
STATUTORY INSTRUMENTS

1985 No. 846 (L. 8)

SUPREME COURT OF ENGLAND AND WALES

The Rules of the Supreme Court (Amendment No. 2) 1985

<i>Made</i>	- - - -	<i>3rd June 1985</i>
<i>Laid before Parliament</i>		<i>10th June 1985</i>
<i>Coming into Operation</i>		
—as to Rules 1 to 4 and 12 to 14		<i>1st July 1985</i>
as to Rules 5 to 11		<i>1st December 1985</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. 2) 1985 and shall come into operation on 1st July 1985, except for Rules 5 to 11, which shall come into operation on 1st December 1985.

(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 to those Rules.

Provisional Damages

2. The Arrangement of Orders at the beginning of the Rules of the Supreme Court 1965 shall be amended by substituting for the title to Order 37 the words “Damages: assessment after judgment and orders for provisional damages”.

3. Order 18, rule 8(3) shall be amended by inserting, after the words “claim for exemplary damages”, the words “or for provisional damages”.

4. Order 37 shall be amended as follows:—

(1) there shall be substituted, for the title, the words

(1) The relevant amending instruments are 1971/1269, 1955, 1972/813, 1898, 1973/2046, 1974/1115, 1976/2097, 1977/532, 1978/579, 1979/402, 1542, 1716, 1980/1010, 2000, 1983/1181, 1984/1051.

“DAMAGES: ASSESSMENT AFTER JUDGMENT AND ORDERS FOR PROVISIONAL DAMAGES”;

(2) immediately before rule 1 there shall be inserted the words

“I. ASSESSMENT OF DAMAGES AFTER JUDGMENT”;

(3) after rule 6 there shall be added the following Part:—

“II

ORDERS FOR PROVISIONAL DAMAGES FOR PERSONAL INJURIES

Application and Interpretation

7.—(1) This Part of this Order applies to actions to which section 32A of the Act⁽²⁾ (in this Part of this Order referred to as “section 32A”) applies.

(2) In this Part of this Order “award of provisional damages” means an award of damages for personal injuries under which—

- (a) damages are assessed on the assumption that the injured person will not develop the disease or suffer the deterioration referred to in section 32A; and
- (b) the injured person is entitled to apply for further damages at a future date if he develops the disease or suffers the deterioration.

Order for provisional damages

8.—(1) The Court may on such terms as it thinks just and subject to the provisions of this rule make an award of provisional damages if—

- (a) the plaintiff has pleaded a claim for provisional damages, and
- (b) the Court is satisfied that the action is one to which section 32A applies.

(2) An order for an award of provisional damages shall specify the disease or type of deterioration in respect of which an application may be made at a future date, and shall also, unless the Court otherwise determines, specify the period within which such application may be made.

(3) The Court may, on the application of the plaintiff made within the period, if any, specified in paragraph (2), by order extend that period if it thinks it just to do so, and the plaintiff may make more than one such application.

(4) An order for an award of provisional damages may be made in respect of more than one disease or type of deterioration and may in respect of each disease or deterioration specify a different period within which an application may be made at a future date.

(5) Orders 13 and 19 shall not apply in relation to an action in which the plaintiff claims provisional damages.

Offer to submit to an award

9.—(1) Where an application is made for an award of provisional damages, any defendant may at any time (whether or not he makes a payment into court) make a written offer to the plaintiff—

(2) S.32A inserted by s.6 of the Administration of Justice Act 1982 (c.53).

(a) to tender a sum of money (which may include an amount, to be specified, in respect of interest) in satisfaction of the plaintiff's claim for damages assessed on the assumption that the injured person will not develop the disease or suffer the deterioration referred to in section 32A; and

(b) to agree to the making of an award of provisional damages.

(2) Any offer made under paragraph (1) shall not be brought to the attention of the Court until after the Court has determined the claim for an award of provisional damages.

(3) Where an offer is made under paragraph (1), the plaintiff may, within 21 days after receipt of the offer, give written notice to the defendant of his acceptance of the offer and shall on such acceptance make an application to the Court for an order in accordance with the provisions of rule 8(2).

Application for award of further damages

10.—(1) This rule applies where the plaintiff, pursuant to an award of provisional damages, claims further damages.

(2) No application for further damages may be made after the expiration of the period, if any, specified under rule 8(2), or of such period as extended under rule 8(3).

