
STATUTORY INSTRUMENTS

1984 No. 1051 (L. 12)

SUPREME COURT OF ENGLAND AND WALES

The Rules of the Supreme Court (Amendment) 1984

Made - - - - 16th July 1984

Laid before Parliament 25th July 1984

Coming into operation in accordance with Rule 1

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) 1984.

(2) Rules 3 to 13 and 16 to 53 shall come into operation on 1st October 1984.

(3) Rule 54 shall come into operation when sections 34 and 35 of the Administration of Justice Act 1982 come into force.

(4) This Rule and Rule 2 shall come into operation on the earlier of the days mentioned in paragraphs (2) and (3) of this Rule.

(5) Rules 14 and 15 shall come into operation when section 2 of the Civil Jurisdiction and Judgments Act 1982 comes 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⁾ and, unless the context otherwise requires, a form referred to by number means the form so numbered in Appendix A or, as the case may be, Appendix B to those Rules.

Payment out of Court: small intestate estates

3. Order 22, rule 11 shall be amended by substituting, for the words “do not exceed £1500 in value, including the value of the fund or share”, the words “including the fund or share, do not exceed in value the amount specified in any order for the time being in force under section 6 of the Administration of Estates (Small Payments) Act 1965”.

⁽¹⁾ the relevant amending instruments are S.I. 1966/1055, 1969/1105, 1971/354, 1269, 1955, 1972/813, 1973/2016, 2046, 1975/911, 1976/337, 1196, 2097, 1977/532, 1955, 1978/579, 1979/402, 1542, 1716, 1980/1908, 1981/1734, 1982/375, 1111, 1786, 1983/531, 1181.

Order for examination

4. Order 39, rule 1 shall be amended by substituting a comma for the full stop at the end of paragraph (2) and by adding thereafter the words “and may contain an order for the production of any document which appears to the Court to be necessary for the purposes of the examination.”.

5. Order 39 shall be further amended by inserting after rule 3 the following new rule:—

“Examination otherwise than on oath

3A. Notwithstanding the provisions of rule 1, where the person to be examined is out of the jurisdiction that person may be examined on oath or affirmation or otherwise in accordance with the procedure of the country in which the examination is to take place.”.

6. For Form 35 in Appendix A there shall be substituted the following Form:—

“No. 35 Letter of request for examination of witness out of jurisdiction

Form of affidavits

7. Order 41, rule 1 shall be amended by substituting, for paragraph (5), the following new paragraph:—

“(5) Every affidavit must be bound in book form, and, whether or not both sides of the paper are used, the printed, written or typed sides of the paper must be numbered consecutively.”.

Enforcement of charging orders

8. Order 50 shall be amended by inserting, after rule 9, the following new rule:—

“Enforcement of Charging Order by Sale

9A.—(1) Proceedings for the enforcement of a charging order by sale of the property charged must be begun by originating summons issued out of Chancery Chambers or out of one of the Chancery district registries.

(2) The provisions of Order 88 shall apply to all such proceedings.”.

9. Order 88, rule 5 shall be amended by inserting, after the words “an action”, the words “(other than an action to which rule 5A applies)”.

10. Order 88 shall be further amended by inserting, after rule 5, the following new rule:—

“Action for the Enforcement of Charging Order by Sale

5A.—(1) This rule applies to a mortgage action in the Chancery Division to enforce a charging order by sale of the property charged.

(2) The affidavit in support of the originating summons must—

- (a) identify the charging order sought to be enforced and the subject matter of the charge;
- (b) specify the amount in respect of which the charge was imposed and the balance outstanding at the date of the affidavit;
- (c) verify, so far as known, the debtor's title to the property charged;

- (d) identify any prior incumbrances on the property charged, stating, so far as is known, the names and addresses of the incumbrancers and the amounts owing to them;
- (e) set out the plaintiff's proposals as to the manner of sale of the property charged together with estimates of the gross price which would be obtained on a sale in that manner and of the costs of such a sale; and
- (f) where the property charged consists of land in respect of which the plaintiff claims delivery of possession—
 - (i) give particulars of every person who to the best of the plaintiff's knowledge is in possession of the property charged or any part of it; and
 - (ii) state, in the case of a dwelling house, whether 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, or a notice pursuant to section 2(8) of the Matrimonial Homes Act 1983 has been entered and, if so, on whose behalf, and whether he has served notice of the proceedings on the person on whose behalf the land charge is registered or the notice or caution entered.”.

