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STATUTORY INSTRUMENTS

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**2017 No. 95 (L. 1)**

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

**The Civil Procedure (Amendment) Rules 2017**

*Made* - - - - *2nd February 2017*

*Laid before Parliament* *3rd February 2017*

*Coming into force in accordance with rule 2*

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

**Citation, commencement and interpretation**

1. These Rules may be cited as the Civil Procedure (Amendment) Rules 2017.
2. These Rules come into force on 6th April 2017, except for—
  - (a) rules 8(5), 9, 10 and 13(3), which come into force on 28th February 2017; and
  - (b) rules 5(1) to (9), 6, 7 and 13(1) and (2), which come into force on 6th March 2017.
3. In these Rules, a reference to a Part or rule by number alone means the Part or rule so numbered in the Civil Procedure Rules 1998(2).

**Amendments to the Civil Procedure Rules 1998**

4. The Civil Procedure Rules 1998 are amended in accordance with rules 5 to 12 of these Rules.

**Amendment of Part 3**

- 5.—(1) In the Contents of Part 3—
  - (a) in the entry for rule 3.7, after “fees” insert “by the claimant”; and

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(1) 1997 c.12. Section 2(1) was substituted by the Constitutional Reform Act 2005 (c.4), section 15 and Schedule 4, Part 1. Section 1(3) was substituted by section 82(1) of the Courts Act 2003 (c.39) and further amended by the Constitutional Reform Act 2005, sections 15 and 146 and Schedule 4, Part 1, paragraphs 261 and 262 and Schedule 18. Section 1(1) was amended by the Crime and Courts Act 2013 (c.22), section 17(5) and Schedule 9, Part 3, paragraph 67(a).

(2) S.I. 1998/3132, to which there are relevant amendments in S.I. 1999/1008, S.I. 2000/2092, S.I. 2001/4015, S.I. 2002/2058, S.I. 2002/3219, S.I. 2003/1242, S.I. 2005/2292, S.I. 2007/3543, S.I. 2008/2178, S.I. 2013/262, S.I. 2013/1974, S.I. 2014/407 and S.I. 2016/788.

(b) after the entry for rule 3.7, insert—

“Sanctions for non-payment of the trial fee by the claimant	Rule 3.7A1
Sanctions for non-payment of certain fees by the defendant	Rule 3.7A
Sanctions for non-payment of the trial fee by the defendant, where proceedings continue on the counterclaim alone	Rule 3.7AA
Sanctions for dishonouring cheque	Rule 3.7B”

(2) At the end of the heading to rule 3.7, insert “by the claimant”.

(3) In rule 3.7(1)—

- (a) for “This rule applies where—”, substitute “Except where rule 3.7A1 applies, this rule applies to fees payable by the claimant where—”;
- (b) omit sub-paragraphs (a) to (c);
- (c) in sub-paragraph (e), for “relevant Fees Order” substitute “Civil Proceedings Fees Order 2008(3) (Fees Order 2008)”; and
- (d) omit the first set of words in parentheses following sub-paragraph (e).

(4) In rule 3.7(2), for “relevant Fees Order”, substitute “Fees Order 2008”.

(5) After rule 3.7, insert new rule 3.7A1—

**“Sanctions for non-payment of the trial fee by the claimant**

**3.—(1)** In this rule and in rule 3.7AA—

- (a) “Fees Order 2008” means the Civil Proceedings Fees Order 2008;
- (b) “fee notice” means a notice of—
  - (i) the amount of a trial fee;
  - (ii) the trial fee payment date; and
  - (iii) the consequences of non-payment of the trial fee;
- (c) “trial date” means the date of the trial in relation to which the trial fee is payable, and if the trial in relation to which the trial fee is payable is scheduled to commence during the course of a specified period, “trial date” means the date of the Monday of the first week of that specified period;
- (d) “trial fee” means fee 2.1 set out in the Table in Schedule 1 to the Fees Order 2008(4) and payable for the trial of a case on the multi-track, fast track or small claims track;
- (e) “trial fee payment date” means the date by which the trial fee must be paid, calculated in accordance with the Fees Order 2008;
- (f) “revised trial fee payment date” means, if an application for fee remission is denied in whole or part, the revised date by which the fee or part of it is to be paid, calculated in accordance with the Fees Order 2008.

