

2014 No. 3299 (L. 36)

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

The Civil Procedure (Amendment No. 8) Rules 2014

Made - - - - *16th December 2014*

Laid before Parliament *18th December 2014*

Coming into force in accordance with rule 2

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. 8) Rules 2014.
2. These Rules come into force as follows—
 - (a) Rules 1 to 3 and 17 of these Rules come into force on 9th January 2015;
 - (b) Rules 4, 13 and 14 of these Rules come into force on 11th January 2015;
 - (c) Rules 5 to 12, 15, 16 and 18 of these Rules, and Schedules 1 and 2 to these Rules, come into force on 6th April 2015.
3. In these Rules—
 - (a) a reference to a Part or rule by number alone means the Part or rule so numbered in the Civil Procedure Rules 1998(b); and
 - (b) a reference to an Order by number and prefixed “RSC” means the RSC Order so numbered in Schedule 1 to those Rules.

Amendments to the Civil Procedure Rules 1998

4. The Civil Procedure Rules 1998 are amended in accordance with rules 5 to 16.
5. In rule 21.12—
 - (a) in paragraph (1)—

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

(b) S.I. 1998/3132, to which there are relevant amendments in S.I. 1999/1008, S.I. 2000/2092, S.I. 2000/221, S.I. 2003/3361, S.I. 2005/2292, S.I. 2006/3435, S.I. 2007/2204, S.I. 2009/3390, S.I. 2010/1953, S.I. 2013/262, S.I. 2013/1695, S.I. 2004/2072, S.I. 2013/1974 and S.I. 2014/407.

- (i) at the beginning, for “In” substitute “Subject to paragraph (1A), in”; and
 - (ii) after “incurs”, insert “costs or”;
- (b) after paragraph (1), insert—
- “(1A) Costs recoverable under this rule are limited to costs incurred by or on behalf of a child by way of success fee under a conditional fee agreement or sum payable under a damages-based agreement in a claim for damages for personal injury where the damages agreed or ordered to be paid do not exceed £25,000.”;
- (c) in paragraph (3)—
- (i) in the first line, for “the” substitute “this”;
 - (ii) before “expenses”, insert “costs or”; and
 - (iii) for the words in parentheses after the paragraph, substitute—
- “(Costs and expenses which are also “costs” as defined in rule 44.1(1) are subject to rule 46.4(2) and (3).)”;
- (d) in paragraph (4)—
- (i) before “expenses”, insert “costs or”; and
 - (ii) after “rule 44.4(3)” insert “and rule 46.9”;
- (e) in paragraph (5)—
- (i) before “expenses”, insert “costs or”; and
 - (ii) before “expense”, insert “cost or”;
- (f) in paragraph (6), at the beginning, for “Where” substitute “Subject to paragraph (7), where”; and
- (g) after paragraph (6), insert—
- “(7) The amount which the litigation friend may recover under paragraph (1) in respect of costs must not (in proceedings at first instance) exceed 25% of the amount of the sum agreed or awarded in respect of—
- (a) general damages for pain, suffering and loss of amenity; and
 - (b) damages for pecuniary loss other than future pecuniary loss,
- net of any sums recoverable by the Compensation Recovery Unit of the Department for Work and Pensions.
- (8) Except in a case in which the costs payable to a child or protected party are fixed by these rules, no application may be made under this rule for a payment out of the money recovered by the child or protected party until the costs payable to the child or protected party have been assessed or agreed.”.

6. In rule 30.3(2)(c), after “in the type of claim in question” insert “and in particular the availability of a specialist judge sitting in an appropriate regional specialist court”.

7. For Part 36, substitute Part 36 as set out in Schedule 1 to these Rules.

8. In rule 37.3, in the words in parentheses at the end of the rule, for “36.9” substitute “36.11”.

9. In rule 44.9(1)(b), for “36.10” substitute “36.13”.

10. In Part 45—

- (a) in rule 45.19—
 - (i) in paragraph (2A)—
 - (aa) for subparagraph (a) substitute—
- “(a) obtaining the first report from an accredited medical expert selected via the MedCo Portal: £180;”; and

- (bb) in subparagraph (b), after “further report where justified from” insert “an expert from”;
- (ii) in paragraph (2B)—
 - (aa) for “a report from a medical expert who—” substitute “a report to which paragraph (2A) applies where the medical expert—”; and
 - (bb) in subparagraph (c), for “that they or an associate provide treatment” substitute “treatment that they or an associate then provide”; and
- (iii) for paragraph (2E) substitute—

“(2E) In this rule, ‘accredited medical expert’, ‘associate’, ‘associated with’, ‘fixed cost medical report’ ‘MedCo’ and ‘soft tissue injury claim’ have the same meaning as in paragraph 1.1(A1), (1A), (10A), (12A), and (16A), respectively, of the RTA Protocol.”;
- (b) in rule 45.20, for “36.21” substitute “36.29”;
- (c) in rule 45.24—
 - (i) in subparagraph (2), for “Where a judgment is given” substitute “Subject to paragraph (2A), where a judgment is given”; and
 - (ii) after paragraph (2)(c), insert—

“(2A) Where a judgment is given in favour of the claimant but the claimant did not comply with the process in paragraph 6.3A(2) of the RTA Protocol, the court may not order the defendant to pay the claimant’s costs and disbursements save in exceptional circumstances.”;
- (d) in rule 45.26, for “36.21” substitute “36.29”; and
- (e) in rule 45.29F—
 - (i) in paragraph (8), for “36.10A” substitute “36.20”; and
 - (ii) in paragraph (9), for “36.14A” substitute “36.21”;
- (f) in rule 45.29I—
 - (i) in paragraph (2A)—
 - (aa) for subparagraph (a) substitute—

“(a) obtaining the first report from an accredited medical expert selected via the MedCo Portal: £180;”; and
 - (bb) in subparagraph (b), after “further report where justified from” insert “an expert from”;
 - (ii) in paragraph (2B)—
 - (aa) for “a report from a medical expert who—” substitute “a report to which paragraph (2A) applies where the medical expert—”; and
 - (bb) in subparagraph (c), for “that they or an associate provide treatment” substitute “treatment that they or an associate then provide”; and
 - (iii) for paragraph (2E) substitute—

“(2E) In this rule, ‘accredited medical expert’, ‘associate’, ‘associated with’, ‘fixed cost medical report’ ‘MedCo’ and ‘soft tissue injury claim’ have the same meaning as in paragraph 1.1(A1), (1A), (10A), (12A), and (16A), respectively, of the RTA Protocol.”.

11. In rule 47.20—

- (a) in paragraph (4)—
 - (i) for sub-paragraph (c) substitute—

“(c) a detailed assessment hearing is “in progress” from the time when it starts until the bill of costs has been assessed or agreed;”; and
 - (ii) in sub-paragraph (d)—
 - (aa) for “36.11” substitute “36.14”; and

(bb) for the words after “substitute” to the end substitute ““If such sum is not paid within 14 days of acceptance of the offer, or such other period as has been agreed, the receiving party may apply for a final costs certificate for the unpaid sum.”;” and

(b) in paragraph (7), for “36.14” substitute “36.17”.

