STATUTORY INSTRUMENTS

1992 No. 1907

The Rules of the Supreme Court (Amendment No. 2) 1992

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Amendment No. 2) 1992 and shall come into force on 1st October 1992, except for Rules 7 to 10 which come into force on 16th November 1992.

(2) In these Rules, an Order referred to by number means the Order so numbered in the Rules of the Supreme Court 1965(**1**).

Contentious probate proceedings

2. In Order 4, rule 5(4), the words "This paragraph shall not apply to a probate cause or matter." shall be omitted.

3. In Order 76, rule 1, there shall at the end be inserted the following new paragraph–

"(4) In this Order, "relevant office" means –

(a) if the action concerned is proceeding in a Chancery district registry, that registry, and

(b) in any other case, Chancery Chambers.".

4. In Order 76, rule 2(1), after the words "the Chancery Chambers" there shall be inserted the words "or one of the Chancery district registries".

5. The words "relevant office" shall be substituted for the words "Chancery Chambers" in the following places in Order 76–

(a) rule 4(1)(a) and (b),

(b) rule 4(2),

(c) rule 5(2),

(d) rule 5(3) (both places), and

(e) rule 13(1) and (3).

6. In Order 76, rule 15(4), for the words from "the Royal Courts" to the end of the rule there shall be substituted the words "either the Royal Courts of Justice or a Chancery district registry (if it is not already proceeding in one of those places).".

Exchange of witness statements

7. In Order 24, rule 10–

(1) in the heading, for the words "and affidavits" there shall be substituted ", affidavits and witness statements"; and

(**1**) S.I.1965/1776; the relevant amending instruments are S.I. 1980/1010, 2000, 1982/1111, 1786, 1983/1181, 1986/1187, 1987/1423, 1988/1340, 1989/177, 2427 and 1990/2599.

(2) in paragraph (1), for the words "or affidavits" there shall be substituted ", affidavits or witness statements".

8. In Order 25, rule 8(1), for sub-paragraph (b) there shall be substituted the following–

"(b) subject to paragraph (2), where any party intends to place reliance at the trial on–

(i) expert evidence, he shall, within 14 weeks, disclose the substance of that evidence to the other parties in the form of a written report, which shall be agreed if possible; and

(ii) any other oral evidence, he shall, within 14 weeks, serve on the other parties written statements of all such oral evidence which he intends to adduce;".

9. In Order 25, rule 8, for paragraph (2) there shall be substituted the following–

"(2) Paragraphs (4) to (16) of Order 38, rule 2A shall apply with respect to statements and reports served under sub-paragraph (1)(b) as they apply with respect to statements served under that rule.".

10. For Order 38, rule 2A, there shall be substituted the following–

"**Exchange of witness statements**

2A.—(1) The powers of the Court under this rule shall be exercised for the purpose of disposing fairly and expeditiously of the cause or matter before it, and saving costs, having regard to all the circumstances of the case, including (but not limited to)–

(a) the extent to which the facts are in dispute or have been admitted;

(b) the extent to which the issues of fact are defined by the pleadings;

(c) the extent to which information has been or is likely to be provided by further and better particulars, answers to interrogatories or otherwise.

(2) At the summons for directions in an action commenced by writ the Court shall direct every party to serve on the other parties, within 14 weeks (or such other period as the Court may specify) of the hearing of the summons and on such terms as the Court may specify, written statements of the oral evidence which the party intends to adduce on any issues of fact to be decided at the trial.

The Court may give a direction to any party under this paragraph at any other stage of such an action and at any stage of any other cause or matter.

Order 3, rule 5(3) shall not apply to any period specified by the Court under this paragraph.

(3) Directions under paragraph (2) or (17) may make different provision with regard to different issues of fact or different witnesses.

(4) Statements served under this rule shall–

(a) be dated and, except for good reason (which should be specified by letter accompanying the statement), be signed by the intended witness and shall include a statement by him that the contents are true to the best of his knowledge and belief;

(b) sufficiently identify any documents referred to therein; and

(c) where they are to be served by more than one party, be exchanged simultaneously.

(5) Where a party is unable to obtain a written statement from an intended witness in accordance with paragraph (4)(a), the Court may direct the party wishing to adduce that witness's evidence to provide the other party with the name of the witness and (unless the Court otherwise orders) a statement of the nature of the evidence intended to be adduced.

(6) Subject to paragraph (9), where the party serving a statement under this rule does not call the witness to whose evidence it relates, no other party may put the statement in evidence at the trial.

(7) Subject to paragraph (9), where the party serving the statement does call such a witness at the trial–

(a) except where the trial is with a jury, the Court may, on such terms as it thinks fit, direct that the statement served, or part of it, shall stand as the evidence in chief of the witness or part of such evidence;

(b) the party may not without the consent of the other parties or the leave of the Court adduce evidence from that witness the substance of which is not included in the statement served, except–

(i) where the Court's directions under paragraph (2) or (17) specify that statements should be exchanged in relation to only some issues of fact, in relation to any other issues:

(ii) in relation to new matters which have arisen since the statement was served on the other party;

(c) whether or not the statement or any part of it is referred to during the evidence in chief of the witness, any party may put the statement or any part of it in cross-examination of that witness.

