

PART 10 : JUDGMENTS AND ORDERS

CHAPTER 1: JUDGMENTS AND ORDERS — GENERAL

10.1 Scope of this Chapter (40.1)

This Chapter sets out rules about judgments and orders which apply except where another rule makes different provision in relation to the judgment or order in question.

10.2 Standard requirements (40.2)

(1) Every judgment or order must state the name and judicial title of the person who made it, unless it is —

- (a) a default judgment entered under rule 10.25(1) or a default costs certificate obtained under rule 11.30;
- (b) judgment entered under Chapter 5 (judgment on admission);
- (c) a consent order under rule 10.7(2) (consent orders made by court officers);
- (d) an order made by a court officer under rule 12.4 (orders to enforce awards as if payable under a court order); or
- (e) an order made by a court officer under rule 12.52 (orders to obtain information from judgment debtors).

(2) Every judgment or order must —

- (a) bear the date on which it is given or made; and
- (b) be sealed by the court or signed by the person who made it.

10.3 Judgment where claim for unspecified amount is limited

Where a claim for an unspecified amount of money is expressed to be limited to a specified amount ('the maximum claimed') —

- (a) judgment may not be entered for an amount (excluding interest) which exceeds the maximum claimed; and
- (b) where judgment is entered for an amount to be decided by the court, the amount decided (excluding interest) may not exceed the maximum claimed.

10.3A Judgment in foreign currency

- (1) Unless the court otherwise orders, where any judgment (including a default judgment) is given for a sum of money expressed in a foreign currency, the judgment shall be for an amount expressed in the foreign currency with the addition of 'or the sterling equivalent at the time of payment'.
- (2) A judgment given in a foreign currency may carry interest on the amount of the judgment in foreign currency, and the interest shall be added to the judgment for the purpose of enforcement of the judgment.

[subs (10.3A) added by SD954/11]

10.4 Drawing up and filing of judgments and orders (40.3)

(1) A judgment or order shall be drawn up by the court in the following cases —

- (a) where a rule requires, or the court orders, it to be drawn up by the court;
- (b) where an award of a judicial officer is entered under rule 10.37;
- (c) where the order is made on the court's own initiative.

(2) A consent judgment or order under rule 10.7 shall be drawn up by the parties in accordance with the terms of their agreement.

(3) Where the court orders a judgment or order to be drawn up by a specified party, it shall be drawn up by that party.

(4) In any other case a judgment or order shall be drawn up by the party at whose request or on whose application it is entered or made.

(5) The court may direct that —

(a) a judgment or an order drawn up by a party must be checked by the court before it is sealed or signed; or

(b) before a judgment or an order is drawn up by the court, the parties must file an agreed statement of its terms.

(6) Where a judgment or order is to be drawn up by a party —

(a) he must file it no later than 7 days after the date on which the court ordered or permitted him to draw it up so that it can be sealed by the court or signed; and

(b) if he fails to file it within that period, any other party may draw it up and file it.

(7) Where a draft of a written judgment to be drawn up by the court is supplied to a party or the advocate for a party in advance of its being pronounced in court, the draft or any of its contents may not, without the permission of the court, be communicated to any person (except to a party by the advocate for that party) until the judgment is pronounced in court.

10.5 Service of judgments and orders (40.4)

(1) Where a judgment or an order has been drawn up by a party and is to be served by the court —

(a) the party who drew it up must file a copy to be retained at court and sufficient copies for service on him and on the other parties; and

(b) once it has been sealed or signed, the court must serve a copy of it on each party to the proceedings.

(2) Unless the court directs otherwise, any order made otherwise than at trial must be served on —

(a) each party, and

(b) any other person on whom the court orders it to be served.

10.6 Judgment or order to be served on a party as well as advocate (40.5)

Where the party on whom a judgment or order is to be served is acting by an advocate, the court may order the judgment or order to be served on the party as well as on his advocate.

10.7 Consent judgments and orders (40.6)

(1) This rule applies where all the parties agree the terms in which a judgment should be given or an order should be made.

(2) A court officer may enter and seal or sign an agreed judgment or order if —

(a) the judgment or order is listed in paragraph (3);

(b) none of the parties is a litigant in person; and

(c) the approval of the court is not required by these Rules or any statutory provision before an agreed order can be made.

(3) The judgments and orders referred to in paragraph (2) are —

(a) a judgment or order for —

(i) the payment of an amount of money (including a judgment or order for damages or the value of goods to be decided by the court); or

(ii) the delivery up of goods with or without the option of paying the value of the goods or the agreed value;

- (b) an order for —
 - (i) the dismissal of any proceedings, wholly or in part;
 - (ii) the stay of proceedings on agreed terms, disposing of the proceedings, whether those terms are recorded in a schedule to the order or elsewhere;
 - (iii) the stay of enforcement of a judgment, either unconditionally or on condition that the money due under the judgment is paid in accordance with an instalment order;
 - (iv) the setting aside under Chapter 2 of a default judgment which has not been satisfied;
 - (v) the payment out of money which has been paid into court;
 - (vi) the discharge from liability of any party;
 - (vii) the payment, assessment or waiver of costs, or such other provision for costs as may be agreed.

(4) Rule 10.4 (drawing up and filing of judgments and orders) applies to judgments and orders entered and sealed or signed by a court officer under paragraph (2) as it applies to other judgments and orders.

(5) Where paragraph (2) does not apply, any party may apply for a judgment or order in the terms agreed.

(6) The court may deal with an application under paragraph (5) without a hearing.

(7) Where this rule applies —

- (a) the order which is agreed by the parties must be drawn up in the terms agreed;
- (b) it must be expressed as being '*By Consent*';
- (c) it must be signed by the advocate acting for each of the parties to whom the order relates or, where paragraph (5) applies, by the party if he is a litigant in person.