12. In rule 52.12, in the words in parentheses at the end of the rule, for “36.3” substitute “36.4”.

13. In Part 74—

(a) in the table of contents, after the entry for rule 74.33 insert—

“Section VI Recognition and enforcement of protection measures

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Procedure for applications in this Section 74.35

OUTGOING PROTECTION MEASURES

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INCOMING PROTECTION MEASURES

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Enforcement of incoming protection measures 74.48

Application for refusal of recognition or enforcement under Article 13 74.49

Application under Article 14(2) 74.50”

(b) after rule 74.1(4A) insert—

“(4B) Section VI applies to—

(a) the certification in England and Wales of outgoing protection measures; and

(b) the enforcement in England and Wales of certified protection measures from Member States of the European Union other than the United Kingdom or Denmark.”;

(c) after rule 74.33 insert—

“VI Recognition and enforcement of protection measures

Interpretation

74.34. In this Section—

(a) “Article 5 certificate” means a certificate issued under Article 5 of the Protection Measures Regulation;

(b) “Article 8 notice” means the notification required by Article 8 of the Protection Measures Regulation;

- (c) “Article 11 notice” means the notification required by Article 11 of the Protection Measures Regulation;
- (d) “Article 14 certificate” means a certificate issued under Article 14 of the Protection Measures Regulation;
- (e) “incoming protection measure” means a protection measure that has been ordered in a Member State of the European Union other than the United Kingdom or Denmark;
- (f) “outgoing protection measure” means any protection measure included in any of—
 - (i) an injunction issued for the purpose mentioned in section 3(3)(a) of the Protection from Harassment Act 1997(a);
 - (ii) any other injunction or order of the County Court;
 - (iii) an undertaking accepted by the County Court;
 - (iv) in proceedings to which these Rules apply—
 - (aa) any other injunction or order of the High Court;
 - (bb) an undertaking accepted by the High Court;
- (g) “person causing the risk” has the meaning given to it in the Protection Measures Regulation;
- (h) “protected person” has the meaning given to it in the Protection Measures Regulation;
- (i) “protection measure” has the meaning given to it in the Protection Measures Regulation;
- (j) “Protection Measures Regulation” means Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12th June 2013 on mutual recognition of protection measures in civil matters(b).

Procedure for applications in this Section

74.35. Subject to the rules in this Section, applications under the Protection Measures Regulation to the County Court or to the High Court must be made in accordance with Part 23.

OUTGOING PROTECTION MEASURES

Application for an Article 5 certificate

- 74.36.**—(1) A protected person may apply for an Article 5 certificate—
- (a) at the time of application for an injunction or other order containing an outgoing protection measure; or
 - (b) at any time after such application, provided—
 - (i) the order or undertaking containing the outgoing protection measure has not yet been made or accepted as the case may be; or
 - (ii) the outgoing protection measure is still in force.
- (2) An application for an Article 5 certificate may be made without notice.

The court to which an application for an Article 5 certificate must be made

74.37. An application for an Article 5 certificate must be made—

(a) 1997 c.40, amended by the Crime and Courts Act 2013 (c.22), section 17(5), Schedule 9 Part 2, paragraph 39(a).
 (b) OJ No. L 181, 29.6.2013, p.4.

- (a) where the outgoing protection measure has not yet been ordered or accepted—
 - (i) to the County Court if the proceedings relating to the outgoing protection measure are before the County Court; or
 - (ii) to the High Court if the proceedings relating to the outgoing protection measure are before the High Court; or
- (b) where the outgoing protection measure has been ordered or accepted—
 - (i) to the County Court if that court made the order or accepted the undertaking as the case may be; or
 - (ii) to the High Court if that court made the order or accepted the undertaking as the case may be.

When a request for a translation of an Article 5 certificate may be made

74.38. A protected person may request a translation of an Article 5 certificate—

- (a) at the time of application for the Article 5 certificate; or
- (b) at any time after such application, provided the Article 5 certificate—
 - (i) has not yet been issued; or
 - (ii) if issued, is still in force.

The court to which a request for a translation of an Article 5 certificate must be made

74.39. A request for a translation of an Article 5 certificate must be made—

- (a) if the certificate has not yet been issued, to—
 - (i) the County Court if the application for the certificate is before the County Court;
 - (ii) the High Court if the application for the certificate is before the High Court;
- (b) if the certificate has been issued, to—
 - (i) the County Court if the County Court issued it;
 - (ii) the High Court if the High Court issued it.

Service requirements under Article 6

74.40.—(1) Where the outgoing protection measure is included in an order, the court may only issue an Article 5 certificate if satisfied that the order has been served on the person causing the risk in accordance with the requirements specified in rule 81.5, unless the court has dispensed with service of the order in accordance with the requirements specified in rule 81.8.

(2) Where the protected person is responsible for serving the order on the person causing the risk, any application for an Article 5 certificate must be accompanied by a certificate of service.

Notification of the certificate under Article 8

74.41.—(1) Subject to paragraph (2), Article 8 notice must be given to the person causing the risk by serving it in accordance with Section III of Part 6 and the rules in that Section shall apply to service of the notice as they apply to any other document to be served.

(2) If the person causing the risk resides in a Member State of the European Union other than the United Kingdom or in a country outside the European Union, Article 8 notice must be given by sending it by registered letter with acknowledgement of receipt or confirmation of delivery or equivalent to the last known place of residence of that person.

Rectification of an Article 5 certificate

74.42.—(1) An application pursuant to Article 9 of the Protection Measures Regulation for rectification of an Article 5 certificate must be made to—

- (a) the County Court if the County Court issued the certificate;
- (b) the High Court if the High Court issued the certificate.

(2) An application for such rectification may be made by—

- (a) the protected person; or
- (b) the person causing the risk.

(3) An Article 5 certificate may be rectified pursuant to Article 9(1)(a) of the Protection Measures Regulation by the court—

- (a) on application under this rule; or
- (b) on its own initiative.

Withdrawal of an Article 5 certificate

74.43.—(1) An application pursuant to Article 9 of the Protection Measures Regulation for withdrawal of an Article 5 certificate must be made to—

- (a) the County Court if the County Court issued the certificate;
- (b) the High Court if the High Court issued the certificate.

(2) An application for such withdrawal may be made by—

- (a) the protected person; or
- (b) the person causing the risk.

(3) An Article 5 certificate may be withdrawn pursuant to Article 9(1)(b) of the Protection Measures Regulation by the court—

- (a) on application under this rule; or
- (b) on its own initiative.

When an application for an Article 14 certificate may be made

74.44. A protected person or person causing the risk may apply for an Article 14 certificate—

- (a) at the time of application to vary or set aside the order containing the outgoing protection measure, or for acceptance of a variation or setting aside of the undertaking containing the outgoing protection measure, as the case may be;
- (b) at any time after the order containing the outgoing protection measure has been varied or set aside or a variation or setting aside of the undertaking containing the outgoing protection measure has been accepted, as the case may be;
- (c) at any time after an Article 5 certificate has been withdrawn under Article 9 of the Protection Measures Regulation; or
- (d) on, or at any time after, the making of an order staying or suspending enforcement of the order or undertaking containing the outgoing protection measure.

The court to which an application for an Article 14 certificate must be made

74.45. An application for an Article 14 certificate must be made—

- (a) if the order containing the outgoing protection measure has not yet been varied or set aside or a variation or setting aside of the undertaking containing the protection measure has not yet been accepted, as the case may be, to—

- (i) the County Court if the application for such variation or setting aside is before the County Court; or
- (ii) the High Court if the application for such variation or setting aside is before the High Court; or
- (b) if there has been an application under Article 9 of the Protection Measures Regulation for withdrawal of the Article 5 certificate, and that application has not yet been decided, to—
 - (i) the County Court if the application for such withdrawal is before the County Court; or
 - (ii) the High Court if the application for such withdrawal is before the High Court; or
- (c) if the order containing the outgoing protection measure has been varied or set aside, or a variation or setting aside of the undertaking containing the outgoing protection measure has been accepted, to—
 - (i) the County Court if the County Court ordered or accepted such variation or setting aside, as the case may be; or
 - (ii) the High Court if the High Court ordered or accepted such variation or setting aside, as the case may be; or
- (d) if an Article 5 certificate has been withdrawn under Article 9, to—
 - (i) the County Court if the County Court ordered such withdrawal;
 - (ii) the High Court if the High Court ordered such withdrawal; or
- (e) where enforcement of the order has been stayed or suspended, to—
 - (i) the County Court if the County Court made the order for the stay or suspension; or
 - (ii) the High Court if the High Court made the order for the stay or suspension.

