order the transfer of a claim to—
- (a) the Commercial list;
  - (b) a Mercantile Court;
  - (c) the Mercantile list at the Central London County Court; or
  - (d) any other appropriate court.

### **Claims in rem**

- 61.3.**—(1) This rule applies to claims in rem.
- (2) A claim in rem is started by the issue of an in rem claim form as set out in the practice direction.
- (3) Subject to rule 61.4, the particulars of claim must—
- (a) be contained in or served with the claim form; or
  - (b) be 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—
- (a) in accordance with the practice direction; and
  - (b) within 12 months after the date of issue and rules 7.5 and 7.6 are modified accordingly.
- (6) 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.

### **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 7.4 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 Part 11 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 Part 11, within 2 months after the defendant files the further acknowledgment of service,
- file at the court a completed collision statement of case in the form specified in the practice direction.
- (6) A collision statement of case must be—
- (a) in the form set out in the practice direction; and
  - (b) 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 section 22(2)(a), (b) or (c) of the Supreme Court Act 1981(10); or

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(10) 1981 c. 54.

- (b) the defendant has submitted to or agreed to submit to the jurisdiction; and the court gives permission in accordance with Section III of Part 6.
- (8) Where permission to serve a claim form out of the jurisdiction is given, the court will 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) (i) a Part 20 claim; or  
(ii) a cross claim in rem arising out of the same collision or occurrence is made; and
  - (b) (i) the party bringing the original claim has caused the arrest of a ship or has obtained security in order to prevent such arrest; and  
(ii) the party bringing the Part 20 claim or cross claim is unable to arrest a ship or otherwise obtain security,
- the party bringing the Part 20 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 loss of life or personal injury)—
- (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.

## **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) The practice direction sets out the procedure for applying for arrest.
- (3) 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 in the form set out in the practice direction.
- (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, the United Kingdom has undertaken to minimise the possibility of arrest of ships of that State until—
- (a) notice in the form set out in the practice direction 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<sup>(11)</sup>, 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.
- (8) Property may only be arrested by the Marshal or his substitute.
- (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 Marshal 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.

### **Security in claim in rem**

- 61.6.**—(1) This rule applies if, in a claim in rem, security has been given to—
- (a) obtain the release of property under arrest; or
  - (b) prevent the arrest of property.
- (2) The court may order that the—
- (a) amount of security be reduced and may stay the claim until the order is complied with; or

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<sup>(11)</sup> 1968 c. 18.

- (b) 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 at the time—
  - (a) of the original arrest; or
  - (b) security was first given (if the property was not arrested).

### **Cautions against arrest**

- 61.7.**—(1) Any person may file a request for a caution against arrest.
- (2) When a request under paragraph (1) is filed the court will enter the caution in the Register if the request is in the form set out in the practice direction and—
- (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(12) 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.

### **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 an in rem right 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 in the form set out in the practice direction.
- (3) When a request under paragraph (2) is filed, a caution against release will be entered in the Register.
- (4) Property will be released from arrest if—
- (a) it is sold by the court;

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(12) The text of the Convention is set out in Schedule 7 to the Merchant Shipping Act 1995 (c. 21).

- (b) the court orders release on an application made by any party;
- (c) (i) the arresting party; and
  - (ii) all persons who have entered cautions against release
 file a request for release in the form set out in the practice direction; or
- (d) any party files—
  - (i) a request for release in the form set out in the practice direction (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—

- (a) request the entry of; and
- (b) 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) (i) a ship is not under arrest but cargo on board her is; or
  - (ii) a ship is under arrest but cargo on board her is not; and
- (b) persons interested in the ship or cargo wish to discharge the cargo,

they may, without being made parties, request the Marshal to authorise steps to discharge the cargo.

(9) If—

- (a) the Marshal considers a request under paragraph (8) reasonable; and
- (b) the applicant gives an undertaking in writing acceptable to the Marshal to pay—
  - (i) his fees; and
  - (ii) all expenses to be incurred by him or on his behalf
 on demand,

the Marshal will apply to the court for an order to permit the discharge of the cargo.

**10.** Where persons interested in the ship or cargo are unable or unwilling to give an undertaking as referred to in paragraph (9)(b), they may—

- (a) be made parties 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 Marshal with regard to the discharge and storage of the cargo.

## **Judgment in default**

**61.9.**—(1) In a claim in rem (other than a collision claim) the claimant may obtain judgment in default of—

- (a) an acknowledgment of service only if—
  - (i) the defendant has not filed an acknowledgment of service; and
  - (ii) the time for doing so set out in rule 61.3(4) has expired; and
- (b) defence only if—
  - (i) a defence has not been filed; and
  - (ii) the relevant time limit for doing so has expired.

