

2012 No. 2208 (L. 8)

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

The Civil Procedure (Amendment No.2) Rules 2012

Made - - - - - *7th August 2012*

Laid before Parliament *29th August 2012*

Coming into force in accordance with rule 1

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

Citation, commencement and interpretation

1. These Rules may be cited as the Civil Procedure (Amendment No.2) Rules 2012 and shall come into force on 1 October 2012.

2. In these Rules—

a reference to a Part or rule by number alone means the Part or rule so numbered in the Civil Procedure Rules 1998(b);

a reference to “Schedule 1” means Schedule 1 to those Rules, and a reference to an Order by number and prefixed by “RSC” means the RSC Order so numbered in that Schedule; and

a reference to “Schedule 2” means Schedule 2 to those Rules, and a reference to an Order by number and prefixed by “CCR” means the CCR Order so numbered in that Schedule.

Amendments to the Civil Procedure Rules 1998

3. In Part 26, after rule 26.3(7), before the words in parentheses, insert—

“(8) Where a party does not file an allocation questionnaire by the date specified, the court will make such order as it considers appropriate, including—

- (a) an order for directions;
- (b) an order striking out the claim;
- (c) an order striking out the defence and entering judgment; or
- (d) listing the case for a case management conference.

(a) 1997 c.12.

(b) S.I. 1998/3132. There are relevant amendments in S.I. 2000/221, S.I. 2000/2092, S.I. 2001/2792, S.I. 2001/4015, S.I. 2002/3219, S.I. 2004/1306, S.I. 2006/1689, S.I. 2008/2178, S.I. 2009/2092, S.I. 2009/3390, S.I. 2010/621, S.I. 2010/1953 & S.I. 2011/3103.

(9) Where a claim is a designated money claim issued in Northampton County Court, the claim will be transferred to the claimant's preferred court or the defendant's home court as appropriate and the court to which it is transferred will make an order pursuant to rule 26.3(8).

(10) Where an order has been made under rule 26.3(8), a party who was in default will not normally be entitled to an order for the costs of any application to set aside or vary that order nor of attending any case management conference and will, unless the court thinks it unjust to do so, be ordered to pay the costs that the default caused to any party who was not in default.”.

4. In Part 27—

- (a) in rule 27.5, omit “(Rule 27.14(3)(d) provides for the payment of an expert’s fees.)”; and
- (b) in rule 27.14(2)—
 - (i) at the end of subparagraph (g), omit “and”;
 - (ii) at the end of subparagraph (h)(iv), for “.” substitute “; and”; and
 - (iii) after subparagraph (h)(iv), insert—
 - “(i) in an appeal, the cost of any approved transcript reasonably incurred.”.

5. In Part 31—

- (a) after rule 31.23(1), insert—
 - “(Section 6 of Part 81 contains provisions in relation to committal for making a false disclosure statement.)”; and
- (b) omit rule 31.23(2).

6. In Part 32—

- (a) after rule 32.14(1) and the words in parentheses following it, insert—
 - “(Section 6 of Part 81 contains provisions in relation to committal for making a false statement of truth.)”; and
- (b) omit rule 32.14(2).

7. In Part 40, after rule 40.2, omit the words in parentheses.

8. In Part 52—

- (a) In rule 52.2, in both the heading and the rule itself, for “Practice Direction 52” substitute “Practice Directions 52A to 52E”;
- (b) in rule 52.3, for paragraph (4A) substitute—
 - “(4A) (a) Where a judge of the Court of Appeal or of the High Court, a Designated Civil Judge or a Specialist Circuit Judge refuses permission to appeal without a hearing and considers that the application is totally without merit, the judge may make an order that the person seeking permission may not request the decision to be reconsidered at a hearing.
 - (b) For the purposes of subparagraph (a) “Specialist Circuit Judge” means a Patents County Court judge and any circuit judge in any county court nominated to hear cases in the Mercantile, Chancery or Technology and Construction Court lists.”; and
- (c) in rule 52.15—
 - (i) after paragraph (1), insert—
 - “(1A) Where permission to apply for judicial review of a decision of the Upper Tribunal has been refused by the High Court—
 - (a) the applicant may apply to the Court of Appeal for permission to appeal;
 - (b) the application will be determined on paper without an oral hearing.”; and
 - (ii) in paragraph (2), for “paragraph (1)”, insert “paragraphs (1) or (1A)”.

9. In Part 54—

(a) in the table of contents—

(i) after the entry for rule 54.1, insert—

“Who may exercise the powers of the High Court Rule 54.1A”; and

(ii) after the entry for rule 54.7, insert—

“Judicial review of decisions of the Upper Tribunal Rule 54.7A”; and

(b) after rule 54.1, insert—

“Who may exercise the powers of the High Court

54.1A.—(1) A court officer assigned to the Administrative Court office who is—

- (a) a barrister; or
- (b) a solicitor,

may exercise the jurisdiction of the High Court with regard to the matters set out in paragraph (2) with the consent of the President of the Queen’s Bench Division.

(2) The matters referred to in paragraph (1) are—

- (a) any matter incidental to any proceedings in the High Court;
- (b) any other matter where there is no substantial dispute between the parties; and
- (c) the dismissal of an appeal or application where a party has failed to comply with any order, rule or practice direction.

(3) A court officer may not decide an application for—

- (a) permission to bring judicial review proceedings;
- (b) an injunction;
- (c) a stay of any proceedings, other than a temporary stay of any order or decision of the lower court over a period when the High Court is not sitting or cannot conveniently be convened, unless the parties seek a stay by consent.

(4) Decisions of a court officer may be made without a hearing.

(5) A party may request any decision of a court officer to be reviewed by a judge of the High Court.

(6) At the request of a party, a hearing will be held to reconsider a decision of a court officer, made without a hearing.