(8) Nothing in this rule shall make admissible evidence which is otherwise inadmissible.

(9) Where any statement served is one to which the Civil Evidence Acts 1968(**2**) and 1972(**3**) apply, paragraphs (6) and (7) shall take effect subject to the provisions of those Acts and Parts III and IV of this Order.

The service of a witness statement under this rule shall not, unless expressly so stated by the party serving the same, be treated as a notice under the said Acts of 1968 and 1972; and where a statement or any part thereof would be admissible in evidence by virtue only of the said Act of 1968 or 1972 the appropriate notice under Part III or Part IV of this Order shall be served with the statement notwithstanding any provision of those Parts as to the time for serving such a notice. Where such a notice is served a counter-notice shall be deemed to have been served under Order 38, rule 26(1).

(10) Where a party fails to comply with a direction for the exchange of witness statements he shall not be entitled to adduce evidence to which the direction related without the leave of the Court.

(11) Where a party serves a witness statement under this rule, no other person may make use of that statement for any purpose other than the purpose of the proceedings in which it was served–

(a) unless and to the extent that the party serving it gives his consent in writing or the Court gives leave; or

(b) unless and to the extent that it has been put in evidence (whether pursuant to a direction under paragraph (7)(a) or otherwise).

(12) Subject to paragraph (13), the judge shall, if any person so requests during the course of the trial, direct the associate to certify as open to inspection any witness statement which was ordered to stand as evidence in chief under paragraph (7)(a).

A request under this paragraph may be made orally or in writing.

(**2**) 1968 c. 64.
(**3**) 1972 c. 30.

(13) The judge may refuse to give a direction under paragraph (12) in relation to a witness statement, or may exclude from such a direction any words or passages in a statement, if he considers that inspection should not be available–

(a) in the interests of justice or national security,

(b) because of the nature of any expert medical evidence in the statement, or

(c) for any other sufficient reason.

(14) Where the associate is directed under paragraph (12) to certify a witness statement as open to inspection he shall–

(a) prepare a certificate which shall be attached to a copy ("the certified copy") of that witness statement; and

(b) make the certified copy available for inspection.

(15) Subject to any conditions which the Court may by special or general direction impose, any person may inspect and (subject to payment of the prescribed fee) take a copy of the certified copy of a witness statement from the time when the certificate is given until the end of 7 days after the conclusion of the trial.

(16) In this rule–

(a) any reference in paragraphs (12) to (15) to a witness statement shall, in relation to a witness statement of which only part has been ordered to stand as evidence in chief under paragraph (7)(a), be construed as a reference to that part;

(b) any reference to inspecting or copying the certified copy of a witness statement shall be construed as including a reference to inspecting or copying a copy of that certified copy.

(17) The Court shall have power to vary or override any of the provisions of this rule (except paragraphs (1), (8) and (12) to (16)) and to give such alternative directions as it thinks fit.".

Affidavits in judicial review proceedings

11. For Order 53, rule 6(2), there shall be substituted the following–

"(2) The Court may on the hearing of the motion or summons allow the applicant to amend his statement, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used by him.".

Consequential amendments

12. Order 6, rule 7(6) shall be amended by substituting, for the words "the Conventions as defined", the words "the Brussels Conventions or the Lugano Convention as defined".

13. Order 10, rule 3(3) shall be amended by substituting, for the words "Article 17 of Schedule 1 or of Schedule 4", the words "Article 17 of Schedule 1, 3C or 4".

14. Order 11, rule 1(2)(a)(ii) shall be amended by substituting, for the words "of Schedule 1 or of Schedule 4" (in both places where they occur), the words "of Schedule 1, 3C or 4".

15. Order 11, rule 1(4) shall be amended by substituting, for the words "the Conventions", the words "the Brussels Conventions or the Lugano Convention".

16. Order 13, rule 7B(2)(b) shall be amended by substituting, for the words "within the meaning of Schedule 1 or under Schedule 4", the words "under Schedule 1, 3C or 4".

17. Order 13, rule 7B(2)(c) shall be amended by substituting, for the words "Schedule 1 or, as the case may require, of Article 20 of Schedule 4 to that Act", the words "Article 20 of Schedule 1, 3C or 4 of that Act, as the case may require".

18. Order 13, rule 7B(3) shall be amended by substituting, for the words "the Conventions", the words "the Brussels Conventions or the Lugano Convention".

19. The definition of "Convention territory" in Order 71, rule 25(1) shall be amended by substituting, for the words "the Conventions", the words "the Brussels Conventions or the Lugano Convention".

20. The definition of "protective measures" in Order 71, rule 25(1) shall be amended by inserting, after the words "Article 39 of Schedule 1", the words "or of Schedule 3C".

21. After the words "Schedule 1" wherever they appear in Order 71, rules 33(1), 33(2) and 35(1), there shall be inserted "or 3C".

22. The definition of "order" in Order 114, rule 1 shall be amended by inserting the word "Brussels" before the words "Conventions referred to".

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Dated 5th August 1992