(2) In a collision claim, a party who has filed a collision statement of case within the time specified by rule 61.4(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 61.4(5) has expired.

(3) An application for judgment in default—

- (a) under paragraph (1) or paragraph (2) in an in rem claim must be made by filing—
  - (i) an application notice as set out in the practice direction;
  - (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 (2) in any other claim must be made in accordance with Part 12 with any necessary modifications.

(4) 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.

(5) The court may set aside or vary any judgment in default entered under this rule.

(6) 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 61.7(2)(a)(ii); and
- (c) that party has not fulfilled that undertaking within 14 days after service on him of the claim form.

## **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 will be made only to judgment creditors and—
- (a) in accordance with the determination of priorities; or
  - (b) as the court orders.

### **Limitation claims**

**61.11.**—(1) This rule applies to limitation claims.

(2) A claim is started by the issue of a limitation claim form as set out in the practice direction.

(3) The—

- (a) claimant; and
- (b) 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) The claim form may not be served out of the jurisdiction unless—

- (a) the claim falls within section 22(2)(a), (b) or (c) of the Supreme Court Act 1981(13);
- (b) the defendant has submitted to or agreed to submit to the jurisdiction of the court; or
- (c) the Admiralty Court has jurisdiction over the claim under any applicable Convention; and

the court grants permission in accordance with Section III of Part 6.

(6) An acknowledgment of service is not required.

(7) 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 to—
  - (i) dispute the jurisdiction of the court; or
  - (ii) argue that the court should not exercise its jurisdiction,

file within 14 days of service (or where the claim form is served out of the jurisdiction, within the time specified in rule 6.22) an acknowledgment of service as set out in the practice direction.

(8) If a defendant files an acknowledgment of service under paragraph (7)(b) he will be treated as having accepted that the court has jurisdiction to hear the claim unless he applies under Part 11 within 14 days after filing the acknowledgment of service.

(9) Where one or more named defendants admits the right to limit—

- (a) the claimant may apply for a restricted limitation decree in the form set out in the practice direction; and
- (b) the court will issue a decree in the form set out in the practice direction limiting liability only against those named defendants who have admitted the claimant's right to limit liability.

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(13) 1981 c. 54.

- (10) 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.
- (11) 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 Admiralty Registrar for a general limitation decree in the form set out in the practice direction; and
  - (b) the court will issue a limitation decree.
- (12) 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 in the form set out in the practice direction.
- (13) 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 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) will, 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.
- (14) 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.
- (15) 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.
- (16) 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.
- (17) An application under paragraph (16) 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.
- (18) The claimant may constitute a limitation fund by making a payment into court.
- (19) A limitation fund may be established before or after a limitation claim has been started.
- (20) If a limitation claim is not commenced within 75 days after the date the fund was established

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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- (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.
- (21) Money paid into court under paragraph (18) will not be paid out except under an order of the court.
- (22) A limitation claim for—
- (a) a restricted decree may be brought by counterclaim; and
  - (b) a general decree may only be brought by counterclaim with the permission of the court.

**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.

**Assessors**

- 61.13.** The court may sit with assessors when hearing—
- (a) collision claims; or
  - (b) other claims involving issues of navigation or seamanship, and
- the parties will not be permitted to call expert witnesses unless the court orders otherwise.

SCHEDULE 6

Rule 29

**PART 62**  
**ARBITRATION CLAIMS**

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### Scope of this Part and interpretation

**62.1.**—(1) This Part contains rules about arbitration claims.

(2) In this Part—

- (a) “the 1950 Act” means the Arbitration Act 1950(**14**);
- (b) “the 1975 Act” means the Arbitration Act 1975(**15**);
- (c) “the 1979 Act” means the Arbitration Act 1979(**16**);
- (d) “the 1996 Act” means the Arbitration Act 1996(**17**);
- (e) references to—

- (i) the 1996 Act; or
- (ii) any particular section of that Act

include references to that Act or to the particular section of that Act as applied with modifications by the ACAS Arbitration Scheme (England and Wales) Order 2001(**18**); and

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**(14)** 1950 c. 27.

**(15)** 1975 c. 3; repealed by the Arbitration Act 1996 (c. 23), section 107(2) and Schedule 4 but continues to apply to claims commenced before 31st January 1997 by virtue of the Arbitration Act 1996 (Commencement No. 1) Order 1996 (S.I. 1996/3146), article 4 and Schedule 2.

