

1974 No. 295 (L.6)

**SUPREME COURT OF JUDICATURE, ENGLAND**

**PROCEDURE**

**The Rules of the Supreme Court (Amendment) 1974**

*Made*                    -                    -                    -                    21st February 1974

*Laid before Parliament*                    8th March 1974

*Coming into Operation—*  
*(except as to Rule 6)*                    1st June 1974

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) 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 Order 1, rule 4(1), after the definition of “the Act” there shall be inserted the following definitions: “ “an action for personal injuries” means an action in which there is a claim for damages in respect of personal injuries to the plaintiff or any other person or in respect of a person’s death, and “personal injuries” includes any disease and any impairment of a person’s physical or mental condition;”.

3. In Order 25, rule 3, for the words in sub-paragraph (a) “or of Part III” there shall be substituted the words “or of the Civil Evidence Act 1972(e) or of Part III or IV”.

4. Order 29, rule 9, shall be amended as follows:—

(1) The definitions of “an action for personal injuries” and of “personal injuries” shall be omitted.

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(a) 1925 c.49.

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

(c) The relevant amending instruments are S.I. 1968/1244, 1969/1105, 1970/944, 1971/1269, 1955, 1972/1194 (1968 II, p.3360; 1969 II, p.3228; 1970 II, p.2932; 1971 II, p. 3634; III, p.5274; 1972 II, p.3532).

(d) 1889 c.63.

(e) 1972 c.30.

- (2) In the definition of “interim payment”, for the words “such damages as aforesaid” there shall be substituted the words “damages in respect of personal injuries to the plaintiff or any other person or in respect of a person’s death”.

5. Order 38 shall be amended as follows:—

- (1) For rules 6 and 7 there shall be substituted the following rules:—

*“Revocation or variation of orders under rules 2 to 5*

6. Any order under rules 2 to 5 (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order of the Court made at or before the trial.

*Evidence of finding on foreign law*

7.—(1) A party to any cause or matter who intends to adduce in evidence a finding or decision on a question of foreign law by virtue of section 4(2) of the Civil Evidence Act 1972 shall—

(a) in the case of an action to which Order 25, rule 1, applies, within 14 days after the pleadings in the action are deemed to be closed, 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, in either case, within such other period as the Court may specify, serve notice of his intention on every other party to the proceedings.

(2) The notice shall specify the question on which the finding or decision was given or made and specify the document in which it is reported or recorded in citable form.

(3) In any cause or matter in which evidence may be given by affidavit, an affidavit specifying the matters contained in paragraph (2) shall constitute notice under paragraph (1) if served within the period mentioned in that paragraph.”

- (2) After rule 33 there shall be added the following rule and Part:—

*“Statements of opinion*

34. Where a party to a cause or matter desires to give in evidence by virtue of Part I of the Act, as extended by section 1(1) of the Civil Evidence Act 1972, a statement of opinion other than a statement to which Part IV of this Order applies, the provisions of rules 20 to 23 and 25 to 33 shall apply with such modifications as the Court may direct or the circumstances of the case may require.

IV. EXPERT EVIDENCE

*Interpretation*

35. In this Part of this Order a reference to a summons for directions includes a reference to any summons or application to which, under any of these Rules, Order 25, rules 2 to 7, apply and expressions used in this Part of this Order which are used in the

Civil Evidence Act 1972 have the same meanings in this Part of this Order as in that Act.

*Restrictions on adducing expert evidence*

36.—(1) Except with the leave of the Court or where all parties agree, no expert evidence may be adduced at the trial or hearing of any cause or matter unless the party seeking to adduce the evidence has applied to the Court to determine whether a direction should be given under rule 37, 38 or 41 (whichever is appropriate) and has complied with any direction given on the application.

(2) Nothing in paragraph (1) shall apply to evidence which is permitted to be given by affidavit or shall affect the enforcement under any other provision of these Rules (except Order 45, rule 5) of a direction given under this Part of this Order.

*Medical evidence in actions for personal injuries*

37.—(1) Where in an action for personal injuries an application is made under rule 36(1) in respect of oral expert evidence relating to medical matters, then, unless the Court considers that there is sufficient reason for not doing so, it shall direct that the substance of the evidence be disclosed in the form of a written report or reports to such other parties and within such period as the Court may specify.

(2) The Court may, if it thinks fit, treat any of the following circumstances as a sufficient reason for not giving a direction under paragraph (1):—

- (a) that the pleadings contain an allegation of a negligent act or omission in the course of medical treatment; or
- (b) that the expert evidence may contain an expression of opinion—
  - (i) as to the manner in which the personal injuries were sustained; or
  - (ii) as to the genuineness of the symptoms of which complaint is made.