10.8 When judgment or order takes effect (40.7)

(1) A judgment or order takes effect from the day when it is given or made, or such later date as the court may specify.

(2) This rule applies to all judgments and orders except those to which rule 10.11 (judgment against a State) applies.

10.9 Time from which interest begins to run (40.8)

(1) Where interest is payable on a judgment pursuant to section 9 of the Administration of Justice Act 1981, the interest shall begin to run from the date that judgment is given unless —

- (a) another rule makes different provision; or
- (b) the court orders otherwise.

(2) The court may order that interest shall begin to run from a date before the date that judgment is given.

10.10 Who may apply to set aside or vary a judgment or order (40.9)

A person who is not a party but who is directly affected by a judgment or order may apply to have the judgment or order set aside or varied.

10.11 Judgment against State in default of acknowledgment of service (40.10)

(1) Where the claimant obtains default judgment under Chapter 2 on a claim against a State where the defendant has failed to file an acknowledgment of service, the judgment does not take effect until 2 months after service on the State of —

- (a) a copy of the judgment; and
- (b) a copy of the evidence in support of the application for permission to enter default judgment (unless the evidence has already been served on the State in accordance with an order made under Chapter 2).

(2) In this rule, ‘State’ has the meaning given by section 14 of the State Immunity Act 1978 (an Act of Parliament).

10.12 Time for complying with judgment or order (40.11)

A party must comply with a judgment or order for the payment of an amount of money (including costs) within 14 days of the date of the judgment or order, unless —

- (a) the judgment or order specifies a different date for compliance;
- (b) an instalment order is in force;
- (c) any of these Rules specifies a different date for compliance; or
- (d) the court has stayed the proceedings or judgment.

10.13 Order requiring an act to be done (PD40B.8)

(1) An order which requires an act to be done (other than a judgment or order for the payment of an amount of money) must specify the time within which the act should be done.

(2) The consequences of failure to do an act within the time specified may be set out in the order in the form of one of the following examples, suitably adapted —

- (a) *Unless the [claimant][defendant] serves his list of documents by 4.00 pm on [date] his [claim][defence] shall be struck out and judgment entered for the [defendant][claimant].*
- (b) *Unless the [claimant][defendant] serves his list of documents within 14 days of service of this order his [claim][defence] will be struck out and judgment entered for the [defendant][claimant].*

10.14 Non-compliance with judgment or order (PD40B.9)

(1) An order which restrains a party from doing an act or requires an act to be done should, if disobedience is to be dealt with by an application to bring contempt of court proceedings, have a penal notice endorsed on it as follows:

‘If you the within-named [] do not comply with this order you may be held to be in contempt of court and imprisoned or fined, or [in the case of a company or corporation] your assets may be seized.’

(2) Paragraph (1) applies to an order which contains an undertaking by a party to do or not do an act, except that the court may decline —

- (a) to accept an undertaking, and
- (b) to deal with disobedience in respect of an undertaking by contempt of court proceedings,

unless the party giving the undertaking has made a signed statement to the effect that he understands the terms of his undertaking and the consequences of failure to comply with it.

10.15 Correction of errors in judgments and orders (40.12)

(1) The court may at any time correct an accidental slip or omission in a judgment or order.

(2) A party may apply for a correction without notice.

10.16 Judgment on both claim and counterclaim (40.13)

(1) This rule applies where the court gives judgment for specified amounts both for the claimant on his claim and against the claimant on a counterclaim.

(2) If there is a balance in favour of one of the parties, it may order the party whose judgment is for the lesser amount to pay the balance.

(3) The court may make a separate order as to costs against each party.

10.17 Judgment in favour of certain part owners relating to the detention of goods (40.14)

(1) In this rule 'part owner' means one of two or more persons who have an interest in the same goods.

(2) Where —

(a) a part owner makes a claim relating to the detention of the goods; and

(b) the claim is not based on a right to possession,

any judgment or order given or made in respect of the claim is to be for the payment of damages only, unless the claimant had the written authority of every other part owner of the goods to make the claim on his behalf as well as for himself.

(3) This rule applies notwithstanding anything in section 3(3) of the Torts (Interference with Goods) Act 1981, but does not affect the remedies and jurisdiction mentioned in section 3(8) of that Act.

10.18 Adjustment in respect of compensation recovery payments (PD40B.5)

(1) In a final judgment where —

(a) some or all of the damages awarded fall under the heads of damage set out in column 1 of Schedule 2 to the 1997 Act in respect of recoverable benefits received by the claimant set out in column 2 of that Schedule and

(b) the defendant has paid to the Department of Health and Social Security the recoverable benefits in accordance with the certificate of recoverable benefits,

there shall be stated in a preamble to the judgment or order the amount awarded under each head of damage and the amount by which it has been reduced in accordance with section 8 and Schedule 2 to the 1997 Act.

(2) The judgment or order shall then provide for entry of judgment and payment of the balance.

(3) In this rule —

'the 1997 Act' means the Social Security (Recovery of Benefits) Act 1997 (an Act of Parliament);

'judgment' includes any order to pay a sum of money, a final award of damages and an assessment of damages.

10.19 Adjustment in respect of interim payment (25.8, PD40B.6)

(1) In a final judgment where an interim payment has previously been made, the judgment shall set out in a preamble —

(a) the total amount awarded by the judge, and

(b) the amount and date of the interim payment or payments.

(2) Where the amount of the interim payment or payments is less than the total amount awarded by the judge, the total amount shall then be reduced by the total amount of

any interim payments, and the judgment shall then provide for entry of judgment and payment of the balance.

(3) Where the amount of the interim payment or payments is more than the total amount awarded by the judge, an order shall be made for repayment, reimbursement, variation or discharge under rule 7.22(2) and for interest on an overpayment under rule 7.22(5).

