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STATUTORY INSTRUMENTS

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**1982 No. 1786 (L. 32)**

**SUPREME COURT OF ENGLAND AND WALES**

**The Rules of the Supreme Court (Amendment No. 3) 1982**

<i>Made</i>	- - - -	<i>29th November 1982</i>
<i>Laid before Parliament</i>		<i>10th December 1982</i>
<i>Coming into Operation</i>		
<i>as to Rules 1 to 5, Rules 9 to 21, and Rules 23 to 25</i>		<i>1st January 1983</i>
<i>as to Rules 6 to 8</i>		<i>1st April 1983</i>

We, the Supreme Court Rule Committee, having power under section 84 of the Supreme Court Act 1981 to make rules of court for the purpose of regulating and prescribing the practice and procedure to be followed in the Supreme Court, 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. 3) 1982 and shall come into operation on 1st January 1983, except for rules 6 to 8, which shall come into operation on 1st April 1983, and Rule 22, which shall come into operation when section 2 of the Matrimonial Homes and Property Act 1981 is brought into force.

(2) In these Rules an Order referred to by number means the Order so numbered in the Rules of the Supreme Court 1965(1)

*Official Referees*

2. Order 1, rule 4(1) shall be amended by substituting, in the definition of “official referee”, for the words “Circuit judge” the word “person”.

*Pleadings in Vacation*

3. Order 3, rule 3 shall be amended by substituting, for the words in the title “*Long Vacation*”, the words “*Month of August*”, and, for the words “period of the Long Vacation”, the words “month of August”.

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(1) the relevant amending instruments are S.I. 1971/354, 1972/813, 1979/1716, 1980/1010, 1908, 1982/1111.

4. Order 18, rule 5 shall be amended by inserting after the word “Pleadings” the words “or amended pleadings” and by substituting, for the words “Long Vacation”, the words “month of August”.

5. Order 20, rule 6 shall be revoked.

#### *Interest*

6. Order 13, rule 1(2) shall be amended by substituting, for the words from “the claim is for interest accruing” to the end, the words “the claim is for interest under section 35A of the Act at a rate which is not higher than that payable on judgment debts at the date of the writ.”.

7. Order 18, rule 8 shall be amended by inserting, after paragraph (3), the following new paragraph:—

“(4) A party must plead specifically any claim for interest under section 35A of the Act or otherwise.”.

8. Order 22, rule 1(8) shall be amended by substituting, for the words “section 3 of the Law Reform (Miscellaneous Provisions) Act 1934”, the words “section 35A of the Act”.

#### *Amendment of Pleadings*

9. Order 20 shall be amended by inserting, after rule 11, the following new rule:—

##### **“Amendment of pleadings by agreement**

12.—(1) Notwithstanding the foregoing provisions of this Order any pleading in a cause or matter in the Chancery Division may, by written agreement between the parties, be amended at any stage of the proceedings.

(2) This rule shall not have effect in relation to an amendment to a counterclaim which consists of the addition omission or substitution of a party.”.

#### *Originating Summons Procedure*

10. Order 21, rule 2 shall be amended as follows:—

(1) There shall be inserted in paragraph (2), after the words “a defendant”, the words “to an action begun by writ”.

(2) There shall be inserted in paragraph (3), after the words “to an action”, the words “begun by writ”.

(3) There shall be inserted after paragraph (3) the following new paragraphs:—

“(3A) The plaintiff in an action begun by originating summons may, without the leave of the Court, discontinue the action or withdraw any particular question or claim in the originating summons, as against any or all of the defendants at any time not later than 14 days after service on him of the defendant's affidavit evidence filed pursuant to Order 28, rule 1A(2) or, if there are two or more defendants, of such evidence last served, by serving a notice to that effect on the defendant concerned.

(3B) When there are two or more defendants to an action begun by originating summons not all of whom serve affidavit evidence on the plaintiff, and the period fixed by or under these rules for service by any of those defendants of his affidavit evidence expires after the latest date on which any other defendant serves his affidavit evidence, paragraph (3A) shall have effect as if the reference therein to the service of the affidavit evidence last served were a reference to the expiration of that period.”.

11. Order 28 shall be amended by inserting, after rule 1, the following new rule:—

**“Affidavit Evidence**

1A.—(1) In any cause or matter begun by originating summons (not being an ex parte summons) the plaintiff must, before the expiration of 14 days after the defendant has acknowledged service, or, if there are two or more defendants, at least one of them has acknowledged service, file with the office of the Court out of which the summons was issued the affidavit evidence on which he intends to rely.