**(16)** 1979 c. 42; repealed by the Arbitration Act 1996 (c. 23), section 107(2) and Schedule 4 but continues to apply to claims commenced before 31st January 1997 by virtue of the Arbitration Act 1996 (Commencement No. 1) Order 1996 (S.I. 1996/3146), article 4 and Schedule 2.

**(17)** 1996 c. 23.

**(18)** S.I. 2001/1185.

(f) “arbitration claim form” means a claim form in the form set out in the practice direction.

(3) Part 58 (Commercial Court) applies to arbitration claims in the Commercial Court, Part 59 (Mercantile Court) applies to arbitration claims in the Mercantile Court and Part 60 (Technology and Construction Court claims) applies to arbitration claims in the Technology and Construction Court, except where this Part provides otherwise.

## **I CLAIMS UNDER THE 1996 ACT**

### **Interpretation**

**62.2.**—(1) In this Section of this Part “arbitration claim” means—

- (a) any application to the court under the 1996 Act;
- (b) a claim to determine—
  - (i) whether there is a valid arbitration agreement;
  - (ii) whether an arbitration tribunal is properly constituted; or
 what matters have been submitted to arbitration in accordance with an arbitration agreement;
- (c) a claim to declare that an award by an arbitral tribunal is not binding on a party; and
- (d) any other application affecting—
  - (i) arbitration proceedings (whether started or not); or
  - (ii) an arbitration agreement.

(2) This Section of this Part does not apply to an arbitration claim to which Sections II or III of this Part apply.

### **Starting the claim**

**62.3.**—(1) Except where paragraph (2) applies an arbitration claim must be started by the issue of an arbitration claim form in accordance with the Part 8 procedure.

(2) An application under section 9 of the 1996 Act to stay legal proceedings must be made by application notice to the court dealing with those proceedings.

(3) The courts in which an arbitration claim may be started are set out in the practice direction.

(4) Rule 30.5(3) applies with the modification that a judge of the Technology and Construction Court may transfer the claim to any other court or specialist list.

### **Arbitration claim form**

**62.4.**—(1) An arbitration claim form must—

- (a) include a concise statement of—
  - (i) the remedy claimed; and
  - (ii) any questions on which the claimant seeks the decision of the court;
- (b) give details of any arbitration award challenged by the claimant, identifying which part or parts of the award are challenged and specifying the grounds for the challenge;
- (c) show that any statutory requirements have been met;
- (d) specify under which section of the 1996 Act the claim is made;
- (e) identify against which (if any) defendants a costs order is sought; and
- (f) specify either—

- (i) the persons on whom the arbitration claim form is to be served, stating their role in the arbitration and whether they are defendants; or
  - (ii) that the claim is made without notice under section 44(3) of the 1996 Act and the grounds relied on.
- (2) Unless the court orders otherwise an arbitration claim form must be served on the defendant within 1 month from the date of issue and rules 7.5 and 7.6 are modified accordingly.
- (3) Where the claimant applies for an order under section 12 of the 1996 Act (extension of time for beginning arbitral proceedings or other dispute resolution procedures), he may include in his arbitration claim form an alternative application for a declaration that such an order is not needed.

### **Service out of the jurisdiction**

**62.5.**—(1) The court may give permission to serve an arbitration claim form out of the jurisdiction if—

- (a) the claimant seeks to—
  - (i) challenge; or
  - (ii) appeal on a question of law arising out of, an arbitration award made within the jurisdiction;

(The place where an award is treated as made is determined by section 53 of the 1996 Act.)

- (b) the claim is for an order under section 44 of the 1996 Act; or
- (c) the claimant—
  - (i) seeks some other remedy or requires a question to be decided by the court affecting an arbitration (whether started or not), an arbitration agreement or an arbitration award; and
  - (ii) the seat of the arbitration is or will be within the jurisdiction or the conditions in section 2(4) of the 1996 Act are satisfied.

- (2) An application for permission under paragraph (1) 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.
- (3) Rules 6.24 to 6.29 apply to the service of an arbitration claim form under paragraph (1).
- (4) An order giving permission to serve an arbitration claim form out of the jurisdiction must specify the period within which the defendant may file an acknowledgment of service.

### **Notice**

**62.6.**—(1) Where an arbitration claim is made under section 24, 28 or 56 of the 1996 Act, each arbitrator must be a defendant.

(2) Where notice must be given to an arbitrator or any other person it may be given by sending him a copy of—

- (a) the arbitration claim form; and
- (b) any written evidence in support.

