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STATUTORY INSTRUMENTS

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**1980 No. 1010**

**SUPREME COURT OF JUDICATURE,  
ENGLAND AND WALES**

**PROCEDURE**

**The Rules of the Supreme Court (Amendment No. 2) 1980**

*Made* - - - - - *14th July 1980*

*Laid before Parliament* *18th July 1980*

*Coming into Operation as to  
Rules 1 and 13* *11th August 1980*

*as to the other Rules* *1st October 1980*

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(1) to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature, hereby exercise those powers as follows:—

*Citation and commencement*

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Amendment No. 2) 1980 and shall come into operation on 1st October 1980, except for this rule and rule 14, which shall come into operation on 11th August 1980.

(2) In these Rules an Order referred to by number means the Order so numbered in the Rules of the Supreme Court 1965(2) and, unless the context otherwise requires, a form referred to by number means the form so numbered in Appendix A to the Rules.

*Further and better particulars*

2. Order 18, rule 12, shall be amended by adding, after paragraph (6), the following paragraph:—

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(1) section 99 was extended by section 20 of the Administration of Justice Act 1969 (c. 58).

(2) The relevant amending instruments are S.I. 1966/1055 and 1514, 1969/1104, 1970/944, 1208 and 1861, 1971 (1269 and 1955, 1972/1898, 1973/2046, 1974/295, 1976/337, 1977/1955, 1978/579, 1979/402, 1542 and 1716, and 1980/629.

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“(7) Where particulars are given pursuant to a request, or order of the Court, the request or order shall be incorporated with the particulars, each item of the particulars following immediately after the corresponding item of the request or order.”

3. Order 34, rule 3(2), shall be amended by inserting, after the words “the proper chronological order”, a comma and the following words:—

“save that voluntary particulars of any pleading and particulars to which Order 18, rule 12(7) applies shall be placed immediately after the pleading to which they relate;”.

#### *Discontinuance*

4. Order 21, rule 2, shall be amended by inserting:—

(a) at the beginning of paragraph (1) and paragraph (2), the words “Subject to paragraph (2A),”; and

(b) after paragraph (2), the following new paragraph:—

“(2A) A party in whose favour an interim payment has been ordered, in accordance with Order 29, rule 11, may not discontinue any action or counterclaim, or withdraw any particular claim therein, except with the leave of the Court or the consent of all the other parties.”

#### *Payment into court of interest*

5. Order 22, rule 1, shall be amended by adding, after paragraph (7), the following paragraph:—

“(8) For the purposes of this rule, the plaintiff’s cause of action in respect of a debt or damages shall be construed as a cause of action in respect, also, of such interest as might be included in the judgment, whether under section 3 of the Law Reform (Miscellaneous Provisions) Act 1934 or otherwise, if judgment were given at the date of the payment into court.”

#### *Automatic directions*

6. Order 25 shall be amended as follows:—

(1) Rule 1(2) shall be amended by deleting the word “and” from the end of sub-paragraph (h), by substituting “; and” for the full-stop at the end of sub-paragraph (i) and by adding the following sub-paragraph:—

“(j) actions for personal injuries for which automatic directions are provided by rule 8.”.

(2) At the end of Order 25 there shall be inserted the following rule:—

#### **“Automatic directions in personal injury actions**

**8.—**(1) When the pleadings in any action to which this rule applies are deemed to be closed the following directions shall take effect automatically:—

(a) there shall be discovery of documents within 14 days in accordance with Order 24, rule 2, and inspection within seven days thereafter, save that where liability is admitted, or where the action arises out of a road accident, discovery shall be limited to disclosure by the plaintiff of any documents relating to special damages;

(b) subject to paragraph (2), where any party intends to place reliance at the trial on expert evidence, he shall, within 10 weeks, disclose the substance of that evidence to the other parties in the form of a written report, which shall be agreed if possible;

- (c) unless such reports are agreed, the parties shall be at liberty to call as expert witnesses those witnesses the substance of whose evidence has been disclosed in accordance with the preceding sub-paragraph, except that the number of expert witnesses shall be limited in any case to two medical experts and one expert of any other kind;
- (d) photographs, a sketch plan and the contents of any police accident report book shall be receivable in evidence at the trial, and shall be agreed if possible;
- (e) subject to Order 77, rule 13, the action shall be tried in London, if the action is proceeding in London, but if it is proceeding in a District Registry it shall be tried at the trial centre for the time being designated for the District Registry;
- (f) the action shall be tried by Judge alone, as a case of substance or difficulty (Category B), and shall be set down within six months;
- (g) the Court shall be notified, on setting down, of the estimated length of the trial.