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(3) [S.I. 2008/1053](#).

(4) Schedule 1 was substituted by [S.I. 2014/874](#), article 2(1), (5), Schedule, and there are relevant amendments in relation to fee 2.1 in the Civil Proceedings Fees (Amendment) Order 2016 ([S.I. 2016/1191](#)), with saving provisions in article 3.

(2) This rule applies in relation to trial fees where that fee is to be paid by the claimant and the court notifies the parties in writing of the trial date.

(3) When the court notifies the parties in writing of the trial date, the court must also send a fee notice to the claimant.

(4) The fee notice may be contained in the same document as the notice of trial date, or may be a separate document.

(5) Where an application for full or part remission of a trial fee is refused, when the court sends written notice to the claimant of the refusal, the court must also notify the claimant in writing—

- (a) that the claimant is required to pay the full trial fee by the revised trial fee payment date; and
- (b) of the consequences of non-payment of the trial fee.

(6) Where part remission of a fee is granted, when the court sends written notice to the claimant of the part remission, the court must also notify the claimant in writing—

- (a) that the claimant is required to pay the balance of the trial fee by the revised trial fee payment date; and
- (b) of the consequences of non-payment of the balance of the trial fee.

(7) If—

- (a) the claimant has had notice in accordance with this rule to pay the trial fee;
- (b) the claimant has not applied to have the trial fee remitted in whole or part; and
- (c) the trial fee has not been paid on or before the trial fee payment date,

the claim will automatically be struck out without further order of the court, and unless the court orders otherwise, the claimant will be liable for the costs which the defendant has incurred.

(8) If—

- (a) the claimant has had notice in accordance with this rule to pay the trial fee;
- (b) the claimant has applied to have the trial fee remitted in whole or part;
- (c) remission is refused or only part remission of the trial fee is granted;
- (d) following the decision on remission, the claimant has had notice in accordance with this rule to pay the full trial fee or balance of it; and
- (e) the full trial fee or balance of it (as appropriate) has not been paid on or before the revised trial fee payment date,

the claim will automatically be struck out without further order of the court, and, unless the court orders otherwise, the claimant will be liable for the costs which the defendant has incurred.

(Rule 44.9 provides for the basis of assessment where a right to costs arises under this rule and contains provisions about when a costs order is deemed to have been made and applying for an order under section 194(3) of the Legal Services Act 2007(5).)

(9) If—

- (a) a claimant applies to have the claim reinstated; and
- (b) the court grants relief,

the relief must be conditional on the claimant either paying the trial fee or filing evidence of full or part remission of that fee within the period specified in paragraph (10).

- (10) The period referred to in paragraph (9) is—
- (a) if the order granting relief is made at a hearing at which the claimant is present or represented, 2 days from the date of the order;
  - (b) in any other case, 7 days from the date of service of the order on the claimant.
- (11) If a fee is not paid for a claim where there is also a counterclaim, the counterclaim will still stand.”.
- (6) Before rule 3.7A, insert a heading to that rule, “Sanctions for non-payment of certain fees by the defendant”.
- (7) In rule 3.7A(1)—
- (a) for “This rule applies where—”, substitute “Except where rule 3.7AA applies, this rule applies to fees payable by the defendant where—”;
  - (b) in sub-paragraph (a)(i), for “relevant Fees Order”, substitute “Civil Proceedings Fees Order 2008(6) (Fees Order 2008)”; and
  - (c) in sub-paragraph (b)—
    - (i) omit sub-sub-paragraphs (i) to (iii); and
    - (ii) in sub-sub-paragraph (iv), for “relevant Fees Order” substitute “Fees Order 2008”.
- (8) In rule 3.7A(2), for “relevant Fees Order”, substitute “Fees Order 2008”.
- (9) After rule 3.7A, insert new rule 3.7AA—

**“Sanctions for non-payment of the trial fee by the defendant, where proceedings continue on the counterclaim alone**

**3.7AA.**—(1) This rule applies in relation to trial fees where that fee is to be paid by the defendant and the court notifies the defendant in writing of the trial date.

