

## **PART 13 : SPECIAL TYPES OF CLAIM**

### **CHAPTER 1: CLAIMS FOR POSSESSION OF LAND**

#### **13.1 Interpretation (55.1)**

In this Chapter —

‘possession claim’ means a claim for the recovery of possession of land (including buildings or parts of buildings);

‘possession claim against trespassers’ means a claim for the recovery of land which the claimant alleges is occupied only by a person or persons who entered or remained on the land without the consent of a person entitled to possession of that land, but does not include a claim against a tenant or sub-tenant whether his tenancy has been terminated or not.

#### **13.2 Possession of land (PD55)**

(1) Where the claimant seeks possession of land, the particulars of claim must be filed and served with the claim form, and must state —

- (a) whether the claim relates to residential property;
- (b) the grounds of the claim for possession,
- (c) the nature of any tenancy (eg. weekly, monthly or yearly or for a fixed term),
- (d) the date of its commencement and, if for a fixed term, the date of expiration of the term;
- (e) the date of any instrument in writing setting out the terms of the tenancy,
- (f) the date of expiry of any notice to quit served on the defendant.

(2) Where the claimant claims possession against trespassers, the particulars of claim must state —

- (a) the claimant’s interest in the land or the basis of his right to claim possession, and
- (b) the circumstances in which it has been occupied without licence or consent.

#### **13.3 Hearing date (55.5)**

(1) The court shall fix a date for the hearing when it issues the claim form.

(2) In a possession claim against trespassers the defendant must be served with the claim form, particulars of claim and any witness statements —

- (a) in the case of residential property, not less than 5 days; and
- (b) in the case of other land, not less than 2 days,

before the hearing date.

(3) In all other possession claims —

- (a) the hearing date shall be not less than 28 days from the date of issue of the claim form;
- (b) the defendant must be served with the claim form and particulars of claim not less than 21 days before the hearing date.

#### **13.4 Service of claims against trespassers (55.6)**

(1) This rule applies where, in a possession claim against trespassers, the claim has been issued against ‘persons unknown’.

(2) The claim form, any particulars of claim and any witness statements must be served on those persons by —

- (a) either —

- (i) attaching copies of those documents to the main door or some other part of the land so that they are clearly visible; and
  - (ii) if practicable, inserting copies of those documents in a sealed transparent envelope addressed to 'the occupiers' through the letter box; or
- (b) placing stakes in the land in places where they are clearly visible and attaching to each stake copies of those documents in a sealed transparent envelope addressed to 'the occupiers'.
- (3) The claimant must file a certificate of service (stating the method or methods by which those documents were served) before the hearing date.

### **13.5 Defendant's response (55.7)**

(1) An acknowledgment of service is not required and Chapter 3 of Part 4 does not apply.

(2) In a possession claim against trespassers rule 6.24 does not apply and the defendant need not file a defence.

(3) Where, in any other possession claim, the defendant does not file a defence within the time specified in rule 6.26, he may take part in any hearing but the court may take his failure to do so into account when deciding what order to make about costs.

### **13.6 The hearing (55.8)**

(1) At the hearing fixed in accordance with rule 13.3(1) or at any adjournment of that hearing, the court may —

- (a) decide the claim; or
- (b) give case management directions.

(2) Where the claim is genuinely disputed on grounds which appear to be substantial, directions given under paragraph (1)(b) shall include the allocation of the claim to a procedure or directions to enable it to be allocated.

(3) Except where —

- (a) the claim is allocated to the summary procedure or the ordinary procedure, or
- (b) the court orders otherwise,

any fact that needs to be proved by the evidence of witnesses at a hearing referred to in paragraph (1) may be proved by evidence in writing.

(4) Subject to paragraph (5), all witness statements must be filed and served at least 10 days before the hearing.

(5) In a possession claim against trespassers all witness statements on which the claimant intends to rely must be filed and served with the claim form.

### **13.7 Allocation (55.9)**

(1) When the court decides the procedure for a possession claim, the matters to which it shall have regard include —

- (a) the amount of any arrears of rent;
- (b) the importance to the defendant of retaining possession of the land;
- (c) the importance of vacant possession to the claimant; and
- (d) if applicable, the alleged conduct of the defendant

(2) The court shall allocate possession claims to the small claims procedure only if all the parties agree.

(3) Where a possession claim has been allocated to the small claims procedure the claim shall be treated, for the purposes of costs, as if it were allocated to the summary procedure.

## **CHAPTER 2: OTHER CLAIMS RELATING TO LAND**

### **13.8 Application of this Chapter**

- (1) This Chapter applies to claims relating to —
  - (a) a dispute concerning —
    - (i) the boundaries of land;
    - (ii) the title to land;
    - (iii) access to land, or
    - (iv) an easement or profit à prendre;
  - (b) the enforcement or construction of a covenant of a kind specified in section 30(4) of the Law Reform Act 1997 (covenants affecting freehold land);
  - (c) the enforcement or construction of any term of a lease or tenancy;
  - (d) the discharge or modification of a restriction affecting land;
  - (e) the cancellation or release of an encumbrance pursuant to section 20 of the Registration of Deeds Act 1961;
  - (f) the annulment or rectification of a registration made pursuant to section 31 of that Act.
- (2) This Chapter does not apply to a claim —
  - (a) which includes a possession claim (within the meaning of Chapter 1);
  - (b) for the recovery of rent only; or
  - (c) to which rule 13.84 applies.

### **13.9 Directions for disposal of claim**

- (1) Where a defence to the claim is filed, any party may apply to the court for directions.
- (2) The application notice must specify the directions which the applicant requests the court to make.
- (3) Directions given on an application under this rule shall —
  - (a) where appropriate, deal with —
    - (i) disclosure of documents,
    - (ii) service of witness statements, and
    - (iii) expert evidence;
    - (iv) the return of a pre-trial checklist;
  - (b) set a timetable for the steps to be taken between the giving of the directions and the trial; and
  - (c) unless the court considers it inappropriate, fix the trial date.
- (4) Directions for disclosure of documents may be —
  - (a) that standard disclosure (as defined in rule 7.35) take place,
  - (b) that no disclosure take place; or
  - (c) that specified documents or specified classes of documents be disclosed.
- (5) Directions under this rule shall be given without a hearing, unless the court thinks it necessary in the special circumstances of the case to hold a hearing.

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

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

### **CHAPTER 3: INTERPLEADER**

#### **13.10 Right to interplead (RSC 17.1)**

Where —

- (a) a person —
  - (i) is under a liability in respect of a debt or in respect of any money or goods, and
  - (ii) is, or expects to be, sued for or in respect of that debt or money or those goods by 2 or more persons making adverse claims to it or them; or
- (b) claim is made to any money or goods taken or intended to be taken by a coroner in execution, or to the proceeds or value of any such goods, by a person other than the person against whom the execution is granted,

the person under liability as mentioned in paragraph (a) or (subject to rule 13.11) the coroner may apply to the court for relief by way of interpleader.

#### **13.11 Claim to goods etc. taken in execution (RSC 17.2)**

(1) Any person making a claim to or in respect of any money or goods taken or intended to be taken in execution, or to the proceeds or value of any such goods, must —

- (a) give notice of his claim to the coroner charged with the execution, and
- (b) include in his notice a statement of his address for service.

(2) On receipt of a claim under this rule the coroner must forthwith give notice of it to the judgment creditor, who must, within 7 days after receiving the notice, give notice to the coroner informing him whether he admits or disputes the claim.

(3) Where —

- (a) a judgment creditor —
  - (i) gives notice disputing a claim in accordance with paragraph (2), or
  - (ii) fails within the period mentioned in that paragraph to give notice admitting or disputing the claim, and
- (b) the claim under this rule is not withdrawn,

the coroner may apply to the court under rule 13.10.

(4) Where a judgment creditor gives notice admitting a claim in accordance with paragraph (2) —

- (a) the judgment creditor is only liable to the coroner for fees and expenses incurred by the coroner before receipt of the notice; and
- (b) the coroner —
  - (i) must withdraw from possession of the money or goods claimed, and
  - (ii) may apply to the court for an order restraining the bringing of a claim against him having taken possession of the money or goods.

#### **13.12 Claim in respect of goods protected from arrest (RSC 17.2A)**

(1) Where a judgment debtor whose goods have been arrested, or are intended to be arrested, by a coroner claims that the goods are not liable to execution by virtue of

paragraph 2 of Schedule 1 to the Administration of Justice Act 1981, he must within 5 days of the seizure give notice in writing to the coroner —

- (a) identifying all those goods in respect of which he makes such a claim, and
- (b) the grounds of such claim in respect of each item.

(2) On receipt of a notice under paragraph (1), the coroner must forthwith give notice of it to —

- (a) the judgment creditor, and
- (b) any person who has made a claim to or in respect of the goods under rule 13.11(1).

(3) The judgment creditor and any person who has made such a claim must, within 7 days of receipt of a notice under paragraph (2), inform the coroner in writing whether he admits or disputes the judgment debtor's claim in respect of each item.

(4) Where the judgment creditor and any person who is given notice under paragraph (2)(b) —

- (a) give notice admitting the judgment debtor's claim, or
- (b) fail within the period mentioned in paragraph (3) to give notice admitting or disputing the claim,

the coroner must withdraw from possession of any goods in respect of which the judgment debtor's claim is admitted or is not disputed and must so inform the parties in writing.

(5) Where the judgment creditor or any person who is given notice under paragraph (2)(b) gives notice disputing the judgment debtor's claim, the coroner —

- (a) must forthwith apply to the court for directions, and
- (b) may also apply for an order restraining the bringing of any claim against him for having seized any of those goods or having failed so to do.

(6) On an application under paragraph (5)(a) the court may —

- (a) determine the judgment debtor's claim summarily; or
- (b) give such directions for the determination of any issue raised by the claim as may be just.

### **13.13 Mode of application (RSC 17.3)**

(1) An application for relief under this Chapter must be made —

- (a) in accordance with Chapter 2 of Part 7 if made in an existing claim;
- (b) otherwise by a claim form, in which case it shall be allocated to the chancery procedure.

(2) Where a coroner has withdrawn from possession of money or goods taken in execution and applies for relief under rule 13.11(4)(b)(ii) or rule 13.12(5)(b), the claim form or application notice must be served on any person who made a claim under rule 13.11 to or in respect of the money or goods, and that person may attend the hearing of the application.

(3) Subject to paragraph (5), a claim form or application notice under this rule must be supported by evidence that the applicant —

- (a) claims no interest in the subject-matter in dispute other than for charges or costs;
- (b) does not collude with any of the claimants to that subject-matter; and
- (c) is willing to pay or transfer that subject-matter into court or to dispose of it as the court may direct.

(4) Any person who makes a claim under rule 13.11 and who is served with a claim form under this rule must within 14 days serve on the judgment creditor and the coroner

a witness statement or affidavit specifying any money and describing any goods and chattels claimed and setting out the grounds upon which such claim is based.

- (5) Where the applicant is a coroner —
  - (a) he shall not provide such evidence as is referred to in paragraph (3) unless directed by the court to do so;
  - (b) a claim form under this rule must give notice of the requirement in paragraph (4).

#### **13.14 Powers of court (RSC 17.5)**

(1) Where on the hearing of a claim under this Chapter all the persons by whom adverse claims to the subject-matter in dispute ('the interpleader claimants') appear, the court may order —

- (a) that any interpleader claimant be made a defendant in any claim pending with respect to the subject-matter in dispute in substitution for or in addition to the applicant for relief under this order; or
- (b) that an issue between the interpleader claimants be stated and tried and may direct which of the interpleader claimants is to be claimant and which defendant.

(2) Where —

- (a) the applicant under this order is a coroner;
- (b) all the interpleader claimants consent or any of them so requests; or
- (c) the question at issue between the interpleader claimants is a question of law and the facts are not in dispute,

the court may summarily determine the question at issue between the interpleader claimants and make an order accordingly on such terms as may be just.

(3) Where an interpleader claimant, having been duly served with a claim form under this Chapter —

- (a) does not appear at the hearing, or
- (b) having appeared, fails or refuses to comply with an order made in the proceedings,

the court may make an order declaring the interpleader claimant, and all persons claiming under him, for ever barred from prosecuting his claim against the applicant for such relief and all persons claiming under him.

(4) An order under paragraph (3) shall not affect the rights of the interpleader claimants as between themselves.

#### **13.15 Power to order sale of goods taken in execution (RSC 17.6)**

Where —

- (a) an application for relief under this order is made by a coroner who has taken possession of any goods in execution under any process, and
- (b) an interpleader claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods by way of security for debt,

the court may —

- (i) order the goods or any part of them to be sold, and
- (ii) direct that the proceeds of sale be applied in such manner and on such terms as are just and are specified in the order.

### **13.16 Powers of court (RSC 17.7, 8, 11)**

(1) Where a defendant to a claim applies for relief under this Chapter in the claim, the court may by order stay all further proceedings in the claim.

(2) Where the court determines any issue in proceedings under this Chapter, it may give such judgment or make such order as finally to dispose of all questions arising in the proceedings.

(3) Subject to the foregoing rules of this Chapter, the court may in or for the purposes of any proceedings under this Chapter make such order as to costs or any other matter as it thinks just.