(2) Where paragraph 1(b) applies to more than one party the reports shall be disclosed by mutual exchange, medical for medical and non-medical for non-medical, within the time provided or as soon thereafter as the reports on each side are available.

(3) Nothing in paragraph (1) shall prevent any party to an action to which this rule applies from applying to the Court for such further or different directions or orders as may, in the circumstances, be appropriate.

(4) For the purposes of this rule—

“a road accident” means an accident on land due to a collision or apprehended collision involving a vehicle; and “documents relating to special damages” include

- (a) documents relating to any industrial injury, industrial disablement or sickness benefit rights, and
- (b) where the claim is made under the Fatal Accidents Act 1976, documents relating to any claim for dependency on the deceased.

(5) This rule applies to any action for personal injuries except—

- (a) any Admiralty action; and
- (b) any action where the pleadings contain an allegation of a negligent act or omission in the course of medical treatment.”

#### *Interim payments*

7. For the existing Parts II and III of Order 29 there shall be substituted the following Part:—

## “II

### INTERIM PAYMENTS

#### **Interpretation of Part II**

9. In this Part of this Order—

“interim payments”, in relation to a defendant, means a payment on account of any damages, debt or other sum (excluding costs) which he may be held liable to pay to or for the benefit of the plaintiff; and any reference to the plaintiff or defendant includes a reference to any person who, for the purpose of the proceedings, acts as next friend of the plaintiff or guardian of the defendant.

### **Application for interim payment**

**10.**—(1) The plaintiff may, at any time after the writ has been served on a defendant and the time limited for him to acknowledge service has expired, apply to the Court for an order requiring that defendant to make an interim payment.

(2) An application under this rule shall be made by summons but may be included in a summons for summary judgment under Order 14 or Order 86.

(3) An application under this rule shall be supported by an affidavit which shall—

- (a) verify the amount of the damages, debt or other sum to which the application relates and the grounds of the application;
- (b) exhibit any documentary evidence relied on by the plaintiff in support of the application; and
- (c) if the plaintiff's claim is made under the Fatal Accidents Act 1976, contain the particulars mentioned in section 2(4) of that Act.

(4) The summons and a copy of the affidavit in support and any documents exhibited thereto shall be served on the defendant against whom the order is sought not less than 10 clear days before the return day.

(5) Notwithstanding the making or refusal of an order for an interim payment, a second or subsequent application may be made upon cause shown.

### **Order for interim payment in respect of damages**

**11.**—(1) If, on the hearing of an application under rule 10 in an action for damages, the Court is satisfied—

- (a) that the defendant against whom the order is sought (in this paragraph referred to as “the respondent”) has admitted liability for the plaintiff's damages, or
- (b) that the plaintiff has obtained judgment against the respondent for damages to be assessed; or
- (c) that, if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against the respondent or, where there are two or more defendants, against any of them,

the Court may, if it thinks fit and subject to paragraph (2), order the respondent to make an interim payment of such amount as it thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the Court are likely to be recovered by the plaintiff after taking into account any relevant contributory negligence and any set-off, cross-claim or counter claim on which the respondent may be entitled to rely.

(2) No order shall be made under paragraph (1) in an action for personal injuries if it appears to the Court that the defendant is not a person falling within one of the following categories, namely—

- (a) a person who is insured in respect of the plaintiff's claim;
- (b) a public authority; or
- (c) a person whose means and resources are such as to enable him to make the interim payment.

### **Order for interim payment in respect of sums other than damages**

**12.** If, on the hearing of an application under rule 10, the Court is satisfied—

- (a) that the plaintiff has obtained an order for an account to be taken as between himself and the defendant and for any amount certified due on taking the account to be paid; or
- (b) that the plaintiff's action includes a claim for possession of land and, if the action proceeded to trial, the defendant would be held liable to pay to the plaintiff a sum of money in respect of the defendant's use and occupation of the land during the pendency of the action, even if a final judgment or order were given or made in favour of the defendant; or
- (c) that, if the action proceeded to trial the plaintiff would obtain judgment against the defendant for a substantial sum of money apart from any damages or costs,

the Court may, if it thinks fit, and without prejudice to any contentions of the parties as to the nature or character of the sum to be paid by the defendant, order the defendant to make an interim payment of such amount as it thinks just, after taking into account any set-off, cross-claim or counterclaim on which the respondent may be entitled to rely.

#### **Manner of payment**

**13.**—(1) Subject to Order 80, rule 12, the amount of any interim payment ordered to be made shall be paid to the plaintiff unless the order provides for it to be paid into court, and where the amount is paid into court, the Court may, on the application of the plaintiff, order the whole or any part of it to be paid out to him at such time or times as the Court thinks fit.