*Other expert evidence*

38.—(1) Where an application is made under rule 36(1) in respect of oral expert evidence to which rule 37 does not apply, the Court may, if satisfied that it is desirable to do so, direct that the substance of any expert evidence which is to be adduced by any party be disclosed in the form of a written report or reports to such other parties and within such period as the Court may specify.

(2) In deciding whether to give a direction under paragraph (1) the Court shall have regard to all the circumstances and may, to such extent as it thinks fit, treat any of the following circumstances as affording a sufficient reason for not giving such a direction:—

- (a) that the expert evidence is or will be based to any material extent upon a version of the facts in dispute between the parties; or
- (b) that the expert evidence is or will be based to any material extent upon facts which are neither—
- (i) ascertainable by the expert by the exercise of his own powers of observation, nor
  - (ii) within his general professional knowledge and experience.

*Disclosure of part of expert evidence*

39. Where the Court considers that any circumstances rendering it undesirable to give a direction under rule 37 or 38 relate to part only of the evidence sought to be adduced, the Court may, if it thinks fit, direct disclosure of the remainder.

*Expert evidence of engineers in accident cases*

40. In an action arising out of an accident on land due to a collision or apprehended collision a party who intends to apply to the Court under rule 36 in respect of the expert evidence of an engineer sought to be called on account of his skill and knowledge as respects motor vehicles shall before the hearing of the summons for directions make available to all parties for their inspection a report by the engineer containing the substance of his evidence.

*Expert evidence contained in statement*

41. Where an application is made under rule 36 in respect of expert evidence contained in a statement and the applicant alleges that the maker of the statement cannot or should not be called as a witness, the Court may direct that the provisions of rules 20 to 23 and 25 to 33 shall apply with such modifications as the Court thinks fit.

*Putting in evidence expert report disclosed by another party*

42. A party to any cause or matter may put in evidence any expert report disclosed to him by any other party in accordance with this Part of this Order.

*Time for putting expert report in evidence*

43. Where a party to any cause or matter calls as a witness the maker of a report which has been disclosed in accordance with rule 40 or in accordance with a direction given under rule 37 or 38, the report may be put in evidence at the commencement of its maker's examination in chief or at such other time as the Court may direct.

*Revocation and variation of directions*

44. Any direction given under this Part of this Order may on sufficient cause being shown be revoked or varied by a subsequent direction given at or before the trial of the cause or matter."

6. Order 104 shall be amended as follows:—

- (1) In rule 1, after the definition of "the Act of 1971" there shall be inserted the following definition:—

“ “the Act of 1972” means the Maintenance Orders (Reciprocal Enforcement) Act 1972(a)”.

(2) After Part V there shall be added the following Part:—

“VI PROCEEDINGS UNDER THE ACT OF 1972

*Interpretation*

21.—(1) Expressions used in this Part of this Order which are used in the Act of 1972 have the same meaning as in that Act.

(2) For the purposes of sections 2(3), 5(4) and 14 of the Act of 1972 the prescribed officer (in this Part of this Order called “the registrar”) shall be—

- (a) in the case of a maintenance order made in a cause or matter proceeding in a district registry, the registrar or one of the registrars of that registry;
  - (b) in any other case, a registrar of the principal registry;
- and “registry” shall be construed accordingly.

*Application for transmission of maintenance order to reciprocating country*

22. An application for a maintenance order to be sent to a reciprocating country under section 2 of the Act of 1972 shall be made by lodging in the registry—

- (a) an affidavit by the applicant stating—
  - (i) the applicant’s reasons for believing that the payer under the maintenance order is residing in that country, and
  - (ii) the amount of any arrears due to the applicant under the order, the date to which those arrears have been calculated and the date on which the next payment under the order falls due;
- (b) a certified copy of the maintenance order;
- (c) a statement giving such information as the applicant possesses as to the whereabouts of the payer;
- (d) a statement giving such information as the applicant possesses for facilitating the identification of the payer (including, if known to the applicant, the name and address of any employer of the payer, his occupation and the date and place of issue of any passport of the payer), and
- (e) if available to the applicant, a photograph of the payer.

*Certification of evidence given on provisional order*

23. Where the High Court makes a provisional order under section 5 of the Act of 1972, the document required by subsection (4) of that section to set out or summarise the evidence given in the proceedings shall be authenticated by a certificate signed by the registrar.