## **CHAPTER 4: PROBATE, WILLS, ESTATES AND TRUSTS**

### **13.17 Scope of this Chapter (57.1)**

- (1) This Chapter contains rules about —
- (a) probate claims;
  - (b) claims for the rectification of wills;
  - (c) claims and applications —
    - (i) to substitute another person for a personal representative; or
    - (ii) to remove a personal representative; and
  - (d) claims under the Inheritance (Provision for Family and Dependents) Act 1982;
  - (e) claims for the court to determine, or for its opinion, advice or direction on, any question arising in —
    - (i) the administration of the estate of a deceased person; or
    - (ii) the management, administration or execution of a trust;
  - (f) claims for the administration of the estate of a deceased person, or the execution of a trust, to be carried out under the direction of the court;
  - (g) claims under the Variation of Trusts Act 1961;
  - (h) claims under the Charities Act 1962; and
  - (i) claims under section 51 of the High Court Act 1991 (action authorised in reliance on counsel's opinion).

(2) In this Chapter —

‘the 1990 Act’ means the Administration of Estates Act 1990 ;

‘probate claim’ means a claim for —

- (a) the grant of probate of the will, or letters of administration of the estate, of a deceased person;
- (b) the revocation of such a grant; or
- (c) a decree pronouncing for or against the validity of an alleged will;

not being a claim which is non-contentious or common form probate business;

‘testamentary document’ means a will, a draft of a will, written instructions for a will made by or at the request of, or under the instructions of, the testator, and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed;

‘will’ includes a codicil.

### **13.18 Allocation of probate claim etc. (57.2, PD57.2)**

- (1) A probate claim shall be allocated to the ordinary procedure.

(2) The title of a probate claim shall be *'In the estate of [name] deceased (Probate)'*.

### **13.19 Acknowledgment of service and defence (57.4)**

(1) In a probate claim, a defendant who is served with a claim form must file an acknowledgment of service.

(2) Subject to paragraph (3), the period for filing an acknowledgment of service is —

(a) if the defendant is served with a claim form which states that particulars of claim are to follow, 28 days after service of the particulars of claim; and

(b) in any other case, 28 days after service of the claim form.

(4) Rule 6.26 (period for filing defence) applies with the omission of the words 'under Chapter 3 of Part 4' in paragraph (1)(b).

### **13.20 Filing of testamentary documents and evidence (57.5)**

(1) In a probate claim any testamentary document of the deceased person in the possession or control of any party must be filed.

(2) The claimant and every defendant who acknowledges service of the claim form must in written evidence —

(a) describe any testamentary document of the deceased of which he has any knowledge or, if he does not know of any such testamentary document, state that fact, and

(b) if any testamentary document of which he has knowledge is not in his possession or under his control —

(i) give the name and address of the person in whose possession or under whose control it is or

(ii) if he does not know the name or address of that person, state that fact.

(3) Unless the court directs otherwise, the testamentary documents and the written evidence required by paragraph (2) must be filed —

(a) by the claimant when the claim form is issued; and

(b) by a defendant when he acknowledges service.

(4) Except with the permission of the court, a party shall not be allowed to inspect the testamentary documents or written evidence lodged or filed by any other party until he himself has lodged his testamentary documents and filed his evidence.

(5) The written evidence about testamentary documents must be signed by the party personally and not by his advocate (except that, if the party is a minor or patient, the written evidence must be signed by his litigation friend).

(6) Where there is urgent need to commence a probate claim and it is not possible for the claimant to lodge the testamentary documents or to file the evidence about testamentary documents at the same time as the claim form is issued, the court may direct that the claimant may issue the claim form upon his giving an undertaking to the court to lodge the documents and file the evidence within such time as the court specifies.

### **13.21 Revocation of existing grant (57.6)**

(1) In a probate claim which seeks the revocation of a grant of probate or letters of administration, every person who is entitled, or claims to be entitled, to administer the estate under that grant must be made a party to the claim.

(2) If the claimant is the person to whom the grant was made, he must file the probate or letters of administration when the claim form is issued.

(3) If a defendant has the probate or letters of administration under his control, he must file it or them when he acknowledges service.

(4) Paragraphs (2) and (3) do not apply where the grant has already been filed.

### **13.22 Contents of statements of case (57.7)**

(1) In a probate claim the claim form must contain a statement of the nature of the interest of the claimant and of each defendant in the estate.

(2) If a party disputes another party's interest in the estate he must state this in his statement of case and set out his reasons.

(3) Any party who contends that at the time when a will was executed the testator did not know of and approve its contents must give particulars of the facts and matters relied on.

(4) Any party who wishes to contend that —

(a) a will was not duly executed;

(b) at the time of the execution of a will the testator was not of sound mind, memory and understanding; or

(c) the execution of a will was obtained by undue influence or fraud,

must set out the contention specifically and give particulars of the facts and matters relied on.

(5) A defendant may give notice in his defence that he does not raise any positive case, but insists on the will being proved in solemn form and, for that purpose, will cross-examine the witnesses who attested the will.

(6) If a defendant gives a notice under paragraph (5), the court shall not make an order for costs against him unless it considers that there was no reasonable ground for opposing the will.

### **13.23 Counterclaim (57.8)**

(1) A defendant to a probate claim who contends that he has any claim or is entitled to any remedy relating to the grant of probate of the will or letters of administration of the estate of the deceased person must serve a counterclaim making that contention.

(2) If the claimant fails to serve particulars of claim within the time allowed, the defendant may, with the permission of the court, serve a counterclaim and the probate claim shall then proceed as if the counterclaim were the particulars of claim.

### **13.24 Probate counterclaim in other proceedings (57.9)**

(1) In this rule 'probate counterclaim' means a counterclaim in any claim other than a probate claim, by which the defendant claims any such remedy as is mentioned in rule 13.17(2).

(2) Subject to the following paragraphs of this rule, this Chapter applies with the necessary modifications to a probate counterclaim as it applies to a probate claim.

(3) A probate counterclaim must contain a statement of the nature of the interest of each of the parties in the estate of the deceased to which the probate counterclaim relates.

### **13.25 Failure to acknowledge service or to file a defence (57.10)**

(1) A default judgment cannot be obtained in a probate claim, and rule 4.14(1) and Chapter 2 of Part 10 do not apply.

(2) If any of several defendants fails to acknowledge service the claimant may —

(a) after the time for acknowledging service has expired; and

(b) upon filing written evidence of service of the claim form and (if no particulars of claim were contained in or served with the claim form) the particulars of claim on that defendant;

proceed with the probate claim as if that defendant had acknowledged service.

(3) If no defendant acknowledges service or files a defence then, unless on the application of the claimant the court orders the claim to be discontinued, the claimant may, after the time for acknowledging service or for filing a defence (as the case may be) has expired, apply to the court for an order that the claim is to proceed to trial.

(4) When making an application under paragraph (3) the claimant must file written evidence of service of the claim form and (if no particulars of claim were contained in or served with the claim form) the particulars of claim on each of the defendants.

(5) Where the court makes an order under paragraph (3), it may direct that the claim be tried on written evidence.

### **13.26 Probate claims: case management (PD57.4)**

In giving directions in a probate claim the court shall give consideration to the questions —

- (a) whether any person who may be affected by the claim and who is not joined as a party should be joined as a party or given notice of the claim, whether under rule 3.27 or otherwise; and
- (b) whether to make a representation order under rule 3.28 or 3.29.

### **13.27 Discontinuance and dismissal of probate claim (57.11)**

(1) Chapter 8 of Part 7 does not apply to probate claims.

(2) At any stage of a probate claim the court, on the application of the claimant or of any defendant who has acknowledged service, may order that —

- (a) the claim be discontinued or dismissed on such terms as to costs or otherwise as it thinks just; and
- (b) a grant of probate of the will, or letters of administration of the estate, of the deceased person be made to the person entitled to the grant.

### **13.28 Summary judgment (PD57.5)**

(1) If an order pronouncing for a will in solemn form is sought on an application for summary judgment under Chapter 6 of Part 10, the evidence in support of the application must include written evidence proving due execution of the will.

(2) If a defendant has given notice in his defence under rule 13.22(5) that he raises no positive case but —

- (a) he insists that the will be proved in solemn form; and
- (b) for that purpose he will cross-examine the witnesses who attested the will;

any application by the claimant for summary judgment is subject to the right of that defendant to require those witnesses to attend court for cross-examination.

### **13.29 Settlement of a probate claim (PD57.6)**

(1) If at any time the parties agree to settle a probate claim, the court may —

- (a) order the trial of the claim on written evidence, which shall lead to a grant in solemn form;
- (b) order that the claim be discontinued or dismissed under rule 13.27, which shall lead to a grant in common form; or
- (c) pronounce for or against the validity of one or more wills under section 34 of the 1990 Act.

(2) An application under section 34 of the 1990 Act must be supported by written evidence identifying the relevant beneficiaries and exhibiting the written consent of each of them, in addition to the written evidence of testamentary documents required by rule 13.20.

### **13.30 Application for an order to bring in a will, etc. (PD57.7)**

(1) Any party applying for an order under section 13 of the 1990 Act must serve the application notice on the person against whom the order is sought.

(2) An application for the issue of a witness summons under section 14 of the 1990 Act —

- (a) may be made without notice; and
- (b) must be supported by written evidence setting out the grounds of the application.

(3) A person against whom a witness summons is issued under section 14 of the 1990 Act who denies that the testamentary document referred to in the witness summons is in his possession or under his control must file written evidence to that effect.

### **13.31 Administration pending determination of probate claim (PD57.8)**

(1) An application under section 22 of the 1990 Act for an order for the grant of administration pending the determination of a probate claim must be made by application notice in the probate claim.

(2) If an order for a grant of administration is made under section 22 of the 1990 Act —

- (a) rules 12.18 to 12.21 apply as if the administrator were a receiver appointed by the court;
- (b) if the court allows the administrator remuneration under rule 12.21, it may make an order under section 33 of the 1990 Act assigning the remuneration out of the estate of the deceased; and
- (c) every application relating to the conduct of the administration shall be made by application notice in the probate claim.

(3) The appointment of an administrator to whom letters of administration are granted following an order under section 22 of the 1990 Act shall cease automatically when a final order in the probate claim is made but shall continue pending any appeal.

### **13.32 Rectification of wills (57.12, PD57.10)**

(1) This rule applies to an application for rectification of a will under section 20 of the Wills Act 1985.

(2) Every personal representative of the estate must be joined as a party.

(3) If the claimant is the person to whom the grant was made in respect of the will of which rectification is sought, he must, unless the court orders otherwise, file the probate or letters of administration with the will annexed when the claim form is issued.

(4) If a defendant has the probate or letters of administration in his possession or under his control, he must, unless the court orders otherwise, file it within 14 days after the service of the claim form on him.

### **13.33 Substitution and removal of personal representatives (57.13, PD57.13, 14)**

(1) This rule applies to claims and applications for the substitution or removal of a personal representative under section 8 of the 1990 Act.

(2) Every personal representative of the estate must be joined as a party.

(3) The claim form or application notice must be accompanied by —

- (a) written evidence containing the grounds of the claim, and
- (b) the following information so far as it is known to the claimant —
  - (i) brief details of the property comprised in the estate, with an approximate estimate of its capital value and any income that is received from it;

- (ii) brief details of the liabilities of the estate;
  - (iii) the names and addresses of the persons who are in possession of the documents relating to the estate;
  - (iv) the names of the beneficiaries and their respective interests in the estate; and
  - (v) the name, address and occupation of any proposed substituted personal representative.
- (4) If the claim or application is for the appointment of a substituted personal representative, the claim form or application notice must be accompanied by —
- (a) a signed or sealed consent to act; and
  - (b) written evidence as to the fitness of the proposed substituted personal representative, if an individual, to act.
- (5) On the hearing of the claim or application the personal representative must produce to the court the grant of representation to the deceased's estate.

### **13.34 Family provision claims (57.14, PD57.16)**

(1) This rule applies to claims under the Inheritance (Provision for Family and Dependents) Act 1982 ('the 1982 Act').

(2) A claim under section 1 of the 1982 Act must be made by issuing a claim form, and shall be allocated to the chancery procedure.

(3) The written evidence filed and served by the claimant with the claim form must —

- (a) include details of the income, outgoings, assets and liabilities of the claimant, and
- (b) have exhibited to it an official copy of —
  - (i) the grant of probate or letters of administration in respect of the deceased's estate; and
  - (ii) every testamentary document in respect of which probate or letters of administration were granted.

(4) The time within which a defendant must file and serve —

- (a) an acknowledgment of service; and
- (b) any written evidence,

is 21 days after service of the claim form on him.

(5) A defendant who is a personal representative of the deceased must file and serve written evidence, which must include the following information —

- (a) full details of the value of the deceased's net estate, as defined in section 24 of the 1982 Act;
- (b) the person or classes of persons beneficially interested in the estate, and —
  - (i) the names and (unless they are parties to the claim) addresses of all living beneficiaries; and
  - (ii) the value of their interests in the estate so far as they are known;
- (c) whether any living beneficiary (and if so, naming him) is a minor or patient; and
- (d) any facts which might affect the exercise of the court's powers under the Act.

(6) After the expiration of 21 days from service of the claim form, any party may apply to the court for directions.

### 13.35 Administration of estates and trusts (64.2-4)

- (1) This rule applies to claims —
  - (a) for the court to determine, or for its opinion, advice or direction on, any question arising in —
    - (i) the administration of the estate of a deceased person; or
    - (ii) the management, administration or execution of a trust;
  - (b) for an administration order;
  - (c) under the Variation of Trusts Act 1961;
  - (d) relating to a charitable trust; and
  - (e) under section 51 of the High Court Act 1991 (action authorised in reliance on counsel’s opinion).

- (2) In this rule —

‘administration order’ means an order for the administration of the estate of a deceased person, or the execution of a trust, to be carried out under the direction of the court;

‘trustees’ includes executors and administrators.

- (3) Any claim under this rule must be made by issuing a claim form, and shall be allocated to the chancery procedure.