(Definitions contained in rule 3.7A1(1) apply to this rule also.)

(2) When the court notifies the parties in writing of the trial date, the court must also send a fee notice to the defendant.

(3) The fee notice may be contained in the same document as the notice of trial date, or may be a separate document.

(4) Where an application for full or part remission of a trial fee is refused, when the court sends written notice to the defendant of the refusal, the court must also notify the defendant in writing—

- (a) that the defendant is required to pay the full trial fee by the revised trial fee payment date; and
- (b) of the consequences of non-payment of the trial fee.

(5) Where part remission of a fee is granted, when the court sends written notice to the defendant of the part remission, the court must also notify the defendant in writing—

- (a) that the defendant is required to pay the balance of the trial fee by the revised trial fee payment date; and
- (b) of the consequences of non-payment of the balance.

(6) If—

- (a) the defendant has had notice in accordance with this rule to pay the trial fee;
- (b) the defendant has not applied to have the trial fee remitted in whole or part; and

(c) the trial fee has not been paid on or before the trial fee payment date, the counterclaim will automatically be struck out without further order of the court.

(7) If—

- (a) the defendant has had notice in accordance with this rule to pay the trial fee;
- (b) the defendant has applied to have the trial fee remitted in whole or part;
- (c) remission is refused or only part remission of the trial fee is granted;
- (d) following the decision on remission, the defendant has had notice in accordance with this rule to pay the full trial fee or balance of it; and
- (e) the full trial fee or balance of it (as appropriate) has not been paid on or before the revised trial fee payment date,

the counterclaim will automatically be struck out without further order of the court.

(8) If—

- (a) a defendant applies to have the counterclaim reinstated; and
- (b) the court grants relief,

the relief will be conditional on the defendant either paying the trial fee or filing evidence of full or part remission of the fee within the period specified in paragraph (9).

(9) The period referred to in paragraph (8) is—

- (a) if the order granting relief is made at a hearing at which the defendant is present or represented, 2 days from the date of the order;
- (b) in any other case, 7 days from the date of service of the order on the defendant.”.

(10) In rule 3.15—

- (a) in paragraph (1), after “incurred” insert “(the budgeted costs)”;
- (b) in paragraph (2)—
  - (i) in sub-paragraph (a), for “budgets” substitute “budgeted costs”;
  - (ii) in sub-paragraph (b), for “budgets or parts of budgets” substitute “the budgeted costs”; and
  - (iii) at the end of sub-paragraph (b), insert—

“;

(c) record the extent (if any) to which incurred costs are agreed”; and

(c) after paragraph (3), insert—

“(4) Whether or not the court makes a costs management order, it may record on the face of any case management order any comments it has about the incurred costs which are to be taken into account in any subsequent assessment proceedings.”.

(11) In rule 3.18—

- (a) in sub-paragraph (a) —
  - (i) for “budget” substitute “budgeted costs”; and
  - (ii) at the end, omit “and”;
- (b) in sub-paragraph (b), for “budget” substitute “budgeted costs”; and
- (c) at the end of sub-paragraph (b) insert—
  - “; and
  - (c) take into account any comments made pursuant to rule 3.15(4) or paragraph 7.4 of Practice Direction 3E and recorded on the face of the order”.

### **Amendment of Part 25**

6. In rule 25.11(1)(b), for “(sanction for non-payment of certain fees)”, substitute “(sanctions for non-payment of certain fees by the claimant) or under rule 3.7A1 (sanctions for non-payment of the trial fee by the claimant)”.