(3) Where the 1996 Act requires an application to the court to be made on notice to any other party to the arbitration, that notice must be given by making that party a defendant.

### Case management

**62.7.**—(1) Part 26 and any other rule that requires a party to file an allocation questionnaire does not apply.

(2) Arbitration claims are allocated to the multi-track.

(3) Part 29 does not apply.

(4) The automatic directions set out in the practice direction apply unless the court orders otherwise.

### Stay of legal proceedings

**62.8.**—(1) An application notice seeking a stay of legal proceedings under section 9 of the 1996 Act<sup>(19)</sup> must be served on all parties to those proceedings who have given an address for service.

(2) A copy of an application notice under paragraph (1) must be served on any other party to the legal proceedings (whether or not he is within the jurisdiction) who has not given an address for service, at—

(a) his last known address; or

(b) a place where it is likely to come to his attention.

(3) Where a question arises as to whether—

(a) an arbitration agreement has been concluded; or

(b) the dispute which is the subject-matter of the proceedings falls within the terms of such an agreement,

the court may decide that question or give directions to enable it to be decided and may order the proceedings to be stayed pending its decision.

### Variation of time

**62.9.**—(1) The court may vary the period of 28 days fixed by section 70(3) of the 1996 Act for—

(a) challenging the award under section 67 or 68 of the Act; and

(b) appealing against an award under section 69 of the Act.

(2) An application for an order under paragraph (1) may be made without notice being served on any other party before the period of 28 days expires.

(3) After the period of 28 days has expired—

(a) an application for an order extending time under paragraph (1) must—

(i) be made in the arbitration claim form; and

(ii) state the grounds on which the application is made;

(b) any defendant may file written evidence opposing the extension of time within 7 days after service of the arbitration claim form; and

(c) if the court extends the period of 28 days, each defendant's time for acknowledging service and serving evidence shall start to run as if the arbitration claim form had been served on the date when the court's order is served on that defendant.

### Hearings

**62.10.**—(1) The court may order that an arbitration claim be heard either in public or in private.

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(19) 1996 c. 23.

- (2) Rule 39.2 does not apply.
- (3) Subject to any order made under paragraph (1)—
  - (a) the determination of—
    - (i) a preliminary point of law under section 45 of the 1996 Act; or
    - (ii) an appeal under section 69 of the 1996 Act on a question of law arising out of an award,
  - will be heard in public; and
  - (b) all other arbitration claims will be heard in private.
- (4) Paragraph (3)(a) does not apply to—
  - (a) the preliminary question of whether the court is satisfied of the matters set out in section 45(2)(b); or
  - (b) an application for permission to appeal under section 69(2)(b).

## II OTHER ARBITRATION CLAIMS

### Scope of this Section

**62.11.**—(1) This Section of this Part contains rules about arbitration claims to which the old law applies.

- (2) In this Section—
  - (a) “the old law” means the enactments specified in Schedules 3 and 4 of the 1996 Act as they were in force before their amendment or repeal by that Act; and
  - (b) “arbitration claim” means any application to the court under the old law and includes an appeal (or application for permission to appeal) to the High Court under section 1(2) of the 1979 Act<sup>(20)</sup>.
- (3) This Section does not apply to—
  - (a) a claim to which Section III of this Part applies; or
  - (b) a claim on the award.

### Applications to Judge

- 62.12.** A claim—
- (a) seeking permission to appeal under section 1(2) of the 1979 Act;
  - (b) under section 1(5) of that Act (including any claim seeking permission); or
  - (c) under section 5 of that Act,

must be made in the High Court and will be heard by a judge of the Commercial Court unless any such judge directs otherwise.

### Starting the claim

**62.13.**—(1) Except where paragraph (2) applies an arbitration claim must be started by the issue of an arbitration claim form in accordance with the Part 8 procedure.

- (2) Where an arbitration claim is to be made in existing proceedings—

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<sup>(20)</sup> 1979 c. 42; repealed by the Arbitration Act 1996 (c. 23), section 107(2) and Schedule 4 but continues to apply to claims commenced before 31st January 1997 by virtue of the Arbitration Act 1996 (Commencement No. 1) Order 1996 (S.I. 1996/3146), article 4 and Schedule 2.

- (a) it must be made by way of application notice; and
  - (b) any reference in this Section of this Part to an arbitration claim form includes a reference to an application notice.
- (3) The arbitration claim form in an arbitration claim under section 1(5) of the 1979 Act (including any claim seeking permission) must be served on—
- (a) the arbitrator or umpire; and
  - (b) any other party to the reference.

