

CIVIL WAY

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IN BRIEF

- ▶ Latest paper intensive CPR update.
- ▶ Latest painless CPR amendment rules.

OVERRULED: FIRST DOSE

Before going to the 149th CPR update and the Civil Procedure (Amendment No 2) Rules 2022 (SI 2022/783) insert a couple of microchips into your brain or, alternatively, stick with our summary. In this dose, all provisions are operative on 1 October 2022. The rule numbers given in parenthesis relate to the amendment rules. One of the most exciting changes is to the recent PD 51ZC on paper determination of small claims which now recognises that there is a universal county court, as we had (see Civil way, *NLJ*, 20 May 2020 p11). If in future you cannot locate a PD it is because the update has moved it and, better still, simplified its language so that LiPs can continue not to understand what to do.

Oh no The disclosure pilot for the B&PCs (mercifully, not the county court) that is PD51U is made permanent with PD57AD which is in substantially the same form. Unlike me, think carefully before printing it out: copy paper for sale.

Service secret CPR 6.23 requires a party to proceedings to give an address for service which, for a LiP, is generally to be where in the UK they reside or carry on business. As we are now heavily into vulnerability, the requirement is qualified (r7(3)) by empowering the court to order otherwise. Mainly contemplated by the amendment are applications on the ground of actual or the likelihood of domestic abuse by one or more of the other parties.

Service Supreme Just pray your defendants are within the jurisdiction. Otherwise, it's over to the trainee or counsel. They will need Pts 6, 62 and 73 and revised PD6B. *CPR 6.38 is devoted to service abroad of documents other than the claim form. Currently, if permission is required to serve the claim form out of the jurisdiction, it is equally required for service of any other document. In future, you will not need further permission for subsequent documents where permission has been given for the claim form (r7(6)). *Pt 62 is about service out of the jurisdiction in claims under the Arbitration Act 1996. CPR 62.5 deals with the situations in which the court may give permission to serve these claims abroad. In future, permission is dispensed with

in these situations where the seat of the arbitration is in England and Wales and the respondent is party to the arbitration agreement (r27). *Charging orders are the focus of Pt 73. The application notice, interim charging order and any supporting documents which are required to be served may be served abroad without permission (r30). *It is the revised PD6B which will necessitate the adhesion of migraine cool gel sheets (strongly recommended) to the forehead of the microchipsless. Brexit messed us up with service abroad. What the new PD does is to set out the gateways for service out of the jurisdiction with permission: old and loved ones, tweaked ones and new ones. But to achieve the grant of permission, you will still have to satisfy the court on forum conveniens. The new gateways cover, among others, applications for contempt and for disclosure for the purpose of obtaining information regarding the true identity of a defendant or potential defendant (*Norwich Pharmacal* applications) or regarding what has become of the applicant's property (*Bankers Trust* applications against financial institutions whose customers have perpetrated a fraud).

How low can you go? If you were comfortable going to the LiP shunned PD8B for that pre-action protocol for low value personal injury claims in RTAs etc, forget it. PD8A becomes PD49F, supplementing the modified dustbin that is Pt49 (see below).

To hell with the defence In *King and others v Steifel* [2021] EWHC 1045 (Comm) (see Civil way, *NLJ* 23 July 2021 p14) Cockerill J ruled that a defendant was not required by the CPR to file a defence before applying for summary judgment but invited the rule committee to provide for absolute clarification on the point. Invitation accepted and relished. New CPR 3.4(7) will now provide that no defence is required before a defendant's application to strike out the claim form or particulars of claim (r4). And substituted CPR 24.4(2) will now provide that if a party applies for summary judgment before a defendant has filed a defence, the defendant by or against whom the application is made need not file a defence before the hearing (r13). Pt 15 on the defence and reply is subject to these drafting changes but, more than that, it is transplanted into a new version (r15 and schedule 1) which is advertised as having simplified language, introducing

changes on gender neutrality and importing elements from PD15 (consequentially amended) which are not deemed to constitute guidance.

Sewage discharge and that sort of thing Have no fear. It will end with the Environment Act 2021 and the establishment of the Office of Environmental Protection (OEP) (you can register an online alert for vacancy details if you fancy a job with it) to hold the government and public authorities to account on its environmental obligations as contained post-Brexit in our domestic legislation. The OEP's enforcement functions under ss 31-41 were commenced by SI 2022/48 and s38 enables it to apply to the High Court for an environmental review where it is satisfied that, on balance, there has been a failure to comply with environmental law and the failure is serious. CPR 54 section VII (r21) sets out the procedure for the review which is modelled on the judicial review procedure: CPR 46 section VIII (r18) deals with environmental review costs (no order for costs without unreasonable or improper conduct).

Gotcha! The digitally excluded shall rejoice. Substituted CPR 4.4 (r5) obliges the court to supply on request a paper copy of any form (with relevant explanatory material) to a person who cannot obtain access to the forms published online.

Spot the difference An amendment by way of text juggling relating to the Pt 8 procedure is aimed at clarifying when it must be used. What CPR 8.1 will now actually state is that the procedure may be used, unless any enactment, rule or PD says otherwise, where the claimant seeks the court's decision on a question which is unlikely to involve a substantial dispute of fact. Heard that before. The devil remains in the detail of the supplementing PD as to which—brace yourselves—PD 8A is going and, in an act of extreme sacrilege, will be replaced by PD 49E. Crazy. [You will find the new Pt49 on 'specific proceedings' rather than the current 'specialist proceedings' in sch 2 to the amendment rules and you will be knocked out by its brevity—'The practice directions made under this Rule apply to proceedings of the types described in them.'] Provisions for extensions of time for filing and serving Pt 8 evidence and for limited extension agreement which have lurked in the PD have now been transferred over to a substituted CPR 8.5.

Second dose on 16 September 2022. **NLJ**