

1969 No. 1105 (L.16)

**SUPREME COURT OF JUDICATURE, ENGLAND  
PROCEDURE**
**The Rules of the Supreme Court (Amendment) 1969**

<i>Made</i> - - - -	31st July 1969
<i>Laid before Parliament</i>	11th August 1969
<i>Coming into Operation</i>	1st October 1969

We, the Rule Committee of the Supreme Court, being the authority having for the time being power under section 99(4) of the Supreme Court of Judicature (Consolidation) Act 1925(a) to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature, hereby exercise those powers and all other powers enabling us in that behalf as follows:—

**PART I**
**CITATION, COMMENCEMENT AND INTERPRETATION**

- 1.—(1) These rules may be cited as the Rules of the Supreme Court (Amendment) 1969 and shall come into operation on 1st October 1969.
- (2) In these rules an Order referred to by number means the Order so numbered in the Rules of the Supreme Court 1965(b), as amended(c).
- (3) The Interpretation Act 1889(d) shall apply to the interpretation of these rules as it applies to the interpretation of an Act of Parliament.

**PART II**
**AMENDMENTS CONSEQUENTIAL ON THE CIVIL EVIDENCE ACT 1968**

2. In the Arrangement of Orders at the beginning of the Rules of the Supreme Court 1965 for the title of Order 38 there shall be substituted the title "Evidence".
3. Order 18 shall be amended as follows:—
  - (1) In rule 7(1) after the word "rules" there shall be inserted the word "7A".
  - (2) The following rule shall be inserted after rule 7:—
 

*"Conviction, etc. to be adduced in evidence: matters to be pleaded*

7A.—(1) If in any action which is to be tried with pleadings any party intends, in reliance on section 11 of the Civil Evidence Act 1968(e) (convictions as evidence in civil proceedings) to adduce evidence that a person was convicted of an offence by or before a court in the United

---

 (a) 1925 c. 49.

(b) S.I. 1965/1776 (1965 III, p. 4995).

(c) The relevant amending instruments are S.I. 1966/1055, 1967/829, 1967/1809, 1968/1244 (1966 II, p. 2588; 1967 II, p. 2476; 1967 III, p. 4832; 1968 II, p. 3360).

(d) 1889 c. 63.

(e) 1968 c. 64.

Kingdom or by a court-martial there or elsewhere, he must include in his pleading a statement of his intention with particulars of—

- (a) the conviction and the date thereof,
- (b) the court or court-martial which made the conviction, and
- (c) the issue in the proceedings to which the conviction is relevant.

(2) If in any action which is to be tried with pleadings any party intends, in reliance on section 12 of the said Act of 1968 (findings of adultery and paternity as evidence in civil proceedings) to adduce evidence that a person was found guilty of adultery in matrimonial proceedings or was adjudged to be the father of a child in affiliation proceedings before a court in the United Kingdom, he must include in his pleading a statement of his intention with particulars of—

- (a) the finding or adjudication and the date thereof,
- (b) the court which made the finding or adjudication and the proceedings in which it was made, and
- (c) the issue in the proceedings to which the finding or adjudication is relevant.

(3) Where a party's pleading includes such a statement as is mentioned in paragraph (1) or (2), then if the opposite party—

- (a) denies the conviction, finding of adultery or adjudication of paternity to which the statement relates, or
- (b) alleges that the conviction, finding or adjudication was erroneous, or
- (c) denies that the conviction, finding or adjudication is relevant to any issue in the proceedings,

he must make the denial or allegation in his pleading."

4. In Order 24, rule 2(3), the words from "or as" to the end shall be omitted.

5. Order 25, rule 3, shall be amended as follows:—

- (1) The words "for the purpose of saving costs" shall be omitted.
- (2) After the word "made" there shall be inserted the words "or direction given".
- (3) For paragraph (a) there shall be substituted the following paragraph:—  
“(a) any provision of Part I of the Civil Evidence Act 1968 (hearsay evidence) or of Part III of Order 38”.