(2) In the case of an ex parte summons the applicant must file his affidavit evidence not less than 4 clear days before the day fixed for the hearing.

(3) Copies of the affidavit evidence filed in Court under paragraph (1) must be served by the plaintiff on the defendant, or, if there are two or more defendants, on each defendant, before the expiration of 14 days after service has been acknowledged by that defendant.

(4) Where a defendant who has acknowledged service wishes to adduce affidavit evidence he must within 28 days after service on him of copies of the plaintiff's affidavit evidence under paragraph (3) file his own affidavit evidence in the office of the Court out of which the summons is issued and serve copies thereof on the plaintiff and on any other defendant who is affected thereby.

(5) A plaintiff on whom a copy of a defendant's affidavit evidence has been served under paragraph (4) may within 14 days of such service file in Court further affidavit evidence in reply and shall in that event serve copies thereof on that defendant.

(6) No other affidavit shall be received in evidence without the leave of the Court.

(7) Where an affidavit is required to be served by one party on another party it shall be served without prior charge.

(8) The provisions of this rule apply subject to any direction by the Court to the contrary.

(9) In this rule references to affidavits and copies of affidavits include references to exhibits to affidavits and copies of such exhibits.”.

12. Order 28, rule 2 shall be amended as follows:—

(1) In paragraph (1) there shall be substituted, for the words from “Where, in the case” to “the plaintiff may”, the words “In the case of an originating summons which is in Form No. 8 in Appendix A the plaintiff must, within one month of the expiry of the time within which copies of affidavit evidence may be served under rule 1A,”.

(2) Paragraph (2) shall be amended by substituting a comma for the stop at the end and inserting the words “and the time limits for lodging affidavits under rule 1A(2) and (3) shall, where appropriate, be abridged so as to expire, respectively, on the fifth day before, and the next day but one before, the day so fixed.”.

13. Order 28, rule 3 shall be amended by substituting, for the title, the title “*Notice of hearing*” and by omitting paragraphs (3) and (4).

14. Order 28, rule 4(2) shall be amended by substituting, for the words from “Unless on the” to “altogether or orders”, the words “In any case where the Court does not dispose of any originating summons altogether at a hearing or order”, and by substituting for the word “makes” the word “make”.

15. Order 62, rule 10(1) shall be amended by inserting, after the words “particular claim made”, the words “or question raised” and by inserting, after the words “by him therein”, the word “as”.

### *Summons for Directions*

16. Order 25 shall be amended as follows:—

(1) In rule 1(2) there shall be omitted, after item (h), the comma and the word “and”; there shall be substituted, for the full stop at the end of item (j), a semicolon; and there shall be inserted immediately thereafter a new item, namely “(k) actions in the Chancery Division in which the parties agree under rule 9 that the only matters to be determined are the mode of trial and time for setting down.”.

(2) After rule 1(6) there shall be inserted the following new paragraph:—

“(7) Notwithstanding anything in paragraph (1), any party to an action to which this rule applies may take out a summons for directions at any time after the defendant has given notice of intention to defend, or, if there are two or more defendants, at least one of them has given such notice.”.

(3) Rule 8(1)(e) shall be amended by substituting, for the words “in London, if the action is proceeding” to the end, the words “at the trial centre for the place in which the action is proceeding or at such other trial centre as the parties may in writing agree”.

(4) Rule 8(3) shall be amended by inserting, after the words “be appropriate”, the words “or prevent the making of an order for the transfer of the proceedings to a county court”.

(5) There shall be inserted, after rule 8, the following new rule:—

#### **“Standard directions by consent in Chancery actions**

**9.—**(1) Subject to paragraphs (2) and (3), where in any action in the Chancery Division the parties agree, not more than one month after the pleadings are deemed to be closed, that the only directions required are as to the mode of trial and the time for setting down, the provisions of rule 8(1)(e) and (g) shall apply and the action shall be tried by a judge alone and shall be set down within six months.

(2) In a case where the trial centre for the purpose of rule 8(1)(e) is Birmingham, Bristol or Cardiff the plaintiff or other party having the conduct of the action shall forthwith lodge in Chancery Chambers or, if the case is proceeding in a district registry, that registry, one copy of the pleadings in the action, and the provisions of rule 8(1)(e) shall have effect subject to any direction of the Court given under paragraph (3).

(3) The Court may give such further directions or orders, whether on application by a party or its own motion, as may, in the circumstances, be appropriate.”.