- (4) In a claim to which this rule applies, other than an application under section 51 of the High Court Act 1991 —

- (a) all the trustees must be parties;
- (b) if the claim is made by trustees, any of them who does not consent to being a claimant must be made a defendant; and
- (c) the claimant may make parties to the claim any persons with an interest in or claim against the estate, or an interest under the trust, who it is appropriate to make parties having regard to the nature of the order sought;
- (d) in the case of a charitable trust, the Attorney General (if not the claimant) must be made a defendant.

- (5) In addition, in a claim under the Variation of Trusts Act 1961, unless the court directs otherwise any person who —

- (a) created the trust; or
- (b) provided property for the purposes of the trust,

must, if still alive, be made a party to the claim.

- (6) Where an application is made for an order under section 1 of the Charities Act 1962 relating to a charitable trust—

- (a) there must be filed with the claim form —
  - (i) a copy of any trust instrument relating to the trust;
  - (ii) a summary of the assets (distinguishing between permanent endowments and other assets) and liabilities of the trust; and
  - (iii) a draft of the order sought; and
- (b) the court shall, when the claim form is issued —
  - (i) fix a hearing at which directions shall be given as to publicity for the application and any other matter appearing to the court to be expedient; and
  - (ii) give notice of the time and place of the hearing to the claimant, any defendant and the Attorney General.

(7) Paragraph (6) applies with any necessary modifications to an application for approval of a scheme under —

- (a) Schedule 3 to the Church Act 1992;
- (b) Part 1 of Schedule 1 to the National Health Service Act 2001; or
- (c) Schedule 8 to the Education Act 2001.

## **CHAPTER 5: ADMIRALTY PROCEEDINGS**

### **13.36 Scope and interpretation (61.1)**

(1) This Chapter applies to admiralty claims.

(2) In this Chapter —

‘admiralty claim’ means a claim within the Admiralty jurisdiction of the court as set out in Schedule 1 to the High Court Act 1991;

‘claim in rem’ means a claim in an admiralty action in rem, and ‘claim in rem form’ means a claim form in a claim in rem;

‘collision claim’ means a claim within paragraph 3(b) of Schedule 1 to the High Court Act 1991;

‘limitation claim’ means a claim within paragraph 3(c) of that Schedule;

‘salvage claim’ means a claim —

- (a) for or in the nature of salvage;
- (b) for special compensation under Article 14 of Schedule 11 to the Merchant Shipping Act 1995 (an Act of Parliament);
- (c) for the apportionment of salvage; and
- (d) arising out of or connected with any contract for salvage services;

‘caution against arrest’ means a caution entered in the Register under rule 13.42;

‘caution against release’ means a caution entered in the Register under rule 13.43;

‘the register’ means the register of cautions maintained under rule 13.41;

‘ship’ includes any vessel used in navigation

### **13.37 Claims in rem (61.3)**

(1) This rule applies to claims in rem.

(2) The title of the proceedings shall begin with the words ‘*Admiralty claim in rem against*’ and brief particulars of the property against which the claim is made (including, in the case of a ship, her name and port of registry).

(3) Subject to rule 13.38, the particulars of claim must be —

- (a) contained in or served with the claim form; or
- (b) served on the defendant by the claimant within 75 days after service of the claim form.

(4) An acknowledgment of service must be filed within 14 days after service of the claim form.

(5) The claim form must be served in one of the following ways —

- (a) on the property against which the claim is brought by fixing a copy of the claim form —
  - (i) on the outside of the property in a position which may reasonably be expected to be seen; or
  - (ii) where the property is freight, either on the cargo in respect of which the freight was earned; or on the ship on which the cargo was carried;

- (b) if the property to be served is in the custody of a person who will not permit access to it, by leaving a copy of the claim form with that person;
  - (c) where the property has been sold by the coroner, by filing the claim form at the court;
  - (d) where there is a notice against arrest, on the person named in the notice as being authorised to accept service;
  - (e) on any advocate authorised to accept service;
  - (f) in accordance with any agreement providing for service of proceedings; or
  - (g) in any other manner as the court may direct under rule 2.30, provided that the property against which the claim is brought or part of it is within the jurisdiction of the court.
- (6) The claim form must be served within 12 months after the date of issue.
- (7) If a claim form has been issued (whether served or not), any person who wishes to defend the claim may file an acknowledgment of service.

### **13.38 Special provisions relating to collision claims (61.4)**

- (1) This rule applies to collision claims.
  - (2) A claim form need not contain or be followed by particulars of claim, and rule 4.6 does not apply.
  - (3) An acknowledgment of service must be filed.
  - (4) A party who wishes to dispute the court's jurisdiction must make an application under rule 4.16 within 2 months after filing his acknowledgment of service.
  - (5) Every party must —
    - (a) within 2 months after the defendant files the acknowledgment of service; or
    - (b) where the defendant applies under rule 4.16, within 2 months after the defendant files the further acknowledgment of service,
- file a completed collision statement of case.
- (6) A collision statement of case must be verified by a statement of truth.
  - (7) A claim form in a collision claim may not be served out of the jurisdiction unless —
    - (a) the case falls within paragraph 19(a), (b) or (c) of Schedule 1 to the High Court Act 1991; or
    - (b) the defendant has submitted to or agreed to submit to the jurisdiction;
- and the court gives permission in accordance with Chapter 9 of Part 2.
- (8) Where permission to serve a claim form out of the jurisdiction is given, the court shall specify the period within which the defendant may file an acknowledgment of service and, where appropriate, a collision statement of case.
  - (9) Where, in a collision claim in rem ('the original claim') —
    - (a) an additional claim, or a cross-claim in rem, arising out of the same collision or occurrence is made;
    - (b) the party bringing the original claim has caused the arrest of a ship or has obtained security in order to prevent such arrest; and
    - (c) the party bringing the additional claim or cross-claim is unable to arrest a ship or otherwise obtain security,

the party bringing the additional claim or cross-claim may apply to the court to stay the original claim until sufficient security is given to satisfy any judgment that may be given in favour of that party.

(10) The consequences set out in paragraph (11) apply where a party to a claim to establish liability for a collision claim (other than a claim for personal injuries) —

- (a) makes an offer to settle in the form set out in paragraph (12) not less than 21 days before the start of the trial;
- (b) that offer is not accepted; and
- (c) the maker of the offer obtains at trial an apportionment equal to or more favourable than his offer.

(11) Where paragraph (10) applies the parties will, unless the court considers it unjust, be entitled to the following costs —

- (a) the maker of the offer will be entitled to —
  - (i) all his costs from 21 days after the offer was made; and
  - (ii) his costs before then in the percentage to which he would have been entitled had the offer been accepted; and
- (b) all other parties to whom the offer was made —
  - (i) will be entitled to their costs up to 21 days after the offer was made in the percentage to which they would have been entitled had the offer been accepted; but
  - (ii) will not be entitled to their costs thereafter.

(12) An offer under paragraph (10) must be in writing and must contain —

- (a) an offer to settle liability at stated percentages;
- (b) an offer to pay costs in accordance with the same percentages;
- (c) a term that the offer remain open for 21 days after the date it is made; and
- (d) a term that, unless the court orders otherwise, on expiry of that period the offer remains open on the same terms except that the offeree should pay all the costs from that date until acceptance.

### **13.39 Arrest (61.5)**

- (1) In a claim in rem —
  - (a) a claimant; and
  - (b) a judgment creditor,

may apply to have the property proceeded against arrested.

(2) A party making an application for arrest must —

- (a) request a search to be made in the register before the warrant is issued to determine whether there is a caution against arrest in force with respect to that property; and
- (b) file a declaration (which shall include an undertaking to pay the fees and expenses of the coroner in executing the warrant of arrest).

(3) The declaration required by paragraph (2)(b) must be verified by a statement of truth and must state —

- (a) in every case —
  - (i) the nature of the claim or counterclaim and that it has not been satisfied and if it arises in connection with a ship, her name;
  - (ii) the nature of the property to be arrested and, if the property is a ship, her name and port of registry; and
  - (iii) the amount of the security sought, if any;

- (b) in a claim against a ship by virtue of paragraph 13 of Schedule 1 to the High Court Act 1991 —
  - (i) the name of the person who would be liable on the claim if it were not commenced in rem;
  - (ii) that the person referred to in (i) was, when the right to bring the claim arose the owner or charterer of; or in possession or in control of, the ship in connection with which the claim arose; and
  - (iii) that at the time the claim form was issued the person referred to in (i) was either the beneficial owner of all the shares in the ship in respect of which the warrant is required, or the charterer of it under a charter by demise;
- (c) in the cases set out in paragraphs (5) and (6), that the relevant notice has been sent or served, as appropriate; and
- (d) in the case of a claim in respect of liability incurred under section 153 of the Merchant Shipping Act 1995 (an Act of Parliament), the facts relied on as establishing that the court is not prevented from considering the claim by reason of section 166(2) of that Act.

(4) A warrant of arrest may not be issued as of right in the case of property in respect of which the beneficial ownership, as a result of a sale or disposal by any court in any jurisdiction exercising admiralty jurisdiction in rem, has changed since the claim form was issued.

(5) A warrant of arrest may not be issued against a ship owned by a State where, by any convention or treaty extending to the Island, the United Kingdom has undertaken to minimise the possibility of arrest of ships of that State until —

- (a) notice has been served on a consular officer at the consular office of that State in London or the port at which it is intended to arrest the ship; and
- (b) a copy of that notice is attached to any declaration under paragraph (3)(b).
- (6) Except —
  - (a) with the permission of the court; or
  - (b) where notice has been given under paragraph (5),

a warrant of arrest may not be issued in a claim in rem against a foreign ship belonging to a port of a State in respect of which an Order in Council has been made under section 4 of the Consular Relations Act 1968 (an Act of Parliament), until the expiration of 2 weeks from appropriate notice to the consul.

(7) A warrant of arrest is valid for 12 months but may only be executed if the claim form —

- (a) has been served; or
- (b) remains valid for service at the date of execution.

(8) Property may be arrested only by the coroner.

(9) Property under arrest —

- (a) may not be moved unless the court orders otherwise; and
- (b) may be immobilised or prevented from sailing in such manner as the coroner may consider appropriate.

(10) Where an in rem claim form has been issued and security sought, any person who has filed an acknowledgment of service may apply for an order specifying the amount and form of security to be provided.

#### **13.40 Security in claim in rem (61.6)**

- (1) This rule applies if, in a claim in rem, security has been given —
  - (a) to obtain the release of property under arrest; or
  - (b) to prevent the arrest of property.
- (2) The court may order that —
  - (a) the amount of security be reduced and may stay the claim until the order is complied with; or
  - (b) the claimant may arrest or re-arrest the property proceeded against to obtain further security.
- (3) The court may not make an order under paragraph (2)(b) if the total security to be provided would exceed the value of the property —
  - (a) at the time of the original arrest; or
  - (b) at the time security was first given (if the property was not arrested).

#### **13.41 Register of cautions**

A register of cautions against arrest and release shall be maintained at the court office, and may be inspected by any person at any time when the court office is open for business.

#### **13.42 Cautions against arrest (61.7)**

- (1) Any person may file a request for a caution against arrest.
- (2) The court shall enter the caution in the register if —
  - (a) the person filing the request undertakes —
    - (i) to file an acknowledgment of service; and
    - (ii) to give sufficient security to satisfy the claim with interest and costs; or
  - (b) where the person filing the request has constituted a limitation fund in accordance with Article 11 of the Convention on Limitation of Liability for Maritime Claims 1976, he —
    - (i) states that such a fund has been constituted; and
    - (ii) undertakes that the claimant will acknowledge service of the claim form by which any claim may be begun against the property described in the request.
- (3) A caution against arrest —
  - (a) is valid for 12 months after the date it is entered in the register; but
  - (b) may be renewed for a further 12 months by filing a further request.
- (4) Paragraphs (1) and (2) apply to a further request under paragraph (3)(b).
- (5) Property may be arrested if a caution against arrest has been entered in the register but the court may order that —
  - (a) the arrest be discharged; and
  - (b) the party procuring the arrest pays compensation to the owner of or other persons interested in the arrested property.

#### **13.43 Release and cautions against release (61.8)**

- (1) Where property is under arrest —
  - (a) an in rem claim form may be served upon it; and

(b) it may be arrested by any other person claiming to have an in rem claim against it.

(2) Any person who —

(a) claims to have a right in rem against any property under arrest; and

(b) wishes to be given notice of any application in respect of that property or its proceeds of sale,

may file a request for a caution against release.

(3) When a request under paragraph (2) is filed, a caution against release shall be entered in the register.

(4) Property shall be released from arrest if —

(a) it is sold by the court;

(b) the court orders release on an application made by any party;

(c) the arresting party and all persons who have entered cautions against release file a request for release; or

(d) any party files —

(i) a request for release (containing an undertaking); and

(ii) consents to the release of the arresting party and all persons who have entered cautions against release.

(5) Where the release of any property is delayed by the entry of a caution against release under this rule any person who has an interest in the property may apply for an order that the person who entered the caution pay damages for losses suffered by the applicant because of the delay.

(6) The court may not make an order under paragraph (5) if satisfied that there was good reason to request the entry of, and to maintain, the caution.

(7) Any person —

(a) interested in property under arrest or in the proceeds of sale of such property; or

(b) whose interests are affected by any order sought or made,

may be made a party to any claim in rem against the property or proceeds of sale.

(8) Where —

(a) a ship —

(i) is not under arrest but cargo on board her is; or

(ii) is under arrest but cargo on board her is not; and

(b) a person interested in the ship or cargo wishes to discharge the cargo,

he may, without being made a party, request the coroner to authorise steps to discharge the cargo.