*Confirmation of provisional order*

24.—(1) On receipt by the High Court of a certified copy of a provisional order made in a reciprocating country, together with the document mentioned in section 5(5) of the Act of 1972, the registrar shall fix a time and place for the Court to consider whether or not the provisional order should be confirmed, and shall send to the payee under the maintenance order notice of the time and place so fixed together with a copy of the provisional order and of that document.

(2) The registrar shall send to the court which made the provisional order a certified copy of any order confirming or refusing to confirm that order.

*Taking of evidence for court in reciprocating country*

25.—(1) The High Court shall be the prescribed court for the purposes of taking evidence pursuant to a request by a court in a reciprocating country under section 14 of the Act of 1972 where—

- (a) the request for evidence relates to a maintenance order made by a superior court in the United Kingdom, and
- (b) the witness resides in England and Wales.

(2) The evidence may be taken before a judge or officer of the High Court as the court thinks fit, and the provisions of Order 39 shall apply with the necessary modifications as if the evidence were required to be taken pursuant to an order made under rule 1 of that Order.

*Notification of variation or revocation*

26. Where the High Court makes an order (other than a provisional order) varying or revoking a maintenance order a copy of which has been sent to a reciprocating country in pursuance of section 2 of the Act of 1972, the registrar shall send a certified copy of the order to the court in the reciprocating country.

*Transmission of documents*

27. Any document required to be sent to a court in a reciprocating country under section 5(4) or section 14(1) of the Act of 1972 or by rule 24(2) or 26 shall be sent to the Secretary of State for transmission to that court unless the registrar is satisfied that, in accordance with the law of that country, the document may properly be sent by him direct to that court."

7.—(1) Rules 2, 3, 4 and 5 of these Rules shall come into operation on 1st June 1974, so however that nothing in rules 3 and 5 shall apply in relation to any cause or matter which has been set down for hearing or has been adjourned into court under Order 28, rule 9(2), before that day.

(2) Rule 6 of these Rules shall come into operation on the day appointed for the coming into force of Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972.

(3) Rule 1 of these Rules shall come into operation on the earlier of the days mentioned in paragraphs (1) and (2) of this rule.

Dated 21st February 1974.

*Hailsham of St. Marylebone, C.*

*Widgery, C. J.*

*Denning, M. R.*

*George Baker, P.*

*John Pennycuik, V-C.*

*Eustace Roskill, L. J.*

*P. J. Millett.*

*Michael Wright.*

*William Carter.*

*H. Montgomery-Campbell.*

## EXPLANATORY NOTE

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

The amendments made by these Rules are consequential on the provisions of the Civil Evidence Act 1972 and the Maintenance Orders (Reciprocal Enforcement) Act 1972.

Rule 3 includes the Civil Evidence Act 1972 among the particular matters for consideration on the summons for directions. Rule 5 adds to Order 38 a new Rule 7, which provides for the giving of notice of intention to adduce evidence of a previous finding on a point of foreign law, and a new rule 34 dealing with the admission under Part III of that Order of a statement of lay opinion.

Rule 5 also adds to Order 38 a new Part IV dealing with expert evidence. Except with the leave of the Court or the consent of all parties, a party to any proceedings may not adduce expert evidence (other than affidavit evidence) at the trial unless he has applied to the Court to determine whether directions should be given under new Rule 37, 38 or 41 (new Rule 36). Under new Rule 37 the Court must, in a personal injuries action, order disclosure of medical reports before the trial unless it considers there are special reasons for not doing so. New Rule 38 enables the Court to order disclosure of other expert reports before the trial if satisfied that it is desirable to do so. The Court may if it thinks fit direct disclosure of part of a report (new Rule 39). New Rule 40 reproduces the effect of the former Order 38, Rule 6, so as to require a report of an automobile expert whose evidence is to be adduced at the hearing of a collision action to be made available for inspection before the summons for directions. New Rule 42 extends the provisions of Part III about hearsay statements of fact to statements containing expert evidence. An expert report disclosed in accordance with a direction under new Rule 37 or 38 may be put in evidence by the person to whom it was disclosed (new Rule 42) or at the commencement of the examination in chief of the maker (new Rule 43). New Rule 44 enables the Court to revoke or vary an earlier direction.

The Rules also make provision for proceedings under the Maintenance Orders (Reciprocal Enforcement) Act 1972. Rule 6 adds to Order 104 a new Part VI which deals with the transmission of a High Court maintenance order for enforcement in a reciprocating country, the subsequent variation or revocation of such an order and the taking of evidence in England and Wales for the purpose of proceedings in a foreign court relating to a United Kingdom order.

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