
STATUTORY INSTRUMENTS

1986 No. 1187 (L.9)

SUPREME COURT OF ENGLAND AND WALES

The Rules of the Supreme Court (Amendment No. 2) 1986

Made - - - - *10th July 1986*

Laid before Parliament *10th July 1986*

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 No. 2) 1986 and shall come into operation on 1st October 1986, except for this Rule and Rules 10 to 12, which shall come into operation on 1st August 1986, and Rules 13 and 14, which shall come into operation when the Trade Marks (Amendment) Act 1984 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 a Form referred to by number means the Form so numbered in Appendix A to those Rules.

Forfeiture of leasehold property

2. Order 6, rule 2(1) shall be amended by adding, at the end of sub-paragraph (c), the words:

“and

(iii) in a case where the plaintiff knows of any person entitled to claim relief against forfeiture as underlessee (including a mortgagee) under section 146(4) of the Law of Property Act 1925(2) or in accordance with section 38 of the Supreme Court Act 1981, the name and address of that person.”.

3. After Order 6, rule 2(1) there shall be inserted the following new paragraph:

“(2) Where particulars are given pursuant to paragraph (1)(c)(iii), the plaintiff shall send a copy of the writ to the person named.”.

(1) the relevant amending instruments are S.I. 1966/1514, 1969/1105, 1970/1208, 1971/1269, 1972/1194, 1973/1384, 1974/295, 1978/579, 1979/39, 522, 1542, 1716, 1725, 1980/1010, 1908, 1981/1734, 1982/1111, 1983/1111, 1985/846, 1986/632.
(2) 1925 c. 20.

Section 47, Administration of Justice Act 1985(3)

4. Order 15 shall be amended by inserting, after rule 13, the following new rule:

“Notice of action to non-parties

13A.—(1) At any stage in an action to which this rule applies, the Court may, on the application of any party or of its own motion, direct that notice of the action be served on any person who is not a party thereto but who will or may be affected by any judgment given therein.

(2) An application under this rule may be made *ex parte* and shall be supported by an affidavit stating the grounds of the application.

(3) Every notice of an action under this rule shall be in Form No. 52 in Appendix A and accompanied by a copy of the originating summons or writ and a form of acknowledgment of service in Form No. 14 or 15 in Appendix A with such modifications as may be appropriate.

(4) A person may, within 14 days of service on him of a notice under this rule, acknowledge service of the writ or originating summons and shall thereupon become a party to the action, but in default of such acknowledgment and subject to paragraph (5) he shall be bound by any judgment given in the action as if he was a party thereto.

(5) If at any time after service of such notice on any person the writ or originating summons is amended so as substantially to alter the relief claimed, the Court may direct that the judgment shall not bind such person unless a further notice together with a copy of the amended writ or originating summons is served upon him under this rule.

(6) This rule applies to any action relating to:

- (a) the estate of a deceased person, or
- (b) property subject to a trust.”

5. Form No. 52 in Appendix A shall be renumbered as Form No. 52A and the following new form shall be inserted as Form No. 52:

“No. 52 Notice of action (O.15 r. 13A)

No. 52 Notice of action (O.15 r. 13A)

Exchange of witnesses' statements and meetings of experts

6. Order 38 shall be amended by inserting, after rule 2, the following new rule:—

“Exchange of witnesses' statements

2A.—(1) This rule applies to any cause or matter which is proceeding in the Chancery Division, the Commercial Court, the Admiralty Court or as official referees' business, and in this rule “the Court” includes an official referee.

(2) At any stage in any cause or matter to which this rule applies, the Court may, if it thinks fit for the purpose of disposing fairly and expeditiously of the cause or matter and saving costs, direct any party to serve on the other parties, on such terms as the Court shall think just, written statements of the oral evidence which the party intends to lead on any issues of fact to be decided at the trial.

(3) Directions given under paragraph (2) may—

- (a) make different provision with regard to different issues of fact or different witnesses;
- (b) require any written statement served to be signed by the intended witness;
- (c) require that statements be filed with the Court.