(7) A request under paragraph (5) or (6) must be filed within 7 days after the party is served with notice of the decision.”.

(c) after rule 54.7 insert—

“Judicial review of decisions of the Upper Tribunal

54.7A.—(1) This rule applies where an application is made, following refusal by the Upper Tribunal of permission to appeal against a decision of the First Tier Tribunal, for judicial review—

- (a) of the decision of the Upper Tribunal refusing permission to appeal; or
- (b) which relates to the decision of the First Tier Tribunal which was the subject of the application for permission to appeal.

(2) Where this rule applies—

- (a) the application may not include any other claim, whether against the Upper Tribunal or not; and
- (b) any such other claim must be the subject of a separate application.

(3) The claim form and the supporting documents required by paragraph (4) must be filed no later than 16 days after the date on which notice of the Upper Tribunal’s decision was sent to the applicant.

(4) The supporting documents are—

- (a) the decision of the Upper Tribunal to which the application relates, and any document giving reasons for the decision;
- (b) the grounds of appeal to the Upper Tribunal and any documents which were sent with them;
- (c) the decision of the First Tier Tribunal, the application to that Tribunal for permission to appeal and its reasons for refusing permission; and
- (d) any other documents essential to the claim.

(5) The claim form and supporting documents must be served on the Upper Tribunal and any other interested party no later than 7 days after the date of issue.

(6) The Upper Tribunal and any person served with the claim form who wishes to take part in the proceedings for judicial review must, no later than 21 days after service of the claim form, file and serve on the applicant and any other party an acknowledgment of service in the relevant practice form.

(7) The court will give permission to proceed only if it considers—

- (a) that there is an arguable case, which has a reasonable prospect of success, that both the decision of the Upper Tribunal refusing permission to appeal and the decision of the First Tier Tribunal against which permission to appeal was sought are wrong in law; and
- (b) that either—
 - (i) the claim raises an important point of principle or practice; or
 - (ii) there is some other compelling reason to hear it.

(8) If the application for permission is refused on paper without an oral hearing, rule 54.12(3) (request for reconsideration at a hearing) does not apply.

(9) If permission to apply for judicial review is granted—

- (a) if the Upper Tribunal or any interested party wishes there to be a hearing of the substantive application, it must make its request for such a hearing no later than 14 days after service of the order granting permission; and
- (b) if no request for a hearing is made within that period, the court will make a final order quashing the refusal of permission without a further hearing.

(10) The power to make a final order under paragraph (9)(b) may be exercised by the Master of the Crown Office or a Master of the Administrative Court.”; and

10. In Part 63—

(a) In the table of contents, after the entry for rule 63.26, insert—

“Allocation to the small claims track	Rule 63.27
Extent to which rules in this Part apply to small claims	Rule 63.28”;

(b) in rule 63.1(3), for “Claims”, substitute “Save as provided in rule 63.27, claims”; and

(c) after rule 63.26, insert—

“Allocation to the small claims track

63.27.—(1) A claim started in or transferred to a patents county court will be allocated to the small claims track if—

- (a) rule 63.13, but not rule 63.2, applies to the claim;
- (b) the value of the claim is not more than £5,000;

- (c) it is stated in the particulars of claim that the claimant wishes the claim to be allocated to the small claims track; and
 - (d) no objection to the claim being allocated to the small claims track is raised by the defendant in the defence.
- (2) Where rule 63.27(1) applies, the parties do not need to file an allocation questionnaire.
- (3) If either—
- (a) the requirements of rule 63.27(1)(a), (b) and (c) are satisfied, but in the defence the defendant objects to the claim being allocated to the small claims track; or
 - (b) the requirements of rule 63.27(1)(a) and (b) are satisfied, but not (c), and in the defence the defendant requests that the claim be allocated to the small claims track,
- the court will allocate the claim to the small claims track or the multi-track in accordance with Part 26 (case management – preliminary stage).
- (4) Part 27 (small claims track) shall apply to claims allocated to the small claims track in a patents county court with the modification to rule 27.2(1)(a) that Part 25 (interim remedies) shall not apply to such claims at all. Section VII of Part 45 (scale costs for claims in a patents county court) shall not apply to claims allocated to the small claims track in a patents county court.

Extent to which rules in this Part apply to small claims

- 63.28.**—(1) To the extent provided by this rule, this Part shall apply to a claim allocated to, or requested to be allocated to, the small claims track in a patents county court.
- (2) Rules 63.1, 63.13, 63.18, 63.20, 63.21, 63.22, 63.25, 63.26(1) and (2), and 63.27 shall apply to the claim.
- (3) No other rules in this Part shall apply.”.

11. In Part 65—

- (a) in rule 65.6, for paragraph (6) and the words in parentheses following it, substitute—

“(6) Sections 2 and 8 of Part 81 apply where an application is made in a county court to commit a person for breach of an injunction, as if references in those Sections to the judge included references to a district judge.

(For applications for the discharge of a person committed to prison for contempt of court see rules 81.31 and 81.32.)”; and
- (b) in rule 65.47, for paragraph (5) and the words in parentheses following it, substitute—

“(5) Sections 2 and 8 of Part 81 apply where an application is made in a county court to commit a person for breach of an injunction as if references in those Sections to the judge include references to a district judge.

(For applications for the discharge of a person committed to prison for contempt of court see rules 81.31 and 81.32.)”.

12. In Part 71—

- (a) in rule 71.2(7)—
 - (i) after “terms”, insert “, or in terms to substantially the same effect”; and
 - (ii) for “You must obey this order. If you do not, you may be sent to prison for contempt of court.”, substitute—

“If you the within-named [] do not comply with this order you may be held to be in contempt of court and imprisoned or fined, or your assets may be seized.”; and
- (b) after rule 71.8, insert—

“(Part 81 contains provisions in relation to committal.)”.