(9) If —

(a) the coroner considers a request under paragraph (8) reasonable; and

(b) the applicant gives an undertaking in writing acceptable to the coroner to pay —

(i) his fees; and

(ii) all expenses to be incurred by him or on his behalf on demand,

the coroner must apply to the court for an order to permit the discharge of the cargo.

(10) Where a person interested in the ship or cargo is unable or unwilling to give an undertaking as referred to in paragraph (9)(b), he may —

- (a) be made a party to the claim; and
- (b) apply to the court for an order for —
  - (i) discharge of the cargo; and
  - (ii) directions as to the fees and expenses of the coroner with regard to the discharge and storage of the cargo.

**13.44 Judgment in default (61.9)**

(1) In a claim in rem (other than a collision claim) the claimant may obtain judgment in default of an acknowledgment of service only if —

- (a) the defendant has not filed an acknowledgment of service; and
- (b) the time for doing so set out in rule 13.37(4) has expired.

(2) In a claim in rem (other than a collision claim) the claimant may obtain judgment in default of defence only if —

- (a) a defence has not been filed; and
- (b) the relevant time limit for doing so has expired.

(3) In a collision claim, a party who has filed a collision statement of case within the time specified by rule 13.38(5) may obtain judgment in default of a collision statement of case only if —

- (a) the party against whom judgment is sought has not filed a collision statement of case; and
- (b) the time for doing so set out in rule 13.38(5) has expired.

(4) An application for judgment in default —

- (a) under paragraph (1), (2) or (3) in a claim in rem must be made by filing —
  - (i) an application notice;
  - (ii) a certificate proving service of the claim form; and
  - (iii) evidence proving the claim to the satisfaction of the court; and
- (b) under paragraph (3) in any other claim must be made in accordance with Chapter 2 of Part 10 with any necessary modifications.

(5) An application notice seeking judgment in default and, unless the court orders otherwise, all evidence in support, must be served on all persons who have entered cautions against release on the register.

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

(7) The claimant may apply to the court for judgment against a party at whose instance a notice against arrest was entered where —

- (a) the claim form has been served on that party;
- (b) the sum claimed in the claim form does not exceed the amount specified in the undertaking given by that party in accordance with rule 13.42(2)(a)(ii); and
- (c) that party has not fulfilled that undertaking within 14 days after service on him of the claim form.

**13.45 Sale by the court, priorities and payment out (61.10)**

(1) An application for an order for the survey, appraisalment or sale of a ship may be made in a claim in rem at any stage by any party.

(2) If the court makes an order for sale, it may —

- (a) set a time within which notice of claims against the proceeds of sale must be filed; and
- (b) the time and manner in which such notice must be advertised.
- (3) Any party with a judgment against the property or proceeds of sale may at any time after the time referred to in paragraph (2) apply to the court for the determination of priorities.
- (4) An application notice under paragraph (3) must be served on all persons who have filed a claim against the property.
- (5) Payment out of the proceeds of sale may be made only to judgment creditors and —
  - (a) in accordance with the determination of priorities; or
  - (b) as the court orders.

**13.46 Limitation claims (61.11, PD61.11)**

- (1) This rule applies to limitation claims.
- (2) A claim is started by the issue of a limitation claim, accompanied by a declaration —
  - (a) setting out the facts upon which the claimant relies,
  - (b) stating the names and addresses (if known) of all persons who, to the knowledge of the claimant, have claims against him in respect of the occurrence to which the claim relates (other than named defendants), and
  - (c) verified by a statement of truth.
- (3) The claimant and at least one defendant must be named in the claim form, but all other defendants may be described.
- (4) The claim form —
  - (a) must be served on all named defendants and any other defendant who requests service upon him; and
  - (b) may be served on any other defendant.
- (5) Subject to paragraph (6)(b), an acknowledgment of service is not required.
- (6) Every defendant upon whom a claim form is served must —
  - (a) within 28 days of service file —
    - (i) a defence; or
    - (ii) a notice that he admits the right of the claimant to limit liability; or
  - (b) if he wishes —
    - (i) to dispute the jurisdiction of the court; or
    - (ii) to argue that the court should not exercise its jurisdiction, file within 14 days of service an acknowledgment of service.
- (7) If a defendant files an acknowledgment of service under paragraph (6)(b) he shall be treated as having accepted that the court has jurisdiction to hear the claim unless he applies under rule 4.16 within 14 days after filing the acknowledgment of service.
- (8) Where one or more named defendants admits the right to limit —
  - (a) the claimant may apply for a restricted limitation decree; and
  - (b) the court shall issue a decree limiting liability only against those named defendants who have admitted the claimant's right to limit liability.
- (9) A restricted limitation decree —

- (a) may be obtained against any named defendant who fails to file a defence within the time specified for doing so; and
  - (b) need not be advertised, but a copy must be served on the defendants to whom it applies.
- (10) Where all the defendants upon whom the claim form has been served admit the claimant's right to limit liability —
- (a) the claimant may apply to the court for a general limitation decree; and
  - (b) the court shall issue a limitation decree.
- (11) Where one or more of the defendants upon whom the claim form has been served do not admit the claimant's right to limit, the claimant may apply for a general limitation decree.
- (12) When a limitation decree is granted the court —
- (a) may —
    - (i) order that any proceedings relating to any claim arising out of the occurrence be stayed;
    - (ii) order the claimant to establish a limitation fund (if one has not been established) or to make such other arrangements for payment of claims against which liability is limited; or
    - (iii) if the decree is a restricted limitation decree, distribute the limitation fund; and
  - (b) shall, if the decree is a general limitation decree, give directions as to advertisement of the decree and set a time within which notice of claims against the fund must be filed or an application made to set aside the decree.
- (13) When the court grants a general limitation decree the claimant must —
- (a) advertise it in such manner and within such time as the court directs; and
  - (b) file —
    - (i) a declaration that the decree has been advertised in accordance with paragraph (a); and
    - (ii) copies of the advertisements.
- (14) No later than the time set in the decree for filing claims, each of the defendants who wishes to assert a claim must file and serve his statement of case on —
- (a) the limiting party; and
  - (b) all other defendants except where the court orders otherwise.
- (15) Any person other than a defendant upon whom the claim form has been served may apply to the court within the time fixed in the decree to have a general limitation decree set aside.
- (16) An application under paragraph (15) must be supported by a declaration —
- (a) stating that the applicant has a claim against the claimant arising out of the occurrence; and
  - (b) setting out grounds for contending that the claimant is not entitled to the decree, either in the amount of limitation or at all.
- (17) The claimant may constitute a limitation fund by making a payment into court.
- (18) A limitation fund may be established before or after a limitation claim has been started.

(19) If a limitation claim is not commenced within 75 days after the date the fund was established —

- (a) the fund will lapse; and
- (b) all money in court (including interest) will be repaid to the person who made the payment into court.

(20) Money paid into court under paragraph (17) will not be paid out except under an order of the court.

#### **13.47 Stay of proceedings (61.12)**

Where the court orders a stay of any claim in rem —

- (a) any property under arrest in the claim remains under arrest; and
- (b) any security representing the property remains in force,

unless the court orders otherwise.

#### **13.48 Assessors (61.13)**

The court may sit with assessors when hearing —

- (a) collision claims; or
- (b) other claims involving issues of navigation or seamanship;

the parties shall not be permitted to call expert witnesses unless the court orders otherwise.

### **CHAPTER 6: *ARBITRATION CLAIMS***

#### **13.49 Interpretation (62.11)**

(1) In this Chapter —

‘the 1976 Act’ means the Arbitration Act 1976;

‘arbitration claim’ means an application to the court under the 1976 Act.

(2) This Chapter does not apply to a claim on an arbitration award.

#### **13.50 Starting the claim (62.13)**

(1) An arbitration claim must be started —

- (a) if made in existing proceedings, by an application notice;
- (b) otherwise, by the issue of a claim form.

(2) The claim, unless made in existing proceedings, shall be allocated to the chancery procedure.

#### **13.51 Time limits and other special provisions about arbitration claims (62.15)**

(1) An arbitration claim —

- (a) to remit an award under section 23 of the 1976 Act; or
- (b) to set aside an award under section 24(2) of the 1976 Act or otherwise;

must be made, and the claim form or application notice served, within 21 days after the award has been made and published to the parties.

(2) In an arbitration claim to which paragraph (1) applies —

- (a) the claim form or application notice must state the grounds of the claim;
- (b) where the claim is based on written evidence, a copy of that evidence must be served with the claim form; and
- (c) where the claim is made with the consent of the arbitrator, the umpire or the other parties, a copy of every written consent must be served with the claim form.

### **13.52 Service out of the jurisdiction (62.16)**

- (1) Subject to paragraph (2) —
  - (a) the claim form or application notice in an arbitration claim; or
  - (b) any order made in an arbitration claim,

may be served out of the jurisdiction with the permission of the court if the arbitration to which the claim relates —

- (i) is governed by the law of the Island; or
- (ii) has been, is being, or will be, held within the jurisdiction.

(2) A claim form or application notice seeking permission to enforce an award may be served out of the jurisdiction with the permission of the court, whether or not the arbitration is governed by the law of the Island.

(3) An application for permission under paragraph (1) or (2) must be supported by written evidence —

- (a) stating the grounds on which the application is made; and
- (b) showing in what place or country the person to be served is, or probably may be found.

(4) An order giving permission under paragraph (1) or (2) must specify the period within which the defendant may file an acknowledgment of service.

### **13.53 Enforcement of awards (62.18)**

(1) An application for permission under section 27 of the 1976 Act to enforce an award in the same manner as a judgment or order may be made without notice in a claim form.

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

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

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

- (5) An application for permission must be supported by written evidence —
  - (a) exhibiting the arbitration agreement and the original award (or copies);
  - (b) stating the name and the usual or last known place of residence or business of the claimant and of the person against whom it is sought to enforce the award; and
  - (c) stating either —
    - (i) that the award has not been complied with; or
    - (ii) the extent to which it has not been complied with at the date of the application.

(6) An order giving permission must —

- (a) be drawn up by the claimant; and
- (b) be served on the defendant by —
  - (i) delivering a copy to him personally; or
  - (ii) sending a copy to him at his usual or last known place of residence or business.

(7) An order giving permission may be served out of the jurisdiction —

- (a) without permission; and
- (b) in accordance with rules 2.43 to 2.48 as if the order were a claim form.
- (8) Within 14 days after service of the order or, if the order is to be served out of the jurisdiction, within such other period as the court may set —
  - (a) the defendant may apply to set aside the order; and
  - (b) the award must not be enforced until —
    - (i) the end of that period; or
    - (ii) after any application made by the defendant within that period has been finally disposed of.
- (9) The order must contain a statement of —
  - (a) the right to make an application to set the order aside; and
  - (b) the restrictions on enforcement under paragraph (8)(b).
- (10) Where a body corporate is a party, any reference in this rule to place of residence or business is a reference to the registered or principal address of the body corporate.

**13.54 Interest on awards (62.19)**

Where an applicant seeks to enforce an award of interest the whole or any part of which relates to a period after the date of the award, he must file a statement giving the following particulars —

- (a) whether simple or compound interest was awarded;
- (b) the date from which interest was awarded;
- (c) where rests were provided for, specifying them;
- (d) the rate of interest awarded; and
- (e) a calculation showing —
  - (i) the total amount claimed up to the date of the statement; and
  - (ii) any sum which will become due on a daily basis.

**13.55 Registration of awards under the Arbitration (International Investment Disputes) Act 1983 (62.21)**

- (1) In this rule —

‘the 1983 Act’ means the Arbitration (International Investment Disputes) Act 1983;

‘award’ means an award under the Convention;

‘the Convention’ means the Convention on the settlement of investment disputes between States and nationals of other States which was opened for signature in Washington on 18th March 1965;

‘judgment creditor’ means the person seeking recognition or enforcement of an award;

‘judgment debtor’ means the other party to the award.

(2) Subject to the provisions of this rule, the following provisions apply with such modifications as may be necessary in relation to an award as they apply in relation to a judgment to which Part I of the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968 applies —

- (a) rule 12.56(1), (2), (3), (4)(a) to (e) and (5);
- (b) rule 12.58 (except paragraph (3)(c) to (e)); and
- (c) rule 12.60(2).

(3) An application to have an award registered in the court under section 1 of the 1983 Act shall be allocated to the chancery procedure.

(4) The written evidence required by rule 12.56 in support of an application for registration must —

- (a) exhibit the award certified under the Convention instead of the judgment (or a copy of it); and
- (b) in addition to stating the matters referred to in rule 12.56(4)(a) to (e) state whether —
  - (i) at the date of the application the enforcement of the award has been stayed (provisionally or otherwise) under the Convention; and
  - (ii) any, and if so what, application has been made under the Convention, which, if granted, might result in a stay of the enforcement of the award.

(5) Where, on granting permission to register an award or an application made by the judgment debtor after an award has been registered, the court considers —

- (a) that the enforcement of the award has been stayed (whether provisionally or otherwise) under the Convention; or
- (b) that an application has been made under the Convention which, if granted, might result in a stay of the enforcement of the award,

the court may stay the enforcement of the award for such time as it considers appropriate.

(6) This rule applies, with the necessary modifications, in relation to an award rendered pursuant to the Convention referred to in the Multilateral Investment Guarantee Agency Act 1989 as it applies in relation to an award.