### Claims in District Registries

#### 62.14. If—

- (a) a claim is to be made under section 12(4) of the 1950 Act<sup>(21)</sup> for an order for the issue of a witness summons to compel the attendance of the witness before an arbitrator or umpire; and
  - (b) the attendance of the witness is required within the district of a District Registry,
- the claim may be started in that Registry.

### Time limits and other special provisions about arbitration claims

#### 62.15.—(1) An arbitration claim to—

- (a) remit an award under section 22 of the 1950 Act<sup>(22)</sup>;
  - (b) set aside an award under section 23(2) of that Act<sup>(23)</sup> or otherwise; or
  - (c) direct an arbitrator or umpire to state the reasons for an award under section 1(5) of the 1979 Act,
- must be made, and the arbitration claim form served, within 21 days after the award has been made and published to the parties.
- (2) An arbitration claim to determine any question of law arising in the course of a reference under section 2(1) of the Arbitration Act 1979 must be made, and the arbitration claim form served, within 14 days after—
- (a) the arbitrator or umpire gave his consent in writing to the claim being made; or
  - (b) the other parties so consented.
- (3) An appeal under section 1(2) of the 1979 Act must be filed, and the arbitration claim form served, within 21 days after the award has been made and published to the parties.
- (4) Where reasons material to an appeal under section 1(2) of the 1979 Act are given on a date subsequent to the publication of the award, the period of 21 days referred to in paragraph (3) will run from the date on which reasons are given.
- (5) In every arbitration claim to which this rule applies—
- (a) the arbitration claim form must state the grounds of the claim or appeal;

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(21) 1950 c. 27; section 12(4) was repealed by the Arbitration Act 1996 (c. 23), section 107(2) and Schedule 4 but continues to apply to claims commenced before 31st January 1997 by virtue of the Arbitration Act 1996 (Commencement No. 1) Order 1996 (S.I. 1996/3146), article 4 and Schedule 2.

(22) 1950 c. 27; section 22 was repealed by the Arbitration Act 1996 (c. 23), section 107(2) and Schedule 4 but continues to apply to claims commenced before 31st January 1997 by virtue of the Arbitration Act 1996 (Commencement No. 1) Order 1996 (S.I. 1996/3146), article 4 and Schedule 2.

(23) 1950 c. 27; section 23(2) was repealed by the Arbitration Act 1996 (c. 23), section 107(2) and Schedule 4 but continues to apply to claims commenced before 31st January 1997 by virtue of the Arbitration Act 1996 (Commencement No. 1) Order 1996 (S.I. 1996/3146), article 4 and Schedule 2.

- (b) where the claim or appeal is based on written evidence, a copy of that evidence must be served with the arbitration claim form; and
  - (c) where the claim or appeal 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 arbitration claim form.
- (6) In an appeal under section 1(2) of the 1979 Act—
- (a) a statement of the grounds for the appeal specifying the relevant parts of the award and reasons; and
  - (b) where permission is required, any written evidence in support of the contention that the question of law concerns—
    - (i) a term of a contract; or
    - (ii) an event,which is not a “one-off” term or event,
- must be filed and served with the arbitration claim form.
- (7) Any written evidence in reply to written evidence under paragraph (6)(b) must be filed and served on the claimant not less than 2 days before the hearing.

(8) A party to a claim seeking permission to appeal under section 1(2) of the 1979 Act who wishes to contend that the award should be upheld for reasons not expressed or fully expressed in the award and reasons must file and serve on the claimant, a notice specifying the grounds of his contention not less than 2 days before the hearing.

### **Service out of the jurisdiction**

- 62.16.**—(1) Subject to paragraph (2)—
- (a) any arbitration claim form in an arbitration claim under the 1950 Act or the 1979 Act; or
  - (b) any order made in such a 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 England and Wales; or
  - (ii) has been, is being, or will be, held within the jurisdiction.
- (2) An arbitration claim form 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 England and Wales.
- (3) An application for permission to serve an arbitration claim form out of the jurisdiction 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) Rules 6.24 to 6.29 apply to the service of an arbitration claim form under paragraph (1).
- (5) An order giving permission to serve an arbitration claim form out of the jurisdiction must specify the period within which the defendant may file an acknowledgment of service.

## **III ENFORCEMENT**

### **Scope of this Section**

**62.17.** This Section of this Part applies to all arbitration enforcement proceedings other than by a claim on the award.