Time for appealing to Court of Appeal

- 11.** Order 59, rule 4 shall be amended by adding, at the end, the following new paragraph:—

“(3) Where leave to appeal is granted by the Court of Appeal upon an application made within the time limited for serving notice of appeal under paragraph (1), a notice of appeal may, instead of being served within that time, be served within 7 days after the date when leave is granted.”.

- 12.** Order 59, rule 21 shall be amended by adding, at the end, the following new paragraph:—

“(3) The provisions of rule 4(3) apply to this rule, with the substitution for the reference in rule 4(3) to paragraph (1) of a reference to paragraph (2).”.

Fixed costs

- 13.** Part I of Appendix 3 to Order 62 shall be amended by substituting, for Table A (*Basic costs*) the following Table:—

“A

Basic costs

Amount to be allowed in cases under following sub-paragraphs of
paragraph 1 of this Appendix

	(a) £ p	(b) £ p	(c) £ p
<hr/>			
If the amount recovered is:—			
not less than £600			
but less than £2,000			
(i) where the writ was served by post	37.00	48.00	85.00
(ii) where the writ was served on the defendant personally	41.00	52.00	89.00

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Amount to be allowed in cases under following sub-paragraphs of
paragraph 1 of this Appendix

	(a) £ p	(b) £ p	(c) £ p
not less than £2,000			
but less than £3,000			
(i) where the writ was served by post	40.00	51.00	88.00
(ii) where the writ was served on the defendant personally	44.00	55.00	92.00
not less than £3,000	50.00	70.00	100.00

Reciprocal enforcement of judgments

14. Order 71, rule 38 shall be amended by substituting in paragraph (2), for the words “Form 112”, the words “the appropriate form prescribed for the purposes of paragraph 4(1)(b) of that Schedule”.

15. Order 71, rule 38 shall be further amended by substituting for paragraph (7) the following new paragraph:

“(7) A certified copy of a judgment shall be an office copy sealed with the seal of the Supreme Court to which shall be annexed a certificate in Form 112.”.

Admiralty Proceedings

16. Order 8, rule 3(4) shall be amended by substituting, for the words “The notice”, the words “Subject to Order 75, rule 33A, the notice” and by omitting the words “or, in an Admiralty matter, in the Admiralty registry”.

17. Order 75, rule 2 shall be amended by substituting, for paragraph (2), the following paragraph:

“(2) In this rule “collision regulations” means regulations under section 418 of the Merchant Shipping Act 1894 or section 21 of the Merchant Shipping Act 1979, or any such rules as are mentioned in subsection (1) of section 421 of the Act of 1894 or any rules made under subsection (2) of the said section 421.”.

18. Order 75, rule 3(3) shall be amended by omitting the words from “and notice of” to “Appendix B”.

19. Order 75, rule 8(1) shall be amended by substituting, for the words from “brought except—” to the end, the following words:—

“brought, save that

(a) where the property is freight, the writ must be served on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried;

(b) where the property has been sold by the marshal, the writ may not be served on that property but a sealed copy of it must be filed in the registry or, if the writ was issued out of a district registry, in that registry, and the writ shall be deemed to have been duly served on the day on which the copy was filed.”.

20. Order 75, rule 8(2) shall be amended by substituting, for the words “on the property or registrar”, the words “or filed as”.

21. Order 75, rule 8(5) shall be amended by substituting, for the words from “the amended writ” to the end, the following words:—

“the amended writ must be served on any intervener and any defendant who has acknowledged issue or service of the writ in the action or, if no defendant has acknowledged issue or service of the writ, it must be served or filed in accordance with paragraph (1) of this rule.”.

22. For Order 75, rule 12 there shall be substituted the following new rule:—

“Directions with respect to property under arrest

12.—(1) The marshal may at any time apply to the Court for directions with respect to property under arrest in any action and may, and if the Court so directs shall, give notice of the application to any or all of the persons referred to in paragraph (2).