(4) Subject to paragraph (6), where the party serving a statement under paragraph (2) does not call the witness to whose evidence it relates no other party may put the statement in evidence at the trial.

(5) Subject to paragraph (6) and unless the Court otherwise orders, where the party serving the statement does call such a witness at the trial—

- (a) that party may not without the consent of the other parties or the leave of the Court lead evidence from that witness the substance of which is not included in the statement served, except in relation to new matters which have arisen in the course of the trial;
- (b) the Court may, on such terms as it thinks fit, direct that the statement served, or part of it, shall stand as the evidence in chief of the witness or part of such evidence;
- (c) whether or not the statement or any part of it is referred to during the evidence in chief of the witness, any party may put the statement or any part of it in cross-examination of that witness.

(6) Where any statement served is one to which the Civil Evidence Acts 1968⁽⁴⁾ and 1972⁽⁵⁾ apply, paragraphs (4) and (5) shall take effect subject to the provisions of those Acts and of Parts III and IV of this Order. The service of a statement pursuant to a direction given under paragraph (2) shall not, unless expressly so stated by the party serving the same, be treated as a notice under the said Acts.

(7) Where a party fails to comply with a direction given under paragraph (2) he shall not be entitled to adduce evidence to which such direction related without the leave of the Court.

(8) Nothing in this rule shall deprive any party of his right to treat any communication as privileged or make admissible evidence otherwise inadmissible.”.

7. Order 38, rule 8 shall be amended by inserting, after the words “of this Order”, the words “(other than rule 2A)”.

8. Order 38, rule 38 shall be amended by adding, at the end, the following new paragraph:

“(3) In any cause or matter the Court may, if it thinks fit, direct that there be a meeting “without prejudice” of such experts within such periods before or after the disclosure of their reports as the Court may specify, for the purpose of identifying those parts of their evidence which are in issue. Where such a meeting takes place the experts may prepare a joint statement indicating those parts of their evidence on which they are, and those on which they are not, in agreement.”.

Court of Appeal

9. Order 59 shall be amended as follows:—

- (i) rule 4(1) shall be amended by substituting, for the words “within 4 weeks from”, the words “not later than 4 weeks after” and by substituting, for the words “signed, entered”, the word “sealed”;

(4) 1968 c. 64.

(5) 1972 c. 30.

- (ii) rule 5(1) shall be amended—
 - (a) by substituting, for the words from “The appellant must” to “and leave with him”, the words “Within 7 days after the later of (i) the date on which service of the notice of appeal was effected, or (ii) the date on which the judgment or order of the court below was sealed or otherwise perfected, the appellant must lodge with the registrar”;
 - (b) by substituting a full stop for a comma at the end of sub-paragraph (b) and by omitting the words thereafter, to the end of the rule;
- (iii) rule 5(4) shall be amended by substituting, for the figure “2”, the figure “4” and by omitting the words “and any extension of time allowed under paragraph (1)”;
- (iv) rule 6(4) shall be amended by substituting, for the words “within 2 days after service of the notice, furnish two copies of the notice to the registrar.”, the words “within 4 days after the later of (i) the date on which service of the respondent's notice was effected or (ii) the date on which he was notified under rule 5(4) that the appeal had been set down, lodge with the registrar two copies of the respondent's notice, one of which shall be indorsed, with the amount of the fee paid, and the other indorsed with a certificate of the date of service of such respondent's notice.”;
- (v) the following new paragraph shall be inserted after paragraph (1) of rule 14—

“(1A) In support of any application (whether made ex parte or inter partes) the applicant shall lodge with the registrar such documents as the Court of Appeal, a single judge or the registrar may direct, and rule 9(3) and (4) shall apply, with any necessary modifications, to applications as they apply to appeals.”;
- (vi) rule 19(2) shall be amended by substituting, for the words “The notice of appeal must be served on”, the words “The appellant must, within the time specified in rule 4, serve the notice of appeal on”;
- (vii) the following paragraph shall be substituted for rule 19(3)—

“In relation to the appeal rule 4(1) and rule 5(1) shall have effect as if for the words “the date on which the judgment or order of the court below was sealed or otherwise perfected” there were substituted the words “the date of the judgment or order of the court below.””.