(4) In this rule 'judgment' has the same meaning as in rule 10.18.

10.20 Preparation of deeds or documents (PD40B.2)

(1) Where a judgment or order directs any deed or document to be prepared, executed or signed, the order shall state —

- (a) the person who is to prepare the deed or document, and
- (b) if the deed or document is to be approved, the person who is to approve it.

(2) If the parties are unable to agree the form of the deed or document, any party may apply for the form of the deed or document to be settled.

- (3) In such case the judge may —
- (a) settle the deed or document himself, or
 - (b) refer it to an advocate to settle.

10.21 Declaratory judgments (40.20)

The court may make binding declarations whether or not any other remedy is claimed.

CHAPTER 2: DEFAULT JUDGMENT

10.22 Meaning of 'default judgment' (12.1)

In these Rules 'default judgment' means judgment without trial where a defendant —

- (a) has failed to file an acknowledgment of service; or
- (b) has failed to file a defence.

10.23 Claims in which default judgment may not be obtained (12.2, 57.10)

A claimant may not obtain a default judgment —

- (a) where the claim is allocated to the chancery procedure; or
- (b) in a probate claim (within the meaning of Chapter 4 of Part 13).

10.24 Conditions to be satisfied (12.3)

(1) The claimant may obtain judgment in default of an acknowledgment of service only if —

- (a) the defendant has not filed an acknowledgment of service or a defence to the claim (or any part of the claim); and
- (b) the relevant time for doing so has expired.

(2) The claimant may obtain judgment in default of defence only if —

- (a) an acknowledgement of service has been filed but a defence has not been filed;
- (b) in a counterclaim made under rule 6.48, a defence has not been filed,

and, in either case, the relevant time limit for doing so has expired.

(3) The claimant may not obtain a default judgment —

- (a) where the defendant has applied —
 - (i) to have the claimant's statement of case struck out under rule 7.3; or

- (ii) for summary judgment under Chapter 6,
- and, in either case, that application has not been disposed of;
- (b) where the defendant has satisfied the whole claim (including any claim for costs) on which the claimant is seeking judgment; or
 - (c) where —
 - (i) the claimant is seeking judgment on a claim for money; and
 - (ii) the defendant has filed or served on the claimant an admission under rule 6.21 or 6.22 admitting liability to pay all of the money claimed together with a request for time to pay.

10.25 Procedure for obtaining default judgment (12.4)

(1) Subject to paragraph (2), a claimant may obtain a default judgment by filing a request where the claim is for —

- (a) a specified amount of money;
- (b) an amount of money to be decided by the court;
- (c) delivery of goods where the claim form gives the defendant the alternative of paying their value; or
- (d) any combination of these remedies.

(2) The claimant must make an application if he wishes to obtain a default judgment —

- (a) on a claim which consists of or includes a claim for any other remedy; or
- (b) where rule 10.30 or 10.31 so provides,

and where the defendant is an individual, the claimant must in the application notice either provide the defendant's date of birth (if known) or state that the defendant is aged under, or of or over, the age of 18.

(3) Where the claimant seeks judgment in default of acknowledgment of service, he must file with his request under paragraph (1) or his application notice —

- (a) a copy of the coroner's notice under rule 2.38(1), or
- (b) where the claim form was served by the claimant or any person on his behalf, a certificate of service.

(4) Where a claimant —

- (a) claims any other remedy in his claim form in addition to those specified in paragraph (1); but
- (b) abandons that claim in his request for judgment,

he may still obtain a default judgment by filing a request under paragraph (1).

10.26 Nature of judgment where default judgment obtained by filing a request (12.5)

(1) Where the claim is for a specified sum of money, the claimant may specify in a request filed under rule 10.25(1) —

- (a) the date by which the whole of the judgment debt is to be paid; or
- (b) the times and rate at which it is to be paid by instalments.

(2) Except where paragraph (4) applies, a default judgment on a claim for a specified amount of money obtained on the filing of a request shall be judgment for the amount of the claim (less any payments made) and costs —

- (a) where the request specifies a date under paragraph (1)(a), to be paid by that date; or
- (b) if none is specified, immediately.

(3) Where the claim is for an unspecified amount of money, a default judgment obtained on the filing of a request shall be for an amount to be decided by the court and costs.

(4) Where the claim is for delivery of goods and the claim form gives the defendant the alternative of paying their value, a default judgment obtained on the filing of a request shall be judgment requiring the defendant —

- (a) to deliver the goods or (if he does not do so) to pay the value of the goods as decided by the court (less any payments made); and
- (b) to pay costs.

(5) The claimant's right to enter judgment requiring the defendant to deliver goods is subject to rule 10.17.

10.27 Default judgment for interest (12.6)

(1) A default judgment on a claim for a specified amount of money obtained on the filing of a request may include the amount of interest claimed to the date of judgment if —

- (a) the particulars of claim include the details required by rule 6.12(2);
- (b) where interest is claimed under section 41 of the High Court Act 1991, the rate is no higher than the rate of interest payable on judgment debts at the date when the claim form was issued; and
- (c) the claimant's request for judgment includes a calculation of the interest claimed for the period from the date up to which interest was stated to be calculated in the claim form to the date of the request for judgment.

(2) In any case where paragraph (1) does not apply, judgment shall be entered for an amount of interest to be decided by the court.

10.28 Procedure for deciding an amount or value (12.7)

(1) This rule applies where the claimant obtains a default judgment on the filing of a request under rule 10.25(1) and judgment is for —

- (a) an amount of money to be decided by the court;
- (b) the value of goods to be decided by the court; or
- (c) an amount of interest to be decided by the court.

(2) Where the court enters judgment it shall —

- (a) give any directions it considers appropriate; and
- (b) if it considers it appropriate, transfer the claim to another procedure.