(2) An application under the preceding paragraph for money in court to be paid out may be made ex parte, but the Court hearing the application may direct a summons to be issued.

(3) An interim payment may be ordered to be made in one sum or by such instalments as the Court thinks fit.

(4) Where a payment is ordered in respect of the defendant's use and occupation of land the order may provide for periodical payments to be made during the pendency of the action.

#### **Directions on application under rule 10**

**14.** Where an application is made under rule 10, the Court may give directions as to the further conduct of the action, and, so far as may be applicable, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires the parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application were a summons for directions, and, in particular, the Court may order an early trial of the action.

#### **Non-disclosure of interim payment**

**15.** The fact that an order has been made under rule 11 or 12 shall not be pleaded and, unless the defendant consents or the Court so directs, no communication of that fact or of the fact that an interim payment has been made, whether voluntarily or pursuant to an order, shall be made to the court at the trial, or hearing, of any question or issue as to liability or damages until all questions of liability and amount have been determined.

#### **Payment into court in satisfaction**

**16.** Where, after making an interim payment, whether voluntarily or pursuant to an order, a defendant pays a sum of money into Court under Order 22, rule 1, the notice of payment must state that the defendant has taken into account the interim payment.

### **Adjustment on final judgment or order or on discontinuance**

17. Where a defendant has been ordered to make an interim payment or has in fact made an interim payment, whether voluntarily or pursuant to an order, the Court may, in giving or making a final judgment or order, or granting the plaintiff leave to discontinue his action or to withdraw the claim in respect of which the interim payment has been made, or at any other stage of the proceedings on the application of any party, make such order with respect to the interim payment as may be just, and in particular—

- (a) an order for the repayment by the plaintiff of all or part of the interim payment, or
- (b) an order for the payment to be varied or discharged, or
- (c) an order for the payment by any other defendant of any part of the interim payment which the defendant who made it is entitled to recover from him by way of contribution or indemnity or in respect of any remedy or relief relating to or connected with the plaintiff's claim.

### **Counterclaims and other proceedings**

18. The preceding rules in this Part of this Order shall apply, with the necessary modifications, to any counterclaim or proceeding commenced otherwise than by writ, where one party seeks an order for an interim payment to be made by another.”

#### *Split trial: offer to accept reduced liability*

8. Order 33 shall be amended by inserting, between rules 4 and 5, the following rule:—

#### **“Split trial: offer on liability**

4A.—(1) This rule applies where an order is made under rule 4(2) for the issue of liability to be tried before any issue or question concerning the amount of damages to be awarded if liability is established.

(2) After the making of an order to which paragraph (1) applies, any party against whom a finding of liability is sought may (without prejudice to his defence) make a written offer to the other party to accept liability up to a specified proportion.

(3) Any offer made under the preceding paragraph may be brought to the attention of the Judge after the issue of liability has been decided, but not before.”

#### *Service of writ of subpoena*

9. Order 38, rule 17, shall be amended by inserting, after the words “issue of the writ”, the words “and not less than four days, or such other period as the Court may fix, before the day on which attendance before the Court is required”.

#### *Expert evidence in actions for personal injuries*

10. Order 38 shall be amended as follows:—

(1) Rule 36(1) shall be amended by inserting, after the words “adduce the evidence”, the letter “(a)” and by adding, after the word “application”, the word “, or” and the following sub-paragraph:—

“(b) has complied with automatic directions taking effect under Order 25, rule 8(1)(b).”.

(2) For the existing rule 37 there shall be substituted the following rule:—

**“Expert evidence in actions for personal injuries**

37.—(1) This rule applies to any action for personal injuries, except—

- (a) any Admiralty action; and
- (b) any action where the pleadings contain an allegation of a negligent act or omission in the course of medical treatment.

(2) Where an application is made under rule 36(1) in respect of oral expert evidence, 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.

(3) Where the expert evidence relates to medical matters the Court may, if it thinks fit, treat the following circumstances as sufficient reason for not giving a direction under paragraph (2), namely 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.

(4) Where the expert evidence does not relate to medical matters, the Court may, if it thinks fit, treat as a sufficient reason for not giving a direction under paragraph (2) any of the circumstances set out in sub-paragraphs (a) or (b) of rule 38(2).”

(3) For the existing title to rule 38 there shall be substituted the title

“*Expert evidence in other actions*”.

(4) Rule 40 shall be revoked.