INCOMING PROTECTION MEASURES

Application for adjustment under Article 11

74.46. A protected person may apply to the court under Article 11 of the Protection Measures Regulation to adjust the factual elements of an incoming protection measure.

Notification of the adjustment under Article 11

74.47.—(1) Subject to paragraph (2), Article 11 notice must be given to the person causing the risk by serving it in accordance with Section III of Part 6 and the rules in that Section apply to service of the notice as they apply to any other document to be served.

(2) If the person causing the risk resides in a Member State of the European Union other than the United Kingdom or in a country outside the European Union, Article 11 notice must be given by sending it by registered letter with acknowledgment of receipt or other confirmation of delivery or equivalent to the last known place of residence of that person.

Enforcement of an incoming protection measure

74.48. Section II of Part 81 applies to applications in relation to a breach of an incoming protection measure as if the incoming protection measure had been ordered by the County Court.

Application for refusal of recognition or enforcement under Article 13

74.49. A person causing the risk may apply to the court under Article 13 of the Protection Measures Regulation for refusal of recognition or enforcement of an incoming protection measure.

Application under Article 14(2)

74.50.—(1) This rule applies where an Article 14 certificate has been issued in a Member State of the European Union other than the United Kingdom or Denmark.

(2) A protected person or person causing the risk may apply to the court to stay, suspend or withdraw the effects of recognition or, where applicable, the enforcement of the protection measure.

(3) An application under this rule must include a copy of the Article 14 certificate issued in the other Member State.

(4) On an application under this rule, the court must make such orders or give such directions as may be necessary to give effect to the Article 14 certificate.”

14. In Rule 81.9—

(a) for paragraph (2) substitute—

“(2) The following may be enforced under rule 81.4 notwithstanding that they do not contain the warning described in paragraph (1)—

(a) an undertaking to do or not do an act which is contained in a judgment or order; and

(b) an incoming protection measure.”;

(b) after paragraph (2) insert—

“(3) In this rule, “incoming protection measure” has the meaning given to it in rule 74.34(1).”.

15. After Part 86, insert Part 87 as set out in Schedule 2 to these Rules.

16. In Schedule 1 to the Civil Procedure Rules 1998, omit RSC Order 54.

Amendment of the Civil Procedure (Amendment No. 7) Rules 2014

17. In rule 5 of the Civil Procedure (Amendment No. 7) Rules 2014(a)—

(a) in paragraph (8), for “rule 74.5(6)” substitute “rule 74.5(1)”; and

(b) in paragraph (9)(a), for “omit” substitute “insert”.

Transitional provision

18.—(1) The amendments made by rules 7 to 9, 10(b), (d) and (e), 11 and 12 of and Schedule 1 to these Rules apply only in relation to Part 36 offers made on or after 6th April 2015, except as provided in paragraph (2).

(2) Rules 36.3, 36.11, 36.12 and 36.16 in Schedule 1 to these Rules also apply in relation to any Part 36 offer where—

(a) the offer is made before 6th April 2015; but

(b) a trial of any part of the claim or of any issue arising in it starts on or after 6th April 2015.

(3) The amendments made by rule 10(a)(i)(aa) and rule 10(f)(i)(aa) apply only to claims where the claim notification form is submitted on or after 6th April 2014.

(4) Rules 15 and 16 of, and Schedule 2 to, these Rules apply in relation to all applications for writ of habeas corpus made on or after 6th April 2015.

*The Right Honourable Lord Dyson, MR
Stephen Richards, LJ
Mr Justice Birss
Master Roberts
His Honour Judge Martin McKenna
District Judge Michael Hovington
District Judge Christopher Lethem
Nicholas Bacon QC
Edward Pepperall QC
Amanda Stevens
Andrew Underwood
Kate Wellington*

I allow these Rules
Signed by authority of the Lord Chancellor

*Edward Faulks
Minister of State
Ministry of Justice*

16th December 2014

SCHEDULE 1

Rule 7

“PART 36 OFFERS TO SETTLE

Contents of this Part

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Scope of this Part

36.1.—(1) This Part contains a self-contained procedural code about offers to settle made pursuant to the procedure set out in this Part (“Part 36 offers”).

(2) Section I of this Part contains general rules about Part 36 offers.

(3) Section II of this Part contains rules about offers to settle where the parties have followed the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (“the RTA Protocol”) or the Pre-Action Protocol for Low Value Personal Injury (Employers’ Liability and Public Liability) Claims (“the EL/PL Protocol”) and have started proceedings under Part 8 in accordance with Practice Direction 8B.

SECTION I
Part 36 Offers to Settle
GENERAL

Scope of this Section

36.2 .—(1) This Section does not apply to an offer to settle to which Section II of this Part applies.

(2) Nothing in this Section prevents a party making an offer to settle in whatever way that party chooses, but if the offer is not made in accordance with rule 36.5, it will not have the consequences specified in this Section.

(Rule 44.2 requires the court to consider an offer to settle that does not have the costs consequences set out in this Section in deciding what order to make about costs.)

(3) A Part 36 offer may be made in respect of the whole, or part of, or any issue that arises in—

- (a) a claim, counterclaim or other additional claim; or
- (b) an appeal or cross-appeal from a decision made at a trial.

(Rules 20.2 and 20.3 provide that counterclaims and other additional claims are treated as claims and that references to a claimant or a defendant include a party bringing or defending an additional claim.)

Definitions

36.3. In this Section—

- (a) the party who makes an offer is the “offeror”;
- (b) the party to whom an offer is made is the “offeree”;
- (c) a “trial” means any trial in a case whether it is a trial of all issues or a trial of liability, quantum or some other issue in the case;
- (d) a trial is “in progress” from the time when it starts until the time when judgment is given or handed down;
- (e) a case is “decided” when all issues in the case have been determined, whether at one or more trials;
- (f) “trial judge” includes the judge (if any) allocated in advance to conduct a trial; and
- (g) “the relevant period” means—
 - (i) in the case of an offer made not less than 21 days before a trial, the period specified under rule 36.5(1)(c) or such longer period as the parties agree;
 - (ii) otherwise, the period up to the end of such trial.

Application of Part 36 to appeals

36.4.—(1) Except where a Part 36 offer is made in appeal proceedings, it shall have the consequences set out in this Section only in relation to the costs of the proceedings in respect of which it is made, and not in relation to the costs of any appeal from a decision in those proceedings.

(2) Where a Part 36 offer is made in appeal proceedings, references in this Section to a term in the first column below shall be treated, unless the context requires otherwise, as references to the corresponding term in the second column—

<i>Term</i>	<i>Corresponding term</i>
Claim	Appeal
Counterclaim	Cross-appeal

Case	Appeal proceedings
Claimant	Appellant
Defendant	Respondent
Trial	Appeal hearing
Trial judge	Appeal judge

MAKING OFFERS

Form and content of a Part 36 offer

36.5.—(1) A Part 36 offer must—

- (a) be in writing;
- (b) make clear that it is made pursuant to Part 36;
- (c) specify a period of not less than 21 days within which the defendant will be liable for the claimant’s costs in accordance with rule 36.13 or 36.20 if the offer is accepted;
- (d) state whether it relates to the whole of the claim or to part of it or to an issue that arises in it and if so to which part or issue; and
- (e) state whether it takes into account any counterclaim.

(Rule 36.7 makes provision for when a Part 36 offer is made.)

(2) Paragraph (1)(c) does not apply if the offer is made less than 21 days before the start of a trial.

(3) In appropriate cases, a Part 36 offer must contain such further information as is required by rule 36.18 (personal injury claims for future pecuniary loss), rule 36.19 (offer to settle a claim for provisional damages), and rule 36.22 (deduction of benefits).