Child Abduction and Custody Act 1985(6)

10. Order 90 shall be amended by substituting, for the title to Part IV, the title “IV. MISCELLANEOUS PROCEEDINGS”.

11. Order 90 shall be further amended by substituting a comma for the full stop at the end of rule 2 and adding the words “and proceedings under Part II of the Children Act 1975 and the Child Abduction and Custody Act 1985 shall be begun in the principal registry.”.

12. Order 90 shall be further amended by adding, after rule 31, the following new Part:

“V

CHILD ABDUCTION AND CUSTODY ACT 1985

Interpretation

32. In this Part of this Order, unless the context otherwise requires:

- (a) “the Act” means the Child Abduction and Custody Act 1985 and words or expressions bear the same meaning as in the Act;
- (b) “the Hague Convention” means the convention defined in section 1(1) of the Act and “the European Convention” means the convention defined in section 12(1) of the Act;
- (c) “the proper officer” means the Senior Registrar of the Family Division or any officer of the principal registry acting on his behalf.

Mode of applications

33.—(1) Except as otherwise provided by this Part, every application under the Hague Convention and the European Convention shall be made by originating summons, which shall be in Form No. 10 in Appendix A.

(2) An application in custody proceedings for a declaration under section 23(2) of the Act shall be made by summons in those proceedings.

Contents of originating summons: general provisions

34. The originating summons under which any application is made under the Hague Convention or the European Convention shall state—

- (a) the name and date of birth of the child in respect of whom the application is made;
- (b) the names of the child's parents or guardians;
- (c) the whereabouts or suspected whereabouts of the child;
- (d) the interest of the plaintiff in the matter and the grounds of the application; and
- (e) particulars of any proceedings (including proceedings out of the jurisdiction and concluded proceedings) relating to the child,

and shall be accompanied by all relevant documents including but not limited to the documents specified in Article 8 of the Hague Convention or, as the case may be, Article 13 of the European Convention.

Contents of originating summons: particular provisions

35.—(1) In applications under the Hague Convention, in addition to the matters specified in rule 34—

- (a) the originating summons under which an application is made for the purposes of Article 8 for the return of a child shall state the identity of the person alleged to have removed or retained the child and, if different, the identity of the person with whom the child is presumed to be;
- (b) the originating summons under which an application is made for the purposes of Article 15 for a declaration shall identify the proceedings in which the request that such a declaration be obtained was made.

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(2) In applications under the European Convention, in addition to the matters specified in rule 34 the originating summons shall identify the decision relating to custody or rights of access which is sought to be registered or enforced or in relation to which a declaration that it is not to be recognised is sought.

Defendants

- 36.** The defendants to an application under the Act shall be—
- (a) the person alleged to have brought into the United Kingdom the child in respect of whom an application under the Hague Convention is made;
 - (b) the person with whom the child is alleged to be;
 - (c) any parent or guardian of the child who is within the United Kingdom and is not otherwise a party,
 - (d) the person in whose favour a decision relating to custody has been made if he is not otherwise a party, and
 - (e) any other person who appears to the Court to have a sufficient interest in the welfare of the child.

Acknowledgment of service

37. Notwithstanding Order 12, rule 9, the time limited for acknowledging service of an originating summons by which an application is made under the Hague Convention or the European Convention shall be seven days after service of the originating summons (including the day of service) or, in the case of a defendant referred to in rule 36(d) or (e), such further time as the Court may direct.

Evidence

- 38.** Notwithstanding Order 28, rule 1A—
- (a) the plaintiff, on issuing an originating summons under the Hague Convention or the European Convention, may lodge affidavit evidence in the principal registry in support of his application and serve a copy of the same on the defendant with the originating summons;
 - (b) a defendant to an application under the Hague Convention or the European Convention may lodge affidavit evidence in the principal registry and serve a copy of the same on the plaintiff within seven days after service of the originating summons on him;
 - (c) the plaintiff in an application under the Hague Convention or the European Convention may within seven days thereafter lodge in the principal registry a statement in reply and serve a copy thereof on the defendant.