(3) The plaintiff shall give not less than three months' written notice to the defendant of his intention to apply for further damages and, if the defendant is to the plaintiff's knowledge insured in respect of the plaintiff's claim, to the insurers.

(4) The plaintiff must take out a summons for directions as to the future conduct of the action within 21 days after the expiry of the period of notice referred to in paragraph (3).

(5) On the hearing of the summons for directions the Court shall give such directions as may be appropriate for the future conduct of the action, including, but not limited to, the disclosure of medical reports and the place, mode and date of the hearing of the application for further damages.

(6) Only one application for further damages may be made in respect of each disease or type of deterioration specified in the order for the award of provisional damages.

(7) The provisions of Order 29 with regard to the making of interim payments shall, with the necessary modifications, apply where an application is made under this rule.

(8) The Court may include in an award of further damages simple interest at such rate as it thinks fit on all or any part thereof for all or any part of the period between the date of notification of the plaintiff's intention to apply for further damages and the date of the award.”.

Proceedings under Part II of the Children Act 1975(3)

5. Order 90, rule 2 shall be amended by substituting, for the words “rules 3, 5 and 17”, the words “rules 3, 5 and 30”.

6. For Order 90, rule 5 there shall be substituted the following new rule:—

“**5.**—(1) Where there is pending any proceeding by reason of which a minor is a ward of court, any application under the Guardianship of Minors Act 1971(4) or the Guardianship Act 1973(5) (in this Order referred to as “the Guardianship Acts”) with respect to that minor may be by summons in that proceeding.

(3) 1975 c.72, amended by the Domestic Proceedings and Magistrates' Courts Act 1978 (c.22) and by the Health and Social Services and Social Security Adjudications Act 1983 (c.41).

(4) 1971 c.3.

(5) 1973 c.29.

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(2) Where there is pending a proceeding under Part II of the Children Act 1975 relating to a minor who is the subject of a custodianship order under that Act, any application under section 3(3) or 4(3A) of the Guardianship Act 1973 or under section 12C(5) of the Guardianship of Minors Act 1971 (as applied by section 4(3D) of the said Act of 1973) must be made by summons in that proceeding.

(3) Subject to paragraphs (1) and (2) any application under the Guardianship Acts must be made by originating summons issued out of the Principal Registry or out of a district registry as defined by the matrimonial causes rules.”.

7. Order 90, rule 9(2) shall be amended by substituting, for the words “Rule 16 of this Order”, the words “Rule 29 of this Order”.

8. Order 90, rule 9(3) shall be amended by substituting, for the words “rule 16(8) of this Order”, the words “rule 29(8) of this Order”.

9. Order 90 shall be amended by inserting, after rule 12, the following Part:—

“III

CUSTODIANSHIP ORDERS

Interpretation

13. In this Part of this Order, unless the context otherwise requires—

- (a) “the Act” means the Children Act 1975;
- (b) references to the mother or father of a minor in relation to applications and orders under section 34(1) of the Act include any person in relation to whom the minor was treated as a child of the family as defined in section 52(1) of the Matrimonial Causes Act 1973⁽⁶⁾.

Applications under Part II of the Act

14.—(1) Every application to the High Court under section 33(1) of the Act for a custodianship order must be made by originating summons.

(2) Every other application to the High Court under Part II of the Act must—

- (a) where proceedings in the High Court for the grant of a custodianship order are pending or have been determined by the making of a custodianship order, be made by summons in those proceedings and
- (b) in any other case be made by originating summons.

Jurisdiction of Registrars

15.—(1) A registrar may hear and determine any of the following applications—

- (a) an application under section 34(1) of the Act for an order relating to the maintenance of a minor or to access to a minor, where the only question for determination is the extent to which access is to be given;
- (b) an application under section 35(3) or (4) of the Act for the revocation or variation of an order made under section 34(1);

(6) 1973 c.18.

- (c) an application under section 35(4A) of the Act for the variation of an order made under section 34(1)(b) of the Act;
 - (d) an application under section 35(10) of the Act for the revival of an order made under section 34(1)(b) of the Act; and
 - (e) an application under section 43A of the Act for an order restricting the removal of a minor from England and Wales, or for the variation or revocation of such an order, where the application is unopposed, or where the application is for the temporary removal of the minor, unless it is opposed on the ground that the minor may not be duly returned.
- (2) Every other application under Part II of the Act shall be heard and determined by a judge.