## Enforcement of awards

**62.18.**—(1) An application for permission under—

- (a) section 66 of the 1996 Act<sup>(24)</sup>;
- (b) section 101 of the 1996 Act;
- (c) section 26 of the 1950 Act<sup>(25)</sup>; or
- (d) section 3(1)(a) of the 1975 Act<sup>(26)</sup>,

to enforce an award in the same manner as a judgment or order may be made without notice in an arbitration claim form.

(2) The court may specify parties to the arbitration on whom the arbitration claim form must be served.

(3) The parties on whom the arbitration claim form is served must acknowledge service and the enforcement proceedings will continue as if they were an arbitration claim under Section I of this Part.

(4) With the permission of the court the arbitration claim form may be served out of the jurisdiction irrespective of where the award is, or is treated as, made.

(5) Where the applicant applies to enforce an agreed award within the meaning of section 51(2) of the 1996 Act—

- (a) the arbitration claim form must state that the award is an agreed award; and
- (b) any order made by the court must also contain such a statement.

(6) An application for permission must be supported by written evidence—

- (a) exhibiting—
  - (i) where the application is made under section 66 of the 1996 Act or under section 26 of the 1950 Act, the arbitration agreement and the original award (or copies);
  - (ii) where the application is under section 101 of the 1996 Act, the documents required to be produced by section 102 of that Act; or
  - (iii) where the application is under section 3(1)(a) of the 1975 Act, the documents required to be produced by section 4 of that Act;
- (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.

(7) 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.

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<sup>(24)</sup> 1996 c. 23.

<sup>(25)</sup> 1950 c. 27; section 26 was repealed by the Arbitration Act 1996 (c. 23), section 107(2) and Schedule 4 but continues to apply to claims commenced before 31st January 1997 by virtue of the Arbitration Act 1996 (Commencement No. 1) Order 1996 (S.I. 1996/3146), article 4 and Schedule 2.

<sup>(26)</sup> 1975 c. 3; repealed by the Arbitration Act 1996 (c. 23), section 107(2) and Schedule 4 but continues to apply to claims commenced before 31st January 1997 by virtue of the Arbitration Act 1996 (Commencement No. 1) Order 1996 (S.I. 1996/3146), article 4 and Schedule 2.

- (8) An order giving permission may be served out of the jurisdiction—
- (a) without permission; and
  - (b) in accordance with rules 6.24 to 6.29 as if the order were an arbitration claim form.
- (9) 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 after—
    - (i) the end of that period; or
    - (ii) any application made by the defendant within that period has been finally disposed of.
- (10) 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 rule 62.18(9)(b).
- (11) Where a body corporate is a party any reference in this rule to place of residence or business shall have effect as if the reference were to the registered or principal address of the body corporate.

### **Interest on awards**

**62.19.**—(1) 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.
- (2) A statement under paragraph (1) must be filed whenever the amount of interest has to be quantified for the purpose of—
- (a) obtaining a judgment or order under section 66 of the 1996 Act (enforcement of the award); or
  - (b) enforcing such a judgment or order.

### **Registration in High Court of foreign awards**

**62.20.**—(1) Where—

- (a) an award is made in proceedings on an arbitration in any part of a United Kingdom Overseas Territory (within the meaning of rule 6.18(f)) or other territory to which Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933<sup>(27)</sup> (“the 1933 Act”) extends;
- (b) Part II of the Administration of Justice Act 1920<sup>(28)</sup> extended to that part immediately before Part I of the 1933 Act was extended to that part; and

<sup>(27)</sup> 1933 c. 13 (23 & 24 Geo. 5).

<sup>(28)</sup> 1920 c. 81 (10 & 11 Geo. 5); section 10 of Part II was substituted by the Civil Jurisdiction and Judgments Act 1982 (c. 27), section 35(2) and section 14 of Part II was amended by the Civil Jurisdiction and Judgments Act 1982 (c. 27), section 35(3).

- (c) an award has, under the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place,

RSC Order 71, Part I applies in relation to the award as it applies in relation to a judgment given by the court subject to the modifications in paragraph (2).

(2) The modifications referred to in paragraph (1) are as follows—

- (a) for references to the country of the original court are substituted references to the place where the award was made; and
- (b) the written evidence required by RSC Order 71, rule 3 must state (in addition to the matters required by that rule) that to the best of the information or belief of the maker of the statement the award has, under the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place.

