

**1974 No. 1115 (L.15)**
**SUPREME COURT OF JUDICATURE, ENGLAND  
PROCEDURE**
**The Rules of the Supreme Court (Amendment No. 2) 1974**

<i>Made</i>	- - -	<i>27th June 1974</i>
<i>Laid before Parliament</i>		<i>5th July 1974</i>
<i>Coming into Operation</i>		<i>27th July 1974</i>

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:—

**1.**—(1) These Rules may be cited as the Rules of the Supreme Court (Amendment No. 2) 1974 and shall come into operation on 27th July 1974.

(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.

**2.** In the title of Order 98 in the Arrangement of Orders at the beginning of the Rules of the Supreme Court 1965 for the words “1933, Part X” there shall be substituted the words “1972, Part VIII”.

**3.** Order 75 shall be amended as follows:—

(1) In rule 8(3) for the words from “he must leave” to the end there shall be substituted the words “he must file in the registry or, where the action is proceeding in a district registry, that registry, a praecipe in Form 6 in Appendix B and lodge—

(a) the writ and a copy thereof, and

(b) an undertaking to pay on demand all expenses incurred by the marshal or his substitute in respect of the service of the writ, and thereupon the marshal or his substitute shall serve the writ on the property described in the praecipe.”

(2) In rule 10(3) for the words “in writing” to the end there shall be substituted the words “to pay on demand the fees of the marshal and all

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(a) 1925 c. 49.

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

(c) The relevant amending instrument is S.I. 1967/829 (1967 II, p. 2476).

(d) 1889 c. 63.

expenses incurred by him or on his behalf in respect of the arrest of the property and the care and custody of it while under arrest has been lodged in the marshal's office or, where the action is proceeding in a district registry, in that registry."

- (3) In rule 13(7) for the words "either pay" to the end there shall be substituted the words "either—

(a) pay the fees of the marshal already incurred and lodge in the marshal's office or the district registry, as the case may be, an undertaking to pay on demand the other fees and expenses in connection with the arrest of the property and the care and custody of it while under arrest and of its release, or

(b) lodge in the marshal's office or district registry an undertaking to pay on demand all such fees and expenses, whether incurred or to be incurred."

- (4) After rule 23 there shall be inserted the following rule:—

*"Undertakings as to expenses, etc.*

23A.—(1) Every undertaking under rule 8(3), 10(3), 13(7) or 23(3) shall be given in writing to the satisfaction of the marshal or, where the action is proceeding in a district registry, the district registrar.

(2) Where a party is required by rule 8(3), 10(3), 13(7) or 23(3) to give to the marshal or a district registrar an undertaking to pay any fees or expenses, the marshal or district registrar may accept instead of an undertaking the deposit with him of such sum as he considers reasonable to meet those fees and expenses.

(3) The Court or, where the action is proceeding in a district registry, a judge, may on the application of any party who is dissatisfied with a direction or determination of the marshal or district registrar under rule 13(7) or this rule, vary or revoke the direction or determination."

4. The following rule shall be inserted in Order 94 after rule 9:—

*"Appeal from and case stated by industrial tribunal*

9A. In relation to proceedings before an industrial tribunal established under section 12 of the Industrial Training Act 1964(a) the jurisdiction of the High Court under rules 8 and 9 shall be exercisable by a single judge of the Queen's Bench Division."

5. For Order 98 there shall be substituted the following Order:—

"ORDER 98

LOCAL GOVERNMENT ACT 1972, PART VIII

*Interpretation*

1. In this Order "the Act" means the Local Government Act 1972(b) and a section referred to by number means the section so numbered in that Act.

*Application by district auditor for declaration*

2.—(1) The jurisdiction of the High Court under section 161(1) to make a declaration that an item of account is contrary to law shall be exercised

(a) 1964 c. 16.

(b) 1972 c. 70.

by a Divisional Court of the Queen's Bench Division on an application made by originating motion.

(2) Notice of the motion shall be served on the body to whose accounts the application relates and on any person against whom an order is sought under section 161(2).

(3) Not later than seven days after lodging the notice of motion in the Crown Office in accordance with Order 57, rule 2, the applicant shall file in that office an affidavit stating the facts on which he intends to rely at the hearing of the application.

(4) A motion under this rule shall be entered for hearing within six weeks after the notice has been lodged in the Crown Office but, unless the Court otherwise directs, the application shall not be heard sooner than 28 days after service of the notice.

*Appeal against decision of auditor*

3.—(1) Notice of motion by which an appeal is brought under section 161(6) against the decision of a district auditor shall be served on—

- (a) the district auditor who for the time being has responsibility for the audit of the accounts of the body in relation to whom the appeal relates;
- (b) that body; and
- (c) in the case of an appeal against a decision not to certify under section 161(4) that a sum or amount is due from another person, that person.

(2) Order 55, rules 4(2) and 5, shall apply to the appeal with the modification that the period of 28 days mentioned in the said rule 4(2) shall be calculated from the day on which the appellant received the district auditor's statement of the reasons for his decision pursuant to a requirement under section 161(5).

(3) Not later than seven days after lodging notice of the motion in the Crown Office in accordance with Order 57, rule 2, the appellant must file in that office an affidavit stating—

- (a) the reasons stated by the district auditor for his decision;
- (b) the date on which he received the district auditor's statement;
- (c) the facts on which he intends to rely at the hearing of the appeal;
- (d) in the case of a decision not to apply for a declaration, such facts within the appellant's knowledge as will enable the Court to consider whether to exercise the powers conferred on it by section 161(2).

*General provisions*

4.—(1) Without prejudice to its powers under Order 15, the Court may at any stage on an application or appeal under section 161 direct that any officer or member of the body to whose accounts the application or appeal relates be joined as a respondent.

(2) Except in so far as the Divisional Court directs that the evidence on any such application or appeal shall be given orally, it shall be given by affidavit.

(3) The applicant or appellant must forthwith after filing any affidavit under rule 2(3) or 3(3) serve a copy thereof on every respondent and any person intending to oppose the application or appeal must, not less than four days before the hearing, serve on the applicant or appellant a copy of any affidavit filed by him in opposition to the motion.

(4) Except by leave of the Court, no affidavit may be used at the hearing unless a copy thereof was served in accordance with paragraph (3)."

6. Nothing in rule 5 of these Rules shall apply in relation to an audit under Part X of the Local Government Act 1933 completed before 1st April 1974.

Dated 27th June 1974.

*Elwyn-Jones, C.*  
*Widgery, C. J.*  
*Denning, M. R.*  
*George Baker, P.*  
*John Pennycuik, V.-C.*  
*Eustace Roskill, L. J.*  
*Nigel Bridge, J.*  
*Ralph Cusack, J.*  
*P. J. Millett.*  
*Michael Wright.*  
*William Carter.*  
*H. Montgomery-Campbell.*

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#### EXPLANATORY NOTE

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

These Rules amend the Rules of the Supreme Court so as to provide for appeals from industrial tribunals to be heard by a single judge of the Queen's Bench Division instead of a Divisional Court (rule 4). They also bring the provisions for payment of the fees and expenses of the Admiralty marshal into line with the current practice of the Admiralty Court (rule 3) and regulate the procedure on an application or appeal to the High Court in connection with the auditing of accounts under the Local Government Act 1972 (rule 5).

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