13. In Part 76—

- (a) in rule 76.12(3)—
 - (i) for “Practice Direction 52 applies”, substitute “Practice Directions 52A to 52E apply”; and
 - (ii) for “paragraphs 5.6, 5.6A, 5.7, 5.9 and 5.10 of that Practice Direction” substitute “paragraphs 5.1 to 5.3 of Practice Direction 52A and paragraphs 6.3 to 6.6 of Practice Direction 52B”; and
- (b) in rule 76.16(3)—
 - (i) for “Practice Direction 52 applies”, substitute “Practice Directions 52A to 52E apply”; and
 - (ii) for “paragraphs 5.6, 5.6A, 5.7, 6.3A 15.2, 15.3, 15.4 and 15.6 of that Practice Direction” substitute “paragraphs 6.3 to 6.6 of Practice Direction 52B and paragraph 28 of Practice Direction 52C”.

14. In Part 79, in rule 79.14B(2)—

- (a) for “Practice Direction 52 applies”, substitute “Practice Directions 52A to 52E apply”; and
- (b) for “paragraphs 5.6, 5.6A, 5.7, 5.9 and 5.10 of that Practice Direction” substitute “paragraphs 5.1 to 5.3 of Practice Direction 52A and paragraphs 6.3 to 6.6 of Practice Direction 52B”.

15. In Part 80—

- (a) in rule 80.8(3)—
 - (i) for “Practice Direction 52 applies”, substitute “Practice Directions 52A to 52E apply”; and
 - (ii) for “paragraphs 5.6, 5.6A, 5.7, 5.9 and 5.10 of that Practice Direction” substitute “paragraphs 5.1 to 5.3 of Practice Direction 52A and paragraphs 6.3 to 6.6 of Practice Direction 52B”; and
- (b) in rule 80.12(3)—
 - (i) for “Practice Direction 52 applies”, substitute “Practice Directions 52A to 52E apply”; and
 - (ii) for “paragraphs 5.6, 5.6A, 5.7, 6.3A 15.2, 15.3, 15.4 and 15.6 of that Practice Direction” substitute “paragraphs 6.3 to 6.6 of Practice Direction 52B and paragraph 28 of Practice Direction 52C”.

16. After Part 80, insert Part 81 (applications and proceedings in relation to contempt of court) as set out in the Schedule to these Rules.

17. In the glossary to the Civil Procedure Rules 1998, after the entry for “Defence of tender before claim”, insert—

“Divisional Court	With or without capital letters, means a divisional court constituted under section 66 of the Senior Courts Act 1981(a).”.
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18. In Schedule 1—

- (a) in RSC Order 45—
 - (i) in rule 3(1)—

(a) 1981 c.54.

- (aa) in subparagraph (b), for “rule 5” substitute “rule 81.4”; and
 - (bb) in subparagraph (c), for “in such a case” substitute “in a case in which rule 81.20 applies”;
 - (ii) in rule 4(1)—
 - (aa) in subparagraph (b), for “rule 5” substitute “rule 81.4”; and
 - (bb) in subparagraph (c), for “in such a case” substitute “in a case in which rule 81.20 applies”;
 - (iii) in rule 4(2)(c), for “rule 5” substitute “rule 81.20”; and
 - (iv) omit—
 - (aa) rule 5;
 - (bb) rule 6;
 - (cc) rule 7; and
 - (dd) rule 12(4);
 - (b) in RSC Order 46, for rule 5 substitute—

“Rule 5 Notwithstanding anything in rules 2 and 4, an application for permission to issue a writ of sequestration must be made in accordance with Part 81 and in particular Section 7 of that Part.”;
 - (c) omit RSC Order 52 (committal); and
 - (d) omit RSC Order 64 (sittings, vacations and office hours).
- 19. In Schedule 2—**
- (a) omit CCR Order 29 (committal for breach of order or undertaking); and
 - (b) omit CCR Order 34 (penal and disciplinary provisions).

Transitional provisions

20. The amendments made by Rules 5, 6, 11, 12, 16, 18 and 19 and the Schedule to these Rules shall apply—

- (a) to all applications in relation to contempt of court that are made on or after the date that these Rules come into force, subject to subparagraph (b); and
- (b) in relation to contempt to which Section 5 of Part 81 of the Civil Procedure Rules 1998 applies (contempt in the face of the court), to all acts or omissions alleged to constitute contempt in the face of the court that are alleged to have occurred on or after that date.

Neuberger of Abbotsbury, M.R.
Martin Moore-Bick, L.J.
Launcelot Henderson, J.
Peter Coulson, J.
HHJ Stephen P. Stewart Q.C.
District Judge Robert Hill
William Featherby Q.C.
Edward Pepperall
Katy Peters

I allow these Rules
Signed by authority of the Lord Chancellor

7th August 2012

Nick Herbert
 Minister of State
 Ministry of Justice

SCHEDULE

Rule 16

“PART 81

APPLICATIONS AND PROCEEDINGS IN RELATION TO CONTEMPT OF COURT

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SECTION 1

Scope and interpretation

Scope

- 81.1.**—(1) This Part sets out the procedure in respect of—
- (a) contempt of court; and
 - (b) the penal, contempt and disciplinary provisions of the County Courts Act 1984(a).
- (2) So far as applicable, and with the necessary modifications, this Part applies in relation to an order requiring a person—
- (a) guilty of contempt of court; or

(a) 1984 c.28.

(b) punishable by virtue of any enactment as if that person had been guilty of contempt of the High Court,
to pay a fine or to give security for good behaviour, as it applies in relation to an order of committal.

(3) Unless otherwise stated, this Part applies to procedure in the Court of Appeal, the High Court and county courts.

Saving for other powers

81.2.—(1) This Part is concerned only with procedure and does not itself confer upon the court the power to make an order for—

- (a) committal;
- (b) sequestration; or
- (c) the imposition of a fine in respect of contempt of court.

