

1976 No. 337 (L. 6)
SUPREME COURT OF JUDICATURE, ENGLAND
PROCEDURE
The Rules of the Supreme Court (Amendment) 1976

<i>Made - - - -</i>	<i>27th February 1976</i>
<i>Laid before Parliament</i>	<i>10th March 1976</i>
<i>Coming into Operation</i>	<i>1st April 1976</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) 1976 and shall come into operation on 1st April 1976.

(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), and Appendix A means Appendix A to those Rules.

(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. Order 1, rule 4(3), shall be revoked.

3. Order 11, rule 6(1), shall be amended as follows:—

- (1) For sub-paragraphs (b) and (c) there shall be substituted the following sub-paragraphs:—
 - “(b) any independent Commonwealth country;
 - (c) any colony or protectorate”.
- (2) Sub-paragraph (d) shall be omitted and sub-paragraph (e) re-lettered as sub-paragraph (d).

4. Order 18, rule 6(3A), shall be revoked.

5. In Order 32, rule 8, for the words “second class clerk” there shall be substituted the words “executive officer”.

(a) 1925 c. 49. (b) S.I. 1965/1776 (1965 III, p. 4995).
 (c) The relevant amending instruments are S.I. 1967/829, 1970/1208, 1971/1269, 1972/1898 (1967 II, p. 2476; 1970 II, p. 4001; 1971 II, p. 3634; 1972 III, p. 5523).
 (d) 1889 c. 63.

6. Order 39, rule 3(4), shall be amended as follows:—

- (1) The words from “Unless” to “English” shall be omitted.
- (2) For the words “that country” where they first appear there shall be substituted the words “the country in which the examination is to be taken”.
- (3) At the end there shall be added the words “unless—
 - (a) the senior master has given a general direction in relation to that country that no translation need be provided, or
 - (b) the official language or one of the official languages of that country is English.”.

7. In Order 41, rule 5(1), after “4(2)” there shall be inserted the words “to Order 86, rule 2(1)”.

8. Order 42, rule 1(4), and Order 45, rule 1(5), shall be revoked.

9. In Order 49, rule 2, the word “and” shall be omitted at the end of paragraph (a) and inserted at the end of paragraph (b) and after that paragraph there shall be added the following paragraph:—

- “(c) stating, where the garnishee is a bank having more than one place of business, the name and address of the branch at which the judgment debtor’s account is believed to be held or, if it be the case, that this information is not known to the deponent.”

10. Order 56, rule 5(2), shall be amended as follows:—

- (1) For the words “section 14 of the Matrimonial Proceedings and Property Act 1970” there shall be substituted the words “section 35 of the Matrimonial Causes Act 1973(a)”.
- (2) In sub-paragraph (b) after “1950” the word “or” shall be omitted and for the words “or confirmed by such a court under the last-mentioned Act” there shall be substituted the words “or the Maintenance Orders (Reciprocal Enforcement) Act 1972(b) or confirmed by such a court under either of the two last-mentioned Acts”.
- (3) For sub-paragraph (c) there shall be substituted the following sub-paragraph:—

“(c) an order for periodical or other payments made, or having effect as if made, under Part II of the Matrimonial Causes Act 1973 and registered in a magistrates’ court under the Maintenance Orders Act 1958(c)”.

11. Order 59 shall be amended as follows:—

- (1) After rule 12 there shall be inserted the following rule:—

“Non-disclosure of payment into court

12A.—(1) Where—

- (a) any question on an appeal in an action for a debt, damages or salvage relates to liability for the debt, damages or salvage or to the amount thereof, and

- (b) money was paid into court under Order 22, rule 1, in the proceedings in the court below before judgment,

neither the fact of the payment nor the amount thereof shall be stated in the notice of appeal or the respondent's notice or in any supplementary notice or be communicated to the Court of Appeal until all such questions have been decided.

This rule shall not apply in the case of an appeal as to costs only or an appeal in an action to which a defence of tender before action was pleaded.

(2) For the purpose of complying with this rule the appellant must cause to be omitted from the copies of the documents lodged by him under rules 9(d) and (f) every part thereof which states, or from which it can be inferred, that money was paid into court in the proceedings in that court before judgment.”.

- (2) In rule 19(5) after the words “a stay of” there shall be inserted the words “execution or of”, and after “the judge of that court” there shall be inserted “or the Court of Appeal”.