(4) A Part 36 offer which offers to pay or offers to accept a sum of money will be treated as inclusive of all interest until—

- (a) the date on which the period specified under rule 36.5(1)(c) expires; or
- (b) if rule 36.5(2) applies, a date 21 days after the date the offer was made.

Part 36 offers – defendant’s offer

36.6.—(1) Subject to rules 36.18(3) and 36.19(1), a Part 36 offer by a defendant to pay a sum of money in settlement of a claim must be an offer to pay a single sum of money.

(2) A defendant’s offer that includes an offer to pay all or part of the sum at a date later than 14 days following the date of acceptance will not be treated as a Part 36 offer unless the offeree accepts the offer.

Time when a Part 36 offer is made

36.7.—(1) A Part 36 offer may be made at any time, including before the commencement of proceedings.

(2) A Part 36 offer is made when it is served on the offeree.

(Part 6 provides detailed rules about service of documents.)

CLARIFYING, WITHDRAWING AND CHANGING THE TERMS OF OFFERS

Clarification of a Part 36 offer

36.8.—(1) The offeree may, within 7 days of a Part 36 offer being made, request the offeror to clarify the offer.

(2) If the offeror does not give the clarification requested under paragraph (1) within 7 days of receiving the request, the offeree may, unless the trial has started, apply for an order that the offeror do so.

(Part 23 contains provisions about making an application to the court.)

(3) If the court makes an order under paragraph (2), it must specify the date when the Part 36 offer is to be treated as having been made.

Withdrawing or changing the terms of a Part 36 offer generally

36.9.—(1) A Part 36 offer can only be withdrawn, or its terms changed, if the offeree has not previously served notice of acceptance.

(2) The offeror withdraws the offer or changes its terms by serving written notice of the withdrawal or change of terms on the offeree.

(Rule 36.17(7) deals with the costs consequences following judgment of an offer which is withdrawn.)

(3) Subject to rule 36.10, such notice of withdrawal or change of terms takes effect when it is served on the offeree.

(Rule 36.10 makes provision about when permission is required to withdraw or change the terms of an offer before the expiry of the relevant period.)

(4) Subject to paragraph (1), after expiry of the relevant period—

- (a) the offeror may withdraw the offer or change its terms without the permission of the court; or
- (b) the offer may be automatically withdrawn in accordance with its terms.

(5) Where the offeror changes the terms of a Part 36 offer to make it more advantageous to the offeree—

- (a) such improved offer shall be treated, not as the withdrawal of the original offer; but as the making of a new Part 36 offer on the improved terms; and
- (b) subject to rule 36.5(2), the period specified under rule 36.5(1)(c) shall be 21 days or such longer period (if any) identified in the written notice referred to in paragraph (2).

Withdrawing or changing the terms of a Part 36 offer before the expiry of the relevant period

36.10.—(1) Subject to rule 36.9(1), this rule applies where the offeror serves notice before expiry of the relevant period of withdrawal of the offer or change of its terms to be less advantageous to the offeree.

(2) Where this rule applies—

- (a) if the offeree has not served notice of acceptance of the original offer by the expiry of the relevant period, the offeror's notice has effect on the expiry of that period; and
- (b) if the offeree serves notice of acceptance of the original offer before the expiry of the relevant period, that acceptance has effect unless the offeror applies to the court for permission to withdraw the offer or to change its terms—
 - (i) within 7 days of the offeree's notice of acceptance; or
 - (ii) if earlier, before the first day of trial.

(3) On an application under paragraph (2)(b), the court may give permission for the original offer to be withdrawn or its terms changed if satisfied that there has been a change of circumstances since the making of the original offer and that it is in the interests of justice to give permission.

ACCEPTING OFFERS

Acceptance of a Part 36 offer

36.11.—(1) A Part 36 offer is accepted by serving written notice of acceptance on the offeror.

(2) Subject to paragraphs (3) and (4) and to rule 36.12, a Part 36 offer may be accepted at any time (whether or not the offeree has subsequently made a different offer), unless it has already been withdrawn.

(Rule 21.10 deals with compromise, etc. by or on behalf of a child or protected party.)

(Rules 36.9 and 36.10 deal with withdrawal of Part 36 offers.)

(3) The court's permission is required to accept a Part 36 offer where—

- (a) rule 36.15(4) applies;
- (b) rule 36.22(3)(b) applies, the relevant period has expired and further deductible amounts have been paid to the claimant since the date of the offer;
- (c) an apportionment is required under rule 41.3A; or
- (d) a trial is in progress.

(Rule 36.15 deals with offers by some but not all of multiple defendants.)

(Rule 36.22 defines “deductible amounts”.)

(Rule 41.3A requires an apportionment in proceedings under the Fatal Accidents Act 1976(a) and Law Reform (Miscellaneous Provisions) Act 1934(b).)

(4) Where the court gives permission under paragraph (3), unless all the parties have agreed costs, the court must make an order dealing with costs, and may order that the costs consequences set out in rule 36.13 apply.

Acceptance of a Part 36 offer in a split-trial case

36.12.—(1) This rule applies in any case where there has been a trial but the case has not been decided within the meaning of rule 36.3.

(2) Any Part 36 offer which relates only to parts of the claim or issues that have already been decided can no longer be accepted.

(3) Subject to paragraph (2) and unless the parties agree, any other Part 36 offer cannot be accepted earlier than 7 clear days after judgment is given or handed down in such trial.

Costs consequences of acceptance of a Part 36 offer

36.13.—(1) Subject to paragraphs (2) and (4) and to rule 36.20, where a Part 36 offer is accepted within the relevant period the claimant will be entitled to the costs of the proceedings (including their recoverable pre-action costs) up to the date on which notice of acceptance was served on the offeror.

(Rule 36.20 makes provision for the costs consequences of accepting a Part 36 offer in certain personal injury claims where the claim no longer proceeds under the RTA or EL/PL Protocol.)

(2) Where—

- (a) a defendant's Part 36 offer relates to part only of the claim; and
- (b) at the time of serving notice of acceptance within the relevant period the claimant abandons the balance of the claim,

(a) 1976 c. 30.

(b) 1934 c. 41.

the claimant will only be entitled to the costs of such part of the claim unless the court orders otherwise.

(3) Except where the recoverable costs are fixed by these Rules, costs under paragraphs (1) and (2) are to be assessed on the standard basis if the amount of costs is not agreed.

(Rule 44.3(2) explains the standard basis for the assessment of costs.)

(Rule 44.9 contains provisions about when a costs order is deemed to have been made and applying for an order under section 194(3) of the Legal Services Act 2007(a).)

(Part 45 provides for fixed costs in certain classes of case.)

(4) Where—

- (a) a Part 36 offer which was made less than 21 days before the start of a trial is accepted; or
- (b) a Part 36 offer which relates to the whole of the claim is accepted after expiry of the relevant period; or
- (c) subject to paragraph (2), a Part 36 offer which does not relate to the whole of the claim is accepted at any time,

the liability for costs must be determined by the court unless the parties have agreed the costs.

(5) Where paragraph (4)(b) applies but the parties cannot agree the liability for costs, the court must, unless it considers it unjust to do so, order that—

- (a) the claimant be awarded costs up to the date on which the relevant period expired; and
- (b) the offeree do pay the offeror's costs for the period from the date of expiry of the relevant period to the date of acceptance.

(6) In considering whether it would be unjust to make the orders specified in paragraph (5), the court must take into account all the circumstances of the case including the matters listed in rule 36.17(5).

(7) The claimant's costs include any costs incurred in dealing with the defendant's counterclaim if the Part 36 offer states that it takes it into account.

Other effects of acceptance of a Part 36 offer

36.14.—(1) If a Part 36 offer is accepted, the claim will be stayed.

