

EXITING THE EUROPEAN UNION

SENIOR COURTS OF ENGLAND AND WALES

COUNTY COURT, ENGLAND AND WALES

The Civil Procedure Rules 1998 (Amendment) (EU Exit) Regulations 2019

The Civil Procedure Rules 1998 (Amendment) (EU Exit) Regulations 2019, SI 2019 No.521 (“Regulations”) were published on 11 March 2019 and **will come into force on exit day** amending SI 1998/3132. The **Regulations extend to England and Wales**. The enabling power is afforded by the European Union (Withdrawal) Act 2018, s 8(1) (“2018 Act”). The Regulations are made **in preparation for Brexit**. The Regulations are intended to apply in the event of no deal withdrawal by the UK from the European Union.

The Regulations will amend legislation relating to civil procedure rules which are consequential upon the 2018 Act and upon statutory instruments made under powers conferred by the 2018 Act, which forms part of the implementation of the Government's strategy for ensuring an orderly statute book.

These Regulations are made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 (EU(W)A 2018) in order to address failures of retained EU law to operate effectively, and other deficiencies (in particular EU(W)A 2018, s 8(2), para g) arising from the withdrawal of the UK from the EU.

The changes made by these Regulations are consequential on provision made in a number of other statutory instruments made under EU(W)A 2018. The Civil Procedure Rules 1998, SI 1998/3132, make provision in a number of places to govern the procedure for proceedings under or related to certain EU instruments. Those EU instruments, as retained EU law under EU(W)A 2018, are being revoked or amended by other Regulations made under EU(W)A 2018, and it is accordingly necessary in consequence to remove or amend the corresponding provisions in SI 1998/3132. Those other Regulations include transitional and saving provisions the effect of which is that in some circumstances the operation of EU legislation which SI 1998/3132 supplement is preserved. Therefore these Regulations include transitional and saving provision to preserve the operation of the corresponding provision in SI 1998/3132 for those purposes.

Amendments to SI 1998/3132

- **Resolution procedure**
 - Negative
- **Amended UK enactments**
 - Civil Procedure Rules 1998, SI 1998/3132

- **Amended EU enactments**
 - None
- **Repeals and revocations (whole/partial)**
 - SI 1998/3132, rules 6. 41, 63.2, 74.3A, 74.4A, 74.7A, 74.7B, 74.7C, 74.11A, 74.19-74.26, 74.27-74.33, 74.36-74.45, Pts 68, 78
- **Savings and transitional provisions**
 - transitional provisions in regulations 17-27

Transitional and Saving Provision

The transitional and savings provisions are important and are reproduced below:

Transitional and saving provision – Part 5

17. In relation to a mediation to which the Cross-Border Mediation (EU Directive) Regulations 2011(18) applied before exit day, rule 5.4C continues to apply on and after exit day, in relation to any documents listed in paragraph (1B) of that rule as it stood immediately before exit day, as if the amendments to that rule made by these Regulations had not been made.

Transitional and saving provision – Part 6

18.—(1) Where before exit day, pursuant to rule 6.7—

(a) a defendant has given, as the address at which the defendant may be served with the claim form, the business address of a solicitor in an EEA state outside the United Kingdom, or of a European lawyer in any EEA state; or

(b) a solicitor acting for the defendant has notified the business address of that solicitor in an EEA state outside the United Kingdom, or a European lawyer has notified the address of that European lawyer in any EEA State, as the address at which that solicitor or European lawyer is instructed to accept service of the claim form,

the claim form, if not served before exit day, must on or after exit day be served at that address notwithstanding the changes made by these Regulations.

(2) Where before exit day, pursuant to rule 6.23, a party to proceedings has given, as the address at which that party may be served with documents relating to those proceedings, the business address in an EEA state outside the United Kingdom of a solicitor acting for that party, or in any EEA State of a European lawyer nominated to accept service of documents—

(a) that address will continue on and after exit day to be that party's address for service unless and until that party elects to change the address for service; and

(b) if that party elects on or after exit day to change the address for service, the new address for service may be any address for service permitted by rule 6.23 as in force immediately before exit day.

(3) Where before exit day a claim form has been served under rule 6.33 in a country referred to in rule 6.35(3) or (4) (as in force immediately before exit day), the period for filing an acknowledgment of service or defence is the period provided in rule 6.35(3) or (4) (as applicable) as in force immediately before exit day.