12. Order 62 shall be amended as follows:—

- (1) In rule 9—
- (a) in paragraph (2) after “28” there shall be inserted “28A”;
- (b) at the end of paragraph (4) there shall be added the words “but where the person entitled to such a gross sum is a litigant in person, rule 28A shall apply with the necessary modifications to the assessment of the gross sum as it applies to the taxation of the costs of a litigant in person”.
- (2) In rules 12(7) and 13, for the words “principal clerk” and “clerk”, wherever they appear, there shall be substituted the words “senior executive officer”.
- (3) In rule 25 before the words “bill of costs”, wherever they appear in paragraphs (1) and (2), there shall be inserted the word “solicitor’s”.
- (4) In rule 27 the word “solicitor’s” shall be omitted and for the word “solicitor” there shall be substituted the words “party whose bill it is”.
- (5) After rule 28 there shall be inserted the following rule:—

“Costs of a litigant in person

28A.—(1) On a taxation of the costs of a litigant in person there may, subject to the provisions of this rule, be allowed such costs as would have been allowed if the work and disbursements to which the costs relate had been done or made by a solicitor on the litigant's behalf.

(2) The amount allowed in respect of any item shall be such sum as the taxing officer thinks fit not exceeding, except in the case of a disbursement, two-thirds of the sum which in the opinion of the taxing officer would have been allowed in respect of that item if the litigant had been represented by a solicitor.

(3) Where in the opinion of the taxing officer the litigant has not suffered any pecuniary loss in doing any work to which the costs relate, he shall not be allowed in respect of the time reasonably spent by him on the work more than £2 an hour.

(4) A litigant who is allowed costs in respect of attending court to conduct his own case shall not be entitled to a witness allowance in addition.

(5) Nothing in Order 6, rule 2(1)(b), or rule 32(4) of this Order or Appendix 3 shall apply to the costs of a litigant in person.

(6) For the purposes of this rule a litigant in person does not include a litigant who is a practising solicitor.”.

13. In Part X of Appendix 2 to Order 62—

(a) in paragraph 1(1) after the words “subject to” there shall be inserted the words “rule 28A and to”;

(b) in paragraph 7(2) the words “the solicitor for” shall be omitted.

14. Order 70 shall be amended as follows:—

(1) For rule 1 there shall be substituted the following rule:—

“Interpretation and exercise of jurisdiction

1.—(1) In this Order “the Act of 1975” means the Evidence (Proceedings in Other Jurisdictions) Act 1975(a) and expressions used in this Order which are used in that Act shall have the same meaning as in that Act.

(2) The power of the High Court to make an order under section 2 of the Act of 1975 may be exercised by a master of the Queen’s Bench Division.”.

(2) In rule 2—

(a) in paragraph (1) for the words from “Foreign Tribunals Evidence Act 1856” to “Evidence by Commission Act 1859” there shall be substituted the words “Act of 1975” and the words from “by a person” to “tribunal in question” shall be omitted;

(b) for paragraph (2) there shall be substituted the following paragraph:—

“(2) There shall be exhibited to the affidavit the request in pursuance of which the application is made, and if the request is not in the English language, a translation thereof in that language.”;

(c) paragraph (3) shall be omitted.

(3) In rule 3—

(a) for the words “Where a letter” to “country be obtained” there shall be substituted the words “Where a request”;

(b) for the words “pending before the” in paragraph (a) there shall be substituted the words “pending or contemplated before the foreign”.

(c) for the words “Foreign Tribunals Evidence Act 1856” there shall be substituted the words “Act of 1975”.

(4) In rule 4(2) after the words “Subject to” there shall be inserted the words “rule 6 and to”.

(5) In paragraph (a) of rule 5 for the words from “the letter of request” to “the examination” there shall be substituted the words “the request”, and in paragraph (b) for “letter of request, certificate or other document” there shall be substituted “request”.

(6) After rule 5 there shall be added the following rule:—

“Claim to privilege

6.—(1) The provisions of this rule shall have effect where a claim by a witness to be exempt from giving any evidence on the ground specified in section 3(1)(b) of the Act of 1975 is not supported or conceded as mentioned in sub-section (2) of that section.

(2) The examiner may, if he thinks fit, require the witness to give the evidence to which the claim relates and, if the examiner does not do so the Court may do so, on the *ex parte* application of the person who obtained the order under section 2.