(2) In the case of acceptance of a Part 36 offer which relates to the whole claim, the stay will be upon the terms of the offer.

(3) If a Part 36 offer which relates to part only of the claim is accepted, the claim will be stayed as to that part upon the terms of the offer.

(4) If the approval of the court is required before a settlement can be binding, any stay which would otherwise arise on the acceptance of a Part 36 offer will take effect only when that approval has been given.

(5) Any stay arising under this rule will not affect the power of the court—

- (a) to enforce the terms of a Part 36 offer; or
- (b) to deal with any question of costs (including interest on costs) relating to the proceedings.

(6) Unless the parties agree otherwise in writing, where a Part 36 offer that is or includes an offer to pay or accept a single sum of money is accepted, that sum must be paid to the claimant within 14 days of the date of—

- (a) acceptance; or

- (b) the order when the court makes an order under rule 41.2 (order for an award of provisional damages) or rule 41.8 (order for an award of periodical payments), unless the court orders otherwise.
- (7) If such sum is not paid within 14 days of acceptance of the offer, or such other period as has been agreed, the claimant may enter judgment for the unpaid sum.
- (8) Where—
- (a) a Part 36 offer (or part of a Part 36 offer) which is not an offer to which paragraph (6) applies is accepted; and
 - (b) a party alleges that the other party has not honoured the terms of the offer,
- that party may apply to enforce the terms of the offer without the need for a new claim.

Acceptance of a Part 36 offer made by one or more, but not all, defendants

36.15.—(1) This rule applies where the claimant wishes to accept a Part 36 offer made by one or more, but not all, of a number of defendants.

(2) If the defendants are sued jointly or in the alternative, the claimant may accept the offer if—

- (a) the claimant discontinues the claim against those defendants who have not made the offer; and
- (b) those defendants give written consent to the acceptance of the offer.

(3) If the claimant alleges that the defendants have a several liability^(GL) to the claimant, the claimant may—

- (a) accept the offer; and
- (b) continue with the claims against the other defendants if entitled to do so.

(4) In all other cases the claimant must apply to the court for permission to accept the Part 36 offer.

UNACCEPTED OFFERS

Restriction on disclosure of a Part 36 offer

36.16.—(1) A Part 36 offer will be treated as “without prejudice except as to costs”.

(2) The fact that a Part 36 offer has been made and the terms of such offer must not be communicated to the trial judge until the case has been decided.

(3) Paragraph (2) does not apply—

- (a) where the defence of tender before claim has been raised;
- (b) where the proceedings have been stayed under rule 36.14 following acceptance of a Part 36 offer;
- (c) where the offeror and the offeree agree in writing that it should not apply; or
- (d) where, although the case has not been decided—
 - (i) any part of, or issue in, the case has been decided; and
 - (ii) the Part 36 offer relates only to parts or issues that have been decided.

(4) In a case to which paragraph (3)(d)(i) applies, the trial judge—

- (a) may be told whether or not there are Part 36 offers other than those referred to in paragraph (3)(d)(ii); but
- (b) must not be told the terms of any such other offers unless any of paragraphs (3)(a) to (c) applies.

Costs consequences following judgment

36.17.—(1) Subject to rule 36.21, this rule applies where upon judgment being entered—

- (a) a claimant fails to obtain a judgment more advantageous than a defendant’s Part 36 offer; or
- (b) judgment against the defendant is at least as advantageous to the claimant as the proposals contained in a claimant’s Part 36 offer.

(Rule 36.21 makes provision for the costs consequences following judgment in certain personal injury claims where the claim no longer proceeds under the RTA or EL/PL Protocol.)

(2) For the purposes of paragraph (1), in relation to any money claim or money element of a claim, “more advantageous” means better in money terms by any amount, however small, and “at least as advantageous” shall be construed accordingly.

(3) Subject to paragraphs (7) and (8), where paragraph (1)(a) applies, the court must, unless it considers it unjust to do so, order that the defendant is entitled to—

- (a) costs (including any recoverable pre-action costs) from the date on which the relevant period expired; and
- (b) interest on those costs.

(4) Subject to paragraph (7), where paragraph (1)(b) applies, the court must, unless it considers it unjust to do so, order that the claimant is entitled to—

- (a) interest on the whole or part of any sum of money (excluding interest) awarded, at a rate not exceeding 10% above base rate for some or all of the period starting with the date on which the relevant period expired;
- (b) costs (including any recoverable pre-action costs) on the indemnity basis from the date on which the relevant period expired;
- (c) interest on those costs at a rate not exceeding 10% above base rate; and
- (d) provided that the case has been decided and there has not been a previous order under this sub-paragraph, an additional amount, which shall not exceed £75,000, calculated by applying the prescribed percentage set out below to an amount which is—
 - (i) the sum awarded to the claimant by the court; or
 - (ii) where there is no monetary award, the sum awarded to the claimant by the court in respect of costs—

<i>Amount awarded by the court</i>	<i>Prescribed percentage</i>
Up to £500,000	10% of the amount awarded
Above £500,000	10% of the first £500,000 and (subject to the limit of £75,000) 5% of any amount above that figure.

(5) In considering whether it would be unjust to make the orders referred to in paragraphs (3) and (4), the court must take into account all the circumstances of the case including—

- (a) the terms of any Part 36 offer;
- (b) the stage in the proceedings when any Part 36 offer was made, including in particular how long before the trial started the offer was made;
- (c) the information available to the parties at the time when the Part 36 offer was made;
- (d) the conduct of the parties with regard to the giving of or refusal to give information for the purposes of enabling the offer to be made or evaluated; and
- (e) whether the offer was a genuine attempt to settle the proceedings.

(6) Where the court awards interest under this rule and also awards interest on the same sum and for the same period under any other power, the total rate of interest must not exceed 10% above base rate.

(7) Paragraphs (3) and (4) do not apply to a Part 36 offer—

- (a) which has been withdrawn;
- (b) which has been changed so that its terms are less advantageous to the offeree where the offeree has beaten the less advantageous offer;
- (c) made less than 21 days before trial, unless the court has abridged the relevant period.

(8) Paragraph (3) does not apply to a soft tissue injury claim to which rule 36.21 applies.

(Rule 44.2 requires the court to consider an offer to settle that does not have the costs consequences set out in this Section in deciding what order to make about costs.)

PERSONAL INJURY CLAIMS

Personal injury claims for future pecuniary loss

36.18.—(1) This rule applies to a claim for damages for personal injury which is or includes a claim for future pecuniary loss.

(2) An offer to settle such a claim will not have the consequences set out in this Section unless it is made by way of a Part 36 offer under this rule.

(3) A Part 36 offer to which this rule applies may contain an offer to pay, or an offer to accept—

- (a) the whole or part of the damages for future pecuniary loss in the form of—
 - (i) a lump sum;
 - (ii) periodical payments; or
 - (iii) both a lump sum and periodical payments;
- (b) the whole or part of any other damages in the form of a lump sum.

(4) A Part 36 offer to which this rule applies—

- (a) must state the amount of any offer to pay or to accept the whole or part of any damages in the form of a lump sum;
- (b) may state—
 - (i) what part of the lump sum, if any, relates to damages for future pecuniary loss; and
 - (ii) what part relates to other damages to be paid or accepted in the form of a lump sum;
- (c) must state what part of the offer relates to damages for future pecuniary loss to be paid or accepted in the form of periodical payments and must specify—
 - (i) the amount and duration of the periodical payments;
 - (ii) the amount of any payments for substantial capital purchases and when they are to be made; and
 - (iii) that each amount is to vary by reference to the retail prices index (or to some other named index, or that it is not to vary by reference to any index); and
- (d) must state either that any damages which take the form of periodical payments will be funded in a way which ensures that the continuity of payments is reasonably

secure in accordance with section 2(4) of the Damages Act 1996^(a) or how such damages are to be paid and how the continuity of their payment is to be secured.