### **Amendment of Part 44**

7. In rule 44.9(1)(a), after “rule 3.7”, insert “or 3.7A1”.

### **Amendment of Part 45**

8.—(1) In rule 45.29B, after “45.29J,” insert “, and for as long as the case is not allocated to the multi-track.”.

(2) In rule 45.29C, in Table 6B—

- (a) in the fourth column of the first row in Part A, omit “, but not more than £25,000”; and
- (b) in the fourth column of the first row in Part B, after “prior” insert “to”.

(3) In rule 45.29D, after “45.29J,” insert “, and for as long as the case is not allocated to the multi-track.”.

(4) In rule 45.29E—

- (a) in Table 6C—
  - (i) in the fourth column of the first row in Part A, omit “, but not more than £25,000”; and
  - (ii) in the fourth column of the first row in Part B, after “prior” insert “to”; and
- (b) in Table 6D—
  - (i) in the fourth column of the first row in Part A, omit “, but not more than £25,000”; and
  - (ii) in the fourth column of the first row in Part B, after “prior” insert “to”.

(5) For Section VII of Part 45, substitute—  
“SECTION VII

### *Costs limits in Aarhus Convention claims*

#### **Scope and interpretation**

**45.41.**—(1) This section provides for the costs which are to be recoverable between the parties in Aarhus Convention claims.

(2) In this Section—

- (a) “Aarhus Convention claim” means a claim brought by one or more members of the public—
  - (i) by judicial review or review under statute which challenges the legality of any decision, act or omission of a body exercising public functions, and which is within the scope of Article 9(1) or 9(2) of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus, Denmark on 25 June 1998 (“the Aarhus Convention”); or

(ii) by judicial review which challenges the legality of any such decision, act or omission and which is within the scope of Article 9(3) of the Aarhus Convention;

(b) references to a member or members of the public are to be construed in accordance with the Aarhus Convention.

(3) This Section does not apply to appeals other than appeals brought under section 289(1) of the Town and Country Planning Act 1990 or section 65(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which are for the purposes of this Section to be treated as reviews under statute.

(Rule 52.19A makes provision in relation to costs of an appeal.)

The Aarhus Convention is available on the UNECE website at <https://www.unece.org/env/pp/welcome.html>.)

### **Opting out, and other cases where rules 45.43 to 45.45 do not apply to a claimant**

**45.42.**—(1) Subject to paragraph (2), rules 45.43 to 45.45 apply where a claimant who is a member of the public has—

- (a) stated in the claim form that the claim is an Aarhus Convention claim; and
- (b) filed and served with the claim form a schedule of the claimant’s financial resources which takes into account any financial support which any person has provided or is likely to provide to the claimant and which is verified by a statement of truth.

(2) Subject to paragraph (3), rules 45.43 to 45.45 do not apply where the claimant has stated in the claim form that although the claim is an Aarhus Convention claim, the claimant does not wish those rules to apply.

(3) If there is more than one claimant, rules 45.43 to 45.45 do not apply in relation to the costs payable by or to any claimant who has not acted as set out in paragraph (1), or who has acted as set out in paragraph (2), or who is not a member of the public.

### **Limit on costs recoverable from a party in an Aarhus Convention claim**

**45.43.**—(1) Subject to rules 45.42 and 45.45, a claimant or defendant in an Aarhus Convention claim may not be ordered to pay costs exceeding the amounts in paragraph (2) or (3) or as varied in accordance with rule 45.44.

(2) For a claimant the amount is—

- (a) £5,000 where the claimant is claiming only as an individual and not as, or on behalf of, a business or other legal person;
- (b) £10,000 in all other cases.

(3) For a defendant the amount is £35,000.

(4) In an Aarhus Convention claim with multiple claimants or multiple defendants, the amounts in paragraphs (2) and (3) (subject to any direction of the court under rule 45.44) apply in relation to each such claimant or defendant individually and may not be exceeded, irrespective of the number of receiving parties.

### **Varying the limit on costs recoverable from a party in an Aarhus Convention claim**

**45.44.**—(1) The court may vary the amounts in rule 45.43 or may remove altogether the limits on the maximum costs liability of any party in an Aarhus Convention claim.