(3) If such evidence is taken—

- (a) it must be contained in a document separate from the remainder of the deposition of the witness;
- (b) the examiner shall send to the senior master with the deposition a statement signed by the examiner setting out the claim and the ground on which it was made;
- (c) on receipt of the statement the senior master shall, notwithstanding anything in rule 5, retain the document containing the part of the witness’s evidence to which the claim relates and shall send the statement and a request to determine the claim to the foreign court or tribunal with the documents mentioned in rule 5;
- (d) if the claim is rejected by the foreign court or tribunal, the senior master shall send to that court or tribunal the document containing that part of the witness’s evidence to which the claim relates, but if the claim is upheld he shall send the document to the witness, and shall in either case notify the witness and the person who obtained the order under section 2 of the court or tribunal’s determination.”.

15. In Order 76 after rule 15 there shall be added the following rule:—

“Probate counterclaim in other proceedings

16.—(1) In this rule “probate counterclaim” means a counterclaim in any action other than a probate action by which the defendant claims any such relief as is mentioned in rule 1(2).

(2) Subject to the following paragraphs, this Order shall apply with the necessary modifications to a probate counterclaim as it applies to a probate action.

(3) A probate counterclaim must contain a statement of the nature of the interest of the defendant and of the plaintiff in the estate of the deceased to which the counterclaim relates.

(4) Before it is served a probate counterclaim must be indorsed with a memorandum signed by a master of the Chancery Division showing that the counterclaim has been produced to him for examination and that three copies of it have been lodged with him.

(5) Unless an application under Order 15, rule 5(2), is made within seven days after the service of a probate counterclaim for the counterclaim to be

struck out and the application is granted, the Court shall, if necessary of its own motion, order the transfer of the action to the Chancery Division (if it is not already assigned to that Division) and to the Royal Courts of Justice (if it is not already proceeding there).”.

16. For paragraph (1) of Order 86, rule 2, there shall be substituted the following paragraph:—

“(1) An application under rule 1 shall be made by summons supported by an affidavit verifying the facts on which the cause of action is based and stating that in the deponent’s belief there is no defence to the action.

Unless the Court otherwise directs, an affidavit for the purposes of this paragraph may contain statements of information or belief with the sources and grounds thereof.”.

17. Order 88, rule 3, shall be amended as follows:—

(a) In the heading the words “*in district registry*” shall be omitted.

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

“(3) The writ or originating summons by which a mortgage action is begun shall be indorsed with or contain a statement showing—

(a) where the mortgaged property is situated, and

(b) if the plaintiff claims possession of the mortgaged property and it is situated outside Greater London, whether the property consists of or includes a dwelling house and, if so, whether the net annual value for rating of the property exceeds £1,000.”.

18. In Order 94, after rule 10, there shall be inserted the following rule:—

“*Consumer Credit Act 1974: appeal from Secretary of State*

10A.—(1) A person who is dissatisfied in point of law with a decision of the Secretary of State for Prices and Consumer Protection on an appeal under section 41 of the Consumer Credit Act 1974(a) from a determination of the Director General of Fair Trading and had a right to appeal to the Secretary of State, whether or not he exercised that right, may appeal to the High Court.

(2) The persons to be served with notice of the originating motion by which such an appeal is brought are the Secretary of State and, where the appeal is by a licensee under a group licence against compulsory variation, suspension or revocation of that licence, the original applicant, if any; but the Court may in any case direct that the notice be served on any other person.

(3) The Court hearing the appeal may remit the matter to the Secretary of State to the extent necessary to enable him to provide the Court with such further information in connection with the matter as the Court may direct.

(4) If the Court is of the opinion that the decision appealed against was erroneous in point of law, it shall not set aside or vary that decision but shall remit the matter to the Secretary of State with the opinion of the Court for hearing and determination by him.

(5) Order 55, rule 7(5), shall not apply in relation to the appeal.”.

19.—(1) For Order 99 there shall be substituted the following Order:—

“ORDER 99

INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS)
ACT 1975

Interpretation

1. In this Order “the Act” means the Inheritance (Provision for Family and Dependants) Act 1975(a) and a section referred to by number means the section so numbered in that Act.

Assignment to Chancery or Family Division

2. Proceedings in the High Court under the Act may be assigned to the Chancery Division or to the Family Division.

Application for financial provision

3.—(1) Any originating summons by which an application under section 1 is made may be issued out of the Central Office, the principal registry of the Family Division or any district registry.

(2) No appearance need be entered to the summons.

(3) There shall be lodged with the Court an affidavit by the applicant in support of the summons, exhibiting an official copy of the grant of representation to the deceased’s estate and of every testamentary document admitted to proof, and a copy of the affidavit shall be served on every defendant with the summons.