(2) Nothing in this Part affects the power of the court to make an order requiring a person—

- (a) guilty of contempt of court; or
- (b) punishable by virtue of any enactment as if that person had been guilty of contempt of the High Court,

to pay a fine or to give security for good behaviour.

(3) Nothing in this Part affects any statutory or inherent power of the court to make a committal order of its own initiative against a person guilty of contempt of court.

Interpretation

81.3. In this Part—

“applicant” means a person making—

- (i) an application for permission to make a committal application;
- (ii) a committal application; or
- (iii) an application for a writ of sequestration;

“committal application” means any application for an order committing a person to prison;

“respondent” means a person—

- (i) against whom a committal application is made or is intended to be made; or
- (ii) against whose property it is sought to issue a writ of sequestration; and

“undertaking” means an undertaking to the court.

SECTION 2

Committal for breach of a judgment, order or undertaking to do or abstain from doing an act

Enforcement of judgment, order or undertaking to do or abstain from doing an act

81.4.—(1) If a person—

- (a) required by a judgment or order to do an act does not do it within the time fixed by the judgment or order; or

(b) disobeys a judgment or order not to do an act,

then, subject to the Debtors Acts 1869(a) and 1878(b) and to the provisions of these Rules, the judgment or order may be enforced by an order for committal.

(2) If the time fixed by the judgment or order for doing an act has been varied by a subsequent order or agreement of the parties under rule 2.11, then references in paragraph (1)(a) to the time fixed are references to the time fixed by that subsequent order or agreement.

(3) If the person referred to in paragraph (1) is a company or other corporation, the committal order may be made against any director or other officer of that company or corporation.

(4) So far as applicable, and with the necessary modifications, this Section applies to undertakings given by a party as it applies to judgments or orders.

(Rules 81.17(3) and (4) make provision for cases in which both this Section and Section 6 (Committal for making a false statement of truth or disclosure statement) may be relevant.)

(5) If a judgment or order requires a person to deliver goods or pay their value—

- (a) the judgment or order may not be enforced by a committal order under paragraph (1);
- (b) the person entitled to enforce the judgment or order may apply to the court for an order requiring that the goods be delivered within a specified time; and
- (c) where the court grants such an order, that order may be enforced under paragraph (1).

Requirement for service of a copy of the judgment or order and time for service

81.5.—(1) Unless the court dispenses with service under rule 81.8, a judgment or order may not be enforced under rule 81.4 unless a copy of it has been served on the person required to do or not do the act in question, and in the case of a judgment or order requiring a person to do an act—

- (a) the copy has been served before the end of the time fixed for doing the act, together with a copy of any order fixing that time;
- (b) where the time for doing the act has been varied by a subsequent order or agreement under rule 2.11, a copy of that subsequent order or agreement has also been served; and
- (c) where the judgment or order was made under rule 81.4(5), or was made pursuant to an earlier judgment or order requiring the act to be done, a copy of the earlier judgment or order has also been served.

(2) Where the person referred to in paragraph (1) is a company or other corporation, a copy of the judgment or order must also be served on the respondent before the end of the time fixed for doing the act.

(3) Copies of the judgment or order and any orders or agreements fixing or varying the time for doing an act must be served in accordance with rule 81.6 or 81.7, or in accordance with an order for alternative service made under rule 81.8(2)(b).

(a) 1869 c. 62.
(b) 1878 c. 54.

Method of service – copies of judgments or orders

81.6. Subject to rules 81.7 and 81.8, copies of judgments or orders and any orders or agreements fixing or varying the time for doing an act must be served personally.

Method of service - copies of undertakings

81.7.—(1) Subject to paragraph (2) and rule 81.8, a copy of any document recording an undertaking will be delivered by the court to the person who gave the undertaking—

- (a) by handing to that person a copy of the document before that person leaves the court building;
- (b) by posting a copy to that person at the residence or place of business of that person where this is known; or
- (c) by posting a copy to that person’s solicitor.

(2) If delivery cannot be effected in accordance with paragraph (1), the court officer will deliver a copy of the document to the party for whose benefit the undertaking was given and that party must serve it personally on the person who gave the undertaking as soon as practicable.

(3) Where the person referred to in paragraph (1) is a company or other corporation, a copy of the judgment or order must also be served on the respondent.

Dispensation with personal service

81.8.—(1) In the case of a judgment or order requiring a person not to do an act, the court may dispense with service of a copy of the judgment or order in accordance with rules 81.5 to 81.7 if it is satisfied that the person has had notice of it—

- (a) by being present when the judgment or order was given or made; or
- (b) by being notified of its terms by telephone, email or otherwise.

(2) In the case of any judgment or order the court may—

- (a) dispense with service under rules 81.5 to 81.7 if the court thinks it just to do so; or
- (b) make an order in respect of service by an alternative method or at an alternative place.

Requirement for a penal notice on judgments and orders

81.9.—(1) Subject to paragraph (2), a judgment or order to do or not do an act may not be enforced under rule 81.4 unless there is prominently displayed, on the front of the copy of the judgment or order served in accordance with this Section, a warning to the person required to do or not do the act in question that disobedience to the order would be a contempt of court punishable by imprisonment, a fine or sequestration of assets.

(2) An undertaking to do or not do an act which is contained in a judgment or order may be enforced under rule 81.4 notwithstanding that the judgment or order does not contain the warning described in paragraph (1).

(Paragraphs 2.1 to 2.4 of the Practice Direction supplementing this Part and form N117 contain provisions about penal notices and warnings in relation to undertakings.)

How to make the committal application

81.10.—(1) A committal application is made by an application notice under Part 23 in the proceedings in which the judgment or order was made or the undertaking was given.

(2) Where the committal application is made against a person who is not an existing party to the proceedings, it is made against that person by an application notice under Part 23.