(5) Rule 36.6 applies to the extent that a Part 36 offer by a defendant under this rule includes an offer to pay all or part of any damages in the form of a lump sum.

(6) Where the offeror makes a Part 36 offer to which this rule applies and which offers to pay or to accept damages in the form of both a lump sum and periodical payments, the offeree may only give notice of acceptance of the offer as a whole.

(7) If the offeree accepts a Part 36 offer which includes payment of any part of the damages in the form of periodical payments, the claimant must, within 7 days of the date of acceptance, apply to the court for an order for an award of damages in the form of periodical payments under rule 41.8.

(Practice Direction 41B contains information about periodical payments under the Damages Act 1996.)

Offer to settle a claim for provisional damages

36.19.—(1) An offeror may make a Part 36 offer in respect of a claim which includes a claim for provisional damages.

(2) Where the offeror does so, the Part 36 offer must specify whether or not the offeror is proposing that the settlement shall include an award of provisional damages.

(3) Where the offeror is offering to agree to the making of an award of provisional damages, the Part 36 offer must also state—

- (a) that the sum offered is in satisfaction of the claim for damages on the assumption that the injured person will not develop the disease or suffer the type of deterioration specified in the offer;
- (b) that the offer is subject to the condition that the claimant must make any claim for further damages within a limited period; and
- (c) what that period is.

(4) Rule 36.6 applies to the extent that a Part 36 offer by a defendant includes an offer to agree to the making of an award of provisional damages.

(5) If the offeree accepts the Part 36 offer, the claimant must, within 7 days of the date of acceptance, apply to the court for an award of provisional damages under rule 41.2.

Costs consequences of acceptance of a Part 36 offer where Section IIIA of Part 45 applies

36.20.—(1) This rule applies where a claim no longer continues under the RTA or EL/PL Protocol pursuant to rule 45.29A(1).

(2) Where a Part 36 offer is accepted within the relevant period, the claimant is entitled to the fixed costs in Table 6B, Table 6C or Table 6D in Section IIIA of Part 45 for the stage applicable at the date on which notice of acceptance was served on the offeror.

(3) Where—

- (a) a defendant's Part 36 offer relates to part only of the claim; and
- (b) at the time of serving notice of acceptance within the relevant period the claimant abandons the balance of the claim,

the claimant will be entitled to the fixed costs in paragraph (2).

(4) Subject to paragraphs (5), (6) and (7), where a defendant's Part 36 offer is accepted after the relevant period—

(a) 1996 c. 48. Section 2 was substituted by the Crime and Courts Act 2003 (c. 39), section 100(1).

- (a) the claimant will be entitled to the fixed costs in Table 6B, Table 6C or Table 6D in Section IIIA of Part 45 for the stage applicable at the date on which the relevant period expired; and
 - (b) the claimant will be liable for the defendant’s costs for the period from the date of expiry of the relevant period to the date of acceptance.
- (5) Subject to paragraphs (6) and (7), where the claimant accepts the defendant’s Protocol offer after the date on which the claim leaves the Protocol—
- (a) the claimant will be entitled to the applicable Stage 1 and Stage 2 fixed costs in Table 6 or Table 6A in Section III of Part 45; and
 - (b) the claimant will be liable for the defendant’s costs from the date on which the Protocol offer is deemed to have been made to the date of acceptance.
- (6) In a soft tissue injury claim, if the defendant makes a Part 36 offer before the defendant receives a fixed cost medical report, paragraphs (4) and (5) will only have effect if the claimant accepts the offer more than 21 days after the defendant received the report.
- (7) In this rule, “fixed cost medical report” and “soft tissue injury claim” have the same meaning as in paragraph 1.1(10A) and (16A) respectively of the RTA Protocol.
- (8) For the purposes of this rule a defendant’s Protocol offer is either—
- (a) defined in accordance with rules 36.25 and 36.26; or
 - (b) if the claim leaves the Protocol before the Court Proceedings Pack Form is sent to the defendant—
 - (i) the last offer made by the defendant before the claim leaves the Protocol; and
 - (ii) deemed to be made on the first business day after the claim leaves the Protocol.
- (9) A reference to—
- (a) the “Court Proceedings Pack Form” is a reference to the form used in the Protocol; and
 - (b) “business day” is a reference to a business day as defined in rule 6.2.
- (10) Fixed costs shall be calculated by reference to the amount of the offer which is accepted.
- (11) Where the parties do not agree the liability for costs, the court must make an order as to costs.
- (12) Where the court makes an order for costs in favour of the defendant—
- (a) the court must have regard to; and
 - (b) the amount of costs ordered must not exceed,
- the fixed costs in Table 6B, Table 6C or Table 6D in Section IIIA of Part 45 applicable at the date of acceptance, less the fixed costs to which the claimant is entitled under paragraph (4) or (5).
- (13) The parties are entitled to disbursements allowed in accordance with rule 45.29I incurred in any period for which costs are payable to them.

Costs consequences following judgment where section IIIA of Part 45 applies

36.21.—(1) Where a claim no longer continues under the RTA or EL/PL Protocol pursuant to rule 45.29A(1), rule 36.17 applies with the following modifications.

- (2) Subject to paragraphs (3), (4) and (5), where an order for costs is made pursuant to rule 36.17(3)—
 - (a) the claimant will be entitled to the fixed costs in Table 6B, 6C or 6D in Section IIIA of Part 45 for the stage applicable at the date on which the relevant period expired; and

(b) the claimant will be liable for the defendant's costs from the date on which the relevant period expired to the date of judgment.

(3) Subject to paragraphs (4) and (5), where the claimant fails to obtain a judgment more advantageous than the defendant's Protocol offer—

(a) the claimant will be entitled to the applicable Stage 1 and Stage 2 fixed costs in Table 6 or 6A in Section III of Part 45; and

(b) the claimant will be liable for the defendant's costs from the date on which the Protocol offer is deemed to be made to the date of judgment; and

(c) in this rule, the amount of the judgment is less than the Protocol offer where the judgment is less than the offer once deductible amounts identified in the judgment are deducted.

("Deductible amount" is defined in rule 36.22(1)(d).)

(4) In a soft tissue injury claim, if the defendant makes a Part 36 offer or Protocol offer before the defendant receives a fixed cost medical report, paragraphs (2) and (3) will only have effect in respect of costs incurred by either party more than 21 days after the defendant received the report.

(5) In this rule "fixed cost medical report" and "soft tissue injury claim" have the same meaning as in paragraph 1.1(10A) and (16A) respectively of the RTA Protocol.

(6) For the purposes of this rule a defendant's Protocol offer is either—

(a) defined in accordance with rules 36.25 and 36.26; or

(b) if the claim leaves the Protocol before the Court Proceedings Pack Form is sent to the defendant—

(i) the last offer made by the defendant before the claim leaves the Protocol; and

(ii) deemed to be made on the first business day after the claim leaves the Protocol.

(7) A reference to—

(a) the "Court Proceedings Pack Form" is a reference to the form used in the Protocol; and

(b) "business day" is a reference to a business day as defined in rule 6.2.

(8) Fixed costs must be calculated by reference to the amount which is awarded.

(9) Where the court makes an order for costs in favour of the defendant—

(a) the court must have regard to; and

(b) the amount of costs ordered shall not exceed,

the fixed costs in Table 6B, 6C or 6D in Section IIIA of Part 45 applicable at the date of judgment, less the fixed costs to which the claimant is entitled under paragraph (2) or (3).

(10) The parties are entitled to disbursements allowed in accordance with rule 45.29I incurred in any period for which costs are payable to them.