## **CHAPTER 7: COMPANIES**

### **13.56 General**

- (1) This Chapter applies to applications to the court under —
  - (a) the 1931 Act, the 1982 Act, the 1992 Act, the 2006 Act or the 2009 Act;
  - (b) Schedule 2 to the Insurance Act 2008 (transfer of long-term insurance business).
- (2) In this Chapter —
  - ‘the 1931 Act’ means the Companies Act 1931 and includes that Act as applied to limited liability companies by the Limited Liability Companies Act 1996;
  - ‘the 1982 Act’ means the Companies Act 1982;
  - ‘the 1992 Act’ means the Companies Act 1992;
  - ‘the 2006 Act’ means the Companies Act 2006;
  - ‘the 2009 Act’ means the Company Officers (Disqualification) Act 2009;
  - ‘disqualification application’ means an application for a disqualification order;
  - ‘disqualification order’ means an order referred to in section 1(1) of the 2009 Act;
  - ‘disqualification proceedings’ means proceedings on a disqualification application.

(3) All proceedings under this Chapter shall be allocated to the chancery procedure.

(4) Where proceedings under this Chapter are begun by a claim form, the title of the proceedings shall be —

- (a) in the case of disqualification proceedings, ‘*Proceedings under the Company Officers (Disqualification) Act 2009*’ followed by the description of the parties in accordance with Schedule 3.1;

- (b) in any other case, '*Proceedings under the Companies Act 1931* (or as the case may be) relating to [name of company]'

### **13.57 Start of proceedings**

(1) Any application under the 1931 Act, the 1982 Act, the 1992 Act, the 2006 Act or the 2009 Act must be made —

- (a) in accordance with Chapter 2 of Part 7, where there are pending proceedings relating to the company in the court, and
- (b) otherwise, by the issue of a claim form.

(2) Any application under Schedule 2 to the Insurance Act 1986 must be made by the issue of a claim form.

### **13.58 Special procedure for certain applications**

(1) This rule applies to applications under the following provisions of the 1931 Act —

- (a) section 5 (cancellation of alteration of company's objects);
- (b) section 46 (reduction of share premium account);
- (c) section 46A (reduction of capital redemption reserve);
- (e) section 57 (reduction of share capital);
- (f) section 62 (cancellation of variation etc. of rights attached to class of shares);
- (g) section 85 (rectification of register of charges);
- (h) section 101 (rectification of register);
- (i) section 152 (compromise or arrangement with creditors or members);
- (j) section 252 (disclaimer of onerous property);
- (k) section 272 (avoidance of dissolution);
- (l) section 273 (restoration of name of company to register);
- (m) section 303 (cancellation of alteration of form of constitution);
- (n) section 337 (relief from liability of officer or auditor).

(2) This rule applies to applications under the following provisions of the 2006 Act —

- (a) section 51 (relief in respect of distribution when insolvent);
  - (b) section 54 (order restraining purchase etc. of shares);
  - (c) section 64 (rectification of register of members);
  - (d) section 99 (relief from liability of director);
  - (e) section 123 (dispute as to liability etc. in respect of cell);
  - (f) section 126 (receivership in respect of cell);
  - (g) section 160 (application by dissenting shareholder as to transfer);
  - (h) section 175 (leave to bring or intervene in proceedings);
  - (i) section 180 (order as to oppressive or prejudicial conduct);
  - (j) section 188 (restoration of company to register);
  - (k) section 217 (declaration as to interpretation of Act etc.).
- (3) This rule also applies to applications under —
- (a) sections 8(2) and 21(1) (cancellation of certain special resolutions) of the 1992 Act; and

- (b) Schedule 2 to the Insurance Act 1986 (sanction of transfer of long term insurance business).
- (4) On or after the filing of an application to which this rule applies, the applicant must apply for directions by filing an application notice.
- (5) At the directions hearing the court may give such directions for the hearing of the application as it thinks fit including, in particular, directions for the publication of notices and the making of any inquiry.
- (6) Where the application is to confirm a reduction of the share capital, the share premium account, or the capital redemption reserve, of a company the court may give directions —
  - (a) for an inquiry to be made as to the debts of, and claims against, the company or as to any class or classes of such debts or claims,
  - (b) as to the proceedings to be taken for settling the list of creditors entitled to object to the reduction and fixing the date by reference to which the list is to be made,
- (7) The power of the court under section 57(3) of the 1931 Act to direct that section 57(2) shall not apply as regards any class of creditors may be exercised at any directions hearing.
- (8) The consent of a creditor to a reduction mentioned in paragraph (6) may be proved in such manner as the court thinks sufficient.
- (9) The evidence in support of an application to confirm a reduction of capital need not show as regards any issue of shares made for a consideration other than cash that the statutory requirements as to registration were complied with, and it is sufficient to state in the application the extent to which any issued shares are or are deemed to be paid up.

### **13.59 Disqualification — general**

- (1) Subject to rule 13.66, rules 13.60 to 13.65 apply to a disqualification application.
- (2) Rule 6.9(2) does not apply to a disqualification application.

### **13.60 Contents of claim form or application notice**

There must be included in the claim form or application notice statements as follows—

- (a) that the application is made in accordance with this Chapter;
- (b) whether the application is for an order under section 4, 5 or 9 of the 2009 Act;
- (c) except in the case of an application by the Financial Supervision Commission, the status of the claimant (for example, the liquidator or a present creditor of a company of which the defendant is or was an officer);
- (d) the maximum period and (where appropriate) minimum period for which the court may make a disqualification order, that is —
  - (i) where the application is for an order under section 4 or 5 of that Act, a period of not less than 2, and not more than 15, years; and
  - (ii) where the application is for an order under section 9 of that Act, a period of not more than 15 years;
- (e) that the application for a disqualification order may, in accordance with this Chapter, be heard and determined summarily, without further or other notice to the defendant, and that, if it is so heard and determined, the court may impose disqualification for a period of up to 5 years;

- (f) that if at the hearing of the application the court, on the evidence then before it, is minded to impose, in the defendant's case, disqualification for any period longer than 5 years, it will not make a disqualification order on that occasion but will adjourn the application to be heard (with further evidence, if any) at a later date to be notified; and
- (g) that any evidence which the defendant wishes to be taken into consideration by the court must be filed in court in accordance with the time limits imposed under rule 13.63 (the provisions of which shall be set out on the claim form or application notice).

### **13.61 Case against defendant**

(1) The claimant must, when the claim form is issued or the application notice is served, file evidence in support of the application for a disqualification order; and copies of the evidence must be served with the claim form or application notice on the defendant.

(2) The evidence must be by one or more affidavits, except where the claimant is the official receiver, in which case it may be in the form of a written report (with or without affidavits by other persons) which shall be treated as if it had been verified by affidavit by him and shall be prima facie evidence of any matter contained in it.

### **13.62 Response to application**

(1) Where the application is made by a claim form, the acknowledgement of service must include the statement referred to in paragraph (3), and rule 4.11(1)(c) does not apply.

(2) Where the application is made by an application notice, the notice must include the statement referred to in paragraph (3).

(3) The statement is that the defendant should indicate —

- (a) whether he contests the application on the grounds, that in case of any particular company—
  - (i) he was not an officer of the company at a time when conduct of his, or of other persons, in relation to that company is in question, or
  - (ii) his conduct as officer of that company was not as alleged in the evidence filed in support of the application,
- (b) whether, in the case of any conduct of his, he disputes the allegation that such conduct makes him unfit to be concerned in the management of a company, and
- (c) whether he, while not resisting the application, intends to adduce mitigating factors with a view to justifying only a short period of disqualification.

### **13.63 Evidence**

(1) The affidavits or official receiver's report in support of the application must include —

- (a) a statement of the matters by reference to which it is alleged that a disqualification order should be made against the defendant; and
- (b) a statement of the steps taken to comply with any requirements imposed by section 3(2) of the 2009 Act.

(2) The defendant must, within 28 days from the date of service of the claim form or application notice file any affidavit evidence in opposition to the application that he wishes the court to take into consideration, and must forthwith serve upon the claimant a copy of such evidence.

(3) The claimant must, within 14 days from receiving the copy of the defendant's evidence, file any further evidence in reply that he wishes the court to take into consideration, and must forthwith serve a copy of that evidence upon the defendant.

(4) Rules 8.21(2) and 8.22 do not apply.

### **13.64 Hearing of application**

(1) When the claim form is issued or application notice filed, the court shall fix a date for the first hearing of the application, which shall not be less than 8 weeks from the date of issue of the claim form or filing of the application notice.

(2) The hearing shall in the first instance be before a judge in open court.

(3) The judge shall either determine the case on the date fixed or adjourn it.

(4) Where the case is not adjourned —

(a) the application may be heard and determined summarily, without further or other notice to the defendant; and

(b) if it is so heard and determined, the court may impose disqualification for a period of not more than 5 years

(5) The judge shall adjourn the case for further consideration if—

(a) he forms the provisional opinion that a disqualification order ought to be made, and that a period of disqualification longer than 5 years is appropriate, or

(b) he is of opinion that questions of law or fact arise which are not suitable for summary determination.

(6) If the judge adjourns the case for further consideration he shall—

(a) direct whether the case is to be heard and determined by a Deemster;

(b) state the reasons for the adjournment; and

(c) give directions as to the following matters—

(i) the manner in which and the time within which notice of the adjournment and the reasons for it are to be given to the defendant,

(ii) the filing in court and the service of further evidence (if any) by the parties,

(iii) the inspection and disclosure of documents;

(iv) such other matters as the judge thinks necessary or expedient with a view to an expeditious disposal of the application, and

(v) the time and place of the adjourned hearing.

(7) Where the case is adjourned, the application may (subject to any direction under paragraph (6)(a)) be heard and determined by the judge who originally dealt with the case or by another judge.

### **13.65 Making and setting aside of disqualification order**

(1) The court may make a disqualification order against the defendant whether or not he appears, and whether or not he has completed and returned the acknowledgement of service of the claim form, or filed evidence in accordance with rule 13.63.

(2) Any disqualification order made in the absence of the defendant may be set aside or varied by the court on such terms as it thinks just.

(3) Unless the court in exceptional circumstances otherwise orders, an application for the setting aside or variation of a disqualification order made in the absence of the defendant must be made not later than 42 days after the making of the order.

### **13.66 Summary disposal by consent**

(1) This rule applies where the parties decide to invite the court to deal with a disqualification application summarily, and rules 13.60 to 13.65 have effect subject to this rule.

(2) The claimant must notify the court in writing of the parties' decision when or as soon as possible after filing the claim form or application notice.

(3) The claimant must file a written statement —

(a) containing, except where the court otherwise directs, any material facts which, for the purposes of the application, are either agreed or not opposed (by either party); and

(b) specifying —

(i) the period of disqualification which the parties accept that the agreed or unopposed facts justify, or

(ii) the band of years (for example, 6 to 10 years) into which they will submit the case falls.

(4) Unless the court otherwise orders, the hearing of the application shall be in private, but any disqualification order shall be made in public.

(5) Unless the court otherwise orders, the written statement referred to in paragraph (3) shall be annexed to the disqualification order.

(6) If the court refuses to deal with the application summarily, it shall give directions in accordance with rule 13.64(6) as if the case had been adjourned under rule 13.64(5).

## **CHAPTER 8: INTELLECTUAL PROPERTY CLAIMS**

### **13.67 Scope of this Chapter and interpretation (63.1)**

(1) This Part applies to all intellectual property claims including those relating to

(a) registered intellectual property rights such as —

(i) patents;

(ii) registered designs;

(iii) registered trade marks;

(iv) Community trade marks; and

(v) supplementary protection certificates;

(b) unregistered intellectual property rights such as —

(i) copyright;

(ii) design right;

(iii) rights in performances;

(iv) moral rights;

(v) rights to prevent circumvention of copy-protection;

(vi) plant variety rights;

(vii) database rights;

(viii) rights to trade secrets;

(ix) rights to prevent passing off;

(x) rights to geographical indications.

(2) In this Chapter —

‘the 1977 Act’ means the Patents Act 1977 (an Act of Parliament);

‘the 1991 Act’ means the Copyright Act 1991;

‘the 1994 Act’ means the Trade Marks Act 1994 (an Act of Parliament);

‘the Comptroller’ means the Comptroller General of Patents, Designs and Trade Marks;

‘patent’ means a patent under the 1977 Act and includes a supplementary protection certificate;

‘the register’ means whichever of the following registers is appropriate —

- (a) the register of patents maintained by the Comptroller under section 32 of the 1977 Act;
- (b) the register of designs maintained by the registrar under section 17 of the Registered Designs Act 1949;
- (c) the register of trade marks maintained by the registrar under section 63 of the 1994 Act;

‘the registrar’ means —

- (a) the registrar of trade marks; or
- (b) the registrar of registered designs,

whichever is appropriate.

### **13.68 Starting intellectual property claim (63.5, 63.13)**

(1) Claims to which this Part applies must be started —

- (a) by issuing a claim form; or
- (b) as an additional claim in existing proceedings.

(2) Claims relating to —

- (a) patents,
- (b) registered designs, and
- (c) supplementary protection certificates;

shall be allocated to the ordinary procedure.

(3) Claims relating to —

- (a) copyright;
- (b) design right;
- (c) rights in performances;
- (d) moral rights;
- (e) rights to prevent circumvention of copy-protection;
- (f) registered trade marks;
- (g) Community trade marks;
- (h) plant variety rights;
- (i) database rights;
- (j) rights to trade secrets;
- (k) rights to prevent passing off; and
- (l) rights to geographical indications;

shall be allocated to the chancery procedure.

### **13.69 Patents and registered designs**

Schedule 13.1 has effect with respect to claims relating to patents and registered designs.

### **13.70 Trade marks: service of claim form on registrar (63.14)**

In a claim under the 1994 Act, the claim form or application notice must be served on the registrar where the relief sought would, if granted, affect an entry in the register.