(3) The application notice must—

- (a) set out in full the grounds on which the committal application is made and must identify, separately and numerically, each alleged act of contempt including, if known, the date of each of the alleged acts; and
 - (b) be supported by one or more affidavits containing all the evidence relied upon.
- (4) Subject to paragraph (5), the application notice and the evidence in support must be served personally on the respondent.
- (5) The court may—
- (a) dispense with service under paragraph (4) if it considers it just to do so; or
 - (b) make an order in respect of service by an alternative method or at an alternative place.

Committal for breach of a solicitor’s undertaking

- 81.11.**—(1) The applicant must obtain permission from the court before making a committal application under this rule.
- (2) The application for permission must be made by filing an application notice under Part 23.
- (3) The application for permission must be supported by an affidavit setting out—
- (a) the name, description and address of the respondent; and
 - (b) the grounds on which the committal order is sought.
- (4) The application for permission may be made without notice.
- (5) Rules 23.9 and 23.10 do not apply.
- (6) Unless the applicant makes the committal application within 14 days after permission has been granted under this rule, the permission will lapse.

SECTION 3

Committal for interference with the due administration of justice

Scope

- 81.12.**—(1) This Section regulates committal applications in relation to interference with the due administration of justice in connection with proceedings—
- (a) in the High Court;
 - (b) in a Divisional Court;
 - (c) in the Court of Appeal;
 - (d) in an inferior court (which includes a county court); or
 - (e) which are criminal proceedings,

except where the contempt is committed in the face of the court or consists of disobedience to an order of the court or a breach of an undertaking to the court.

(2) This Section also regulates committal applications otherwise than in connection with any proceedings.

(3) A committal application under this Section may not be made without the permission of the court.

(The procedure for applying for permission to make a committal application is set out in rule 81.14.)

(Rules 81.17(5) and (6) make provision for cases in which both this Section and Section 6 (Committal for making a false statement of truth or disclosure statement) may be relevant.)

Court to which application for permission under this Section is to be made

81.13.—(1) Where contempt of court is committed in connection with any proceedings—

- (a) in the High Court (other than proceedings in a Divisional Court), the application for permission may be made only to a single judge of the Division of the High Court in which the proceedings were commenced or to which they have subsequently been transferred;
- (b) in a Divisional Court, the application for permission may be made only to a single judge of the Queen’s Bench Division;
- (c) in the Court of Appeal, the application for permission may be made only to a Divisional Court of the Queen’s Bench Division;
- (d) in an inferior court, the application for permission may be made only to a single judge of the Queen’s Bench Division; and
- (e) which are criminal proceedings, the application for permission may be made only to a Divisional Court of the Queen’s Bench Division.

(2) Where contempt of court is committed otherwise than in connection with any proceedings, the application for permission may be made only to the Administrative Court.

Application for permission (High Court, Divisional Court or Administrative Court)

81.14.—(1) The application for permission to make a committal application must be made by a Part 8 claim form which must include or be accompanied by—

- (a) a detailed statement of the applicant’s grounds for bringing the committal application; and
- (b) an affidavit setting out the facts and exhibiting all documents relied upon.

(2) The claim form and the documents referred to in paragraph (1) must be served personally on the respondent unless the court otherwise directs.

(3) Within 14 days of service on the respondent of the claim form, the respondent—

- (a) must file and serve an acknowledgment of service; and
- (b) may file and serve evidence.

(4) The court will consider the application for permission at an oral hearing, unless it considers that such a hearing is not appropriate.

(5) If the respondent intends to appear at the permission hearing referred to in paragraph (4), the respondent must give 7 days’ notice in writing of such intention to the court and any other party and at the same time provide a written summary of the submissions which the respondent proposes to make.

(6) Where permission to proceed is given, the court may give such directions as it thinks fit, and may—

- (a) transfer the proceedings to another court; or
- (b) direct that the application be listed for hearing before a single judge or a Divisional Court.

SECTION 4

(1) Certifications by any court, tribunal etc to the High Court under any enactment; and (2) Applications to the High Court under section 336 of the Charities Act 2011

Certifications of conduct, and applications under section 336 of the Charities Act 2011, to the High Court under this Section

81.15.—(1) This Section applies where, by virtue of any enactment, the High Court has power to punish or take steps for the punishment of any person charged with having done or

omitted to do anything in relation to a court, tribunal or person which, if it had been an act or omission in relation to the High Court, would have been a contempt of that court.

(2) Subject to paragraph (3), an order under this Section may be made by a single judge of the Administrative Court.

(3) An order made on an application under section 336 of the Charities Act 2011(a) (“a section 336 application”) may be made only by a single judge of the Chancery Division.

(4) The certification or section 336 application, as appropriate, must be in the form annexed to Practice Direction 81 at Annex A, and include or be accompanied by—

- (a) a detailed statement of the grounds for the certification or section 336 application;
- (b) any written evidence relied upon; and
- (c) any other documents required for the disposal of the certification or section 336 application.

(5) Subject to paragraph (6), the certification or section 336 application, accompanied by the other documents referred to in paragraph (4), must be served personally on the respondent.

(6) The court may—

- (a) dispense with service under paragraph (5) if it thinks it just to do so; or
- (b) make an order in respect of service by an alternative method or at an alternative place.

(7) Within 14 days of service on the respondent of the certification or section 336 application, the respondent—

- (a) must file and serve an acknowledgment of service in the form annexed to Practice Direction 81 at Annex B; and
- (b) may file and serve evidence.

SECTION 5

Contempt in the face of the court

Committal for contempt in the face of the court

81.16.—(1) Where—

- (a) contempt has occurred in the face of the court; and
- (b) that court has power to commit for contempt,

the court may deal with the matter of its own initiative and give such directions as it thinks fit for the disposal of the matter.