6. In Order 27, for the words "14 days", where they appear in rules 2(1), 4(2) and 5(1) and (2), there shall be substituted the words "21 days”.

7. Order 38 shall be amended as follows:—

- (1) For the title there shall be substituted the title "EVIDENCE".
- (2) Immediately before rule 1 there shall be inserted the words "I. GENERAL RULES".
- (3) In rule 1, for the words "Evidence Act 1938" there shall be substituted the words "Civil Evidence Act 1968".

- (4) Immediately before rule 14 there shall be inserted the words "II. WRITS OF SUBPOENA".
- (5) At the end there shall be added the following Part:—

**" III. HEARSAY EVIDENCE.**

*Interpretation and application*

20.—(1) In this Part of this Order "the Act" means the Civil Evidence Act 1968 and any expressions used in this Part of this Order and in Part I of the Act have the same meanings in this Part of this Order as they have in the said Part I.

(2) This Part of this Order shall apply in relation to the trial or hearing of an issue or question arising in a cause or matter, and to a reference, inquiry and assessment of damages, as it applies in relation to the trial or hearing of a cause or matter.

*Notice of intention to give certain statements in evidence*

21.—(1) Subject to the provisions of this rule, a party to a cause or matter who desires to give in evidence at the trial or hearing of the cause or matter any statement which is admissible in evidence by virtue of section 2, 4 or 5 of the Act must—

- (a) in the case of a cause or matter which is required to be set down for trial or hearing or adjourned into court, within 21 days after it is set down or so adjourned, or within such other period as the Court may specify, and
- (b) in the case of any other cause or matter, within 21 days after the date on which an appointment for the first hearing of the cause or matter is obtained, or within such other period as the Court may specify,

serve on every other party to the cause or matter notice of his desire to do so, and the notice must comply with the provisions of rule 22, 23 or 24, as the circumstances of the case require.

(2) Paragraph (1) shall not apply in relation to any statement which is admissible as evidence of any fact stated therein by virtue not only of the said section 2, 4 or 5 but by virtue also of any other statutory provision within the meaning of section 1 of the Act.

(3) Paragraph (1) shall not apply in relation to any statement which any party to a probate action desires to give in evidence at the trial of that action and which is alleged to have been made by the deceased person whose estate is the subject of the action.

(4) Where by virtue of any provision of these rules or of any order or direction of the Court the evidence in any proceedings is to be given by affidavit then, without prejudice to paragraph (2), paragraph (1) shall not apply in relation to any statement which any party to the proceedings desires to have included in any affidavit to be used on his behalf in the proceedings, but nothing in this paragraph shall affect the operation of Order 41, rule 5, or the powers of the Court under Order 38, rule 3.

(5) Order 65, rule 9, shall not apply to a notice under this rule but the Court may direct that the notice need not be served on any party who at the time when service is to be effected is in default as to entry of appearance or who has no address for service.

*Statement admissible by virtue of section 2 of the Act: contents of notice.*

22.—(1) If the statement is admissible by virtue of section 2 of the Act and was made otherwise than in a document, the notice must contain particulars of—

- (a) the time, place and circumstances at or in which the statement was made;
- (b) the person by whom, and the person to whom, the statement was made; and
- (c) the substance of the statement or, if material, the words used.

(2) If the statement is admissible by virtue of the said section 2 and was made in a document, a copy or transcript of the document, or of the relevant part thereof, must be annexed to the notice and the notice must contain such (if any) of the particulars mentioned in paragraph (1)(a) and (b) as are not apparent on the face of the document or part.

(3) If the party giving the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the trial or hearing for any of the reasons specified in rule 25, the notice must contain a statement to that effect specifying the reason relied on.