10.29 Claim against more than one defendant (12.8)

(1) A claimant may obtain a default judgment on request under this Chapter on a claim for money or a claim for delivery of goods against one of 2 or more defendants, and proceed with his claim against the other defendants.

(2) Where a claimant applies for a default judgment against one of 2 or more defendants —

- (a) if the claim can be dealt with separately from the claim against the other defendants —
 - (i) the court may enter a default judgment against that defendant; and
 - (ii) the claimant may continue the proceedings against the other defendants;
- (b) if the claim cannot be dealt with separately from the claim against the other defendants —
 - (i) the court shall not enter default judgment against that defendant; and

- (ii) the court shall deal with the application at the same time as it disposes of the claim against the other defendants.

(3) A claimant may not enforce against one of 2 or more defendants any judgment obtained under this Chapter for possession of land or for delivery of goods unless

- (a) he has obtained a judgment for possession or delivery (whether or not obtained under this Chapter) against all the defendants to the claim; or
- (b) the court gives permission.

10.30 Procedure for obtaining a default judgment for costs only (12.9)

(1) Where a claimant wishes to obtain a default judgment for costs only —

- (a) if the claim is for fixed costs, he may obtain it by filing a request;
- (b) if the claim is for any other type of costs, he must make an application.

(2) Where an application is made under this rule for costs only, judgment shall be entered for an amount to be decided by the court.

10.31 Default judgment to be obtained on application (12.10, RHC 8.5)

(1) Default judgment may be obtained only on an application where —

- (a) the claim is —
 - (i) against a minor or patient;
 - (ii) in tort by one spouse against the other; or
 - (iii) for possession of land; or
- (b) the claim is —
 - (i) against a State;
 - (ii) against any person who enjoys immunity from civil jurisdiction by virtue of any statutory provision;

and the defendant has failed to file an acknowledgment of service.

(2) Subject to paragraph (3), an application under this rule may be made without notice.

(3) Unless the court otherwise directs, where the claim is for possession of land, the defendant must be given at least 7 days' notice of the date fixed for the hearing of an application under this rule.

10.32 Application for default judgment — supplementary (12.11)

(1) Where the claimant makes an application for a default judgment, there shall be entered such judgment as appears to the court that the claimant is entitled to on his statement of case.

(2) Any evidence relied on by the claimant in support of his application need not be served on a party who has failed to file an acknowledgment of service.

(3) An application for a default judgment on a claim against a minor or patient or a claim in tort between spouses must be supported by evidence.

(4) Where an application is made against a State for a default judgment where the defendant has failed to file an acknowledgment of service —

- (a) the court may direct that a copy of the application notice be served on the State;
- (b) if the court —
 - (i) grants the application; or
 - (ii) directs that a copy of the application notice be served on the State,

the judgment or application notice (and the evidence in support) may be served out of the jurisdiction without any further order.

(5) Where paragraph (4)(b) permits a judgment or an application notice to be served out of the jurisdiction, the procedure for serving the judgment or the application notice is the same as for serving a claim form under Chapter 9 of Part 2 except where an alternative method of service has been agreed under section 12(6) of the State Immunity Act 1978 (an Act of Parliament).

(6) In this rule 'State' has the meaning given by section 14 of the said Act of 1978.

10.33 Default judgment on additional claim (other than counterclaim or contribution or indemnity notice) (20.11)

(1) This rule applies if —

(a) an additional claim, other than —

(i) a counterclaim; or

(ii) a claim by a defendant for contribution or indemnity against another defendant under rule 6.50;

is served; and

(b) the party against whom the additional claim is made fails to file an acknowledgment of service or defence in respect of the additional claim.

(2) The party against whom the additional claim is made —

(a) is deemed to admit the additional claim, and is bound by any judgment or decision in the main proceedings in so far as it is relevant to any matter arising in the additional claim;

(b) subject to paragraph (3), if default judgment under this Chapter is given against the person who makes an additional claim, the person who makes an additional claim may obtain judgment in respect of the additional claim by filing a request.

(3) A person who makes an additional claim may not enter judgment under paragraph (2)(b) without the court's permission if —

(a) he has not satisfied the default judgment which has been given against him; or

(b) he wishes to obtain judgment for any remedy other than a contribution or indemnity .

(4) An application for the court's permission under paragraph (3) may be made without notice unless the court directs otherwise.

(5) The court may at any time set aside or vary a judgment entered under paragraph (2)(b).

10.34 Cases where court must set aside default judgment (13.2)

The court shall set aside a judgment entered under this Chapter if judgment was wrongly entered because —

(a) in the case of a judgment in default of an acknowledgment of service, any of the conditions in rule 10.24(1) and (3) was not satisfied;

(b) in the case of a judgment in default of a defence, any of the conditions in rule 10.24(1) and (2) was not satisfied; or

(c) the whole of the claim was satisfied before judgment was entered.

10.35 Cases where court may set aside or vary default judgment (13.3, 13.4)

(1) In any other case, the court may set aside or vary a judgment entered under this Chapter if —

- (a) the defendant has a real prospect of successfully defending the claim; or
- (b) it appears to the court that there is some other good reason why —
 - (i) the judgment should be set aside or varied; or
 - (ii) the defendant should be allowed to defend the claim.

(2) In considering whether to set aside or vary a judgment entered under this Chapter, the matters to which the court must have regard include whether the person seeking to set aside the judgment made an application to do so promptly.

(3) An application under this rule must be supported by evidence.

10.36 Abandoned claim restored where default judgment set aside (13.6)

Where —

- (a) the claimant claimed a remedy in addition to one specified in rule 10.25(1);
- (b) the claimant abandoned his claim for that remedy in order to obtain default judgment on request in accordance with rule 10.25(4); and
- (c) that default judgment is set aside under rule 10.34 or 10.35,

the abandoned claim is restored when the default judgment is set aside.