SECTION 6

Committal for making a false statement of truth (rule 32.14) or disclosure statement (rule 31.23)

Scope and interaction with other Sections of this Part

81.17.—(1) This Section contains rules about committal applications in relation to making, or causing to be made—

- (a) a false statement in a document verified by a statement of truth; or

(a) 2011 c.25.

- (b) a false disclosure statement,

without an honest belief in its truth.

(2) Where the committal application relates only to a false statement of truth or disclosure statement, this Section applies.

(3) Where the committal application relates to both—

- (a) a false statement of truth or disclosure statement; and
- (b) breach of a judgment, order or undertaking to do or abstain from doing an act,

Section 2 (Committal for breach of a judgment, order or undertaking to do or abstain from doing an act) applies, but subject to paragraph (4).

(4) To the extent that a committal application referred to in paragraph (3) relates to a false statement of truth or disclosure statement—

- (a) the applicant must obtain the permission of the court in accordance with rule 81.18; or
- (b) the court may direct that the matter be referred to the Attorney General with a request that the Attorney General consider whether to bring proceedings for contempt of court.

(5) Where the committal application relates to both—

- (a) a false statement of truth or disclosure statement; and
- (b) other interference with the due administration of justice,

Section 3 (Committal for interference with the due administration of justice) applies, but subject to paragraph (6).

(6) To the extent that a committal application referred to in paragraph (5) relates to a false statement of truth or disclosure statement, the court may direct that the matter be referred to the Attorney General with a request that the Attorney General consider whether to bring proceedings for contempt of court.

Committal application in relation to a false statement of truth or disclosure statement

81.18.—(1) A committal application in relation to a false statement of truth or disclosure statement in connection with proceedings in the High Court, a Divisional Court or the Court of Appeal, may be made only—

- (a) with the permission of the court dealing with the proceedings in which the false statement or disclosure statement was made; or
- (b) by the Attorney General.

(2) Where permission is required under paragraph (1)(a), rule 81.14 applies as if the reference in that rule to a Part 8 claim form were a reference to a Part 23 application notice and the references to the claim form were references to the Part 23 application notice.

(3) A committal application in relation to a false statement of truth or disclosure statement in connection with proceedings in a county court may be made only—

- (a) with the permission of a single judge of the Queen’s Bench Division; or
- (b) by the Attorney General.

(4) Where permission is required under paragraph (3)(a) rule 81.14 applies without the modifications referred to in paragraph (2).

(Under rule 81.14(6)(b), the court granting permission may direct that the application be listed for hearing before a single judge or a Divisional Court.)

(5) The court may direct that the matter be referred to the Attorney General with a request that the Attorney General consider whether to bring proceedings for contempt of court.

(6) Where the committal application is made by the Attorney General, the application may be made to a single judge or a Divisional Court of the Queen’s Bench Division.

SECTION 7

Writ of sequestration to enforce a judgment, order or undertaking

Scope

81.19. This Section contains rules about applications to the High Court for a writ of sequestration to enforce a judgment, order or undertaking.

Writ of sequestration to enforce a judgment, order or undertaking

81.20.—(1) If—

- (a) a person required by a judgment or order to do an act does not do it within the time fixed by the judgment or order; or
- (b) a person disobeys a judgment or order not to do an act,

then, subject to the provisions of these Rules and if the court permits, the judgment or order may be enforced by a writ of sequestration against the property of that person.

(2) If the time fixed by the judgment or order for doing an act has been varied by a subsequent order or agreement of the parties under rule 2.11, references in paragraph (1)(a) to the time fixed are references to the time fixed by that subsequent order or agreement.

(3) If the person referred to in paragraph (1) is a company or other corporation, the writ of sequestration may in addition be issued against the property of any director or other officer of that company or corporation.

(4) So far as applicable, and with the necessary modifications, this Section applies to undertakings given by a party as it applies to judgments or orders.

Requirement for service of a copy of the judgment or order and time for service

81.21.—(1) Unless the court dispenses with service under rule 81.24, a judgment or order may not be enforced by writ of sequestration unless a copy of it has been served on the person required to do or not do the act in question, and in the case of a judgment or order requiring a person to do an act—

- (a) the copy has been served before the end of the time fixed for doing the act, together with a copy of any order fixing that time;
- (b) where the time for doing the act has been varied by a subsequent order or agreement under rule 2.11, a copy of that subsequent order or agreement has also been served; and
- (c) where the judgment or order was made under rule 81.4(5), or was made pursuant to an earlier judgment or order requiring the act to be done, a copy of the earlier judgment or order has also been served.

(2) Where the person referred to in paragraph (1) is a company or other corporation, a copy of the judgment or order must also be served on the respondent before the end of the time fixed for doing the act.

(3) Copies of the judgment or order and any orders or agreements fixing or varying the time for doing an act must be served in accordance with rule 81.22 or 81.23, or in accordance with an order for alternative service made under rule 81.24(2)(b).

Method of service – copies of judgments or orders

81.22. Subject to rules 81.23 and 81.24, copies of judgments or orders and any orders or agreements fixing or varying the time for doing an act must be served personally.

Method of service - copies of undertakings

81.23.—(1) Subject to paragraph (2) and rule 81.24, a copy of any document recording an undertaking will be delivered by the court to the person who gave the undertaking—

- (a) by handing to that person a copy of the document before that person leaves the court building;
- (b) by posting a copy to that person at the residence or place of business of that person where this is known; or
- (c) by posting a copy to that person’s solicitor.

(2) If delivery cannot be effected in accordance with paragraph (1), the court officer will deliver a copy of the document to the party for whose benefit the undertaking was given and that party must serve it personally on the person who gave the undertaking as soon as practicable.

(3) Where the person referred to in paragraph (1) is a company or other corporation, a copy of the judgment or order must also be served on the respondent.