Hearing

39. Any application under the Act (other than an application (a) to join a defendant, (b) to dispense with service or extend the time for acknowledging service, or (c) for the transfer of proceedings) shall be heard and determined by a judge and shall be dealt with in chambers unless the Court otherwise directs.

Dispensing with service

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

Adjournment of summons

41. Notwithstanding Order 28, rule 5, the hearing of the originating summons under which an application under the Hague Convention or the European Convention is made may be adjourned for a period not exceeding 21 days at any one time.

Stay of proceedings

42.—(1) A party to proceedings under the Hague Convention shall, where he knows that an application relating to the merits of rights of custody is pending in or before a relevant authority, file in the principal registry a concise statement of the nature of the application which is pending, including the authority before which it is pending.

(2) A party—

- (a) to pending proceedings under section 16 of the Act, or
- (b) to proceedings as a result of which a decision relating to custody has been registered under section 16 of the Act,

shall, where he knows that such an application as is specified in section 20(2) of the Act is pending in or before a relevant authority, file a concise statement of the nature of the application which is pending.

(3) The proper officer shall on receipt of such a statement as is mentioned in paragraph (1) or (2) notify the relevant authority in which or before whom the application is pending and shall subsequently notify it or him of the result of the proceedings.

(4) On the Court receiving notification equivalent to that mentioned in paragraph (3) from the Court of Session or the High Court in Northern Ireland—

- (a) where the application relates to the merits of rights of custody, all further proceedings in the action shall be stayed unless and until the proceedings under the Hague Convention in the Court of Session or, as the case may be, the High Court in Northern Ireland are dismissed, and the parties to the action shall be notified by the proper officer of the stay and of any such dismissal accordingly, and
- (b) where the application is such a one as is specified in section 20(2) of the Act, the proper officer shall notify the parties to the action.

(5) In this rule “relevant authority” includes the High Court, a County Court, a Magistrates' Court, the Court of Session, a Sheriff Court, a Children's Hearing within the meaning of Part III of the Social Work (Scotland) Act 1968(7), the High Court in Northern Ireland, a County Court in Northern Ireland, a court of summary jurisdiction in Northern Ireland or the Secretary of State.

Transfer of proceedings

43.—(1) At any stage in any proceedings under the Act the Court may, of its own motion or on the application by summons of any part to the proceedings issued on two days' notice, order that the proceedings be transferred to the Court of Session or the High Court in Northern Ireland.

(2) Where an order is made under paragraph (1) the proper officer shall send a copy of the order, which shall state the grounds therefor, together with the originating summons, the documents accompanying it and any evidence, to the Court of Session or the High Court in Northern Ireland, as the case may be.

(3) Where proceedings are transferred to the Court of Session or the High Court in Northern Ireland the costs of the whole proceedings both before and after the transfer shall be at the discretion of the Court to which the proceedings are transferred.

(4) Where proceedings are transferred to the High Court from the Court of Session or the High Court in Northern Ireland the proper officer shall notify the parties of the transfer and the proceedings shall continue as if they had been begun by originating summons under rule 33.

Interim directions

44. An application for interim directions under section 5 or section 19 of the Act may where the case is one of urgency be made ex parte on affidavit but shall otherwise be made by summons.

Obtaining authenticated copies of decisions

45. Without prejudice to the generality of Order 63, rule 4(1), any person who intends to make an application under the Hague Convention in a Contracting State other than the United Kingdom shall on satisfying the Court as to that intention be entitled to obtain an office copy sealed with the seal of the Supreme Court of any order made in the High Court relating to the child in respect of whom the application is to be made.

Revocation and variation of registered decisions

46.—(1) This rule applies to decisions which have been registered under section 16 of the Act and are subsequently varied or revoked by an authority in the Contracting State in which they were made.

(2) The Court shall, on cancelling the registration of a decision which has been revoked, notify—

- (a) the person appearing to the Court to have actual custody of the child;
- (b) the person on whose behalf the application for registration of the decision was made; and
- (c) any other party to that application

of the cancellation.