(2) The court may vary such an amount or remove such a limit only if satisfied that—

- (a) to do so would not make the costs of the proceedings prohibitively expensive for the claimant; and
  - (b) in the case of a variation which would reduce a claimant’s maximum costs liability or increase that of a defendant, without the variation the costs of the proceedings would be prohibitively expensive for the claimant.
- (3) Proceedings are to be considered prohibitively expensive for the purpose of this rule if their likely costs (including any court fees which are payable by the claimant) either—
- (a) exceed the financial resources of the claimant; or
  - (b) are objectively unreasonable having regard to—
    - (i) the situation of the parties;
    - (ii) whether the claimant has a reasonable prospect of success;
    - (iii) the importance of what is at stake for the claimant;
    - (iv) the importance of what is at stake for the environment;
    - (v) the complexity of the relevant law and procedure; and
    - (vi) whether the claim is frivolous.
- (4) When the court considers the financial resources of the claimant for the purposes of this rule, it must have regard to any financial support which any person has provided or is likely to provide to the claimant.

(Rule 39.2(3)(c) makes provision for a hearing (or any part of it) to be in private if it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality.)

### **Challenging whether the claim is an Aarhus Convention claim**

**45.45.**—(1) Where a claimant has complied with rule 45.42(1), and subject to rule 45.42(2) and (3), rule 45.43 will apply unless—

- (a) the defendant has in the acknowledgment of service—
  - (i) denied that the claim is an Aarhus Convention claim; and
  - (ii) set out the defendant’s grounds for such denial; and
- (b) the court has determined that the claim is not an Aarhus Convention claim.

(2) Where the defendant denies that the claim is an Aarhus Convention claim, the court must determine that issue at the earliest opportunity.

- (3) In any proceedings to determine whether the claim is an Aarhus Convention claim—
- (a) if the court holds that the claim is not an Aarhus Convention claim, it will normally make no order for costs in relation to those proceedings;
  - (b) if the court holds that the claim is an Aarhus Convention claim, it will normally order the defendant to pay the claimant’s costs of those proceedings to be assessed on the standard basis, and that order may be enforced even if this would increase the costs payable by the defendant beyond the amount stated in rule 45.43(3) or any variation of that amount.”

### **Amendment of Part 52**

**9.**—(1) In rule 52.19—

- (a) in the heading, at the end insert “– general”; and
- (b) in paragraph (1), for “In” substitute “Subject to rule 52.19A, in”.



(2) After rule 52.19A insert—

**“Orders to limit the recoverable costs of an appeal – appeals in Aarhus Convention claims**

**52.19A.**—(1) In this rule, “Aarhus Convention claim” and “prohibitively expensive” have the same meanings as in Section VII of Part 45, and “claimant” means a claimant to whom rules 45.43 to 45.45 apply.

(2) In an appeal against a decision made in an Aarhus Convention claim to which rules 45.43 to 45.45 apply, the court must—

- (a) consider whether the costs of the proceedings will be prohibitively expensive for a party who was a claimant; and
- (b) if they will be, make an order limiting the recoverable costs to the extent necessary to prevent this.

(3) When the court considers the financial resources of a party for the purposes of this rule, it must have regard to any financial support which any person has provided or is likely to provide to that party.”

**Amendment of Part 61**

**10.**—(1) In rule 61.1, at the end of sub-paragraph (l) insert—

“

- (m) “electronic track data” means a digital or electronic recording of the track of a vessel (including any associated visual or aural recordings) as recorded by, for example, ship or shore-based AIS (Automatic Identification System), ECDIS (Electronic Chart and Display Information System), or a voyage data recorder”.

(2) In rule 61.4, after paragraph (4) insert—

“(4A) Every party must—

- (a) within 21 days after the defendant files their acknowledgment of service; or
- (b) where the defendant applies under Part 11, within 21 days after the defendant files their further acknowledgment of service,

disclose any electronic track data which is or has been in its control, in accordance with Part 31, and, where every party has electronic track data in its control, each must provide copies, or permit inspection, of that electronic track data within 7 days of a request by another party to do so.”