(2) The marshal shall send by post a copy of any order made on an application under paragraph (1) to all those persons who, in relation to that property, have—

- (a) entered a caveat which is still in force; or
- (b) caused a warrant for the arrest of the property to be executed by the marshal; or
- (c) acknowledged issue or service of the writ in any action in which the property is under arrest; or
- (d) intervened in any action in which the property is under arrest.

(3) A person other than the marshal may make an application under this rule by summons or motion in the action in which the property is under arrest and the summons or notice of motion together with copies of any affidavits in support must be served upon the marshal and all persons referred to in paragraph (2) unless the Court otherwise orders on an application made ex parte.

(4) A district registrar by whom any order under paragraph (3) is made shall cause a copy of the order to be sent to the marshal.”.

23. Order 75, rule 14 shall be amended by substituting, for the title, the following:—

“Caveat against release etc”

24. Order 75, rule 14 shall be amended by substituting, for paragraph (1), the following paragraph:—

“(1) Where a person claiming to have a right of action in rem against any property which is under arrest or the proceeds of sale thereof wishes to be served with notice of any application to the Court in respect of that property or those proceeds, he must file in the registry a praecipe in Form No. 9 in Appendix B and, on the filing of the praecipe, a caveat shall be entered in the caveat book.”.

25. Order 75, rule 15(1) shall be amended by substituting, for the words “for 6 months”, the words “for 12 months”.

26. Order 75, rule 16 shall be amended as follows:—

(1) for paragraph (1), there shall be substituted the following paragraph:—

“(1) Bail on behalf of a party to an action in rem must be given by bond in Form No. 11 in Appendix B; and the sureties to the bond must enter into the bond before a commissioner for oaths (or a solicitor exercising the powers of a commissioner for oaths under section 81 of the Solicitors Act 1974) not being a commissioner (or solicitor) who, or whose partner, is acting as solicitor or agent for the party on whose behalf the bail is to be given.”.

(2) in paragraph (4), the words “or registrar” shall be omitted.

27. Order 75, rule 18 shall be amended by inserting, after paragraph (2), the following new paragraph:—

“(2A) A defendant who has lodged a preliminary act must within 7 days thereafter serve notice of such lodgment on all other parties to the action.”.

28. Order 75, rule 21(3) shall be amended by omitting the words “on a registrar or” and the words “or indorsed by the registrar with a statement that it was served on him”.

29. Order 75, rule 25(1) shall be amended by omitting the words “and actions ordered to be tried as Admiralty short causes” and inserting, after the word “On”, the words “or before”.

30. For Order 75, rule 26 there shall be substituted the following new rule:—

“Fixing date for trial, etc

26.—(1) Subject to paragraph (2), the date for trial of an Admiralty action shall be fixed by the judge at the hearing of the summons for directions, unless a judge in person otherwise directs.

(2) Where an action is ordered to be tried without pleadings or a summons for directions is directed to be heard by a registrar the date for trial shall be fixed by the Admiralty registrar whether the action is proceeding in the registry or a district registry.

(3) Order 34 shall apply to Admiralty actions subject to the following and any other necessary modifications—

- (a) the bundles referred to in rule 3(1) shall include any preliminary acts and any notice given under rule 18(3) or filed under rule 18(4) of this Order, and where trial with one or more assessors has been ordered an additional bundle shall be lodged for the use of each assessor;
- (b) “the proper officer” shall mean the chief clerk of the Admiralty registry; and
- (c) in an action which has been ordered to be tried with an assessor or assessors the solicitor to the party setting it down must file in the registry an undertaking to pay the proper fees and expenses of such assessor or assessors.

(4) If all the parties to an action consent, the action may be withdrawn without the leave of the Court at any time before trial by producing—

- (a) in a case where the action has been set down for trial, to the proper officer, and
- (b) in any other case, to an officer of the registry or, if the action is proceeding in a district registry, to the registrar of that registry,

a written consent to the action being withdrawn signed by all the parties.”.

31. Order 75, rules 32(1) and (5) and 33(2) shall be revoked.

32. After Order 75, rule 33, there shall be inserted the following new rule:—

“Issue of originating and other motions

33A.—(1) Notice of an originating motion in Admiralty must be issued out of the registry.

(2) Notice of any other motion in an Admiralty action must be issued out of the registry or, if the action is proceeding in a district registry, that registry.”.