(4) In this regulation, “EEA state” has the meaning it had for the purposes of Part 6 immediately before exit day.

(5) Where before exit day an applicant has filed the documents referred to in rule 6.41(2) but the action required by rule 6.41(3) has not been taken by exit day, the court may treat the request for service of the documents in question as a request for service pursuant to rule 6.42(1) or (2) as appropriate.

Transitional and saving provision – Part 12

19. Where before exit day a claim was served out of the jurisdiction without requiring the permission of the court under any of the provisions of rule 6.33, rules 12.10 and 12.11 apply on and after exit day in relation to an application for default judgment as if the amendments made to those rules by these Regulations had not been made.

Transitional and saving provision – Part 25

20. Where a claim was issued before exit day, rule 25.13 (conditions to be satisfied for security for costs) applies on and after exit day in relation to the issue of security for costs for that claim as if the amendments to that rule made by these Regulations had not been made.

Transitional and saving provision – Part 30

21. The amendment made to rule 30.8 by these Regulations does not apply in relation to proceedings relating to competition described in paragraph 14(2) of Schedule 4 to the Competition (Amendment etc.) (EU Exit) Regulations 2019(19).

Transitional and saving provision – Part 31

22. In relation to a mediation to which the Cross-Border Mediation (EU Directive) Regulations 2011(20) applied before exit day, rule 31.3 continues to apply on and after exit day as if the amendments to that rule made by these Regulations had not been made.

Transitional and saving provision – Part 34

23.—(1) Where regulation 13 of the Service of Documents and Taking of Evidence in Civil and Commercial Matters (Revocation and Saving Provision) (EU Exit) Regulations 2018(21) applies, rules 34.22 and 34.24 continue to apply on and after exit day as if the amendments to those rules made by these Regulations had not been made.

(2) If before exit day a court has made an order for the issue or submission of a request under rule 34.23 but the further action required by that rule has not been taken by exit day, the court may treat the order as one for the issue of a letter of request under rule 34.13 and proceed accordingly.

Transitional and saving provision – Part 63

24. Where a claim relating to—

- (a) Community registered designs;
- (b) Community plant variety rights; or
- (c) Community trade marks,

is issued before exit day but has not been determined by exit day, Part 63 continues to apply on and after exit day in relation to the proceedings on the claim as if the amendments to that Part made by these Regulations had not been made.

Transitional and saving provision – Part 68

25. Proceedings which immediately before exit day were stayed in accordance with rule 68.5 continue to be stayed on or after exit day unless or until the court directs otherwise.

Transitional and saving provision – Part 74

26.—(1) Where—

(a) a judgment—

(i) was given before exit day by a court of a Contracting State or Regulation State; or

(ii) was given after exit day by such a court in proceedings commenced before that court before exit day;

(b) an authentic instrument was before exit day formally drawn up or registered as an authentic instrument in a Contracting State or Regulation State; or

(c) a court settlement was before exit day approved by or concluded before a court of a Contracting State or Regulation State,

Part 74 applies to proceedings concerning recognition and enforcement of that judgment, authentic instrument or court settlement on and after exit day as if the changes made by these Regulations had not been made.

(2) In this regulation, “Contracting State” and “Regulation State” have the meanings given by rule 74.2 (as that rule was in force immediately before exit day).

Transitional and saving provision – Part 74 and Part 78

27.—(1) Where in relation to any proceedings the relevant saving provision applies, the relevant rules continue to apply on and after exit day for the purposes of those proceedings as if the amendments made to those rules by these Regulations had not been made.

(2) In this regulation—

(a) “the relevant saving provision” means any of regulations 16 to 18, and regulation 19, of the European Enforcement Order, European Order for Payment and European Small Claims Procedure (Amendment etc.) (EU Exit) Regulations 2018(22) as applicable; and

(b) “the relevant rules” means Part 78, or Section IV of Part 74, as applicable.

(3) Where an application under rule 78.24 as then in force for a mediation settlement enforcement order was made before exit day, rules 78.24 and 78.25 continue to apply on and after exit day for the purposes of that application as if the changes made in relation to those rules by these Regulations had not been made.

(4) In relation to a mediation to which the Cross-Border Mediation (EU Directive) Regulations 2011(23) applied before exit day, rules 78.23 and 78.25 to 78.28 continue to apply on and after exit day, so far as relevant in relation to mediation evidence relating to that mediation, as if the changes made in relation to those rules by these Regulations had not been made.

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