*Statement admissible by virtue of section 4 of the Act: contents of notice*

23.—(1) If the statement is admissible by virtue of section 4 of the Act, the notice must have annexed to it a copy or transcript of the document containing the statement, or of the relevant part thereof, and must contain—

- (a) particulars of—
  - (i) the person by whom the record containing the statement was compiled;
  - (ii) the person who originally supplied the information from which the record was compiled; and
  - (iii) any other person through whom that information was supplied to the compiler of that record;

and, in the case of any such person as is referred to in (i) or (iii) above, a description of the duty under which that person was acting when compiling that record or supplying information from which that record was compiled, as the case may be;

- (b) if not apparent on the face of the document annexed to the notice, a description of the nature of the record which, or part of which, contains the statement; and
- (c) particulars of the time, place and circumstances at or in which that record or part was compiled.

(2) If the party giving the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the trial or hearing for any of the reasons specified in rule 25, the notice must contain a statement to that effect specifying the reason relied on.

*Statement admissible by virtue of section 5 of the Act: contents of notice*

24.—(1) If the statement is contained in a document produced by a computer and is admissible by virtue of section 5 of the Act, the notice must have

annexed to it a copy or transcript of the document containing the statement, or of the relevant part thereof, and must contain particulars of—

- (a) a person who occupied a responsible position in relation to the management of the relevant activities for the purposes of which the computer was used regularly during the material period to store or process information;
- (b) a person who at the material time occupied such a position in relation to the supply of information to the computer, being information which is reproduced in the statement or information from which the information contained in the statement is derived;
- (c) a person who occupied such a position in relation to the operation of the computer during the material period;

and where there are two or more persons who fall within any of the foregoing subparagraphs and some only of those persons are at the date of service of the notice capable of being called as witnesses at the trial or hearing, the person particulars of whom are to be contained in the notice must be such one of those persons as is at that date so capable.

(2) The notice must also state whether the computer was operating properly throughout the material period and, if not, whether any respect in which it was not operating properly or was out of operation during any part of that period was such as to affect the production of the document in which the statement is contained or the accuracy of its contents.

(3) If the party giving the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the trial or hearing for any of the reasons specified in rule 25, the notice must contain a statement to that effect specifying the reason relied on.

#### *Reasons for not calling a person as a witness*

25. The reasons referred to in rules 22(3), 23(2) and 24(3) are that the person in question is dead, or beyond the seas, or unfit by reason of his bodily or mental condition to attend as a witness or that despite the exercise of reasonable diligence it has not been possible to identify or find him or that he cannot reasonably be expected to have any recollection of matters relevant to the accuracy or otherwise of the statement to which the notice relates.

#### *Counter-notice requiring person to be called as a witness*

26.—(1) Subject to paragraphs (2) and (3), any party to a cause or matter on whom a notice under rule 21 is served may within 21 days after service of the notice on him serve on the party who gave the notice a counter-notice requiring that party to call as a witness at the trial or hearing of the cause or matter any person (naming him) particulars of whom are contained in the notice.

(2) Where any notice under rule 21 contains a statement that any person particulars of whom are contained in the notice cannot or should not be called as a witness for the reason specified therein, a party shall not be entitled to serve a counter-notice under this rule requiring that person to be called as a witness at the trial or hearing of the cause or matter unless he contends that that person can or, as the case may be, should be called, and in that case he must include in his counter-notice a statement to that effect.

(3) Where a statement to which a notice under rule 21 relates is one to which rule 28 applies, no party on whom the notice is served shall be entitled to serve a counter-notice under this rule in relation to that statement, but the foregoing provision is without prejudice to the right of any party to apply to the Court under rule 28 for directions with respect to the admissibility of that statement.

(4) If any party to a cause or matter by whom a notice under rule 21 is served fails to comply with a counter-notice duly served on him under this rule, then, unless any of the reasons specified in rule 25 applies in relation to the person named in the counter-notice, and without prejudice to the powers of the Court under rule 29, the statement to which the notice under rule 21 relates shall not be admissible at the trial or hearing of the cause or matter as evidence of any fact stated therein by virtue of section 2, 4 or 5 of the Act, as the case may be.