CHAPTER 3: SMALL CLAIMS

10.37 Small claims — entry of award (RHC 26A.6)

(1) Where the award of the judicial officer on a reference under rule 5.7 is filed, the award shall forthwith be entered as a judgment of the court.

- (2) The judgment shall be stayed where —
 - (a) the court office is notified by the judicial officer that the award has been set aside, or
 - (b) application is made to set aside the award under section 16(4) of the High Court Act 1991.

CHAPTER 4: JUDGMENT WITHOUT TRIAL AFTER STRIKING OUT

10.38 Judgment without trial after striking out (3.5)

- (1) This rule applies where —
 - (a) the court makes an order which includes a term that the statement of case, or part of the statement of case, of a party shall be struck out if the party does not comply with the order; and
 - (b) the party against whom the order was made does not comply with it.
- (2) A party may obtain judgment with costs by filing a request for judgment if —
 - (a) the order referred to in paragraph (1)(a) relates to the whole of a statement of case; and
 - (b) where the party wishing to obtain judgment is the claimant, the claim is for —
 - (i) a specified amount of money;
 - (ii) an amount of money to be decided by the court;
 - (iii) delivery of goods where the claim form gives the defendant the alternative of paying their value; or
 - (iv) any combination of these remedies.

(3) Where judgment is obtained under this rule in a case to which paragraph (2)(b)(iii) applies, it shall be a judgment requiring the defendant to deliver goods, or (if he does not do so) pay the value of the goods as decided by the court (less any payments made).

(4) The request shall state that the right to enter judgment has arisen because the court's order has not been complied with.

(5) Judgment under this rule may be obtained on an application in a case to which paragraph (2) does not apply.

10.39 Setting aside judgment entered after striking out (3.6)

(1) A party against whom the court has entered judgment under rule 10.38 may apply to the court to set the judgment aside.

(2) An application under paragraph (1) must be made not more than 14 days after the judgment has been served on the party making the application.

(3) If the right to enter judgment had not arisen at the time when judgment was entered, the court must set aside the judgment.

(4) If the application to set aside is made for any other reason, rule 2.59 (relief from sanctions) shall apply.

CHAPTER 5: JUDGMENT ON ADMISSION

10.40 Application for judgment on admission (14.3)

(1) Where a party makes an admission under rule 6.19(2) (admission by notice in writing), any other party may apply for judgment on the admission.

(2) There shall be entered such judgment as appears to the court that the applicant is entitled to on the admission.

10.41 Judgment on admission of whole or part of claim for specified amount (14.4, 14.5)

(1) Where a defendant has admitted a claim under rule 6.21(1) or (3) (admission of whole or part of claim), the claimant may obtain judgment by filing a request.

(2) In the case of an admission under rule 6.21(1) (admission of whole of claim), judgment shall be entered for the amount of the claim (less any payments made) and costs.

(3) In the case of an admission under rule 6.21(3) (admission of part of claim), where the claimant accepts the amount admitted in satisfaction of the claim, judgment shall be entered for the amount admitted (less any payments made) and costs.

(4) Subject to paragraphs (5) and (6), judgment shall be entered for the amount of the claim, or the amount admitted, as the case may be, (less any payments made) and costs, to be paid immediately.

(5) Where —

(a) the defendant requests time to pay under rule 6.23 and offers to pay the amount of the claim, or the amount admitted, in full by a specified date; and

(b) the request for judgment states that the claimant accepts that offer,

judgment shall be entered for the amount of the claim, or the amount admitted, as the case may be, (less any payments made) and costs, to be paid by the date specified.

(6) Where —

(a) the defendant does not request time to pay under rule 6.23, and

(b) the claimant specifies in his request for judgment the date by which the whole of the judgment debt is to be paid,

judgment shall be entered for the amount of the claim, or the amount admitted, as the case may be, (less any payments made) and costs, to be paid by the date specified.

10.42 Interest (14.14)

(1) Judgment under rule 10.41(2) (admission of whole of claim for specified amount) shall include the amount of interest claimed to the date of judgment if —

- (a) the particulars of claim include the details required by rule 6.12(2);
- (b) where interest is claimed under section 41 of the High Court Act 1991, the rate is no higher than the rate of interest payable on judgment debts at the date when the claim form was issued; and
- (c) the claimant's request for judgment includes a calculation of the interest claimed for the period from the date up to which interest was stated to be calculated in the claim form to the date of the request for judgment.

(2) In any case where judgment is entered under rule 10.41(2) and the conditions in paragraph (1) are not satisfied, judgment shall be entered for an amount of interest to be decided by the court.

(3) Where judgment is entered for an amount of interest to be decided by the court, the court shall give any directions it considers appropriate.

10.43 Admission of liability to pay claim for unspecified amount (14.6, 14.7)

(1) Where the defendant has admitted a claim for an unspecified amount under rule 6.22(2) or (4), the claimant may obtain judgment by filing a request.

(2) Where the defendant has admitted the claim under rule 6.22(2) (admission without offer of specified amount), judgment shall be entered for an amount to be decided by the court and costs.

(3) Where the defendant has admitted the claim under rule 6.22(4) (admission with offer of specified amount in satisfaction) —

- (a) if the request for judgment states that the claimant accepts the defendant's offer, judgment shall be entered for the amount offered by the defendant (less any payments made) and costs;
- (b) if the request states that the claimant does not accept the defendant's offer, judgment shall be entered for an amount to be decided by the court and costs.

10.44 Directions in relation to outstanding matters (14.8)

Where the court enters judgment under rule 10.43 for an amount to be decided by the court it shall —

- (a) give any directions it considers appropriate; and
- (b) if it considers it appropriate, allocate the case to another procedure.