Powers of Court as to parties

4.—(1) Without prejudice to its powers under Order 15, the Court may at any stage of proceedings under the Act direct that any person be added as a party to the proceedings or that notice of the proceedings be served on any person.

(2) Order 15, rule 13, shall apply to proceedings under the Act as it applies to the proceedings mentioned in paragraph (1) of that rule.

Affidavit in answer

5.—(1) A defendant to an application under section 1 who is a personal representative of the deceased shall and any other defendant may, within 21 days after service of the summons on him, inclusive of the day of service, lodge with the Court an affidavit in answer to the application.

(2) The affidavit lodged by a personal representative pursuant to paragraph (1) shall state to the best of the deponent’s ability—

- (a) full particulars of the value of the deceased’s net estate, as defined by section 25(1);
- (b) the person or classes of persons beneficially interested in the estate, giving the names and (in the case of those who are not already parties) the addresses of all living beneficiaries, and the value of their interests so far as ascertained;
- (c) if such be the case, that any living beneficiary (naming him) is a minor or a patient within the meaning of Order 80, rule 1; and
- (d) any facts known to the deponent which might affect the exercise of the Court’s powers under the Act.

(3) Every defendant who lodges an affidavit shall at the same time serve a copy on the plaintiff and on every other defendant who is not represented by the same solicitor.

Separate representation

6. Where an application under section 1 is made jointly by two or more applicants and the originating summons is accordingly issued by one solicitor on behalf of all of them, they may, if they have conflicting interests, appear on any hearing of the summons by separate solicitors or counsel or in person; and where at any stage of the proceedings it appears to the Court that one of the applicants is not but ought to be separately represented, the Court may adjourn the proceedings until he is.

Endorsement of memorandum on grant

7. On the hearing of an application under section 1 the personal representative shall produce to the Court the grant of representation to the deceased's estate and, if an order is made under the Act, the grant shall remain in the custody of the Court until a memorandum of the order has been endorsed on or permanently annexed to the grant in accordance with section 19(3).

Disposal of proceedings in chambers

8. Any proceedings under the Act may, if the Court so directs, be disposed of in chambers and Order 32, rule 14(1), shall apply in relation to proceedings in the Family Division as if for the words from the beginning to "the purpose" there were substituted the words "A registrar of the Family Division shall".

Subsequent applications in proceedings under section 1

9. Where an order has been made on an application under section 1, any subsequent application under the Act, whether made by a party to the proceedings or by any other person, shall be made by summons in those proceedings.

Drawing up and service of orders

10. The provisions of the Matrimonial Causes Rules relating to the drawing up and service of orders shall apply to proceedings in the Family Division under this Order as if they were proceedings under those Rules.

Transfer to county court

11.—(1) Where an application to which section 22(1) relates is within the jurisdiction of a county court, the Court may, if the parties consent or it appears to the Court to be desirable, order the transfer of the application to such county court as appears to the Court to be most convenient to the parties.

(2) An order under paragraph (1) may be made by the Court of its own motion or on the application of any party, but before making an order of its own motion otherwise than by consent the Court shall give the parties an opportunity of being heard on the question of transfer and for that purpose the master or registrar may give the parties notice of a date, time and place at which the question will be considered."

(2) In the title of Order 99 in the Arrangement of Orders at the beginning of the Rules of the Supreme Court 1965 for "The Inheritance (Family Provision) Act 1938" there shall be substituted "The Inheritance (Provision for Family and Dependents) Act 1975".

20. Order 110 shall be revoked and the reference to that Order in the Arrangement of Orders at the beginning of the Rules of the Supreme Court 1965 shall be omitted.

21. In Appendix A, Form 10 shall be amended as follows:—

(1) After the word “o’clock” there shall be inserted the words “[*or, if no application has yet been made for a day to be fixed, on a day to be fixed*]”.

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

“[*In the case of an application under section 1 of the Inheritance (Provision for Family and Dependants) Act 1975. A defendant who is a personal representative must, within 21 days after service of this summons on him, inclusive of the day of service, lodge with the court an affidavit in answer, stating the particulars required by Order 99, rule 5, of the Rules of the Supreme Court.*]”.

22. In Appendix A, in Form 72, immediately above the words “Dated the day of 19 ” there shall be inserted the following paragraph:—

“[*Add where appropriate The name and address of the branch of the garnishee bank at which the debtor’s account is believed to be held is*]”.