*Consent orders*

11. Order 42 shall be amended as follows:—

(1) Rule 1(3) shall be amended by substituting, for the words “An order”, the words “Any order other than a consent order to which rule 5A applies”.

(2) After rule 5 there shall be inserted the following rule:—

**“Consent judgments and orders in the Queen's Bench Division**

5A.—(1) Subject to paragraphs (2), (3), (4) and (5), where all the parties to a cause or matter in the Queen's Bench Division are agreed upon the terms in which a judgment should be given, or an order should be made, a judgment or order in such terms may be given effect as a judgment or order of the Court by the procedure provided in rule 5.

(2) This rule applies to any judgment or order which consists of one or more of the following—

- (a) any judgment or order for—
  - (i) the payment of a liquidated sum, or damages to be assessed, or the value of goods to be assessed;
  - (ii) the delivery up of goods, with or without the option of paying the value of the goods to be assessed, or the agreed value;
  - (iii) the possession of land where the claim does not relate to a dwelling-house;
- (b) any order for—
  - (i) the dismissal, discontinuance or withdrawal of any proceedings, wholly or in part;

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- (ii) the stay of proceedings, either unconditionally or upon conditions as to the payment of money;
  - (iii) the stay of proceedings upon terms which are scheduled to the order but which are not otherwise part of it (a “Tomlin order”);
  - (iv) the stay of enforcement of a judgment, either unconditionally or upon condition that the money due under the judgment is paid by instalments specified in the order;
  - (v) the setting aside of a judgment in default;
  - (vi) the transfer of any proceedings to a county court, under sections 45, 50 or 67 of the County Courts Act 1959;
  - (vii) the payment out of money in court;
  - (viii) the discharge from liability of any party;
  - (ix) the payment, taxation or waiver of costs, or such other provision for costs as may be agreed;
- (c) any order, to be included in a judgment or order to which the preceding subparagraphs apply, for—
- (i) the extension of the period required for the service or filing of any pleading or other document;
  - (ii) the withdrawal of the record;
  - (iii) liberty to apply, or to restore.

(3) Before any judgment, or order, to which this rule applies may be entered, or sealed, it must be drawn up in the terms agreed and expressed as being “By Consent” and it must be indorsed by solicitors acting for each of the parties.

(4) This rule shall not apply to any judgment or order in proceedings which are pending in the Admiralty Court or in the Commercial Court or before an official referee.

(5) This rule shall not apply to any judgment or order in proceedings in which any of the parties is a litigant in person or a person under a disability.”

*Appeals to the Family Division by way of case stated*

**12.** Order 56, rule 5(2)(a), shall be amended by inserting, after the words “the Matrimonial Proceedings (Magistrates' Courts) Act 1960”, the words “or the Domestic Proceedings and Magistrates' Courts Act 1978”.

*Fixed costs*

**13.** Appendix 3 to Order 62 shall be amended as follows:—

(1) Part I, paragraph 1, shall be amended by substituting, for the words “April 19, 1977”, the words “August 11, 1980”, and by omitting, from sub-paragraph (b), the words “or Order 84, rule 3,”.

(2) The Table of Basic Costs, in Part I, shall be amended by substituting, for the figures “17.25”, “27.50” and “40.85”, which indicate the amounts currently allowed by way of basic costs where the amount of the debt recovered is not less than £1,200, the figures “42.00”, “60.00” and “90.00”.

(3) The figures in column (ii) of the Table of Additional Costs, which indicate the additional costs to be allowed where the amount recovered is not less than £1,200, shall be amended as follows—

- (a) Against paragraph (1), which allows for service on an additional defendant, for the figure “2.05” there shall be substituted the figure “5.50”.



- (b) Against paragraph (2), which allows for substituted service, for the figure “7.75” there shall be substituted the figure “22”.
  - (c) Against paragraph (4), which allows for service out of the jurisdiction, for figures (a) “11.15” and (b) “17.20”, there shall be substituted the figures (a) “29.50” and (b) “32.50”.
  - (d) Against paragraph (5), which allows for the proof of service where notice of intention to defend is given out of time, for the figure “3.40” there shall be substituted the figure “8.00”.
  - (e) Against paragraph (6), which allows for the proof of service of a summons under Order 14, for the figure “3.40” there shall be substituted the figure “8.00”.
  - (f) Against paragraph (7), which allows for the cost of an adjournment of a summons under Order 14, for the figure “2.05” there shall be substituted the figure “10”.
- (4) Paragraphs (3) and (10) of the Table of Additional Costs shall be omitted and the paragraphs currently numbered (4), (5), (6) and (7) shall be renumbered (3), (4), (5) and (6).
- (5) Part II, paragraph 2, which provides for the costs to be allowed on judgment without trial for possession of land, shall be amended by omitting the words “£350 but less than”.
- (6) Part III, paragraph 1, which provides for the costs to be allowed on signing judgment for costs under rule 10, shall be amended by substituting, for the sum of “£2.15”, the sum of “£5”.
- (7) Part III, paragraph 2, which provides for the costs to be allowed on the registration of a certificate of a judgment, shall be amended by substituting, for the sum of “£9.45”, the sum of “£19.50”.
- (8) Part III, paragraph 4, which provides for the costs to be allowed in garnishee proceedings, shall be amended as follows:—
- (a) For the existing sub-paragraph (a), there shall be substituted the following sub-paragraph—
    - “(a) to the garnishee, to be deducted by him from any debt due by him as aforesaid before payment to the applicant £12”
  - (b) For the Table of Basic Costs which is part of sub-paragraph (b), there shall be substituted the following Table:—