Deduction of benefits and lump sum payments

36.22.—(1) In this rule and rule 36.11—

(a) "the 1997 Act" means the Social Security (Recovery of Benefits) Act 1997(a);

(b) "the 2008 Regulations" means the Social Security (Recovery of Benefits)(Lump Sum Payments) Regulations 2008(b);

(c) "recoverable amount" means—

(a) 1997 c. 27

(b) S.I. 2008/1596. Relevant amendments were made by S.I. 2014/1456, regulation 2, Schedule, paragraphs 1, 2(e), 9.

- (i) “recoverable benefits” as defined in section 1(4)(c) of the 1997 Act; and
- (ii) “recoverable lump sum payments” as defined in regulation 1 of the 2008 Regulations;
- (d) “deductible amount” means—
 - (i) any benefits by the amount of which damages are to be reduced in accordance with section 8 of, and Schedule 2 to the 1997 Act^(a) (“deductible benefits”); and
 - (ii) any lump sum payment by the amount of which damages are to be reduced in accordance with regulation 12 of the 2008 Regulations (“deductible lump sum payments”); and
- (e) “certificate”—
 - (i) in relation to recoverable benefits, is construed in accordance with the provisions of the 1997 Act; and
 - (ii) in relation to recoverable lump sum payments, has the meaning given in section 29 of the 1997 Act, as applied by regulation 2 of, and modified by Schedule 1 to, the 2008 Regulations.

(2) This rule applies where a payment to a claimant following acceptance of a Part 36 offer would be a compensation payment as defined in section 1(4)(b) or 1A(5)(b)(b) of the 1997 Act.

(3) A defendant who makes a Part 36 offer must, where relevant, state either—

- (a) that the offer is made without regard to any liability for recoverable amounts; or
- (b) that it is intended to include any deductible amounts.

(4) Where paragraph (3)(b) applies, paragraphs (5) to (9) will apply to the Part 36 offer.

(5) Before making the Part 36 offer, the offeror must apply for a certificate.

(6) Subject to paragraph (7), the Part 36 offer must state—

- (a) the gross amount of compensation;
- (b) the name and amount of any deductible amounts by which the gross amount is reduced; and
- (c) the net amount of compensation.

(7) If at the time the offeror makes the Part 36 offer, the offeror has applied for, but has not received, a certificate, the offeror must clarify the offer by stating the matters referred to in paragraph (6)(b) and (c) not more than 7 days after receipt of the certificate.

(8) For the purposes of rule 36.17(1)(a), a claimant fails to recover more than any sum offered (including a lump sum offered under rule 36.6) if the claimant fails upon judgment being entered to recover a sum, once deductible amounts identified in the judgment have been deducted, greater than the net amount stated under paragraph (6)(c).

(Section 15(2) of the 1997 Act provides that the court must specify the compensation payment attributable to each head of damage. Schedule 1 to the 2008 Regulations modifies section 15 of the 1997 Act in relation to lump sum payments and provides that the court must specify the compensation payment attributable to each or any defendant who has received a lump sum payment.)

(9) Where—

- (a) further deductible amounts have accrued since the Part 36 offer was made; and
- (b) the court gives permission to accept the Part 36 offer,

^(a) Schedule 12 was amended by the Welfare Reform Act 2012 (c. 5), section 31, Schedule 2 paragraphs 40, 42; section 91, Schedule 9, paragraphs 34, 36; and section 147, Schedule 14, Parts 1 and 9.

^(b) Section 1A was inserted by the Child Maintenance and Other Payments Act 2008 (c. 6), section 54.

the court may direct that the amount of the offer payable to the offeree shall be reduced by a sum equivalent to the deductible amounts paid to the claimant since the date of the offer. (Rule 36.11(3)(b) states that permission is required to accept an offer where the relevant period has expired and further deductible amounts have been paid to the claimant.)

MISCELLANEOUS

Cases in which the offeror's costs have been limited to court fees

36.23.—(1) This rule applies in any case where the offeror is treated as having filed a costs budget limited to applicable court fees, or is otherwise limited in their recovery of costs to such fees.

(Rule 3.14 provides that a litigant may be treated as having filed a budget limited to court fees for failure to file a budget.)

(2) “Costs” in rules 36.13(5)(b), 36.17(3)(a) and 36.17(4)(b) shall mean—

- (a) in respect of those costs subject to any such limitation, 50% of the costs assessed without reference to the limitation; together with
- (b) any other recoverable costs.

SECTION II

RTA Protocol and EL/PL Protocol Offers to Settle

Scope of this Section

36.24.—(1) Where this Section applies, Section I does not apply.

(2) This Section applies to an offer to settle where the parties have followed the RTA Protocol or the EL/PL Protocol and started proceedings under Part 8 in accordance with Practice Direction 8B (“the Stage 3 Procedure”).

(3) A reference to the Court Proceedings Pack Form is a reference to the form used in the relevant Protocol.

(4) Nothing in this Section prevents a party making an offer to settle in whatever way that party chooses, but if the offer is not made in accordance with this Section, it will not have any costs consequences.

Form and content of a Protocol offer

36.25.—(1) An offer to settle which is made in accordance with this rule is called a Protocol offer.

(2) A Protocol offer must—

- (a) be set out in the Court Proceedings Pack (Part B) Form; and
- (b) contain the final total amount of the offers from both parties.

Time when a Protocol offer is made

36.26.—(1) The Protocol offer is deemed to be made on the first business day after the Court Proceedings Pack (Part A and Part B) Form is sent to the defendant.

(2) In this Section “business day” has the same meaning as in rule 6.2.

General provisions

36.27. A Protocol offer—

- (a) is treated as exclusive of all interest; and

- (b) has the consequences set out in this Section only in relation to the fixed costs of the Stage 3 Procedure as provided for in rule 45.18, and not in relation to the costs of any appeal from the final decision of those proceedings.

Restrictions on the disclosure of a Protocol offer

36.28.—(1) The amount of the Protocol offer must not be communicated to the court until the claim is determined.

- (2) Any other offer to settle must not be communicated to the court at all.

Costs consequences following judgment

36.29.—(1) This rule applies where, on any determination by the court, the claimant obtains judgment against the defendant for an amount of damages that is—

- (a) less than or equal to the amount of the defendant’s Protocol offer;
- (b) more than the defendant’s Protocol offer but less than the claimant’s Protocol offer; or
- (c) equal to or more than the claimant’s Protocol offer.

(2) Where paragraph (1)(a) applies, the court must order the claimant to pay—

- (a) the fixed costs in rule 45.26; and
- (b) interest on those fixed costs from the first business day after the deemed date of the Protocol offer under rule 36.26.

(3) Where paragraph (1)(b) applies, the court must order the defendant to pay the fixed costs in rule 45.20.

(4) Where paragraph (1)(c) applies, the court must order the defendant to pay—

- (a) interest on the whole of the damages awarded at a rate not exceeding 10% above base rate for some or all of the period starting with the date specified in rule 36.26;
- (b) the fixed costs in rule 45.20;
- (c) interest on those fixed costs at a rate not exceeding 10% above base rate; and
- (d) an additional amount calculated in accordance with rule 36.17(4)(d).

Deduction of benefits

36.30. For the purposes of rule 36.29(1)(a) the amount of the judgment is less than the Protocol offer where the judgment is less than that offer once deductible amounts identified in the judgment are deducted.

(“Deductible amount” is defined in rule 36.22(1)(d).)”

SCHEDULE 2

Rule 15

“PART 87

APPLICATIONS FOR WRIT OF HABEAS CORPUS

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SECTION 1

SCOPE AND INTERPRETATION

Scope and interpretation of this Part

87.1 .—(1) This Part contains rules about applications to the court as follows —

- (a) Section 2 relates to applications for a writ of habeas corpus for release; and
- (b) Section 3 relates to applications for a writ of habeas corpus to give evidence or a writ of habeas corpus to answer a charge.