### **13.71 Claim for infringement of registered trade mark (63.15)**

- (1) In a claim for infringement of a registered trade mark the defendant may —
  - (a) in his defence, challenge the validity of the registration of the trade mark; and
  - (b) apply by an additional claim for —
    - (i) revocation of the registration;
    - (ii) a declaration that the registration is invalid; or
    - (iii) rectification of the register.

(2) Where a defendant applies under paragraph (1)(b) and the relief sought would, if granted, affect an entry in the register, he must serve on the registrar a copy of his claim form.

### **13.72 Service (63.16)**

A claim form relating to a registered right may be served on a party who has registered the right at the address for service given for that right in the register, provided that the address is within the Isle of Man or the United Kingdom.

## **CHAPTER 9: REVIEW OF DETENTION**

### **13.73 Scope**

This Chapter applies to a claim to review the lawfulness of the detention of any person ('the detainee').

### **13.74 Starting claim (RSC 54.1)**

(1) The claim shall be started by an application in accordance with Chapter 2 of Part 7 for an order requiring the defendant to produce the detainee and to show cause why the detainee should not be released from detention (an 'order to produce').

(2) Subject to paragraph (3), the application notice must be accompanied by a witness statement or affidavit by the detainee showing that the claim is made at his instance and setting out the nature of the detention.

(3) Where the detainee is unable for any reason to make the witness statement or affidavit required by paragraph (2), it may be made by some other person on his behalf, and must state that the detainee is unable to make the witness statement or affidavit himself and for what reason.

(4) The application may be made without notice to any other party.

(5) If the court office is open, the application notice and witness statement or affidavit must be filed, and the court office must forthwith refer them to a Deemster.

(6) In case of emergency, if the court office is closed the application may be made to a Deemster.

### **13.75 Power of court where application made without notice (RSC 54.2)**

(1) Where an application under rule 13.74 is made without notice being served on any other party, the court may —

- (a) forthwith make an order to produce,

- (b) where the application is made to a Deemster otherwise than in court, direct that an application for an order to produce be made to the court by claim form;
- (c) where the application is made to a Deemster in court, adjourn the application so that notice thereof may be given, or direct that an application be made to the court by claim form.

(2) The claim form must be served on the defendant and on such other persons as the court or Deemster may direct, and, unless the court otherwise directs, there must be at least 5 clear days between the service of the claim form and the date named therein for the hearing of the application.

### **13.76 Copies of witness statements or affidavits to be supplied (RSC 54.3)**

Every party to an application under rule 13.74 must supply to every other party copies of the witness statements or affidavits which he proposes to use at the hearing of the application.

### **13.77 Directions as to hearing etc. (RSC 54.5)**

An order to produce shall include —

- (a) a notice of the time and place of a hearing of the matter, and
- (b) a direction requiring the defendant to file, not later than 3 days before the date of the hearing, a statement showing all the causes of the detention of the detainee, and
- (c) a direction requiring the defendant to bring the detainee to the hearing and to show cause why he should not be released from detention.

### **13.78 Service of order (RSC 54.6)**

(1) Subject to paragraphs (2) and (3), an order under rule 13.74 must be served personally on the person to whom it is directed.

(2) If it is not possible to serve the order personally, or if it is directed to a governor of an institution or other public official, it must be served by leaving it with an employee or agent of the person to whom the order is directed, or a member of the staff of the institution or official, at the place where the detainee is detained.

(3) There must be served with the order a notice stating that in default of obedience proceedings for committal of the party disobeying will be taken.

### **13.79 Power to order release of detainee (RSC 54.4)**

(1) Without prejudice to rule 13.75(1), the court hearing an application under rule 13.74 may in its discretion order that the detainee be released.

(2) At a hearing pursuant to an order to produce the court may order that the detainee be released

(3) An order under this rule shall be a sufficient warrant to any governor of an institution, constable or other person for the release of the detainee.

## **CHAPTER 10: MISCELLANEOUS CLAIMS**

### **13.80 Defamation: summary disposal under Law Reform Act 1997 Part 2 (53.2)**

(1) This rule provides for summary disposal in accordance with Part 2 of the Law Reform Act 1997 ('the Act')

(2) In proceedings for summary disposal under sections 14 and 15 of the Act, rules 10.48 (procedure), 10.49 (evidence) and 10.50 (directions) apply.

(3) An application for summary judgment under Chapter 6 of Part 10 may not be made if —

- (a) an application has been made for summary disposal in accordance with the Act, and that application has not been disposed of; or
  - (b) summary relief has been granted on an application for summary disposal under the Act.
- (4) The court may on any application for summary disposal direct the defendant to elect whether or not to make an offer to make amends under section 9 of the Act.
- (5) When it makes a direction under paragraph (4), the court shall specify the time by which and the manner in which —
- (a) the election is to be made; and
  - (b) notification of it is to be given to the court and the other parties.

### **13.81 Defamation: sources of information (53.3)**

In a claim for defamation, a party shall not be required to provide further information about the identity of the defendant's sources of information, unless the court orders otherwise.

### **13.82 Applications under Mental Health Act 1998 Part 2**

- (1) In this rule —
- (a) 'the Act' means the Mental Health Act 1998;
  - (b) expressions which are defined in the Act have the same meanings as they have in the Act.
- (2) Where an application is made under section 40 of the Act for an order that the functions of the nearest relative of the patient are to be exercisable by some other person —
- (a) the nearest relative must be made a respondent, unless —
    - (i) the application is made on the grounds that the patient has no nearest relative or that it is not reasonably practicable to ascertain whether he has a nearest relative; or
    - (ii) the court orders otherwise; and
  - (b) the court may order that any other person shall be made a respondent.
- (3) Subject to paragraph (4), the court may accept as evidence of the facts relied upon in support of the application, any report made —
- (a) by a medical practitioner; or
  - (b) by any of the following acting in the course of their official duties —
    - (i) a probation officer;
    - (ii) an officer of the Department;
    - (iii) an officer of a voluntary body exercising statutory functions on behalf of the Department; or
    - (iv) an officer of the managers of a hospital.
- (4) The respondent must be informed of the substance of any part of the report dealing with his fitness or conduct that the court considers to be material to the determination of the claim.
- (5) An application under Part 2 of the Act shall be heard in private unless the court orders otherwise.
- (6) The judge may, for the purpose of determining the application, interview the patient. The interview may take place in the presence of, or separately from, the parties. The interview may be conducted elsewhere than at the court.

### **13.83 Applications for injunctions — planning and conservation**

- (1) This rule relates to applications under —

- (a) section 37 of the Town and Country Planning Act 1999, and
- (b) section 6 of the Tree Preservation Act 1993.
- (2) In this rule—
  - (a) ‘injunction’ means an injunction under one of those sections;
  - (b) ‘the defendant’ is the person against whom the injunction is sought.
- (3) An injunction may be granted against a person whose identity is unknown to the applicant.
- (4) Where paragraph (3) applies —
  - (a) the claim form must describe the defendant by reference to —
    - (i) a photograph;
    - (ii) a thing belonging to or in the possession of the defendant; or
    - (iii) any other evidence;
 but the description of the defendant must be sufficiently clear to enable the defendant to be served with the proceedings;
  - (b) the application must be accompanied by a witness statement, which must state —
    - (i) that the applicant was unable to ascertain the defendant’s identity within the time reasonably available to him;
    - (ii) the steps taken by him to ascertain the defendant’s identity;
    - (iii) the means by which the defendant has been described in the claim form; and
    - (iv) that the description is the best the applicant is able to provide.
- (5) When the court issues the claim form it shall fix a date for the hearing.
- (6) The claim form must be served not less than 21 days, or such shorter period as the court may direct, before the hearing date.
- (7) Notice of the hearing date must be served at the same time as the claim form, unless the hearing date is specified in the claim form.
- (8) The court may on the hearing date —
  - (a) proceed to hear the case and dispose of the claim; or
  - (b) give directions.

### **13.84 Applications under Access to Neighbouring Land Act 1993**

- (1) An application under the Access to Neighbouring Land Act 1993 (‘the 1993 Act’) shall be allocated to the chancery procedure.
- (2) Expressions in this rule which are defined in the 1993 Act have the same meaning in this rule as they have in the 1993 Act.
- (3) An application for an access order must be supported by written evidence, and the claim form must —
  - (a) identify the dominant land and the servient land and state whether the dominant land is or includes residential land;
  - (b) specify the works alleged to be necessary for the preservation of the whole or a part of the dominant land;
  - (c) state why entry upon the servient land is required and specify the area to which access is required by reference, if possible, to a plan annexed to the claim form;

- (d) give the name of the person who will be carrying out the works, if it is known at the time claim is started;
  - (e) state the proposed date on which, or the dates between which, the works are to be started and their approximate duration; and
  - (f) state what (if any) provision has been made by way of insurance in the event of possible injury to persons or damage to property arising out of the proposed works.
- (4) The defendants shall be the owner and the occupier of the servient land.
  - (5) The court may direct that notice of the application shall be given to any other person who may be affected by the proposed entry.
  - (6) In the circumstances specified in section 4(3)(a) of the 1993 Act the application may, with the permission of the court, make a person defendant by description instead of by name; and notice of the application may in that case be served on that person by  
—
    - (a) affixing a copy of the claim form to the main door or other conspicuous part of the servient land and, if practicable, inserting through the letter-box on the land a copy of the notice in an envelope addressed to ‘the owner’ or ‘the occupier’ (or as the case may be); or
    - (b) placing stakes in the ground at conspicuous part of the servient land, to each of which shall be affixed a copy of the claim form.
  - (7) The application may, if the court thinks fit, be dealt with in private.

### **13.85 Financial restrictions proceedings**

Schedule 13.2 makes provision for financial restrictions proceedings within the meaning of the Terrorism (Finance) Act 2009.

[rule 13.85 added by SD 222/10]

## SCHEDULE 13.1 — PATENTS AND REGISTERED DESIGNS

### Rule 13.69

#### 1. *Scope and interpretation*

- (1) This Schedule applies to any claim relating to matters arising out of —
  - (a) the Patents Act 1977 (an Act of Parliament) ('the 1977 Act'), or
  - (b) the Registered Designs Act 1949 (an Act of Parliament).

#### 2. *Starting the claim (63.5)*

Claims to which this Schedule applies must be started —

- (a) by issuing a claim form; or
- (b) as an additional claim in existing proceedings.

#### 3. *Defence and reply (63.6)*

- (1) Chapter 5 of Part 6 applies with the following modifications.

(2) In a claim for infringement under paragraph 5, the defence must be filed within 42 days of service of the claim form,

- (3) The claimant must —
  - (a) file any reply to a defence; and
  - (b) serve it on all other parties,

within 21 days of service of the defence.

#### 4. *Disclosure and inspection (PD63.5)*

- (1) Chapter 5 of Part 7 is modified as follows.

(2) Standard disclosure does not require the disclosure of documents where the documents relate to —

- (a) the infringement of a patent by a product or process if, before or at the same time as serving a list of documents, the defendant has served on the claimant and any other party —
  - (i) full particulars of the product or process alleged to infringe; and
  - (ii) drawings or other illustrations, if necessary;
- (b) any ground on which the validity of a patent is put in issue, except documents which came into existence within the period —
  - (i) beginning 2 years before the earliest claimed priority date; and
  - (ii) ending 2 years after that date; and
- (c) the issue of commercial success.

(3) Where the issue of commercial success arises, the patentee must, within such time limit as the court may direct, serve a schedule containing —

- (a) where the commercial success relates to an article or product —
  - (i) an identification of the article or product (for example by product code number) which the patentee asserts has been made in accordance with the claims of the patent;
  - (ii) a summary by convenient periods of sales of any such article or product;
  - (iii) a summary for the equivalent periods of sales, if any, of any equivalent prior article or product marketed before the article or product in sub-paragraph (a); and

- (iv) a summary by convenient periods of any expenditure on advertising and promotion which supported the marketing of the articles or products in (i) and (iii) above; or
- (b) where the commercial success relates to the use of a process —
  - (i) an identification of the process which the patentee asserts has been used in accordance with the claims of the patent;
  - (ii) a summary by convenient periods of the revenue received from the use of such process;
  - (iii) a summary for the equivalent periods of the revenues, if any, received from the use of any equivalent prior art process; and
  - (iv) a summary by convenient periods of any expenditure which supported the use of the process in (i) and (iii) above.

5. *Claim for infringement and challenge to validity (63.9, PD63.11)*

- (1) In a claim for infringement, the statement of case must —
  - (a) show which of the claims in the specification of the patent are alleged to be infringed; and
  - (b) give at least one example of each type of infringement alleged;
 and a copy of each document referred to in the statement of case, and where necessary a translation of the document, must be served with the statement of case.
- (2) In a claim for infringement, the period for service of the defence or additional claim is 42 days after service of the claim form.
- (3) Where the validity of a patent or registered design is challenged —
  - (a) the statement of case must contain particulars of —
    - (i) the relief sought; and
    - (ii) the issues except those relating to validity of the patent or registered design;
  - (b) the statement of case must have a separate document annexed to it headed ‘Grounds of Invalidity’ specifying the grounds on which validity of the patent is challenged;
  - (c) a copy of each document referred to in the grounds of invalidity, and where necessary a translation of the document, must be served with the grounds of invalidity; and
  - (d) the Comptroller must be sent a copy of the grounds of invalidity, and where the grounds of invalidity are amended, a copy of the amended document, at the same time as the grounds of invalidity are served or amended.
- (4) Where, in an application in which validity of a patent or a registered design is challenged, the grounds of invalidity include an allegation —
  - (a) that the invention is not a patentable invention because it is not new or does not involve an inventive step, the particulars must specify such details of the matter in the state of art relied on, as set out in sub-paragraph (5);
  - (b) that the specification of the patent does not disclose the invention clearly enough and completely enough for it to be performed by a person skilled in the art, the particulars must state, if appropriate, which examples of the invention cannot be made to work and in which respects they do not work or do not work as described in the specification; or
  - (c) that the registered design is not new, the particulars must specify such details of the matter in the state of art relied on, as set out in sub-paragraph (5).