Defendants

- 16.—**(1) The defendants to an application under section 33(1) of the Act shall be—
- (a) the mother and father, or guardian (not being a plaintiff), of the minor,
 - (b) any local authority—
 - (i) having the powers and duties of a parent or guardian of the minor by virtue of section 10 of the Child Care Act 1980(7), or
 - (ii) in which the parental rights and duties in respect of the minor are vested, whether jointly or not, by virtue of section 3 of the said Act of 1980, or
 - (iii) which has received the minor into its care under section 2 of the said Act of 1980, or
 - (iv) which has the minor in its care by virtue of any other enactment, or
 - (v) in whose area the minor resides,
 - (c) any voluntary organisation in whom the parental rights and duties in respect of the minor are vested, whether jointly or not, by virtue of section 64 of the said Act of 1980,
 - (d) any person liable by virtue of any order of any court or agreement to contribute to the maintenance of the minor, and
 - (e) any other person (not being a plaintiff) who has actual or legal custody of the minor.
- (2) The defendant to an application under section 34(1)(a) or (d) of the Act shall, where the application is made in pending proceedings under section 33(1) of the Act, be the plaintiff in the pending proceedings and shall, where a custodianship order is in force, be the custodian.
- (3) The defendant to an application under section 34(1)(b) or (c) of the Act shall be the mother or father of the minor.
- (4) The defendant to an application under section 34(1)(e) of the Act shall, where the applicant is the mother or father of the minor, be the applicant for a custodianship order or the custodian and shall, where the applicant is the applicant for a custodianship order or the custodian, be the mother or father.
- (5) The defendants to an application under section 35(1) of the Act for the revocation of a custodianship order shall be—

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- (a) any person or body (not being the applicant) who would be a defendant to an application under section 33(1) of the Act,
 - (b) the person who would have legal custody of the minor if the custodianship order were revoked, where he is not the applicant, and
 - (c) the custodian, where he is not the applicant.
- (6) The defendant to an application under section 35(3) of the Act shall be the parent or grandparent against whom or in favour of whom the order sought to be varied or revoked was made.
- (7) The defendant to an application under section 35(4) of the Act shall be the custodian.
- (8) The defendant to an application under section 35(4A) of the Act shall be the mother or father against whom the order sought to be varied was made.
- (9) The defendant to an application under section 35(10) of the Act shall, where the application is to revive or vary an order made under section 34(1)(b), be the mother or father against whom the order was made and shall, where the application is to vary or revoke an order made under section 34(1)(b) which has been revived, be the person in whose favour the order was made.
- (10) The defendant to an application under section 38 of the Act for the resolution of a dispute between joint custodians shall be the other joint custodian.
- (11) The defendants to an application under section 41 of the Act for leave to remove a minor from the actual custody of an applicant under section 33(1) of the Act shall be the plaintiff in the proceedings under section 33(1) and the defendants (other than the applicant under section 41) to those proceedings.
- (12) The defendants to an application under section 42(1) of the Act for the return of a minor removed in breach of section 41 shall be the person who has allegedly removed the minor and the defendants to the application under section 33(1) of the Act.
- (13) The defendants to an application under section 42(2) of the Act for an order directing a person not to remove a minor from the actual custody of the applicant in breach of section 41 shall be the person believed to be intending to remove the minor and the defendants to the application under section 33(1) of the Act.
- (14) The defendants to an application under section 43A(1) or (2) of the Act shall, where the applicant is the mother or father of the minor, be the custodian or the person with custody under an interim order under section 34(5) and, where the applicant is the custodian, be the mother and father and guardian of the minor.

Parties to applications made in pending proceedings

17. Where an application under Part II of the Act is made in pending proceedings a party to the application who is not a party to the pending proceedings shall not, unless the Court otherwise orders, be joined as a party to those proceedings.

Representation of minors

18. Without prejudice to Order 80, the provisions of Rule 115(1) to (4) of the matrimonial causes rules relating to the representation of minors shall apply, with the necessary modifications, to proceedings under Part II of the Act, and, where an order appointing a guardian ad litem of a minor is made, the minor shall be joined as a party to the proceedings.