(The Family Procedure Rules 2010(a) contain rules about applications for a writ of habeas corpus for release in relation to a minor.)

(2) In Sections 2 and 3—

- (a) “judge” means a judge of the High Court; and
- (b) “court” means the High Court,

unless otherwise specified.

SECTION 2

*APPLICATIONS TO THE HIGH COURT FOR A WRIT OF HABEAS CORPUS FOR
RELEASE*

How to make the application for a writ of habeas corpus for release

87.2.—(1) The applicant must make the application by filing—

- (a) a claim form under Part 8; and
- (b) a witness statement or affidavit.

(a) S.I. 2010/2955.

- (2) The witness statement or affidavit must—
 - (a) state that the application is made at the instance of the person being detained;
 - (b) set out the nature of the detention; and
 - (c) subject to paragraph (3), be made by the detained person.
- (3) If the detained person is unable to make the witness statement or affidavit, the witness statement or affidavit—
 - (a) may be made by some other person on behalf of the detained person; and
 - (b) must state the reason why the detained person is unable to make the witness statement or affidavit.
- (4) The claim form must be filed in the Administrative Court.
- (5) The application may be made without notice.
- (6) In cases of urgency, the judge—
 - (a) may dispense with the requirement that a claim form must be filed; and
 - (b) must give directions for the conduct of the application.

Initial consideration of the application by a single judge

- 87.3.**—(1) A judge may consider an application under rule 87.2 initially on paper.
- (2) If an application has not been considered initially on paper, it must be considered—
 - (a) by a judge sitting in court, unless rule 87.7 applies; or
 - (b) if no judge is sitting in court, by a judge otherwise than in court.

Initial consideration of the application on paper

- 87.4.**—(1) Where the judge considers the application under rule 87.2 on paper, the judge may—
 - (a) make an order for the issue of the writ;
 - (b) adjourn the application to a hearing;
 - (c) direct that the application be considered by a Divisional Court of the Queen’s Bench Division;
 - (d) direct that the application continues as an application for permission to apply for judicial review;
 - (e) give such other directions for resolution of the application as may be appropriate; or
 - (f) dismiss the application.
- (2) Where the judge dismisses a paper application, the applicant may request the decision to be reconsidered at a hearing.
 - (3) A request under paragraph (2) must be filed within 7 days after service of the order dismissing the application.
 - (4) The applicant and the respondent must be given at least 2 days’ notice of the hearing date.

Consideration of the application at a hearing

- 87.5.** Where the judge considers the application under rule 87.2 at a hearing, including a hearing ordered under rule 87.4(1)(b) or a hearing requested under rule 87.4(2), the judge may—
 - (a) make an order for the issue of the writ;
 - (b) adjourn the application to a further hearing;

- (c) direct that the application be considered by a Divisional Court of the Queen's Bench Division;
- (d) direct that the application continues as an application for permission to apply for judicial review;
- (e) give such other directions for resolution of the application as may be appropriate;
- (f) dismiss the application; or
- (g) order that the detained person must be released.

Order for release: sufficient authority to release detained person

87.6. An order made under rule 87.5(g) is sufficient authorisation for a governor of a prison, police officer or other person to release the detained person.

Applications involving protected parties

87.7. Any application made on behalf of a protected party must initially be considered by a judge otherwise than in court.

Form and directions as to the return to the writ

87.8.—(1) A writ of habeas corpus for release must be in Practice Form No. 89 as set out in Practice Direction 4.

(2) A court or judge issuing a writ of habeas corpus for release must give directions as to the court or judge before whom, and the date on which, the writ is returnable.

Service of the writ

87.9.—(1) Subject to paragraphs (2) and (3), the applicant must serve the writ of habeas corpus for release personally on the respondent.

(2) If it is not practicable to serve the writ personally, or if the respondent is the governor of a prison or other public official, the applicant must serve the writ by leaving it with an employee or agent of the respondent at the place where the detained person is being held.

(3) If there is more than one respondent named in the writ, the original writ must be served according to this rule on the first-named respondent, and copies must be served on the other respondents.

(4) The court must notify all parties—

- (a) of the court or judge before whom, and the date on which, the writ is to be returned to the court; and
- (b) that in default of obedience, proceedings for committal of the party disobeying may be taken.

Return to the writ

87.10.—(1) The return to a writ of habeas corpus for release must—

- (a) be indorsed on or annexed to the writ; and
- (b) state all the causes of the detention of the detained person.

(2) The return may be amended, or another return substituted for it, by permission of the court or judge before whom the writ is returnable.

(3) The return must be filed and served upon the applicant in accordance with the directions of the court issuing the writ.

Procedure at hearing of the writ

87.11. At the hearing of the writ an application may be made—

- (a) to discharge or remand the detained person; or
- (b) to amend or quash the return.

SECTION 3

WRIT OF HABEAS CORPUS TO GIVE EVIDENCE OR TO ANSWER A CHARGE

Writ of habeas corpus to give evidence or to answer a charge

87.12.—(1) An application for a writ of habeas corpus to give evidence or a writ of habeas corpus to answer a charge must be made to a judge and be supported by a witness statement or affidavit.

(2) A writ of habeas corpus to give evidence must be in Practice Form No. 91 as set out in Practice Direction 4.

(3) A writ of habeas corpus to answer a charge must be in Practice Form No. 92 as set out in Practice Direction 4.

(4) An application for an order to bring up a prisoner otherwise than by writ of habeas corpus, to give evidence in any criminal or civil proceedings before any court, tribunal or judge, must be—

- (a) made to a judge or, in the case of an application for an order under section 57 of the County Courts Act 1984(a), a judge of the County Court; and
- (b) supported by a witness statement or affidavit.”

EXPLANATORY NOTE

(This note is not part of the Order)

These Rules amend the Civil Procedure Rules 1998 (CPR) (SI 1998/3132), by—

- amending rule 21.12, which concerns expenses incurred by a litigation friend, so that it covers the position where full recovery of costs from the other party to the proceedings is not achieved or is not possible by virtue of the changes brought about by the Legal Aid, Sentencing and Punishment of Offenders Act 2012(b);
- amending rule 30.3, which concerns the criteria for transferring proceedings to another court and, which includes the availability of a specialist judge. The amendment will require the court, when considering making a transfer order, to consider the availability of a specialist judge sitting in an appropriate regional specialist court;
- substituting for Part 36 (offers to settle) a revised Part (together with consequential changes elsewhere in the CPR) which aligns the rules with case law developed since the Part was last amended and re-arranges the order of the rules in the Part;
- amending rules 45.19 and 45.29I to reflect amendments made to the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (“the RTA Protocol”), which require initial fixed cost medical reports in personal injury claims for whiplash (referred to as “soft tissue injuries”) to be obtained from medical experts who have been accredited, and who have been selected via a Portal operated, by MedCo Registration Solutions;

(a) 1984 c.28. Section 57 was amended by the Crime and Courts Act 2013 (c.22) Section 17, Schedule 9, Part 1, paragraphs 1, 10 and Schedule 10, Part 2, paragraphs 64 and 68.

(b) 2012 c. 10

- inserting new paragraph (2A) in rule 45.24, to provide that claimants who do not comply with paragraph 6.3A(2) of the RTA Protocol (requirement to include the unique reference number on the Claim Notification Form as evidence of having undertaken a search of askCUEPI.com) will only be awarded the costs of their claim in exceptional circumstances;
- inserting a new Section VI in Part 74, together with related and consequential amendments elsewhere, to make provision in relation to the recognition and enforcement as between courts in England and Wales and courts in other EU Member States other than Denmark of protection measures (as defined by Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters (the “Protection Measures Regulation”)); and
- inserting a new Part 87 – Applications for Writ of Habeas Corpus, and as a consequential amendment, omitting RSC Order 54 – Applications for Writ of Habeas Corpus.

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