**Amendment of Part 63**

**11.**—(1) In rule 63.20(2), for “7.1(1) and Annex A (paragraph 2)” substitute “6”.

(2) In rule 63.16(2), after “Appeals about patents” insert “and registered designs”.

**Amendment of Part 68**

**12.**—(1) In rule 68.2, for paragraph (4) substitute—

“(4) The reference must be set out in a schedule to the order and must be a self-contained document in a form that can be sent to the European Court without the order or any separate judgment of the court.”

(2) In rule 68.3(1), for “order” in the two places where it occurs substitute “reference”.

- (3) In rule 68.4—
  - (a) in paragraph (1)—
    - (i) for “order” substitute “reference”; and
    - (ii) before “request” insert “further”;
  - (b) in paragraph (2), for “order” substitute “reference”; and
  - (c) in paragraph (4), for “order” substitute “reference”.

### **Transitional provision**

**13.**—(1) The amendments made by rules 5(1) to (9), 6 and 7 of these Rules have no effect in relation to a case in which the court gives notice of the trial date or the start of the trial period before 6th March 2017.

- (2) For the purposes of paragraph (1)—
  - (a) where notice of the trial date or the start of the trial period is in written form, the notice is given on the date that it is sent out from the court;
  - (b) subject to sub-paragraph (c), where oral notice is given, the notice is given on the date that the oral notice is communicated by the court; and
  - (c) where notice is both in written form and given orally, the notice is given on the date that the written notice is sent out from the court.

(3) The amendments made by rules 8(5) and 9 of these Rules apply in relation to Aarhus Convention claims commenced on or after 28th February 2017.

(4) The amendments made by rule 12 of these Rules apply in relation to requests to the European Court for a preliminary ruling which are made on or after 6th April 2017.

*The Right Honourable Sir Terence Etherton, MR  
Michael Briggs, LJ  
Mr Justice Birss  
Mr Justice Kerr  
Master Richard Roberts  
His Honour Judge Martin McKenna  
District Judge Michael Hovington  
District Judge Christopher Lethem  
John Dagnall  
Jonathan Klein  
Richard Viney  
Brett Dixon  
Andrew Underwood*

I allow these Rules  
Signed by authority of the Lord Chancellor

2nd February 2017

*Oliver Heald*  
Minister of State  
Ministry of Justice

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## EXPLANATORY NOTE

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

These Rules amend the Civil Procedure Rules 1998 (CPR) (S.I. 1998/3132), by—

- introducing new rules 3.7A1 and 3.7AA, and consequential and related drafting amendments, in relation to the sanction for non-payment of the trial fee (rules 5(1) to (9), 6 and 7(3));
- amending rules 3.15 and 3.18 to ensure that costs management and budgeting operate as intended, in the light of the decision of the Court of Appeal in *SARPD Oil International Limited v. Addax Energy SA and another* [2016] EWCA Civ. 120 (rule 5(10) and (11));
- amending rules 45.29B to 45.29E to make it clear that the fixed costs provided for in those rules do not apply to cases in the multi-track, in the light of the decision of the Court of Appeal in *Qader and others v. Esure Services Limited* [2016] EWCA Civ 1109 (rule 8(1) to (4));
- substituting a new Section VII of Part 45, and inserting a new rule 52.19A, to change the rules governing costs protection in certain environmental claims (rules 8(5) and 9);
- amending Part 61 to reflect the availability of electronic track data (as defined in the amended rule) and the need to alter the existing procedure in the light of that availability (rule 10);
- making technical amendments in relation to intellectual property proceedings which correct a cross-reference and ensure that a reference is included to appeals in registered design cases (rule 11);
- amending Part 68 (concerning preliminary references to the Court of Justice of the EU) in the light of suggestions made by litigators involved in such cases, and by the Court itself (rule 12).

They also make transitional provision (rule 13).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sectors is foreseen.