### **Registration of awards under the Arbitration (International Investment Disputes) Act 1966**

**62.21.**—(1) In this rule—

- (a) “the 1966 Act” means the Arbitration (International Investment Disputes) Act 1966<sup>(29)</sup>;
- (b) “award” means an award under the Convention;
- (c) “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<sup>(30)</sup>;
- (d) “judgment creditor” means the person seeking recognition or enforcement of an award; and
- (e) “judgment debtor” means the other party to the award.

(2) Subject to the provisions of this rule, the following provisions of RSC Order 71 apply with such modifications as may be necessary in relation to an award as they apply in relation to a judgment to which Part II of the Foreign Judgments (Reciprocal Enforcement) Act 1933 applies—

- (a) rule 1;
- (b) rule 3(1) (except sub-paragraphs (c)(iv) and (d));
- (c) rule 7 (except paragraph (3)(c) and (d)); and
- (d) rule 10(3).

(3) An application to have an award registered in the High Court under section 1 of the 1966 Act<sup>(31)</sup> must be made in accordance with the Part 8 procedure.

(4) The written evidence required by RSC Order 71, rule 3 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 3(1)(c)(i) and (ii), 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.

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<sup>(29)</sup> 1966 c. 41.

<sup>(30)</sup> The text of the Convention is set out in the Schedule to the Arbitration (International Investment Disputes) Act 1966 (c. 41).

<sup>(31)</sup> 1966 c. 41; section 1 was amended by the Administration of Justice Act 1977 (c. 38), sections 4 and 32(4) and Schedule 5, Part I and by the Supreme Court Act 1981 (c. 54), section 152(1) and Schedule 5.

(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.

## SCHEDULE 7

Rule 35

### **V. RECIPROCAL ENFORCEMENT: COUNCIL REGULATION (EC) NO. 44/2001 OF 22ND DECEMBER 2000 ON JURISDICTION AND THE RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS.**

#### **Interpretation**

**45.** In this Part of the Order—

“domicile” shall be determined in accordance with paragraphs 9 to 12 of Schedule 1 to the Civil Jurisdiction and Judgments Order 2001 and the Judgments Regulation;

“judgment” has the meaning given in Article 32 of the Judgments Regulation;

“the Judgments Regulation” means Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;

“Regulation State” in any provision, in the application of that provision in relation to the Judgments Regulation, has the same meaning as “Member State” in the Judgments Regulation, that is all Member States except Denmark.

#### **Assignment of business and exercise of powers**

**46.** All applications to the High Court under the Judgments Regulation will be assigned to the Queen’s Bench Division.

#### **Application for registration**

**47.** An application for registration of a judgment under the Judgments Regulation may be made without notice being served on any other party.

#### **Evidence in support of application**

**48.** An application for registration under the Judgments Regulation must, in addition to the evidence required by the Judgments Regulation, be supported by a witness statement or affidavit—

- (a) stating whether the judgment provides for the payment of a sum or sums of money;
- (b) stating whether interest is recoverable on the judgment or any part of it in accordance with the law of the State in which the judgment was given, and if so,—
  - (i) the rate of interest;
  - (ii) the date from which interest is recoverable; and
  - (iii) the date on which interest ceases to accrue;

and

- (c) exhibiting, where the judgment or document is not in English, a translation of it into English certified in accordance with Article 55(2) of the Judgments Regulation.

#### **Order for registration**

- 49.** An order giving permission to register a judgment under the Judgments Regulation must—
- (a) state the period within which an appeal may be made against the order for registration; and
  - (b) contain notification that the judgment will not be enforced until after that period has expired other than, where appropriate, any protective measures against the property of the party against whom enforcement is sought.

#### **Register of judgments registered under the Judgments Regulation**

**50.** A register of the judgments registered under the Judgments Regulation will be kept in the Central Office of the Supreme Court under the direction of the Senior Master.

#### **Notice of registration**

**51.—**(1) Where notice of registration of a judgment, and a copy of the judgment, is to be served on the person against whom enforcement is sought in accordance with Article 42(2) of the Judgments Regulation, it may be served—

- (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) Permission is not required to serve a notice of registration out of the jurisdiction, and CPR rules 6.24, 6.25, 6.26 and 6.29 apply in relation to such a notice as they apply in relation to a claim form.

(3) The notice of registration must state—

- (a) full particulars of—
  - (i) the judgment registered; and
  - (ii) the order for registration;
- (b) the name of the party making the application and his address for service within the jurisdiction;
- (c) the right of the person against whom judgment was given to appeal against the order for registration; and
- (d) the period within which an appeal against the order for registration may be made.