CHAPTER 6: SUMMARY JUDGMENT

10.45 Scope of this Chapter (24.1)

This Chapter sets out a procedure by which the court may decide a claim or a particular issue without a trial.

10.46 Grounds for summary judgment (24.2)

The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if —

- (a) it considers that —
 - (i) that claimant has no real prospect of succeeding on the claim or issue; or
 - (ii) that defendant has no real prospect of successfully defending the claim or issue; and

- (b) there is no other compelling reason why the case or issue should be disposed of at a trial.

10.47 Types of proceedings in which summary judgment is available (24.3)

(1) The court may give summary judgment against a claimant in any type of proceedings.

(2) The court may give summary judgment against a defendant in any type of claim except —

- (a) a claim for possession of residential premises against a tenant; or
- (b) an admiralty claim in rem.

10.48 Procedure (24.4)

(1) A claimant may not apply for summary judgment until the defendant against whom the application is made has filed —

- (a) an acknowledgement of service; or
- (b) a defence,

unless the court gives permission.

(2) If a claimant applies for summary judgment before a defendant against whom the application is made has filed a defence, that defendant need not file a defence before the hearing.

(3) Where a hearing of an application for summary judgment is fixed, the respondent (or the parties where the hearing is fixed on the court's own initiative) must be given at least 14 days' notice of —

- (a) the date fixed for the hearing; and
- (b) the issues which it is proposed that the court will decide at the hearing.

10.49 Evidence for purposes of hearing (24.5)

(1) If the respondent to an application for summary judgment wishes to rely on written evidence at the hearing, he must —

- (a) file the written evidence; and
- (b) serve copies on every other party to the application,

at least 7 days before the hearing.

(2) If the applicant wishes to rely on written evidence in reply, he must —

- (a) file the written evidence; and
- (b) serve a copy on the respondent,

at least 3 days before the hearing.

(3) Where a hearing to consider whether to give summary judgment is fixed by the court of its own initiative —

- (a) any party who wishes to rely on written evidence at the hearing must —
 - (i) file the written evidence; and
 - (ii) unless the court orders otherwise, serve copies on every other party to the proceedings,

at least 7 days before the date of the hearing;

(b) any party who wishes to rely on written evidence at the hearing in reply to any other party's written evidence must —

- (i) file the written evidence in reply; and

- (ii) unless the court orders otherwise serve copies on every other party to the proceedings,

at least 3 days before the date of the hearing.

- (4) This rule does not require written evidence —
 - (a) to be filed if it has already been filed; or
 - (b) to be served on a party on whom it has already been served.

10.50 Court's powers on application for summary judgment (24.6)

When the court determines an application for summary judgment it may —

- (a) give directions as to the filing and service of a defence;
- (b) give further directions about the management of the case.

CHAPTER 7: *INSTALMENT ORDERS*

10.51 Meaning of 'instalment order'

In this Chapter 'instalment order' means an order for payment of the amount of a judgment or order by instalments under —

- (a) rule 10.52 (default judgment),
- (b) rule 10.53 (judgment on admission), or
- (c) rule 10.54 (order on application);

and includes such an order as varied under rule 10.56.

10.52 Instalment order on default judgment (12.5)

Where —

- (a) a claim is for a specified sum of money, and
- (b) the claimant specifies under rule 10.26(1) the times and rate at which it is to be paid by instalments, .

the court shall on entering judgment make an order for payment of the amount of the judgment by instalments at the times and rate specified.

10.53 Instalment order where judgment entered on admission

- (1) This rule applies where judgment is entered —
 - (a) under rule 10.41(4) for the amount of a claim or an amount admitted under rule 6.21(2), or
 - (b) under rule 10.43(3)(a) for an amount offered under rule 6.22(4).
- (2) Where —
 - (a) the defendant requests time to pay under rule 6.23 and offers to pay the amount of the claim, or the amount admitted, at the times and rate specified in the admission; and
 - (b) the defendant's statement of means is set out in the admission form or in any other written notice of the admission which is filed,

the court shall on entering judgment make an order for payment of the amount of the judgment by instalments at the times and rate specified.

- (3) Where —
 - (a) the defendant does not request time to pay under rule 6.23, and
 - (b) the request for judgment specifies the times and rate of the instalments by which the claimant wishes the amount to be paid,

the court shall on entering judgment make an order for payment of the amount of the judgment by instalments at the times and rate specified.

- (4) Where —
 - (a) the defendant requests time to pay under rule 6.23 and offers to pay the amount of the claim, or the amount admitted, at the times and rate specified in the admission; and
 - (b) the request for judgment states that the claimant does not accept the defendant's proposal,

the court may on entering judgment, if it thinks fit, make an order for payment of the amount of the judgment by instalments at such times and rate as it thinks fit.

(5) In deciding whether to make an order under paragraph (4) and, if so, the times and rate of payment, the court shall take into account —

- (a) the defendant's statement of means set out in the admission form or in any other written notice of the admission filed,
- (b) the claimant's objections to the defendant's request set out in the claimant's notice, and
- (c) any other relevant factors.

10.54 Application for instalment order (RHC 51A.2-4)

- (1) Where —
 - (a) a judgment or order has been made for the payment of a specified amount, or
 - (b) a judgment or order has been made for the payment of an amount to be decided by the court and the court has decided on a specified amount,

the judgment debtor or judgment creditor, or a coroner with the consent of the judgment creditor, may apply for an order that the amount (less any payments made) be paid by instalments.