- (5) The details required under sub-paragraph (4)(a) and (c) are —
  - (a) in the case of matter or a design made available to the public by written description the date on which and the means by which it was so made available, unless this is clear from the face of the matter; and
  - (b) in the case of matter or a design made available to the public by use —
    - (i) the date or dates of such use;
    - (ii) the name of all persons making such use;
    - (iii) any written material which identifies such use;
    - (iv) the existence and location of any apparatus employed in such use; and
    - (v) all facts and matters relied on to establish that such matter was made available to the public.
- (6) In any proceedings in which the validity of a patent is challenged —
  - (a) on the ground that the invention did not involve an inventive step, a party who wishes to rely on the commercial success of the patent must state the grounds on which he so relies in his statement of case; and
  - (b) the court may order inspection of machinery or apparatus where a party alleges such machinery or apparatus was used before the priority date of the claim.

6. *Application to amend a patent specification in existing proceedings (63.10)*

(1) An application under section 75 of the 1977 Act for permission to amend the specification of a patent by the proprietor of the patent must be made by application notice.

(2) The application notice must —

(a) give particulars of —

- (i) the proposed amendment sought; and
- (ii) the grounds upon which the amendment is sought;

(b) state whether the applicant will contend that the claims prior to amendment are valid; and

(c) be served by the applicant on all parties and the Comptroller within 7 days of its issue.

(3) The application notice must, if it is reasonably possible, be served on the Comptroller electronically.

(4) Within 14 days of the first appearance of the Comptroller's advertisement in the journal of the application to amend, any person who wishes to oppose the application must file and serve on all parties and the Comptroller a notice opposing the application which must include the grounds relied on.

(5) Within 28 days of the first appearance of the advertisement the applicant must apply to the court for directions.

(6) Unless the court otherwise orders, the applicant must within 7 days serve on the Comptroller any order of the court on the application.

(7) In this rule, 'the journal' means the journal published pursuant to rules made under section 123(6) of the 1977 Act.

7. *Court's determination of question or application (63.11)*

Where the Comptroller —

(a) declines to deal with a question under section 8(7), 12(2), 37(8) or 61(5) of the 1977 Act;

- (b) declines to deal with an application under section 40(5) of the 1977 Act; or
- (c) certifies under section 72(7)(b) of the 1977 Act that the court should determine the question whether a patent should be revoked,

any person seeking the court's determination of that question or application must issue a claim form within 14 days of the Comptroller's decision.

8. *Application by employee for compensation (63.12, PD63.13)*

(1) An application by an employee for compensation under section 40(1) or (2) of the 1977 Act must be made —

- (a) in a claim form; and
- (b) within the period prescribed by paragraphs (2) and (3).

(2) The prescribed period begins on the date of the grant of the patent and ends one year after the patent has ceased to have effect.

(3) Where a patent has ceased to have effect as a result of failure to pay the renewal fees within the period prescribed under rule 39 of the Patents Rules 1995, and an application for restoration is made to the Comptroller under section 28 of the 1977 Act, the period prescribed under paragraph (2) —

- (a) if restoration is ordered, continues as if the patent had remained continuously in effect; or
  - (b) if restoration is refused, is treated as expiring one year after the patent ceased to have effect, or six months after the refusal, whichever is the later.
- (4) On the application the court shall give directions as to —
- (a) the manner in which the evidence, including any accounts of expenditure and receipts relating to the claim, is to be given at the hearing of the claim and if written evidence is to be given, specify the period within which witness statements or affidavits must be filed; and
  - (b) the provision to the claimant by the defendant or a person deputed by him, of reasonable facilities for inspecting and taking extracts from the accounts by which the defendant proposes to verify the accounts in (a) or from which those accounts have been derived.

9. *Order affecting entry in the register of patents or designs (PD63.15)*

(1) Where any order of the court affects the validity of an entry in the register, the court and the party in whose favour the order is made, must serve a copy of such order on the Comptroller within 14 days.

(2) Where the order is in favour of more than one party, a copy of the order must be served by such party as the court directs.

10. *Claim for rectification of the register of patents or designs (PD63.16)*

(1) Where a claim is made for the rectification of the register of patents or designs, the claimant must at the same time as serving the other parties, serve a copy of —

- (a) the claim form; and
- (b) accompanying documents

on the Comptroller or registrar, as appropriate.

(2) Where documents are served on the Comptroller or registrar under sub-paragraph (1), he shall be entitled to take part in the proceedings.

SCHEDULE 13.2 — FINANCIAL RESTRICTIONS PROCEEDINGS UNDER  
TERRORISM (FINANCE) ACT 2009

Rule 13.85

11. *Interpretation (79.1)*

In this Schedule —

- (a) ‘the 2009 Act’ means the Terrorism (Finance) Act 2009;
- (b) ‘financial restrictions decision’ means a decision to which section 23 of the 2009 Act applies;
- (c) ‘financial restrictions proceedings’ means proceedings in the court on an application under section 23 of the 2009 Act or on a claim arising from any matter to which such an application relates;
- (d) ‘closed material’ means —
  - (i) material, evidence or submissions to the court upon which the Treasury wish to rely in proceedings;
  - (ii) material which adversely affects the Treasury’s case or supports another party’s case; or
  - (iii) information which the Treasury is required to file pursuant to an order under paragraph 9(7), but which the Treasury objects to disclosing to another party and that party’s legal representative;
- (e) ‘legal representative’, in relation to a party, means the advocate for the party, other than a special advocate;
- (f) ‘material’ means anything in which information of any description is recorded;
- (g) ‘party’ includes the Treasury unless otherwise stated or the context otherwise requires;
- (h) ‘special advocate’ means a person appointed under section 27 of the 2009 Act; and
- (i) ‘specially represented party’ means a party, other than the Treasury, whose interests a special advocate represents.

12. *Modification of overriding objective (79.2)*

- (1) In financial restrictions proceedings the overriding objective in rule 1.2, and so far as relevant any other rule, must be read and given effect in a way which is compatible with the duty set out in sub-paragraph (2).
- (2) The court shall ensure that information is not disclosed contrary to the public interest.
- (3) Without prejudice to sub-paragraph (2), the court shall satisfy itself that the material available to it enables it properly to determine the proceedings.

13. *Procedure on application to set aside financial restrictions decision (79.3-5)*

- (1) An application to set aside a financial restrictions decision shall be allocated to the chancery procedure.
- (2) The following rules do not apply —
  - (a) rule 4.14 (consequence of not filing an acknowledgment of service);
  - (b) rules 5.3 and 5.4 (allocation or transfer of claims to other procedure by court officer or court);
  - (c) rule 5.20 (issue of claim form without naming defendants);
  - (d) rule 5.21 (objection to use of chancery procedure);
  - (e) rule 8.21 (evidence – general); and

(f) rule 8.22 (filing and serving written evidence).

14. *Start of proceedings (79.6)*

- (1) An application to set aside a financial restrictions decision must be started by a claim form.
- (2) The claim form must set out –
  - (a) the details of the financial restrictions decision;
  - (b) details of how the claimant is affected by the financial restrictions decision; and
  - (c) the grounds on which the claimant seeks to set aside the decision.
- (3) The claimant must file with the claim form –
  - (a) a copy of –
    - (i) the written notice of the relevant financial restrictions decision made by the Treasury; or
    - (ii) where relevant, any direction, order or licence made under the Schedule to the Act or any freezing order made under Part VII of the Anti-terrorism and Crime Act 2003; and
  - (b) any evidence, including witness statements, on which the claimant relies at that stage.

15. *Fixing of directions hearing date (79.7)*

- (1) When the court issues the claim form it will fix a date for a directions hearing.
- (2) Unless the court directs otherwise, the directions hearing will be not less than 14 days but not more than 28 days after the date of issue of the claim form.

16. *Service of the claim form and accompanying documents (79.8)*

The court will –

- (a) serve on the Treasury and any special advocate (if one has been appointed) –
  - (i) the claim form; and
  - (ii) the documents specified in paragraph 4(3); and
- (b) send to all parties and any special advocate a notice of the directions hearing date (where such date is not endorsed on the claim form).

17. *Acknowledgment of service (79.9)*

Where a special advocate has been appointed, the Treasury must serve on that special advocate a copy of the acknowledgment of service filed under Chapter 3 of Part 4.

18. *Directions hearing (79.10)*

At the directions hearing the court may give case management directions, in particular –

- (a) for the holding of a further hearing to determine the application;
- (b) fixing a date, time and place for the further hearing at which the parties, their legal representatives (if any) and any special advocate can be present; and
- (c) as to the order in which, and the time within which, the following are to be filed and served –
  - (i) any response to the application to be filed and served by the Treasury under paragraph 9(1), (2) and (4);
  - (ii) any application to be made under paragraph 9(5);
  - (iii) any information to be filed and served by the Treasury pursuant to an order under paragraph 9(7);

- (iv) any evidence to be filed and served by the claimant under paragraph 10(1);
- (v) any evidence to be filed and served by the Treasury under paragraph 10(2);
- (vi) any application by the Treasury under paragraph 9(3) or (8) or 10(3); and
- (vii) any further evidence, including witness statements, written submissions or skeleton arguments, to be filed and served by the parties and any special advocate.

19. *Response by the Treasury (79.11)*

- (1) Where the Treasury intends to oppose the application to set aside the financial restrictions decision, it must file –
  - (a) the grounds for contesting the application; and
  - (b) any relevant evidence of which they are aware at that stage.
- (2) Unless the Treasury objects to the grounds and evidence in sub-paragraph (1) being disclosed to the claimant and the claimant's legal representative, the Treasury must serve a copy of the grounds and evidence on the claimant at the same time as filing the grounds.
- (3) Where the Treasury objects to the grounds and evidence in sub-paragraph (1) being disclosed to the claimant and the claimant's legal representative, the Treasury must make an application in accordance with paragraph 20.
- (4) Where a special advocate has been appointed, the Treasury must serve on that special advocate a copy of the grounds and evidence filed under sub-paragraph (1).
- (5) The claimant and any special advocate may apply to the court for an order directing the Treasury to file and serve further information about the Treasury's grounds filed under sub-paragraph (1)(a).
- (6) The application under sub-paragraph (5) must set out –
  - (a) what information is sought; and
  - (b) why the information sought is necessary for the determination of the application to set aside the financial restrictions decision.
- (7) The court may make an order on an application under sub-paragraph (5) where it considers that the information sought is –
  - (a) necessary for the determination of the application to set aside the financial restrictions decision; and
  - (b) may be provided without disproportionate cost, time or effort.
- (8) Where the Treasury objects to serving on the claimant and the claimant's legal representative the information sought under sub-paragraph (5), the Treasury must make an application in accordance with paragraph 20.

20. *Filing and service of evidence (79.12)*

- (1) Where the claimant wishes to rely on evidence in support of the application to set aside the financial restrictions decision and –
  - (a) such evidence was not filed with the claim form; or
  - (b) such evidence was filed with the claim form but the claimant wishes to rely on further evidence, the claimant must file and serve that evidence, including any witness statement, on the Treasury and any special advocate.
- (2) Where the claimant serves evidence in support of the application, the Treasury must file and serve, subject to sub-paragraph (3), any further evidence, including any witness statement, on the claimant and any special advocate.

- (3) Where the Treasury seeks to withhold disclosure of any closed material from the claimant and the claimant's legal representative, the Treasury must make an application in accordance with paragraph 20.
  - (4) The Treasury must serve any closed material upon the special advocate.
  - (5) The parties and, where relevant, any special advocate must file and serve any further evidence, including witness statements, written submissions or skeleton arguments as directed by the court.
21. *Notification of hearing (79.16)*

Unless the court orders otherwise, the court will serve any notice of the date, time and place fixed for a hearing on –

  - (a) every party, whether or not a party is entitled to attend that hearing; and
  - (b) if one has been appointed for the purposes of the proceedings, the special advocate or those instructing the special advocate.
22. *Hearings (79.17)*
  - (1) All financial restrictions proceedings must be determined at a hearing except where –
    - (a) the claimant withdraws the claim or application;
    - (b) the Treasury consents to the claim or application being allowed; or
    - (c) the parties agree to a determination without a hearing.
  - (2) Where the court considers it necessary for a party other than the Treasury and that party's legal representative to be excluded from a hearing or part of a hearing in order to secure that information is not disclosed contrary to the public interest, the court will –
    - (a) direct accordingly; and
    - (b) conduct the hearing, or that part of it from which the party and that party's legal representative are excluded, in private but attended by a special advocate to represent the interests of the excluded party.
23. *Appointment of a special advocate (79.18)*
  - (1) Subject to sub-paragraph (2), the Treasury must immediately give notice of the proceedings to the Attorney General –
    - (a) upon being served with any claim form, application notice or appeal notice; or
    - (b) where the Treasury intends to file an appeal notice, in financial restrictions proceedings.
  - (2) Sub-paragraph (1) applies unless –
    - (a) the Treasury does not intend to –
      - (i) oppose the claim, application or appeal; or
      - (ii) apply for permission to withhold closed material from a party and that party's legal representative; or
    - (b) a special advocate has already been appointed to represent the interests of a party other than the Treasury and that special advocate is not prevented from communicating with that party by virtue of paragraph 15.
  - (3) Where any financial restrictions proceedings are pending but no special advocate has been appointed, any party may request the Attorney General to appoint a special advocate.
24. *Function of a special advocate (79.19)*