(3) The Court shall, on being notified of the variation of a decision, notify—

- (a) the person appearing to the Court to have actual custody of the child; and
- (b) any party to the application for registration of the decision

of the variation and any such person may apply by summons in the proceedings for the registration of the decision, for the purpose of making representations to the Court before the registration is varied.

(4) Any person appearing to the Court to have an interest in the matter may apply by summons in the proceedings for the registration of a decision for the cancellation or variation of the registration.

Orders for disclosure of information

47. At any stage in proceedings under the European Convention the Court may, if it has reason to believe that any person may have relevant information about the child who is the subject of those proceedings, order that person to disclose such information and may for that purpose order that the person attend before it or file affidavit evidence.”.

Trade Marks (Amendment) Act 1984

13. 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 100 the words “The Trade Marks Act 1938 and The Trade Marks (Amendment) Act 1984.”.

14. Order 100 shall be amended as follows:

(1) There shall be substituted, for the title, the words “THE TRADE MARKS ACT 1938 AND THE TRADE MARKS (AMENDMENT) ACT 1984”;

(2) In the heading to rule 3, after the words “*trade mark*”, there shall be inserted the words “*or registered service mark*”;

(3) In rule 3(1), after the words “a registered trade mark”, there shall be inserted the words “or a registered service mark”, and, after the words “that trade mark”, there shall be inserted the words “or that service mark”;

(4) In rule 3(2), after the words “of a registered trade mark”, there shall be inserted the words “or of a registered service mark”.

Patents procedure

15. Order 104 shall be amended as follows:

(1) For rule 6(1) there shall be substituted the following:

“(1) A person who presents a petition under section 32 of the 1949 Act or section 72 of the 1977 Act for the revocation of a patent must serve with his petition particulars of the objections to the validity of the patent on which he relies.”.

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

“(1A) A party to an action concerning a patent who either challenges the validity of the patent or applies by counterclaim in the action for revocation of the patent must, notwithstanding Order 18, rule 2, serve his defence or counterclaim (as the case may be), together with particulars of the objections to the validity of the patent on which he relies, within 42 days after service upon him of the statement of claim.”.

(3) Rule 6(2) shall be amended by inserting, after the words “paragraph (1)”, the words “or (1A)” and by substituting, for the word “questioned”, the word “challenged”.

(4) After rule 6(4) there shall be inserted the following new paragraph:

“5. In any action or other proceedings relating to a patent in which the validity of the patent has been put in issue on the ground of obviousness a party who wishes to rely on the commercial success of the patent must state in his answer or in his pleadings the grounds upon which he so relies.”

(5) The following new rules shall be inserted after rule 8:

“Application of rules 10 to 14

9. Rules 10 to 14 of this Order apply to any action for infringement of a patent (whether or not any other relief is claimed) and to any proceedings by petition for the revocation of a patent.

Admissions

10.—(1) Notwithstanding anything in Order 27, where a party desires any other party to admit any facts, he shall, within 21 days after service of a reply or answer or after the expiration of the period fixed for the service thereof, serve on that other party a notice requiring him to admit for the purpose of the action or proceedings the facts specified in the notice.

(2) A party upon whom a notice under paragraph (1) is served shall within 21 days after service thereof serve upon the party making the request a notice stating in respect of each fact specified in the notice whether or not he admits it.

Discovery of documents

11.—(1) Order 24, rules 1 and 2 shall apply in an action for infringement of a patent except that the list of documents must be served by each party within 21 days after service of the notice of admissions under rule 10(2), or within 21 days after the close of pleadings.

(2) Order 24, rules 1 and 2 shall apply in proceedings for the revocation of a patent as they apply to actions begun by writ except that the period prescribed by rule 2(1) shall be that which is prescribed by paragraph (1) of this rule.

Experiments

12.—(1) Where a party desires to establish any fact by experimental proof he shall within 21 days after service of the lists of documents under rule 11 serve on the other party a notice stating the facts which he desires to establish and giving full particulars of the experiments proposed to establish them.