Dispensation with personal service

81.24.—(1) In the case of a judgment or order requiring a person not to do an act, the court may dispense with service of a copy of the judgment or order in accordance with rules 81.21 to 81.23 if it is satisfied that the person has had notice of it—

- (a) by being present when the judgment or order was given or made; or
- (b) by being notified of its terms by telephone, email or otherwise.

(2) In the case of any judgment or order the court may—

- (a) dispense with service under rules 81.21 to 81.23 if the court thinks it just to do so; or
- (b) make an order in respect of service by an alternative method or at an alternative place.

Requirement for a penal notice on judgments and orders

81.25.—(1) Subject to paragraph (2), a judgment or order to do or not do an act may not be enforced by a writ of sequestration unless there is prominently displayed, on the front of the copy of the judgment or order served in accordance with this Section, a warning to the person required to do or not do the act in question that disobedience to the order would be a contempt of court punishable by imprisonment, a fine or sequestration of assets.

(2) An undertaking to do or not do an act which is contained in a judgment or order may be enforced by a writ of sequestration notwithstanding that the judgment or order does not contain the warning described in paragraph (1).

(Paragraphs 2.1 to 2.4 of the Practice Direction supplementing this Part and form N117 contain provisions about penal notices and warnings in relation to undertakings.)

How to make an application for permission to issue a writ of sequestration

81.26.—(1) An application for permission to issue a writ of sequestration must be made—

- (a) to a single judge of the Division of the High Court in which the proceedings were commenced or to which they have subsequently been transferred; or
- (b) in any other case, to a single judge of the Queen’s Bench Division.

(2) An application for permission to issue a writ of sequestration must be made by filing an application notice under Part 23.

(3) The application notice must—

- (a) set out in full the grounds on which the application is made and must identify, separately and numerically, each alleged act of contempt including, if known, the date of each of the alleged acts; and
 - (b) be supported by one or more affidavits containing all the evidence relied upon.
- (4) Subject to paragraph (5), the application notice must be served personally on the respondent.
- (5) The court may—
- (a) dispense with service under paragraph (4) if the court thinks it just to do so; or
 - (b) make an order in respect of service by an alternative method or at an alternative place.

Form of writ of sequestration

81.27. A writ of sequestration must be in Form No 67 as set out in Practice Direction 4.

SECTION 8

General rules about committal applications, orders for committal and writs of sequestration

The hearing

81.28.—(1) Unless the court hearing the committal application or application for sequestration otherwise permits, the applicant may not rely on—

- (a) any grounds other than—
 - (i) those set out in the claim form or application notice; or
 - (ii) in relation to a committal application under Section 3 or 4, the statement of grounds required by rule 81.14(1)(a) (where not included in the claim form) or 81.15(4)(a); or
- (b) any evidence unless it has been served in accordance with the relevant Section of this Part or the Practice Direction supplementing this Part.

(2) At the hearing, the respondent is entitled—

- (a) to give oral evidence, whether or not the respondent has filed or served written evidence, and, if doing so, may be cross-examined; and
- (b) with the permission of the court, to call a witness to give oral evidence whether or not the witness has made an affidavit or witness statement.

(3) The court may require or permit any party or other person (other than the respondent) to give oral evidence at the hearing.

(4) The court may give directions requiring the attendance for cross-examination of a witness who has given written evidence.

(5) If the court hearing an application in private decides to make a committal order against the respondent, it will in public state—

- (a) the name of the respondent;
- (b) in general terms, the nature of the contempt of court in respect of which the committal order is being made; and
- (c) the length of the period of the committal order.

(Rule 39.2 contains provisions about hearings in private.)

(6) Where a committal order is made in the absence of the respondent, the court may on its own initiative fix a date and time when the respondent is to be brought before the court.

Power to suspend execution of a committal order

81.29.—(1) The court making the committal order may also order that its execution will be suspended for such period or on such terms or conditions as it may specify.

(2) Unless the court otherwise directs, the applicant must serve on the respondent a copy of any order made under paragraph (1).

Warrant of committal

81.30.—(1) If a committal order is made, the order will be for the issue of a warrant of committal.

(2) Unless the court orders otherwise—

- (a) a copy of the committal order must be served on the respondent either before or at the time of the execution of the warrant of committal; or
- (b) where the warrant of committal has been signed by the judge, the committal order may be served on the respondent at any time within 36 hours after the execution of the warrant.

(3) Without further order of the court, a warrant of committal must not be enforced more than 2 years after the date on which the warrant is issued.

Discharge of a person in custody

81.31.—(1) A person committed to prison for contempt of court may apply to the court to be discharged.

(2) The application must—

- (a) be in writing and attested by the governor of the prison (or any other officer of the prison not below the rank of principal officer);
- (b) show that the person committed to prison for contempt has purged, or wishes to purge, the contempt; and
- (c) be served on the person (if any) at whose instance the warrant of committal was issued at least one day before the application is made.

(3) Paragraph (2) does not apply to—

- (a) a warrant of committal to which CCR Order 27 rule 8, or CCR Order 28 rule 4 or 14 relates; or
- (b) an application made by the Official Solicitor acting with official authority for the discharge of a person in custody.

(4) If the committal order is made in a county court and—

- (a) does not direct that any application for discharge must be made to a judge; or
- (b) was made by a district judge under section 118 of the County Courts Act 1984(a),

the application for discharge may be made to a district judge.

(5) If the committal order is made in the High Court, the application for discharge may be made to a single judge of the Division in which the committal order was made.

Discharge of a person in custody where a writ of sequestration has been issued

81.32.—(1) Where—

(a) 1984 c.28.

- (a) a writ of sequestration has been issued to enforce a judgment or order;
- (b) the property is in the custody or power of the respondent;
- (c) the respondent has been committed for failing to deliver up any property or deposit it in court or elsewhere; and
- (d) the commissioners appointed by the writ of sequestration take possession of the property as if it belonged to the respondent,

then, without prejudice to rule 81.31(1), the court may discharge the respondent and give such directions for dealing with the property taken by the commissioners as it thinks fit.