“Basic costs

If the amount recovered by the applicant from the garnishee is—

	£ p
less than £90	one half of the amount recovered
not less than £90	45”
  - (c) For the figure “3.45” allowed by way of additional costs where service on the garnishee has to be proved by affidavit, there shall be substituted the figure “8”.
- (9) Part III, paragraph 5, shall be amended by substituting, for the existing paragraph, the following paragraph:—
- “5. Where a charging order is sought and made absolute there shall be allowed—

	£ p
Basic costs	50
Additional costs where an affidavit of service is required	8”

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(10) Part III, paragraph 6, which provides for the costs to be allowed on obtaining leave to issue a writ of possession, for the figures “3.45” and “0.55”, there shall be substituted the figures “20” and “1.50”.

(11) Part III, paragraph 7, which provides for the costs recoverable on the issue of a writ of execution, for the figure “7.40”, there shall be substituted the figure “25.00”.

*Wardship proceedings*

14. Order 90, rule 3, shall be amended by inserting, after paragraph (3A), the following paragraph:—

“(3B) The name of each party to the proceedings shall be qualified by a brief description, in the body of the summons, of his interest in, or relationship to, the minor.”

*Appeals to the Family Division from magistrates' courts*

15. Order 90, rule 16(9) shall be amended by inserting, before the word “payment”, the words “or lump sum”, and after the words “ordered to be made,” the words “or to access, where the extent of access only is in dispute,”.

*Hailsham of St. Marylebone, C*  
*Lane, C.J*  
*Denning, M.R*  
*John Arnold, P*  
*John Donaldson, L.J*  
*R.E. Megarry, V.C*  
*Hilary Talbot, J*  
*Patrick O'Connor, J*  
*J. Maurice Price*  
*John Toulmin*  
*H. Montgomery-Campbell*  
*R.J. Pannone*

Dated 14th July 1980

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## EXPLANATORY NOTE

These Rules amend the Rules of the Supreme Court so as—

- (a) to change the practice regarding the giving of further and better particulars and the place in which they should appear in a set of pleadings (rules 2 and 3);
- (b) to prevent discontinuance without the leave of the Court once an interim payment has been ordered (rule 4);
- (c) to provide for interest to be included in a payment into court in satisfaction of a claim (rule 5);
- (d) to provide for automatic directions (without a summons) in personal injury actions (rule 6);
- (e) to allow the Court to order payments on account of any damages, debt or other sum (excluding costs) whatever the nature of the litigation (rule 7);
- (f) to allow a defendant to make an offer to accept reduced liability where liability is ordered to be tried before any issue or question concerning damages (rule 8);
- (g) to require a writ of subpoena to be served no later than four days before the hearing, unless the Court directs otherwise (rule 9);
- (h) to require all experts' reports (medical and non-medical) to be disclosed in personal injury cases, unless sufficient reason is shown to the contrary (rule 10);
- (i) to allow judgments and orders of certain kinds to be made “by consent” without judicial action or approval (rule 11);
- (j) to provide for appeals by case stated under the Domestic Proceedings and Magistrates' Courts Act 1978 to be taken by a Divisional Court of the Family Division (rule 12);
- (k) to revise the Fixed Costs which may be allowed under Appendix 3 to Order 62 (rule 13);
- (l) to require that the originating summons in wardship proceedings should state the relationship of each party to the minor, or the party's interest in the proceedings (rule 14); and
- (m) to require any appeal from a magistrates' court in matrimonial proceedings to be heard by a single judge (unless the President otherwise directs), if it relates only to the amount of a lump sum payment ordered by the court, or to the amount of access ordered in respect of a child (rule 15).