*Determination of question whether person can or should be called as a witness*

27.—(1) Where in any cause or matter a question arises whether any of the reasons specified in rule 25 applies in relation to a person particulars of whom are contained in a notice under rule 21, the Court may, on the application of any party to the cause or matter, determine that question before the trial or hearing of the cause or matter or give directions for it to be determined before the trial or hearing and for the manner in which it is to be so determined.

(2) Unless the Court otherwise directs, the summons by which an application under paragraph (1) is made must be served by the party making the application on every other party to the cause or matter.

(3) Where any such question as is referred to in paragraph (1) has been determined under or by virtue of that paragraph, no application to have it determined afresh at the trial or hearing of the cause or matter may be made unless the evidence which it is sought to adduce in support of the application could not with reasonable diligence have been adduced at the hearing which resulted in the determination.

*Directions with respect to statement made in previous proceedings*

28. Where a party to a cause or matter has given notice in accordance with rule 21 that he desires to give in evidence at the trial or hearing of the cause or matter—

- (a) a statement falling within section 2(1) of the Act which was made by a person, whether orally or in a document, in the course of giving evidence in some other legal proceedings (whether civil or criminal), or
- (b) a statement falling within section 4(1) of the Act which is contained in a record of direct oral evidence given in some other legal proceedings (whether civil or criminal),

any party to the cause or matter may apply to the Court for directions under this rule, and the Court hearing such an application may give directions as to whether, and if so on what conditions, the party desiring to give the statement in evidence will be permitted to do so and (where applicable) as to the manner in which that statement and any other evidence given in those other proceedings is to be proved.

*Power of Court to allow statement to be given in evidence*

29.—(1) Without prejudice to section 2(2)(a) and 4(2)(a) of the Act and rule 28, the Court may, if it thinks it just to do so, allow a statement falling within section 2(1), 4(1) or 5(1) of the Act to be given in evidence at the trial or hearing of a cause or matter notwithstanding—

- (a) that the statement is one in relation to which rule 21(1) applies and that the party desiring to give the statement in evidence has failed to comply with that rule, or
- (b) that that party has failed to comply with any requirement of a counter-notice relating to that statement which was served on him in accordance with rule 26.

(2) Without prejudice to the generality of paragraph (1), the Court may exercise its power under that paragraph to allow a statement to be given in evidence at the trial or hearing of a cause or matter if a refusal to exercise that power might oblige the party desiring to give the statement in evidence to call as a witness at the trial or hearing an opposite party or a person who is or was at the material time the servant or agent of an opposite party.

*Restriction on adducing evidence as to credibility of maker, etc. of certain statements*

30. Where—

- (a) a notice given under rule 21 in a cause or matter relates to a statement which is admissible by virtue of section 2 or 4 of the Act, and
- (b) the person who made the statement, or, as the case may be, the person who originally supplied the information from which the record containing the statement was compiled, is not called as a witness at the trial or hearing of the cause or matter, and
- (c) none of the reasons mentioned in rule 25 applies so as to prevent the party who gave the notice from calling that person as a witness,

no other party to the cause or matter shall be entitled, except with the leave of the Court, to adduce in relation to that person any evidence which could otherwise be adduced by him by virtue of section 7 of the Act unless he gave a counter-notice under rule 26 in respect of that person or applied under rule 28 for a direction that that person be called as a witness at the trial or hearing of the cause or matter.

*Notice required of intention to give evidence of certain inconsistent statements*

31.—(1) Where a person, particulars of whom were contained in a notice given under rule 21 in a cause or matter, is not to be called as a witness at the trial or hearing of the cause or matter, any party to the cause or matter who is entitled and intends to adduce in relation to that person any evidence which is admissible for the purpose mentioned in section 7(1)(b) of the Act must, not more than 21 days after service of that notice on him, serve on the party who gave that notice, notice of his intention to do so.

(2) Rule 22(1) and (2) shall apply to a notice under this rule as if the notice were a notice under rule 21 and the statement to which the notice relates were a statement admissible by virtue of section 2 of the Act.