The function of a special advocate is to represent the interests of a party other than the Treasury by, for example –

- (a) making submissions to the court at any hearing from which the party and that party's legal representative are excluded;
  - (b) adducing evidence and cross-examining witnesses at such a hearing;
  - (c) making applications to the court or seeking directions from the court where necessary; and
  - (d) making written submissions to the court.
25. *Special advocate: communicating about proceedings (79.20)*
- (1) The special advocate may communicate with the specially represented party or that party's legal representative at any time before the Treasury serves closed material on the special advocate.
  - (2) After the Treasury serves closed material on the special advocate, the special advocate must not communicate with any person about any matter connected with the proceedings, except in accordance with sub-paragraph (3) or a direction of the court pursuant to a request under sub-paragraph (4).
  - (3) The special advocate may, without directions from the court, communicate about the proceedings with –
    - (a) the court;
    - (b) the Treasury and any persons acting for the Treasury;
    - (c) the Attorney General and any persons acting for the Attorney General; and
    - (d) any other person, except for –
      - (i) the specially represented party and that party's legal representative; and
      - (ii) any other party to the proceedings (other than the Treasury) and that party's legal representative, with whom it is necessary for administrative purposes for the special advocate to communicate about matters not connected with the substance of the proceedings.
  - (4) The special advocate may request directions from the court authorising the special advocate to communicate with the specially represented party or that party's legal representative or with any other person.
  - (5) Where the special advocate makes a request for directions under sub-paragraph (4) –
    - (a) the court will notify the Treasury of the request; and
    - (b) the Treasury must, within a period specified by the court, file and serve on the special advocate notice of any objection which it has to the proposed communication, or to the form in which it is proposed to be made.
  - (6) Sub-paragraph (2) does not prohibit the specially represented party from communicating with the special advocate after the Treasury has served closed material on the special advocate as mentioned in sub-paragraph (1), but –
    - (a) that party may only communicate with the special advocate through a legal representative in writing; and
    - (b) the special advocate must not reply to the communication other than in accordance with directions given by the court, except that the special advocate may without such directions send a written acknowledgment of receipt to the specially represented party's legal representative.
26. *Consideration of the Treasury's objection (79.21)*
- (1) Where the Treasury objects under paragraph 15(5)(b) to a proposed communication by the special advocate the court will fix a hearing for the Treasury and the special advocate to make oral representations, unless –

- (a) the special advocate gives notice to the court that the special advocate does not challenge the objection;
  - (b) the court –
    - (i) has previously considered an objection under paragraph 15(5)(b) to the same or substantially the same communication; and
    - (ii) is satisfied that it would be just to uphold or dismiss that objection without a hearing; or
  - (c) the Treasury and the special advocate consent to the court deciding the issue without a hearing.
- (2) If the special advocate does not challenge the objection, the special advocate must give notice of that fact to the court and to the Treasury –
- (a) within 14 days after the Treasury serves on the special advocate a notice under paragraph 15(5)(b); or
  - (b) within such other period as the court may direct.
- (3) Where the court fixes a hearing under sub-paragraph (1) –
- (a) the special advocate may file and serve on the Treasury a reply to the Treasury’s objection;
  - (b) the Treasury may file and serve on the special advocate a response to the special advocate’s reply; and
  - (c) the Treasury and the special advocate must file at least 7 days before the hearing a schedule identifying the issues which cannot be agreed between them and which must –
    - (i) give brief reasons for their contentions on each issue in dispute; and
    - (ii) set out any proposals for the court to resolve the issues in dispute.
- (4) A hearing under this rule must take place in the absence of the specially represented party and that party’s legal representative.
27. *Modification of the general rules of evidence and disclosure (79.22)*
- (1) Chapter 5 of Part 7 (disclosure and inspection of documents), Chapter 1 of Part 8 (evidence) and Chapter 3 of Part 8 (Hearsay evidence) do not apply to financial restrictions proceedings.
  - (2) Subject to the other provisions of this Schedule, and to any directions of the court, the evidence of a witness may be given either –
    - (a) orally before the court; or
    - (b) in a witness statement.
  - (3) The court may also receive evidence in documentary or any other form.
  - (4) A party is entitled to adduce evidence and to cross-examine witnesses during any part of a hearing from which a party and that party’s legal representative are not excluded.
  - (5) A special advocate is entitled to adduce evidence and to cross – examine witnesses.
  - (6) The court may require a witness to give evidence on oath or by affirmation.
28. *Search for, filing of and service of material (79.23)*
- (1) A party (the disclosing party) must –
    - (a) make a reasonable search for material relevant to the matters under consideration in financial restrictions proceedings; and
    - (b) file and serve on the other party and any special advocate material other than closed material –
      - (i) on which the disclosing party relies;

- (ii) which adversely affects the disclosing party's case;
  - (iii) which adversely affects the other party's case; or
  - (iv) which supports the other party's case.
- (2) The factors relevant in deciding the reasonableness of a search under sub-paragraph (1)(a) include –
- (a) the amount of material involved;
  - (b) the nature and complexity of the proceedings;
  - (c) whether the material is in the control of the party making the search;
  - (d) the ease and expense of retrieval of any material; and
  - (e) the significance of any material which is likely to be located during the search.
- (3) The duty to search for, file and serve material under sub-paragraph (1) continues until the financial restrictions proceedings have been determined.
- (4) Where material, other than closed material, to which the duty under sub-paragraph (1) extends comes to a party's attention before the financial restrictions proceedings have been determined, that party must immediately file it and serve it on the other party and on any special advocate.
29. *Redacted material (79.24)*
- Where the Treasury serves on another party any evidence (including a witness statement) or material which has been redacted on grounds other than those of legal professional privilege, the Treasury must –
- (a) notify the party that the evidence or material has been redacted and on what grounds it has been redacted;
  - (b) file the evidence or material in an unredacted form together with an explanation of the redaction.
30. *Application to withhold closed material (79.25)*
- (1) The Treasury –
- (a) must apply to the court for permission to withhold closed material from another party and that party's legal representative in accordance with this rule; and
  - (b) may not rely on closed material at a hearing unless a special advocate has been appointed and attends the hearing to represent the interests of that party.
- (2) The Treasury must file and serve, at such time as the court directs, on the special advocate –
- (a) the closed material;
  - (b) a statement of the reasons for withholding that material from the specially represented party; and
  - (c) if the Treasury considers it possible to summarise that material without disclosing information contrary to the public interest, a summary of that material in a form which can be served on the specially represented party or that party's legal representative.
- (3) Where the Treasury serves on the special advocate any closed material which has been redacted on grounds other than those of legal professional privilege –
- (a) the Treasury must file the material in an unredacted form together with an explanation of the redactions; and
  - (b) the court will give a direction to the Treasury as to what may be redacted and what, if any, must be served on the special advocate in an unredacted form.

- (4) The Treasury may at any time amend or supplement material filed under this rule, but only with –
  - (a) the agreement of the special advocate; or
  - (b) the permission of the court.

31. *Consideration of the Treasury's application (79.26)*

- (1) Where the Treasury applies in accordance with paragraph 20 for permission to withhold closed material the court will fix a hearing for the Treasury and the special advocate to make oral representations, unless –
  - (a) the special advocate gives notice to the court that the special advocate does not challenge the application;
  - (b) the court –
    - (i) has previously considered an application for permission to withhold the same or substantially the same material; and
    - (ii) is satisfied that it would be just to give permission without a hearing; or
  - (c) the Treasury and the special advocate consent to the court deciding the issue without a hearing.
- (2) If the special advocate does not challenge the application, the special advocate must give notice of that fact to the court and to the Treasury –
  - (a) within 14 days after the Treasury serves on the special advocate the material under paragraph 20(2); or
  - (b) within such other period as the court may direct.
- (3) Where the court fixes a hearing under sub-paragraph (1) –
  - (a) the special advocate may file and serve on the Treasury a reply to the Treasury's application;
  - (b) the Treasury may file and serve on the special advocate a response to the special advocate's reply; and
  - (c) the Treasury and the special advocate must file at least 7 days before the hearing a schedule identifying the issues which cannot be agreed between them and which must –
    - (i) give brief reasons for their contentions on each issue in dispute; and
    - (ii) set out any proposals for the court to resolve the issues in dispute.
- (4) A hearing under this paragraph must take place in the absence of the specially represented party and that party's legal representative.
- (5) The court will give permission to the Treasury to withhold closed material where it considers that disclosure of that material would be contrary to the public interest.
- (6) Where the court gives permission to the Treasury to withhold closed material, the court will –
  - (a) consider whether to direct the Treasury to serve a summary of that material on the specially represented party or that party's legal representative; but
  - (b) ensure that such a summary does not contain material, the disclosure of which would be contrary to the public interest.
- (7) Where the court does not give permission to the Treasury to withhold closed material from, or directs the Treasury to serve a summary of that material on, the specially represented party or that party's legal representative –
  - (a) the Treasury is not required to serve that material or summary; but
  - (b) if it does not do so, at a hearing on notice, the court may –

- (i) where it considers that the material or anything that is required to be summarised might adversely affect the Treasury's case or supports the case of the specially represented party, direct that the Treasury must not rely on such material in its case, or must make such concessions or take such other steps, as the court may specify; or
- (ii) in any other case, direct that the Treasury do not rely on the material or (as the case may be) on that which is required to be summarised.

32. *Failure to comply with directions (79.27)*

- (1) Where a party or special advocate fails to comply with a direction of the court, the court may serve on that party or the special advocate a notice which states –
  - (a) the respect in which that party or special advocate has failed to comply with the direction;
  - (b) a time limit for complying with the direction; and
  - (c) that the court may proceed to determine the proceedings before it, on the material available to it, if the party or special advocate fails to comply with the relevant direction within the time specified.
- (2) Where a party or special advocate fails to comply with such a notice, the court may proceed in accordance with sub-paragraph (1)(c).

33. *Judgments (79.28)*

- (1) When the court gives judgment in any financial restrictions proceedings, it may withhold all or some of its reasons if and to the extent that it is not possible to give reasons without disclosing information contrary to the public interest.
- (2) Where the judgment of the court does not include the full reasons for its decision, the court will serve on the Treasury and the special advocate a separate written judgment including those reasons.
- (3) Where the court serves a separate written judgment under sub-paragraph (2), the special advocate may apply to the court to amend that judgment and the judgment under sub-paragraph (1) on the grounds that the separate written judgment under sub-paragraph (2) contains material not in the judgment under sub-paragraph (1) the disclosure of which would not be contrary to the public interest.
- (4) The special advocate must serve a copy of the application under sub-paragraph (3) on the Treasury.
- (5) The court will give the special advocate and the Treasury an opportunity to file written submissions and may determine the application with or without a hearing.

34. *Application by Treasury for reconsideration of order, direction or judgment (79.29)*

- (1) This rule applies where the court proposes, in any financial restrictions proceedings, to serve on a party other than the Treasury –
  - (a) notice of any order or direction made or given in the absence of the Treasury; or
  - (b) any written judgment.
- (2) Before the court serves any such notice or judgment on a party other than the Treasury, it will first serve notice on the Treasury of its intention to do so.
- (3) The Treasury may, within 5 days of being served with notice under sub-paragraph (2), apply to the court to reconsider the terms of the order or direction or to review the terms of the proposed judgment if the Treasury considers –
  - (a) its compliance with the order or direction; or
  - (b) the notification to another party of any matter contained in the judgment, order or direction, would cause information to be disclosed contrary to the public interest.

- (4) Where the Treasury makes an application under sub-paragraph (3), it must at the same time serve on a special advocate, if one has been appointed –
  - (a) a copy of the application;
  - (b) a copy of the relevant document referred to in sub-paragraph (1)(a) or (b); and
  - (c) a copy of the notice served on the Treasury pursuant to sub-paragraph (2).
- (5) If a special advocate has been appointed, paragraph 21 (except sub-paragraphs (6) and (7)) applies with any necessary modifications to the consideration of an application under sub-paragraph (3).
- (6) The court will not serve notice on a party other than the Treasury as mentioned in sub-paragraph (1) before the time for the Treasury to make an application under sub-paragraph (3) has expired.

35. *Supply of court documents (79.30)*

Unless the court directs otherwise, rule 2.20 (register of claims) and rule 2.21 (supply of documents from court records) do not apply to any financial restrictions proceedings or to any document relating to such proceedings.

36. *Audio recordings*

Unless the court directs otherwise, nothing in rule 9.8 entitles any person, whether or not a party, to obtain a recording of any part of financial restrictions proceedings which is held in private.

37. *Appeals (79.13-14)*

- (1) Chapter 1 of Part 14 applies to an appeal to the Appeal Division against an order under the preceding provisions of this Schedule subject to —
  - (a) paragraph 2, and
  - (b) sub-paragraphs (2) and (3).
- (2) The following provisions apply to such an appeal —
  - (a) paragraph 1;
  - (b) paragraph 11;
  - (c) paragraph 12, with the substitution for sub-paragraph (1)(a) and (b) of the following —
    - "(a) the appellant withdraws the appeal against a decision of the Civil Division;
    - (b) the respondent to the appeal consents to the appeal being allowed;" and
  - (d) paragraphs 13 to 26.

and all references in those provisions to this Schedule and to financial restrictions proceedings shall be construed as references to Chapter 1 of Part 14 as modified by this paragraph and to the appeal proceedings.
- (3) The appellant must serve a copy of the appellant's appeal notice on any special advocate.

[Schedule 13.2 'Financial Restrictions Proceedings under Terrorism (Finance) Act 2009' added by SD 222/10]