Applications to be in Chambers

19. Applications under Part II of the Act shall be dealt with in chambers unless the Court otherwise directs.

Form and contents of Originating Summons

20.—(1) The originating summons by which an application under section 33(1) of the Act is made shall be in Form No. 11B in Appendix A.

(2) On issuing such originating summons the plaintiff must file—

- (a) medical certificates by a registered medical practitioner made not more than 3 months before the issue of the originating summons on the health of the minor and, save where the plaintiff is a step-parent of the minor, on the plaintiff, which shall be in Form No. 113 in Appendix A; and
- (b) the consent to the application, where it is required by section 33(3)(a) or (b) of the Act, of the person with sole legal custody or of at least one of the persons with joint legal custody of the minor, which consent shall be in Form No. 114 in Appendix A.

(3) Without prejudice to Order 7, rule 3 the originating summons by which any other application under Part II of the Act is made shall state—

- (a) the name and address of the minor and of the custodian, and
- (b) details of the custodianship order or, where the application is to vary or revoke any other order, that order, including, in either case, the date of the order and the Court which made it.

Applications to be treated as Applications for Custodianship Orders

21.—(1) Where an application for leave under section 41(1) of the Act is granted or an application under section 42(1) or (2) of the Act is refused, the Court may thereupon treat the hearing of the application as the hearing of the application for a custodianship order and refuse a custodianship order accordingly.

(2) Where an application is made under section 9 of the Guardianship of Minors Act 1971 by the mother or father of a minor, and the Court is of opinion that legal custody of the minor should be given to a person other than the applicant, the Court may—

- (a) treat the application as an application for a custodianship order by that other person, and
- (b) order that that person, where he is not a party to the proceedings, be added as a plaintiff, if he consents thereto, and the registrar shall, on the making of such an order, send a copy of the originating summons to the person so added.

(3) Where the Court, pursuant to section 37(1) to (3) of the Act, treats an application for an adoption order as an application for a custodianship order, it may order that any person not a party to the proceedings who would have been a defendant under rule 16(1) shall be added as a defendant and Order 15, rule 8 shall apply to any such order as it applies to any order made under Order 15, rules 6 or 7.

Dispensing with Service

22. The Court may dispense with service of any summons (whether originating or ordinary) in any proceedings under Part II of the Act.

Consent to Custodianship Applications

23. A document signifying the consent of a person having legal custody of a minor to an application for a custodianship order shall be witnessed—

- (a) if executed in England and Wales, by
 - (i) a justice of the peace, or
 - (ii) an officer of a county court appointed for the purposes of section 58 of the County Courts Act 1984⁽⁸⁾, or
 - (iii) a justices' clerk;
- (b) if executed in Scotland, by a justice of the peace or a sheriff;
- (c) if executed in Northern Ireland, by a justice of the peace; and
- (d) if executed outside the United Kingdom, by
 - (i) any person for the time being authorised by law in the place where the document is executed to administer an oath for any judicial or other legal process; or
 - (ii) a British Consular officer; or
 - (iii) a notary public; or
 - (iv) if the person executing the document is serving in any of the regular armed forces of the Crown, an officer holding a commission in any of those forces.

Reports by Local Authorities and Probation Officers

24.—(1) The plaintiff, upon notifying the local authority in whose area the minor resides of his application for a custodianship order in accordance with section 40(1) of the Act, shall serve the local authority with a copy of the originating summons together with any documents filed therewith.

(2) The local authority in whose area the minor resides shall, within 6 weeks of service of the originating summons, lodge with the Court a report in accordance with section 40 of the Act.

(3) Where the Court requests a local authority or probation officer to make to the Court a report under section 36(4) of the Act on the desirability of the child returning to the legal custody of any individual or under section 39 of the Act on any matter specified by the Court, the local authority or probation officer, as the case may be, shall make such report to or lodge such report with the Court within 6 weeks of the request.

(4) The registrar shall, on the making of such a request as is mentioned in paragraph (3), send to the local authority or probation officer a copy of any documents filed with the originating summons.

(5) The registrar shall, upon receiving any written report mentioned in paragraphs (2) and (3), notify the parties that they may inspect it and take copies of it.

Representation of Local Authority

25. In proceedings under Part II of the Act a local authority may be represented by its director of social services or other officer employed by it for the purposes of its social services functions under the Local Authority Social Services Act 1970⁽⁹⁾.

⁽⁸⁾ 1984 c.28.

⁽⁹⁾ 1970 c.42.