(3) The Court may, if it thinks it just to do so, allow a party to give in evidence at the trial or hearing of a cause or matter any evidence which is admissible for the purpose mentioned in the said section 7(1)(b) notwithstanding that that party has failed to comply with the provisions of paragraph (1).

### *Costs*

#### 32. If—

- (a) a party to a cause or matter serves a counter-notice under rule 26 in respect of any person who is called as a witness at the trial of the cause or matter in compliance with a requirement of the counter-notice, and
- (b) it appears to the Court that it was unreasonable to require that person to be called as a witness,

then, without prejudice to Order 62 and, in particular, to rule 7(1) thereof, the Court may direct that any costs to that party in respect of the preparation and service of the counter-notice shall not be allowed to him and that any costs occasioned by the counter-notice to any other party shall be paid by him to that other party.

### *Certain powers exercisable in chambers*

33. The jurisdiction of the Court under sections 2(2)(a), 2(3), 4(2)(a) and 6(1) of the Act may be exercised in chambers."

#### 8. Order 75 shall be amended as follows:—

- (1) In rule 25(1) the words from the beginning to "subject to that" shall be omitted, and after the words "other actions" there shall be inserted the words "except that—
  - (a) the summons for directions shall be returnable in not less than seven weeks;
  - (b) any notice under Order 25, rule 7(1), must be served within 21 days after service of the summons for directions on the party giving the notice; and
  - (c) unless a judge in person otherwise directs, the summons for directions shall be heard by a judge in person."
- (2) In rule 31(3) there shall be inserted at the end of subparagraph (b) the words "and fix the period within which any notice under Order 38, rule 21, must be served".
- (3) For rule 32 there shall be substituted the following rule:—

#### *"Further provisions with respect to evidence*

32.—(1) Notwithstanding anything in Order 38, rule 8, rules 1, 2 and 4 of that Order shall not apply to a reference to the registrar or a district registrar.

(2) Order 38, rule 14, shall apply in relation to the issue of a writ of subpoena ad testificandum or subpoena duces tecum in an Admiralty cause or matter as if for references therein to the Central Office there were substituted references to the registry.

(3) Unless the Court otherwise directs, Order 38, rule 21(1), shall not apply in relation to any statement which is admissible in evidence by virtue of section 2, 4 or 5 of the Civil Evidence Act 1968



and which an applicant for judgment in default under rule 19 or 21 desires to give in evidence at the hearing of the motion by which the application for judgment is made.

(4) In any Admiralty action in which a summons for directions is required by virtue of rule 25 or rule 38(7) to be taken out, any notice under Order 38, rule 21, must, if given by the party who takes out that summons, be served with that summons and, if given by any other party, be served within 21 days after service of the summons for directions on him.

(5) In any proceedings on a reference to the registrar or a district registrar, any notice under Order 38, rule 21, must be served not less than 6 weeks before the day appointed for the hearing of the reference.

(6) On the day on which any party serves on any other party a notice under Order 38, rule 21, or a counter-notice under Order 38, rule 26, he must lodge two copies of the notice or counter-notice in the registry or, if the action is proceeding in a district registry, that registry.

(7) Unless the Court otherwise directs, an affidavit for the purposes of rule 19(4), 21 or 38(2) may, except in so far as it relates to the service of a writ, contain statements of information or belief with the sources and grounds thereof."

- (4) In rule 38 there shall be added at the end of paragraph (7) the words "and, if he gives no such direction, a direction fixing the period within which any notice under Order 38, rule 21, must be served".

### PART III

#### MISCELLANEOUS AMENDMENTS

9. Order 42, rule 6, shall be amended as follows:—

- (1) In paragraph (4) the words from "and the originals" to the end shall be omitted.
- (2) In paragraph (5) for the words "and volumes" there shall be substituted the words "and the originals of the judgments and orders filed under this rule".