- (2) An application under paragraph (1) may be made either —
 - (a) without notice, on the judgment or order being made; or
 - (b) with notice to the respondent to the application, at any time after the making of the judgment or order.
- (3) An application under paragraph (2)(b) shall state —
 - (a) the amount payable under the judgment or order;
 - (b) the amount of any payments made;
 - (c) the times and rate at which the amount is to be paid by instalments; and
 - (d) in the case of an application by a judgment debtor, the means of a debtor.
- (4) On an application under this rule the court may make an order that —
 - (a) the amount payable under the judgment or order (less any payments made), or
 - (b) such part of that amount as the court thinks fit,

shall be paid by instalments at such times and rate as the court thinks fit.

10.55 Stay of enforcement (RHC 51A.4)

(1) Where an instalment order is in force in respect of a judgment or order, no step shall be taken for the enforcement of the judgment or order without the permission of the court, unless the judgment debtor has failed to comply with the terms of the instalment order.

(2) Paragraph (1) does not apply to a judgment or order so far as it provides for any matter other than the payment of an amount of money.

10.56 Variation or revocation of instalment order (RHC 51A.5)

(1) The judgment creditor or judgment debtor may at any time apply to the court for the variation or revocation of an instalment order, and rule 10.54(2), (3) and (4) applies to an application under this rule as it applies to an application under rule 10.54(2)(b).

(2) An application under paragraph (1) must state —

- (a) the amount payable under the judgment or order;
- (b) the amount of any payments made;
- (c) the times and rate of the instalments specified in the instalment order;
- (d) where appropriate, the times and rate of the instalments to be paid under the order as varied; and
- (e) in the case of an application by the judgment debtor, the means of a debtor.

(3) On an application under paragraph (1) the court may vary or revoke the instalment order.

10.57 Exercise of court's functions (14.11-13)

(1) A court officer may exercise any power of the court —

- (a) to make an instalment order under —
 - (i) rule 10.26 (default judgment),
 - (ii) rule 10.53(2) or (3),
 - (iii) rule 10.53(4) or 10.54, where the amount outstanding (including costs) is not more than £50,000; and
- (b) to vary or revoke an instalment order where the amount outstanding (including costs) is not more than £50,000.

(2) Where a court officer makes, varies or revokes an instalment order, he shall do so without a hearing.

(3) Where a judge is to make, vary or revoke an instalment order, he may do so without a hearing.

(4) If there is to be a hearing, the court must give each party at least 7 days' notice of the hearing.

(5) Where —

- (a) a court officer has made an instalment order under rule 10.53(4) or 10.54, or varied or revoked an instalment order; or
- (b) a judge has made an instalment order under rule 10.53(4) or 10.54, or varied or revoked an instalment order, without a hearing,

either party may apply for the decision to be re-determined by a judge.

(6) An application for re-determination must be made within 14 days after service of the instalment order on the applicant.

CHAPTER 8: PROVISIONAL DAMAGES

10.58 Application and definitions (41.1)

(1) This Chapter applies to proceedings to which section 33 of the High Court Act 1991 applies.

(2) In this Chapter 'award of provisional damages' means an award of damages for personal injuries under which —

- (a) damages are assessed on the assumption referred to in section 33 that the injured person will not develop the disease or suffer the deterioration; and

- (b) the injured person is entitled to apply for further damages at a future date if he develops the disease or suffers the deterioration.

10.59 Order for award of provisional damages (41.2)

- (1) The court may make an order for an award of provisional damages if —
 - (a) the particulars of claim include a claim for provisional damages; and
 - (b) the court is satisfied that section 33 of the High Court Act 1991 applies.
- (2) An order for an award of provisional damages —
 - (a) must specify the disease or type of deterioration in respect of which an application may be made at a future date;
 - (b) must specify the period within which such an application may be made; and
 - (c) may be made in respect of more than one disease or type of deterioration and may, in respect of each disease or type of deterioration, specify a different period within which a subsequent application may be made.
- (3) The claimant may make more than one application to extend the period specified under paragraph (2)(b) or (2)(c).

10.60 Application for further damages (41.3)

- (1) The claimant may not make an application for further damages after the end of the period specified under rule 10.59(2), or such period as extended by the court.
- (2) Only one application for further damages may be made in respect of each disease or type of deterioration specified in the award of provisional damages.
- (3) The claimant must give at least 28 days' written notice to the defendant of his intention to apply for further damages.
- (4) If the claimant knows —
 - (a) that the defendant is insured in respect of the claim; and
 - (b) the identity of the defendant's insurers,he must also give at least 28 days' written notice to the insurers.
- (5) Within 21 days after the end of the 28 day notice period referred to in paragraphs (3) and (4), the claimant must apply for directions.

10.61 Apportionment of damages (41.3A)

- (1) Where—
 - (a) a claim includes claims arising under—
 - (i) the Fatal Accidents Act 1981; and
 - (ii) the Law Reform (Miscellaneous Provisions) Act 1938; and
 - (b) a single sum of money is ordered or agreed to be paid in satisfaction of the claims,the court shall apportion the money between the different claims.
- (2) Where, in an action in which a claim under the Fatal Accidents Act 1981 is made by or on behalf of more than one person, a single sum of money is ordered or agreed to be paid in satisfaction of the claim, the court will apportion it between the persons entitled to it.
- (3) Unless it has already been apportioned by the court, a jury or agreement between the parties, the court shall apportion money under paragraphs (1) and (2) —
 - (a) when it gives directions under rule 3.23 (control of money received by minor or patient); or
 - (b) if rule 3.23 does not apply, on application by one of the parties .

CHAPTER 9: *ACCOUNTS, INQUIRIES ETC.*

10.62 Accounts and inquiries: general (PD40.1, 9, 10)

(1) Where the court orders any account to be taken or any inquiry to be made, it may, by the same or a subsequent order, give directions as to the manner in which the account is to be taken and verified or the inquiry is to be conducted.