33. For Order 75, rule 34 there shall be substituted the following new rule:—

“Notice of motion in actions in rem

34.—(1) The affidavits, if any, in support of a motion in an action in rem must be filed in the appropriate registry before the notice of motion is issued, unless the Court gives leave to the contrary.

(2) A notice of motion, except a motion for judgment in default, must be served on all caveators together with copies of the affidavits, if any, in support of the motion 2 clear days at least before the hearing, unless the Court gives leave to the contrary.”.

34. For Order 75, rule 36(2)–(4) there shall be substituted the following new paragraph:—

“(2) In the application of Order 12 and of Order 28, rule 2 to the Admiralty proceedings begun by originating summons, references to the Central Office shall have effect as references to the registry.”.

35. For Order 75, rule 42(1)–(3) there shall be substituted the following paragraphs:—

“(1) Unless a judge in person otherwise orders, a reference shall be heard in public.

(2) The registrar may adjourn the hearing of a reference from time to time as he thinks fit.”.

36. Order 75, rule 43(1) shall be amended by omitting the words “to a judge in court” and by substituting, for the words “14 days”, wherever they occur, the words “28 days”.

37. Order 75, rule 43(2) shall be amended by substituting, for the words “the judge”, the words “a judge” and by omitting the words, “or while such a motion is pending or remains undisposed of”.

38. Order 75, rule 45 shall be amended by inserting, after the words “Admiralty cause or matter”, the words “, except an order which by virtue of Order 42, rule 4 is not required to be drawn up.”.

39. Order 75, rule 46(2) shall be amended by substituting, for the words from “in chambers” to the end, the words “by a registrar in a limitation action and a decision and any statement of the grounds of that decision filed under rule 42 shall be deemed to have been made or given in court,”.

40. Order 75, rule 47 shall be revoked.

41. For Form No. 9 in Appendix B there shall be substituted the following new form:—

“No. 9Praeipe for caveat against release etc

42. Form No. 11 in Appendix B shall be amended by inserting, after the words “Commissioner for Oaths”, the words “[or a Solicitor exercising the powers of a Commissioner for Oaths]”.

Contentious probate proceedings

43. Order 76, rule 2 shall be amended by substituting for paragraph (2) the following paragraph:

—
“(2) Before a writ beginning a probate action is issued it must be indorsed with a statement of the nature of the interest of the plaintiff and of the defendant in the estate of the deceased to which the action relates.”.

44. Order 76, rule 15 shall be amended by the deletion of paragraph (4).

Garnishee proceedings against the Crown

45. Order 77, rule 16 shall be amended as follows:—

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

“(1A) No application shall be made under paragraph (2) unless the order of the Court to be enforced is for a sum of money amounting in value to at least £50.”.

(2) For paragraph (2) there shall be substituted the following paragraphs:—

“(2) Every application to the Court for an order under section 27(1) of the Crown Proceedings Act 1947 restraining any person from receiving money payable to him by the Crown and directing payment of the money to the applicant or some other person must be made by summons and, unless the Court otherwise directs, served—

- (a) on the Crown at least 15 days before the return day, and
- (b) on the person to be restrained or his solicitor at least 7 days after the summons has been served on the Crown and at least 7 days before the return day.

(2A) An application under paragraph (2) must be supported by an affidavit—

- (a) setting out the facts giving rise to the application;
- (b) stating the name and last known address of the person to be restrained;
- (c) identifying the order to be enforced and stating the amount of such order and the amount remaining unpaid under it at the time of the application, and
- (d) identifying the particular debt from the Crown in respect of which the application is made.

(2B) Where the debt from the Crown in respect of which the application is made is money payable by the Crown to a person on account of a deposit in the National Savings Bank, the affidavit must state the name and address of the branch of the Post Office at which the account is believed to be held and the number of that account or, if it be the case, that all or part of this information is not known to the deponent.”.

Appeals under the Child Care Act 1980(2)

46. Order 90, rule 6 shall be amended by substituting in paragraph (1), for the words “section 1 of the Children Act 1948”, the words “section 2 of the Child Care Act 1980”.

47. Order 90, rule 9 shall be amended by substituting in paragraph (1), for the words “section 4A of the Children Act 1948”, the words “section 6, 12C(5) and 67(3) of the Child Care Act 1980”.