10. In Order 63, rule 4(2), the words "judgments and orders contained in the volumes of" shall be omitted.

11. In Order 75, rule 4(1), for the words "rule 2(1)(a)" there shall be substituted the words "rule 2(1)".

12. Order 94, rule 2, shall be amended as follows:—

- (1) At the beginning of paragraph (2) there shall be inserted the words "Subject to paragraph (4)".
- (2) Sub-paragraph (c) of paragraph (2) shall be omitted and sub-paragraphs (d), (e) and (f) shall stand as sub-paragraphs (c), (d) and (e) respectively.
- (3) In paragraph (3) for the words "this rule" there shall be substituted the words "paragraph (2)".

(4) The following paragraph shall be added at the end:—

“(4) Where the application relates to an order made under the Road Traffic Regulation Act 1967(a), notice of the motion must be served—

- (a) if the order was made by a Minister of the Crown, on that Minister;
- (b) if the order was made by a local authority with the consent, or in pursuance of a direction, of a Minister of the Crown, on that authority and also on that Minister;
- (c) in any other case, on the local authority by whom the order was made.

In this paragraph ‘local authority’ includes the Greater London Council.”

13.—(1) Order 105 shall be revoked and the entry relating to that Order in the Arrangement of Orders at the beginning of the Rules of the Supreme Court 1965 shall be omitted.

(2) Nothing in the foregoing paragraph shall affect any proceedings which are pending on the coming into operation of these rules.

Dated 31st July 1969.

*Gardiner, C.*  
*Parker of Waddington, C.J.*  
*Denning, M.R.*  
*J. E. S. Simon, P.*  
*John Megaw, L.J.*  
*John R. Willis, J.*  
*E. S. Fay.*  
*Oliver Lodge.*  
*W. O. Carter.*

---

## EXPLANATORY NOTE

*(This Note is not part of the Rules.)*

These Rules amend the Rules of the Supreme Court in the following respects:—

Part II contains rules made in pursuance of the Civil Evidence Act 1968. Rule 3 specifies the particulars to be included in a pleading where it is intended to put in evidence (by virtue of section 11 or 12 of the Act) a previous conviction, finding of adultery or adjudication of paternity.

Rule 7 adds a new Part III to Order 38, prescribing the procedure to be followed where it is intended to adduce hearsay evidence under Part I of the Act. Order 38, rules 21 to 24, provide for notice to be given of such intention; rule 25

specifies the reasons which may be relied on for contending that the maker of the relevant statement is unavailable to be called as a witness, while rule 26 provides for a counter-notice requiring the maker to be called as a witness if available. Order 38, rule 27, provides for the determination of any question as to his availability; rule 28 makes special provision for statements made in previous proceedings and rule 29 gives the Court a discretion to admit a statement notwithstanding failure to comply with the rules.

Order 38, rule 30, requires a counter-notice to be served by a party who intends to impugn the credibility of the maker of an out-of-court statement sought to be put in by his opponent; if the maker is not to be called, rule 31 requires notice to be given of intention to adduce an inconsistent statement made by him.

Order 38, rule 32, empowers the Court to make a party who, without reasonable cause, serves a counter-notice pay the costs thereby occasioned, and rule 33 enables certain powers of the Court to be exercised in chambers.

Rule 8 makes special provision for the application of Part I of the Act to Admiralty proceedings.

Part III of the Rules contains a number of miscellaneous amendments. Rules 9 and 10 give effect to the recommendation in paragraph 35(2) of the Report of the Committee on Legal Records (Cmnd. 3084) by abolishing the requirement that the originals of Chancery judgments and orders must be bound up in volumes. Rule 11 enables the writ in a limitation action to be served out of the jurisdiction with the leave of the Court. Rule 12 makes fresh provision for applications to the High Court under the Road Traffic Regulation Act 1967 in consequence of the amendments made in that Act by the Transport Act 1968. Rule 13 revokes Order 105, because the jurisdiction of the High Court in proceedings referred to in that Order has been brought to an end by section 13 of the Restrictive Trade Practices Act 1968.

The Rules are to come into operation on 1st October 1969. This is the date on which Part I of the Civil Evidence Act 1968 is brought into force by S.I. 1969/1104 as respects proceedings in the Supreme Court.