STATUTORY INSTRUMENTS

2017 No. 95 (L. 1)

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

The Civil Procedure (Amendment) Rules 2017

Made - - - - *2nd February 2017*

Laid before Parliament *3rd February 2017*

Coming into force in accordance with rule 2

The Civil Procedure Rule Committee, having power under section 2 of the Civil Procedure Act 1997(**1**) to make rules of court under section 1 of that Act and 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) Rules 2017.

2. These Rules come into force on 6th April 2017, except for—

(a) rules 8(5), 9, 10 and 13(3), which come into force on 28th February 2017; and

(b) rules 5(1) to (9), 6, 7 and 13(1) and (2), which come into force on 6th March 2017.

3. 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(**2**).

Amendments to the Civil Procedure Rules 1998

4. The Civil Procedure Rules 1998 are amended in accordance with rules 5 to 12 of these Rules.

Amendment of Part 3

5.—(1) In the Contents of Part 3—

(a) in the entry for rule 3.7, after "fees" insert "by the claimant"; and

(**1**) 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).

(**2**) S.I. 1998/3132, to which there are relevant amendments in S.I. 1999/1008, S.I. 2000/2092, S.I. 2001/4015, S.I. 2002/2058, S.I. 2002/3219, S.I. 2003/1242, S.I. 2005/2292, S.I. 2007/3543, S.I. 2008/2178, S.I. 2013/262, S.I. 2013/1974, S.I. 2014/407 and S.I. 2016/788.

(b) after the entry for rule 3.7, insert—

"Sanctions for non-payment of the trial fee by the claimant	Rule 3.7A1
Sanctions for non-payment of certain fees by the defendant	Rule 3.7A
Sanctions for non-payment of the trial fee by the defendant, where proceedings continue on the counterclaim alone	Rule 3.7AA
Sanctions for dishonouring cheque	Rule 3.7B"

(2) At the end of the heading to rule 3.7, insert "by the claimant".

(3) In rule 3.7(1)—

(a) for "This rule applies where—", substitute "Except where rule 3.7A1 applies, this rule applies to fees payable by the claimant where—";

(b) omit sub-paragraphs (a) to (c);

(c) in sub-paragraph (e), for "relevant Fees Order" substitute "Civil Proceedings Fees Order 2008(**3**) (Fees Order 2008)"; and

(d) omit the first set of words in parentheses following sub-paragraph (e).

(4) In rule 3.7(2), for "relevant Fees Order", substitute "Fees Order 2008".

(5) After rule 3.7, insert new rule 3.7A1—

"**Sanctions for non-payment of the trial fee by the claimant**

3.—(1) In this rule and in rule 3.7AA—

(a) "Fees Order 2008" means the Civil Proceedings Fees Order 2008;

(b) "fee notice" means a notice of—

(i) the amount of a trial fee;

(ii) the trial fee payment date; and

(iii) the consequences of non-payment of the trial fee;

(c) "trial date" means the date of the trial in relation to which the trial fee is payable, and if the trial in relation to which the trial fee is payable is scheduled to commence during the course of a specified period, "trial date" means the date of the Monday of the first week of that specified period;

(d) "trial fee" means fee 2.1 set out in the Table in Schedule 1 to the Fees Order 2008(**4**) and payable for the trial of a case on the multi-track, fast track or small claims track;

(e) "trial fee payment date" means the date by which the trial fee must be paid, calculated in accordance with the Fees Order 2008;

(f) "revised trial fee payment date" means, if an application for fee remission is denied in whole or part, the revised date by which the fee or part of it is to be paid, calculated in accordance with the Fees Order 2008.

(**3**) S.I. 2008/1053.

(**4**) Schedule 1 was substituted by S.I. 2014/874, article 2(1), (5), Schedule, and there are relevant amendments in relation to fee 2.1 in the Civil Proceedings Fees (Amendment) Order 2016 (S.I. 2016/1191), with saving provisions in article 3.

(2) This rule applies in relation to trial fees where that fee is to be paid by the claimant and the court notifies the parties in writing of the trial date.

(3) When the court notifies the parties in writing of the trial date, the court must also send a fee notice to the claimant.

(4) The fee notice may be contained in the same document as the notice of trial date, or may be a separate document.

(5) Where an application for full or part remission of a trial fee is refused, when the court sends written notice to the claimant of the refusal, the court must also notify the claimant in writing—

(a) that the claimant is required to pay the full trial fee by the revised trial fee payment date; and

(b) of the consequences of non-payment of the trial fee.

(6) Where part remission of a fee is granted, when the court sends written notice to the claimant of the part remission, the court must also notify the claimant in writing—

(a) that the claimant is required to pay the balance of the trial fee by the revised trial fee payment date; and

(b) of the consequences of non-payment of the balance of the trial fee.

(7) If—

(a) the claimant has had notice in accordance with this rule to pay the trial fee;

(b) the claimant has not applied to have the trial fee remitted in whole or part; and

(c) the trial fee has not been paid on or before the trial fee payment date,

the claim will automatically be struck out without further order of the court, and unless the court orders otherwise, the claimant will be liable for the costs which the defendant has incurred.