48. Order 90, rule 16 shall be amended by inserting in paragraph (4)(d), after the words “affected by the appeal, and”, the words “if the appeal is under section 6, section 12C(5) or section 67(3) of the Child Care Act 1980 on any person to whom notice of the proceedings in the juvenile court was given and who made representations in those proceedings, and”.

49. Order 90 shall be further amended by inserting, after rule 12, the following new rule:—

“Guardians ad litem appointed in appeals under the Child Care Act 1980

13. The person appointed by the Court to act as guardian ad litem of a minor in accordance with Order 80 for the purposes of an appeal under section 6, section 12C(5) or section 67(3) of the Child Care Act 1980 shall, unless, having regard to all the circumstances, the Court otherwise directs, be the guardian ad litem, if any, appointed by the juvenile court and shall in any event be selected from the panel established by regulations under section 103 of the Children Act 1975, provided always that such person shall not—

- (a) be a member, officer or servant of a local authority or voluntary organisation within the meaning of section 87(1) of the Child Care Act 1980 which is a party to the proceedings, or
- (b) be, or at any time have been, a person who has been directly concerned as a member, officer or servant of a local authority or voluntary organisation in arrangements relating to the care, accommodation or welfare of the minor, or
- (c) be a serving probation officer.”.

Evidence on application for new tenancy

50. Order 97, rule 7(1) shall be amended by substituting, for the words “On issuing”, the words “Not less than 14 days before the day fixed for the first hearing of”.

Patents proceedings

51. Order 33, rule 4 shall be amended by omitting paragraph (4).

52. Order 62, Appendix 2, Part VII shall be amended as follows:—

(1) paragraph 4(2) shall be amended by substituting, for the words “Order 103, rule 27”, the words “Order 104, rule 11”;

(2) the following sub-paragraph shall be substituted for sub-paragraph (3) of paragraph 4—
“Where—

- (a) an action or counterclaim for the infringement of a patent, or
- (b) a petition for revocation of a patent under section 32 of the Patents Act 1949, or
- (c) an application for revocation of a patent under section 72 of the Patents Act 1977, or
- (d) a counterclaim for the revocation of a patent under section 61 of the Patents Act 1949, or
- (e) a counterclaim in proceedings for the infringement of a patent under section 61 of the Patents Act 1977

proceeds to trial, no costs shall be allowed to the parties serving any particulars of breaches or particulars of objection in respect of any issues raised in those particulars and relating to that patent except in so far as those issues or particulars have been certified by the Court to have been proven or to have been reasonable and proper.”.

53. Order 103 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.

Enforcement of country court judgments

54. For Forms Nos. 53, 54 and 56 in Appendix A there shall be substituted the following new forms:—

“No. 53Writ of fieri facias

No. 54Writ of fieri facias on order for costs

No. 56Writ of fieri facias after levy of part

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Dated 16th July 1984

EXPLANATORY NOTE

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

- (a) to amend the provisions relating to payment out of Court to small intestate estates (Rule 3);
- (b) to amend the form of the letter of request for the examination of a witness out of the jurisdiction and to clarify the provisions relating to orders for examination (Rules 4 to 6);
- (c) to permit the production of affidavits on one side of the paper (Rule 7);
- (d) to make new provision for proceedings for the enforcement of charging orders (Rules 8 to 10);
- (e) to amend the provisions relating to time limits in appeals to the Court of Appeal (Rules 11 to 12);
- (f) to revise the fixed costs which may be allowed under Appendix 3 to Order 62 (Rule 13);
- (g) to correct the provisions for the recognition and enforcement of judgments under the Civil Jurisdiction and Judgments Act 1982 (Rules 14 to 15);
- (h) to amend the provisions for Admiralty proceedings (Rules 16 to 42);
- (i) to amend the provisions relating to the indorsement of writs in probate actions and of probate counterclaims in other proceedings (Rules 43 to 44);
- (j) to amend the provisions relating to garnishee proceedings against the Crown (Rule 45);
- (k) to provide for appeals from juvenile courts under the Child Care Act 1980 (Rules 46 to 49);
- (l) to amend the provisions relating to the filing of evidence in applications for new business tenancies (Rule 50);
- (m) to revoke Order 103 (Patents) (Rules 51 to 53);
- (n) to amend the writs of fieri facias to permit the enforcement of county court judgments in the High Court (Rule 54).