(2) In particular, the court may direct that, in taking an account, the relevant books of account shall be evidence of their contents but that any party may take such objections to the contents as he may think fit.

(3) Any party may apply to the court for —

- (a) directions as to the taking of an account or the conduct of an inquiry, or
- (b) the variation of directions already made.

(4) Unless the court orders otherwise, an account or inquiry shall be taken or made by a judge.

(5) The court may —

- (a) direct any necessary advertisement; and
- (b) fix the time within which the advertisement should require a reply.

10.63 Further provision as to accounts and inquiries

Schedule 10.1 makes further provision as to accounts and inquiries.

SCHEDULE 10.1 — ACCOUNTS AND INQUIRIES

Rule 10.63

1. *Verifying the account (PD40.2)*

Subject to any order to the contrary —

- (a) the accounting party must make out his account and verify it by an affidavit or witness statement to which the account is exhibited;
- (b) the accounting party must file the account with the court and at the same time notify the other parties that he has done so and of the filing of any affidavit or witness statement verifying or supporting the account.

2. *Objections (PD40.3)*

(1) Any party who wishes to contend —

- (a) that an accounting party has received more than the amount shown by the account to have been received,
- (b) that the accounting party should be treated as having received more than he has actually received,
- (c) that any item in the account is erroneous in respect of amount, or
- (d) that in any other respect the account is inaccurate,

must, unless the court directs otherwise, give written notice to the accounting party of his objections.

(2) The written notice referred to in sub-paragraph (1) must, so far as the objecting party is able to do so —

- (a) state the amount by which it is contended that the account understates the amount received by the accounting party,
- (b) state the amount which it is contended that the accounting party should be treated as having received in addition to the amount he actually received,
- (c) specify the respects in which it is contended that the account is inaccurate, and
- (d) in each case, give the grounds on which the contention is made.

(3) The contents of the written notice must, unless the notice contains a statement of truth, be verified by either an affidavit or a witness statement to which the notice is an exhibit.

3. *Allowances (PD40.4)*

In taking any account all proper allowances shall be made without any express direction to that effect.

4. *Hearing (PD40.5)*

(1) The court may at any stage in the taking of an account or in the course of an inquiry direct a hearing in order to resolve an issue that has arisen.

(2) For that purpose the court may —

- (a) order that points of claim and points of defence be served, and
- (b) give any necessary directions.

5. *Delay (PD40.6)*

If it appears to the court that there is undue delay in the taking of any account or the progress of any inquiry, it may —

- (a) require the accounting party or the party with the conduct of the inquiry, as the case may be, to explain the delay, and

- (b) make such order for the management of the proceedings (including a stay) and for costs as the circumstances may require.

6. *Distribution (PD40.7)*

Where —

- (a) some of the persons entitled to share in a fund are known, but
- (b) there is, or is likely to be, difficulty or delay in ascertaining other persons so entitled,

the court may direct or allow immediate payment of their shares to the known persons without reserving any part of those shares to meet the subsequent costs of ascertaining the other persons.

7. *Guardian's accounts (PD40.8)*

The accounts of a person appointed guardian of the property of a minor under rule 3.25 must be verified and approved in such manner as the court may direct.

8. *Examination of claims (PD40.11)*

(1) Where the court orders an account of debts or other liabilities to be taken, it may direct any party within a specified time —

- (a) to examine the claims of persons claiming to be owed money out of the estate or fund in question;
- (b) to determine, so far as he is able, which of them are valid; and
- (c) to file written evidence —
 - (i) stating his findings and his reasons for them; and
 - (ii) listing any other debts which are or may be owed out of the estate or fund.

(2) Where the court orders an inquiry for other unascertained claimants to an estate or fund, it may direct any party within a specified time —

- (a) to examine the claims that are made;
- (b) to determine, so far as he is able, which of them are valid; and
- (c) to file written evidence stating his findings and his reasons for them.

(3) If the personal representatives or trustees concerned are not the parties directed by the court to examine claims, the court may direct them to join with the party directed to examine claims in producing the written evidence required by this rule.

9. *Consideration of claims by court (PD40.12)*

For the purpose of considering a claim the court may —

- (a) direct it to be investigated in any manner;
- (b) direct the person making the claim to give further details of it; and
- (c) direct that person —
 - (i) to file written evidence; or
 - (ii) to attend court to give evidence,

to support his claim.

10. *Notice of decision (PD40.13)*

Where —

- (a) the court has allowed or disallowed any claim or part of a claim; and
- (b) the person making the claim was not present when the decision was made,

the court shall serve on that person a notice informing him of its decision.

11. *Interest on debts (PD40.14)*

(1) Where a judgment or order directs an account of the debts of a deceased person, unless the deceased's estate is insolvent or the court orders otherwise, interest shall be allowed —

- (a) on any debt which carries interest, at the rate it carries, and
- (b) on any other debt, from the date of the judgment, at the rate payable on judgment debts at that date.

(2) Where interest on a debt is allowed under sub-paragraph (1)(b), it shall be paid out of any assets of the estate which remain after payment of —

- (a) any costs of the proceedings directed to be paid out of the estate;
- (b) all the debts which have been established; and
- (c) the interest on such of those debts as by law carry interest.

(3) For the purpose of this rule —

- (a) 'debt' includes funeral, testamentary or administration expenses; and
- (b) in relation to any expenses incurred after the judgment, paragraph (1)(b) applies as if, instead of the date of the judgment, it referred to the date when the expenses became payable.

12. *Interest on legacies (PD40.15)*

Where an account of legacies is directed by any judgment, then, subject to —

- (a) any directions contained in the will or codicil in question; and
- (b) any order made by the court,

interest shall be allowed on each legacy at the basic rate payable for the time being on funds in court or at such other rate as the court shall direct, beginning one year after the testator's death.