SECTION 9

Penal, contempt and disciplinary provisions under the County Courts Act 1984

Scope

81.33.—(1) This Section applies to county courts only and contains rules in relation to the penal, contempt and disciplinary provisions of the County Courts Act 1984.

(2) In this Section, “the Act” means the County Courts Act 1984.

Offences under sections 14, 92 or 118 of the Act

81.34.—(1) This rule applies where it is alleged that any person has committed an offence—

- (a) under section 14 of the Act, by assaulting an officer of the court acting in the execution of the officer’s duties;
- (b) under section 92 of the Act, by rescuing or attempting to rescue any goods seized in execution; or
- (c) under section 118 of the Act, by wilfully insulting a judge, juror, witness or any officer of the court or by wilfully interrupting the proceedings of a county court or otherwise misbehaving in court,

and the alleged offender has not been taken into custody and brought before the court.

(2) The court will issue a summons, which must be served on the alleged offender personally not less than 7 days before the day of the hearing stated in the summons.

(3) Rule 81.30 applies, with the necessary modifications, where an order is made under section 14, 92 or 118 of the Act committing a person to prison.

Offences under section 124 of the Act

81.35. Where a complaint is made against an officer of the court under section 124 of the Act for having lost the opportunity of levying execution, the court will issue a summons, which must be served on the alleged offender personally not less than 7 days before the day of the hearing stated in the summons.

Notice to give evidence before or after a fine is imposed under section 55 of the Act

81.36.—(1) Before or after imposing a fine on any person under section 55 of the Act for disobeying a witness summons or refusing to be sworn or give evidence, the court may direct that notice be given to that person in accordance with paragraph (2).

(2) The notice must state that if the recipient of the notice can demonstrate any reason why a fine should not be or should not have been imposed, that person may give evidence—

- (a) by witness statement, affidavit or otherwise; and

- (b) on a day named in the notice.

Non-payment of fine

81.37.—(1) If a fine is not paid in accordance with the order imposing it, the court officer will, as soon as reasonably possible, report the matter to a judge.

(2) Where by an order imposing a fine—

- (a) the amount of the fine is directed to be paid by instalments; and
(b) default is made in the payment of any instalment,

the same proceedings may be taken as if default had been made in payment of the whole of the fine.

(3) If the court makes an order for payment of a fine to be enforced by warrant of execution, the order will be treated as an application to the court for the issue of the warrant at the time when the order was made.

Repayment of fine

81.38. If a person pays a fine and later gives evidence to satisfy the court that, if the evidence had been given earlier, no fine or a smaller fine would have been imposed, the court may order the whole or part of the fine to be repaid.”

EXPLANATORY NOTE

(This note is not part of the Order)

These Rules amend the Civil Procedures Rules 1998 (SI 1998/3132) (“the Rules”) by—

- in Part 26 (case management – preliminary stage), providing that the court will make such order as it considers appropriate where a party fails to file an allocation questionnaire by the specified date as well as providing for the automatic transfer of proceedings in those cases where a claim is a designated money claim issued in Northampton County Court. In addition, provision is made as regards the orders for costs that may be made in these circumstances;
- in Part 27 (the small claims track), providing for the recovery of the costs of obtaining transcripts in appeals from the small claims track from another party to the proceedings, as well as omitting an incorrect reference to Rule 27.14(3)(d) in that Part;
- in Parts 40 (judgments, orders, sale of land etc.), 52 (appeals), 76 (proceedings under the Prevention of Terrorism Act 2005), 79 (proceedings under the Counter-Terrorism Act 2008) and 80 (proceedings under the Terrorism Prevention and Investigation Measures Act 2011), making amendments consequential on the replacement of Practice Direction 52, supporting Part 52 by a new set of Practice Directions 52A to 52E;
- in Part 52 (appeals), extending to High Court Judges, Designated Civil Judges and Specialist Circuit Judges the power which currently enables the Court of Appeal when refusing permission to appeal without a hearing, and where the application is considered to be totally without merit, to make an order that the person seeking permission may not request the decision to be reconsidered at a hearing. “Specialist Circuit Judge” is also defined;

- in Part 54 (judicial review and statutory review), providing for the delegation of specified judicial powers to qualified barristers and solicitors working in the Administrative Court Office
- in Parts 52 and 54, establishing a procedure in respect of applications for judicial review of non-appealable decisions of the Upper Tribunal, following the Supreme Court’s judgment in *Cart*(a);
- in Part 63 (intellectual property claims), providing for a small claims track in a patents county court;
- inserting new Part 81 (applications and proceedings in relation to contempt of court), which replaces the existing procedural rules in relation to contempt of court and, in particular, those rules found in RSC Order 52 (committal) and CCR Order 29 (committal for breach of order or undertaking); and
- in consequence of the introduction of new Part 81—
 - (a) amending Parts 31 (disclosure and inspection of documents), 32 (evidence), 65 (proceedings relating to anti-social behaviour and harassment) and 71 (orders to obtain information from judgment debtors) and RSC Orders 45 (enforcement of judgments and orders: general) and 46 (writs of execution: general) in Schedule 1 to the Rules;
 - (b) omitting RSC Orders 52 (committal), 64 (sittings, vacations and office hours) and CCR Orders 29 (committal for breach of order or undertaking) and 34 (penal and disciplinary provisions) in Schedules 1 and 2 to the Rules respectively; and
 - (c) inserting in the glossary to the Rules a definition of “Divisional Court”.

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(a) *R (on the application of Cart) v. The Upper Tribunal; R (on the application of MR (Pakistan)) v. The Upper Tribunal (Immigration and Asylum Chamber) and Secretary of State for the Home Department* [2011] UKSC 28

STATUTORY INSTRUMENTS

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