(8) If—

(a) the claimant has had notice in accordance with this rule to pay the trial fee;

(b) the claimant has applied to have the trial fee remitted in whole or part;

(c) remission is refused or only part remission of the trial fee is granted;

(d) following the decision on remission, the claimant has had notice in accordance with this rule to pay the full trial fee or balance of it; and

(e) the full trial fee or balance of it (as appropriate) has not been paid on or before the revised trial fee payment date,

the claim will automatically be struck out without further order of the court, and, unless the court orders otherwise, the claimant will be liable for the costs which the defendant has incurred.

(Rule 44.9 provides for the basis of assessment where a right to costs arises under this rule and 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(**5**).)

(9) If—

(a) a claimant applies to have the claim reinstated; and

(b) the court grants relief,

the relief must be conditional on the claimant either paying the trial fee or filing evidence of full or part remission of that fee within the period specified in paragraph (10).

(**5**) 2007 c.29.

(10) The period referred to in paragraph (9) is—

(a) if the order granting relief is made at a hearing at which the claimant is present or represented, 2 days from the date of the order;

(b) in any other case, 7 days from the date of service of the order on the claimant.

(11) If a fee is not paid for a claim where there is also a counterclaim, the counterclaim will still stand.".

(6) Before rule 3.7A, insert a heading to that rule, "Sanctions for non-payment of certain fees by the defendant".

(7) In rule 3.7A(1)—

(a) for "This rule applies where—", substitute "Except where rule 3.7AA applies, this rule applies to fees payable by the defendant where—";

(b) in sub-paragraph (a)(i), for "relevant Fees Order", substitute "Civil Proceedings Fees Order 2008(**6**) (Fees Order 2008)"; and

(c) in sub-paragraph (b)—

(i) omit sub-sub-paragraphs (i) to (iii); and

(ii) in sub-sub-paragraph (iv), for "relevant Fees Order" substitute "Fees Order 2008".

(8) In rule 3.7A(2), for "relevant Fees Order", substitute "Fees Order 2008".

(9) After rule 3.7A, insert new rule 3.7AA—

"**Sanctions for non-payment of the trial fee by the defendant, where proceedings continue on the counterclaim alone**

3.7AA.—(1) This rule applies in relation to trial fees where that fee is to be paid by the defendant and the court notifies the defendant in writing of the trial date.

(Definitions contained in rule 3.7A1(1) apply to this rule also.)

(2) When the court notifies the parties in writing of the trial date, the court must also send a fee notice to the defendant.

(3) The fee notice may be contained in the same document as the notice of trial date, or may be a separate document.

(4) Where an application for full or part remission of a trial fee is refused, when the court sends written notice to the defendant of the refusal, the court must also notify the defendant in writing—

(a) that the defendant is required to pay the full trial fee by the revised trial fee payment date; and

(b) of the consequences of non-payment of the trial fee.

(5) Where part remission of a fee is granted, when the court sends written notice to the defendant of the part remission, the court must also notify the defendant in writing—

(a) that the defendant is required to pay the balance of the trial fee by the revised trial fee payment date; and

(b) of the consequences of non-payment of the balance.

(6) If—

(a) the defendant has had notice in accordance with this rule to pay the trial fee;

(b) the defendant has not applied to have the trial fee remitted in whole or part; and

(**6**) S.I. 2008/1053.

(c) the trial fee has not been paid on or before the trial fee payment date,

the counterclaim will automatically be struck out without further order of the court.

(7) If—

(a) the defendant has had notice in accordance with this rule to pay the trial fee;

(b) the defendant has applied to have the trial fee remitted in whole or part;

(c) remission is refused or only part remission of the trial fee is granted;

(d) following the decision on remission, the defendant has had notice in accordance with this rule to pay the full trial fee or balance of it; and

(e) the full trial fee or balance of it (as appropriate) has not been paid on or before the revised trial fee payment date,

the counterclaim will automatically be struck out without further order of the court.

(8) If—

(a) a defendant applies to have the counterclaim reinstated; and

(b) the court grants relief,

the relief will be conditional on the defendant either paying the trial fee or filing evidence of full or part remission of the fee within the period specified in paragraph (9).

(9) The period referred to in paragraph (8) is—

(a) if the order granting relief is made at a hearing at which the defendant is present or represented, 2 days from the date of the order;

(b) in any other case, 7 days from the date of service of the order on the defendant.".

(10) In rule 3.15—

(a) in paragraph (1), after "incurred" insert "(the budgeted costs)";

(b) in paragraph (2)—

(i) in sub-paragraph (a), for "budgets" substitute "budgeted costs";

(ii) in sub-paragraph (b), for "budgets or parts of budgets" substitute "the budgeted costs"; and

(iii) at the end of sub-paragraph (b), insert—

";

(c) record the extent (if any) to which incurred costs are agreed"; and

(c) after paragraph (3), insert—

"(4) Whether or not the court makes a costs management order, it may record on the face of any case management order any comments it has about the incurred costs which are to be taken into account in any subsequent assessment proceedings.".

(11) In rule 3.18—

(a) in sub-paragraph (a) —

(i) for "budget" substitute "budgeted costs"; and

(ii) at the end, omit "and";

(b) in sub-paragraph (b), for "budget" substitute "budgeted costs"; and

(c) at the end of sub-paragraph (b) insert—

"; and

(c) take into account any comments made pursuant to rule 3.15(4) or paragraph 7.4 of Practice Direction 3E and recorded on the face of the order".