(2) A party upon whom a notice under paragraph (1) is served shall, within 21 days after service thereof, serve upon the other party a notice stating in respect of each fact whether or not he admits it.

(3) Where any fact which a party desires to establish by experimental proof is not admitted he may at the hearing of the summons for directions apply for directions in respect of such experiments.

Experts

13. Where a party intends to adduce oral expert evidence he shall not later than 14 days before the hearing of the summons for directions under rule 14 give notice to every other party and to the Court of the name of each expert he intends to call as a witness.

This rule is without prejudice to the power of the Court to restrict the number of expert witnesses.

Summons for directions

14.—(1) The plaintiff or petitioner must, within 21 days after the expiration of all the periods specified in rules 10 to 12, take out a summons for directions as to the place and mode of trial returnable before a judge of the Patents Court in not less than 21 days, accompanied by minutes of the order proposed, a copy of the specification of any patent in issue, copies of the pleadings and of any documents referred to therein and copies of all documents served under rules 10 and 12 and if the plaintiff or petitioner does not take out such a summons in accordance with this paragraph, the defendant or respondent, as the case may be, may do so.

(2) The judge hearing a summons under this rule may give such directions:

(a) for the service of further pleadings or particulars;

- (b) for the further discovery of documents;
- (c) for securing the making of further admissions;
- (d) for the service of interrogatories and of answers thereto;
- (e) for the taking by affidavit of evidence relating to matters requiring expert knowledge, and for the filing of such affidavits and the service of copies thereof on the other parties;
- (f) for the holding of a meeting of such experts as the judge may specify, for the purpose of producing a joint report on the state of the relevant art;
- (g) for the exchanging of experts' reports, in respect of those matters on which they are not agreed;
- (h) for the making of experiments, tests, inspections or reports;
- (i) for the hearing, as a preliminary issue, of any question that may arise (including any questions as to the construction of the specification or other documents)

and otherwise as the judge thinks necessary or expedient for the purpose of defining and limiting the issues to be tried, restricting the number of witnesses to be called at the trial of any particular issue and otherwise securing that the case shall be disposed of, consistently with adequate hearing, in the most expeditious manner. Where the evidence is directed to be given by affidavit, the deponents must attend at the trial for cross-examination unless, with the concurrence of the Court, the parties otherwise agree.

(3) On the hearing of a summons under this rule the judge shall consider, if necessary of his own motion, whether:

- (a) the parties' advisers should be required to meet for the purpose of agreeing which documents will be required at the trial and of paginating such documents;
- (b) an independent scientific adviser should be appointed under rule 15 to assist the court.

(4) Part IV of Order 38 shall not apply to an action or proceedings to which this rule applies.

(5) No action or petition to which this rule applies shall be set down for trial unless and until a summons under this rule in the action or proceedings has been taken out and the directions given on the summons have been carried out or the time fixed by the judge for carrying them out has expired.”

(6) The present rule 10 shall be revoked.

(7) The present rule 11 shall be re-numbered as rule 15, the present rule 9 shall be re-numbered as rule 16 and the present rules 12 to 18 shall be renumbered as rules 17 to 23.

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Dated 10th July 1986

EXPLANATORY NOTE

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

- (a) require a landlord who is taking proceedings for forfeiture to notify any person entitled to relief against forfeiture of whom he is aware (Rules 2 and 3);
- (b) give effect to section 47 of the Administration of Justice Act 1985 (power of High Court to make judgments binding on persons who are not parties) (Rules 4 and 5);
- (c) enable the Court in certain cases to require parties to prepare and exchange statements relating to their evidence and to require experts to meet (Rules 6 to 8);
- (d) clarify the rules relating to procedure in the Court of Appeal (Rule 9);
- (e) implement the Child Abduction and Custody Act 1985 (applications relating to children wrongfully removed from their country and to foreign custody decisions (Rules 10 to 12);
- (f) make amendments consequential on the extension of trademark legislation to service marks (Rules 13 and 14);
- (g) amend the procedure in patent actions by requiring matters to be dealt with before instead of at the summons for directions (Rule 15).