### *Summary order for account*

17. Order 43, rule 1 shall be amended as follows:—

(1) After paragraph (1) there shall be inserted the following new paragraph:—

“(1A) A defendant to an action begun by writ who has served a counterclaim, which includes a claim for an account or a claim which necessarily involves taking an account, on—

- (a) the plaintiff, or
- (b) any other party, or
- (c) any person who becomes a party by virtue of such service

may apply for an order under this rule.”.

(2) In paragraph (3) the words “by the defendant by affidavit or otherwise” shall be omitted.

*Appeals from Crown Court by Case Stated*

18. Order 56, rule 1(4) shall be amended by substituting, for the words from “6 months” to “was stated”, the words “10 days from the receipt by the appellant of the case”.

*Commercial Actions*

19. Order 72 shall be amended as follows:—

(1) In Rule 2(3) there shall be substituted, for the words from “before final judgment” to the end, the words “in such an action (including any appeal from any judgment, order or decision of a master or registrar, given or made prior to transfer of the action to the commercial list), be exercisable by the judge.”.

(2) In Rule 5(1) there shall be omitted the words “before trial”.

(3) In Rule 5(3) there shall be substituted, for the words “on the hearing of any summons”, the words “at any stage of the proceedings”, and, for the words from “adjourn the summons” to “and treated”, the words “adjourn any hearing so that it can proceed before the judge and be treated”.

*Rectification of Wills*

20. Order 76, rule 1(1) shall be amended by inserting, after the words “probate causes and matters,”, the words “including applications for the rectification of a will,”.

21. Order 76 shall be further amended by adding, after rule 15, the following new rule:—

**“Rectification of wills**

16.—(1) Where an application is made for the rectification of a will, and the grant has not been lodged in court, rule 4 shall apply, with the necessary modifications, as if the proceedings were a probate action.

(2) A copy of every order made for the rectification of a will shall be sent to the principal registry of the Family Division for filing, and a memorandum of the order shall be endorsed on, or permanently annexed to, the grant under which the estate is administered.”

*Matrimonial Homes and Property Act 1981*

22. In Order 88, rule 5, the following paragraph shall be substituted for paragraph (4):—

“(4) Where the plaintiff claims delivery of possession the affidavit must—

- (a) give particulars of every person who to the best of the plaintiff’s knowledge is in possession of the mortgaged property; and
- (b) state, in the case of a dwelling house, whether—
  - (i) a land charge of Class F has been registered, or a notice or caution pursuant to section 2(7) of the Matrimonial Homes Act 1967 has been entered, and, if so, on whose behalf; and
  - (ii) he has served notice of the proceedings on the person on whose behalf the land charge is registered or the notice or caution entered.”.

*Payment out of Chancery funds*

23. Order 92, rule 5(3) shall be amended by substituting for the figure “£1500” the figure “£5000”.

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*Charities*

**24.** Order 108, rule 2 shall be amended by omitting the words from “and, subject to rules 3 and 4” to the end.

**25.** Order 108, rule 3(2) shall be amended by omitting the words “under the said section 18(11) or” and the words “of a certificate or, as the case may be,”.

*Hailsham of St. Marylebone, C  
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John G. McK. Laws  
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Dated 29th November 1982

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## EXPLANATORY NOTE

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

- (a) to amend the definition of “official referee” and to amend the provision for pleadings in vacation (Rules 2 to 5);
- (b) to give effect to section 35A of the Supreme Court Act 1981 as inserted by Schedule 1 to the Administration of Justice Act 1982 which relates to the power of the Court to award interest on debts and damages (Rules 6 to 8);
- (c) to amend the provision for amendment of pleadings (Rule 9);
- (d) to make new provision for originating summons procedure (Rules 10 to 15);
- (e) to amend the provision for a summons for directions (Rule 16);
- (f) to make provision for a summary order for account on a counterclaim (Rule 17);
- (g) to amend the provision for appeals by way of case stated (Rule 18) and for commercial actions (Rule 19);
- (h) to give effect to section 20 of the Administration of Justice Act 1982 which relates to the rectification of wills (Rules 20 and 21);
- (i) to give effect to section 7A of the Matrimonial Homes Act 1967 as inserted by section 2 of the Matrimonial Homes and Property Act 1981 which relates to proceedings in respect of a dwelling house subject to mortgage (Rule 22);
- (j) to make minor amendments in relation to the payment out of funds in Court and charity proceedings (Rules 23 to 25).