Care Orders

26.—(1) Before the Court may make an order under section 36(2) or (3)(a) of the Act or under section 2(2)(b) of the Guardianship Act 1973 committing the care of a minor to a specified local authority, the authority (whether or not it is a party) may make representations to the Court either—

- (a) when the Court indicates that it proposes to make such an order, or
- (b) at a date, time and place fixed by the registrar, who shall notify the authority not less than 14 days before the date so fixed.

(2) If the local authority wishes to represent that, in the event of an order being made under the said section 36(3)(a) or the said section 2(2)(b), the Court should make a periodical payments order in favour of the minor, the authority shall, within seven days after being notified by the registrar, file an affidavit setting out such facts as are known to the authority which are relevant to the property and income of the person against whom the periodical payments order is sought and shall at the same time serve a copy of the affidavit on that person.

(3) A person on whom a copy of the local authority's affidavit is served under paragraph (2) shall within 14 days after service file an affidavit containing full particulars of his property and income and shall at the same time serve a copy of the affidavit on the local authority.

Orders

27.—(1) The provisions of the matrimonial causes rules relating to the drawing up and service of orders shall apply to proceedings under this Part of this Order as if they were proceedings under those rules.

(2) Where the Court makes an order in proceedings under Part II of the Act or under the Guardianship Acts relating to a minor who is the subject of a custodianship order made by another court, the registrar shall send a copy of the order to that other court.”.

10. The existing Part III of Order 90 shall be re-numbered IV and rules 13 and 16 to 18 shall be re-numbered 28 to 31.

11. Appendix A shall be amended as follows:—

(1) the following new form shall be inserted after Form No. 11A:—
“No. 11B Originating Summons for Custodianship Order

(2) the following new forms shall be added at the end of Appendix A:—
“No. 113 Medical Certificate for Minor or Plaintiff in Application for Custodianship Order

No. 114 Consent to Application for Custodianship Order

Local Government Finance Act 1982

12. The Arrangement of Orders at the beginning of the Rules of the Supreme Court 1965 shall be amended by substituting, for the title to Order 98, the words “Local Government Finance Act 1982, Part III”.

13. Order 98 shall be amended as follows:—

(1) For the title there shall be substituted the following title “LOCAL GOVERNMENT FINANCE ACT 1982, PART III”.

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(2) In rule 1 for the words “Local Government Act 1972” there shall be substituted the words “Local Government Finance Act 1982”.

(3) For the heading to rule 2 there shall be substituted the heading “*Application by auditor for declaration*”.

(4) In rule 2(1) for the words “under section 161(1)” there shall be substituted the words “under section 19(1)”.

(5) In rule 2(2) for the words “under section 161(2)” there shall be substituted the words “under section 19(2)”.

(6) In rule 3(1) for the words “section 161(6)”, “a district auditor”, “the district auditor” and “section 161(4)” there shall be substituted the words “section 19(4) or section 20(3)”, “auditor”, “the auditor” and “section 20(1)” respectively.

(7) In rule 3(2) for the words “district auditor’s” and “section 161(5)” there shall be substituted the words “auditor’s” and “section 19(4) or section 20(2)” respectively.

(8) In rule 3(3) for the words “district auditor”, “district auditor’s” and “section 161(2)” there shall be substituted the words “auditor”, “auditor’s” and “section 19(2)” respectively.

(9) In rule 4(1) for the words “by section 161” there shall be substituted the words “by section 19 or section 20”.

14. Nothing in Rule 13 shall apply to accounts for any period beginning before 1st April 1983.

Hailsham of St. Marylebone, C
Lane, C.J
John F. Donaldson, M.R
John Arnold, P
R. E. Megarry, V-C
Oliver, L.J
Lloyd, L.J
Hirst, J
John R. Cherryman
R. J. P. Aikens
Harvey M. Crush

Dated 3rd June 1985

EXPLANATORY NOTE

These Rules amend the Rules of the Supreme Court 1965 so as—

- (a) to give effect to section 32A of the Supreme Court Act 1981 (orders for provisional damages for personal injuries) (Rules 2 to 4);
- (b) to give effect to Part II of the Children Act 1975 (custodianship orders) (Rules 5 to 11);
- (c) to effect minor amendments to Order 98 in the light of the provisions of the Local Government Finance Act 1982 (Rules 12 to 14).