23. In Appendix A, for Form 93 there shall be substituted the following form:—

“ No. 93

Order under the Evidence (Proceedings in Other Jurisdictions) Act 1975
(O. 70, r. 1)

In the High Court of Justice

Queen’s Bench Division

[*Name of Master*], master in chambers

In the matter of the Evidence (Proceedings in Other Jurisdictions) Act 1975
and

In the matter of a civil [*or commercial or criminal*] proceeding now pending [*or contemplated*] before [*description of court or tribunal*] entitled as follows:—

[*give title of proceedings in foreign court or tribunal or state in proceedings contemplated between* *plaintiff and*
defendant].

Upon reading the affidavit of filed the day of 19 and the request exhibited thereto and it appearing that proceedings are pending [*or contemplated*] in the [*description of foreign court or tribunal*] in [*name of country*] and that such court wishes to obtain the testimony of [*name of witness*].

It is ordered that the said witness do attend before [*name and address of examiner*] who is hereby appointed examiner herein, at [*place appointed for examination*] on day the of 19 at o’clock, or such other day and time as the said examiner may appoint, and do there submit to be examined [*upon oath or affirmation*] touching the testimony so required as aforesaid and do then and there produce [*description of documents. if any. to be produced*].

It is also ordered that the said examiner do take down or cause to be taken down in writing the evidence of the said witness according to the rules and practice of Her Majesty's High Court of Justice pertaining to the examination and cross-examination of witnesses [*or as may be otherwise directed*], and do request the said witness [*or each and every witness*] to sign his deposition in the said examiner's presence and do sign the depositions taken in pursuance of this order, and when so completed do send them, together with this order and the request, to the [*Senior Master, Royal Courts of Justice, Strand, London WC2A 2LL*] for transmission to the court desiring the evidence of the said witness."

24. Nothing in rules 12(1), (3) to (5) and 13 shall apply to any work done or disbursement made before 1st April 1976, and nothing in rules 19 and 21(2) shall apply to proceedings relating to the estate of a person who died before that date.

Dated 27th February 1976.

Elwyn-Jones, C.
Widgery, C. J.
Denning, M. R.
George Baker, P.
R. E. Megarry, V-C.
Eustace Roskill, L. J.
Ralph Cusack, J.
E. W. Eveleigh, J.
John Blofeld.
Christopher McCall.
H. Montgomery-Campbell.
R. K. Denby.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules amend the Rules of the Supreme Court in consequence of a number of recent Acts. Changes are made in Orders 39 and 70 to take account of the replacement of the Foreign Tribunals Evidence Act 1856 (c. 113) and the Evidence by Commission Act 1859 (22 Vic c. 20) by the Evidence (Proceedings in Other Jurisdictions) Act 1975 (rules 6, 14 and 23). Provision is made for the costs recoverable by a litigant in person under the Litigants in Person (Costs and Expenses) Act 1975 (rules 12(1), (3) to (5) and 13). Order 99 is re-written so as to deal with proceedings under the Inheritance (Provision for Family and Dependants) Act 1975 and enable them to be brought in either the Chancery Division or the Family Division (rules 19 and 21). Provision is made for an appeal to the High Court from a decision of the Secretary of State on an application for a consumer credit licence under the Consumer Credit Act 1974 (rule 18). Order 110 is revoked in consequence of the repeal of the Limitation Act 1963 (c. 47) by the Limitation Act 1975 (c. 54) (rule 20).

Minor amendments are also made so as—

- (a) to revoke the rules which require claims and judgments and writs and orders for their enforcement to be expressed in decimal currency (rules 2, 4 and 8);

- (b) to bring up to date the designation of Commonwealth countries for the purpose of service of process (rule 3);
- (c) to substitute general Civil Service grades for old departmental grades mentioned in the Rules (rules 5 and 12(2));
- (d) to enable a deponent to an affidavit in support of an application for summary judgment in a specific performance action to swear to the facts from his information or belief (rules 7 and 16);
- (e) to require the applicant for a garnishee order against a bank to state in his supporting affidavit the name and address of the branch at which the judgment debtor's account is believed to be held (rules 9 and 22);
- (f) to assign appeals against the enforcement of orders registered in magistrates' courts under the Maintenance Orders (Reciprocal Enforcement) Act 1972 to the Family Division (rule 10);
- (g) to prevent a payment into court being disclosed to the Court of Appeal until all questions of liability and quantum have been decided (rule 11(1));
- (h) to clarify the rules relating to stay of execution on an appeal from a county court to the Court of Appeal (rule 11(2));
- (i) to provide for a counterclaim for probate in a non-probate action (rule 15);
- (j) to require the originating process in a mortgage action to contain information as to the address of the property and its rateable value (rule 17).

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