#### **Appeals**

**52.—**(1) An appeal under Article 43(2) of, and Annex III to the Judgments Regulation must be made in accordance with CPR Part 52 except that—

- (a) permission is not required; and
- (b) the appeal notice must be served—
  - (i) in accordance with Article 43(5) of the Judgments Regulation; or

- (ii) in the case of an appeal against a refusal to register a judgment for enforcement, within one month of the determination of the application under Article 38 of the Judgments Regulation.

(2) If—

- (a) the party against whom judgment was given is not domiciled in a Regulation State, and
- (b) an application to extend the time for appealing is made within two months of service of notice of registration,

the court may extend the period within which an appeal may be made against the order for registration, except on the grounds of distance.

### **Enforcement**

**53.** Any party wishing to enforce a judgment registered under the Judgments Regulation must produce to the court officer a witness statement or affidavit of service of the notice of registration of the judgment and of any order made by the court in relation to the judgment.

### **Application for recognition**

**54.** Rules 45 to 53 apply to applications for recognition of a judgment, together with Sections 2 and 3 of Chapter III of the Judgments Regulation.

### **Enforcement of High Court Judgments in other Regulation States**

**55.—(1)** An application to the court by any interested party for a certificate under Article 54 of the Judgments Regulation must be made—

- (a) without notice being served on any other party, and
- (b) on witness statement or affidavit.

(2) A witness statement or affidavit under paragraph (1)(b) must—

- (a) give particulars of the proceedings in which the judgment was obtained;
- (b) contain evidence of service of the claim form by which the proceedings were begun where judgment was given in default of appearance by the defendant; and
- (c) where appropriate, include any document showing that for these proceedings the applicant is an assisted person or an LSC funded client, as defined in CPR rule 43.2(1)(h) and (i).

(3) An office copy of the judgment sealed with the seal of the Supreme Court shall be issued together with a certificate, in the form of Annex V to the Judgments Regulation, signed by a High Court judge, the Admiralty Registrar, a Master or a district judge and sealed with the seal of the Supreme Court.

### **Register of certificates**

**56.** A register of certificates issued under Article 54 of the Judgments Regulation will be kept in the Central Office of the Supreme Court under the direction of the Senior Master.

### **Authentic instruments and court settlements**

**57.** Rules 45 to 55 apply to—

- (1) an authentic instrument to which Article 57 of the Judgments Regulation applies; and
- (2) a settlement to which Article 58 applies,

as they apply to a judgment with any necessary modifications.

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

The primary purpose of these Rules is to insert into the Civil Procedure Rules 1998, as Parts 58 to 62, new rules about procedures for—

- (i) the Commercial Court;
- (ii) Mercantile Courts;
- (iii) Technology and Construction Court claims;
- (iv) Admiralty claims; and
- (v) Arbitration claims.

These rules supersede the relevant Part 49 Practice Directions.

In addition, a new Section V on reciprocal enforcement of judgments is inserted into RSC Order 71 and amendments are made to CCR Order 35, to provide for applications to the court for the enforcement of judgments under Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Amendments are made to Part 6 to provide for service out of the jurisdiction where the jurisdiction of the court is determined under the Council Regulation.

A new rule is also made setting out the amounts of fixed costs which may be awarded in enforcement proceedings under Parts 70 to 73, which were inserted into the Civil Procedure Rules 1998 by the Civil Procedure (Amendment No. 4) Rules 2001 (S.I. 2001/2792).

The opportunity has also been taken to make a number of minor amendments to the rules currently in force, including amendments—

- (i) to Parts 8 and 11, to clarify the procedure for disputing the court's jurisdiction;
- (ii) to Part 20, to restrict the right of a defendant to serve a contribution notice without requiring the permission of the court;
- (iii) to Part 26, to prohibit parties from varying by agreement the date for filing a completed allocation questionnaire;
- (iv) to Parts 31 and 35, to modify the rules about experts, and the inspection of documents mentioned in experts' reports;
- (v) to Parts 44 and 48, to clarify the entitlement of a trustee or personal representative to recover costs out of a trust fund or estate;
- (vi) to CCR Order 28, in Schedule 2 to the Civil Procedure Rules 1998, to modify the procedure on judgment summonses;
- (vii) to CCR Order 34, to enable a summons to be issued against a person alleged to have committed a contempt of court under section 118 of the County Courts Act 1984 by wilfully insulting a judge, juror, witness or officer of the court; and
- (viii) to CCR Order 38, to modify the circumstances in which fixed costs may be awarded in a claim for possession of land in a county court.

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**Status:** *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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