

## 1986 No. 2289

## SUPREME COURT OF ENGLAND AND WALES

## The Rules of the Supreme Court (Amendment No. 3) 1986

<i>Made</i>	- - -	18th December 1986
<i>Laid before Parliament</i>		22nd December 1986
<i>Coming into Operation</i>		12th January 1987

We, the Supreme Court Rule Committee, having power under section 84 of the Supreme Court Act 1981(a) 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) 1986 and shall come into operation on 12th January 1987.

(2) In these Rules an Order referred to by number means the Order so numbered in the Rules of the Supreme Court 1965(b) and a reference to Appendix A or B is a reference to Appendix A or B to those Rules.

*Examiners of the Court*

2. Order 39, rule 18(l) shall be amended by substituting, for the words “the clerk”, the words “the proper officer”.

3. The Table in Order 39, rule 19(l) shall be amended by substituting, for the figures “30.00”, “15.00” and “35.00”, the figures “32.00”, “16.00” and “37.00”.

*Appeals from value added tax tribunals*

4. Order 59 shall be amended by adding at the end the following new rule—  
“*Appeals from value added tax tribunals*”

22.— (1) An application to the Court of Appeal for leave to appeal from a value added tax tribunal direct to that Court under section 26 of the Finance

(a) 1981 c. 54.

(b) S.I. 1965/1776; the relevant amending instruments are S.I. 1970/944, 1971/1269, 1955, 1972/813, 1975/911, 1976/1196, 1977/532, 960, 1955, 1979/522, 1716, 1980/629, 1908, 1981/1734, 1982/1111, 1983/1181, 1985/69, 1277, 1986/632.

Act 1985(a) shall be made within 28 days from the date on which the tribunal certifies that its decision involves a point of law relating wholly or mainly to the construction of an enactment or of a statutory instrument, or of any of the Community Treaties or any Community Instrument, which has been fully argued before it and fully considered by it.

(2) Such an application shall be made by the parties jointly by lodging a copy of the decision, endorsed with the certificate of the tribunal and a statement of the grounds of the application, with the Registrar of Civil Appeals, and shall be determined by a single judge of the Court of Appeal, who may do so without a hearing.

(3) In the case of all applications, the Registrar of Civil Appeals shall notify the parties of the determination of the single judge, and

- (a) where leave to appeal to the Court of Appeal is granted, the appellant shall within 14 days after such notification serve the notice of appeal on the chairman of the tribunal as well as on the party or parties required to be served by rule 3,
- (b) where leave to appeal to the Court of Appeal is refused, the period specified in Order 55, rule 4(2) for appealing to the High Court shall be calculated from the date of notification of the refusal.”

5. Order 91 shall be amended by omitting the words in the title “in Chancery Division”.

6. Order 91 shall be further amended by adding at the end the following new rule—

*“Appeals from value added tax tribunals*

6.— (1) A party to proceedings before a value added tax tribunal who is dissatisfied in point of law with a decision of the tribunal may appeal under section 13(1) of the Tribunals and Inquiries Act 1971(b) to the High Court and Order 94, rule 9 shall not apply in relation to such an appeal.

(2) Such an appeal shall be heard and determined by a single judge of the Queen’s Bench Division or, where both parties consent, by a single judge of the Chancery Division.

(3) Order 55 shall apply to such an appeal, except that the period of 28 days specified in rule 4(2) of that Order shall, where the tribunal has refused to grant a certificate under Article 2(b) of the Value Added Tax Tribunal Appeals Order 1986(c), be calculated from the date of the release of the decision of the tribunal containing the refusal.

(4) This rule is without prejudice to the right of the parties to appeal direct to the Court of Appeal in accordance with Order 59, rule 22.”.

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(a) 1985 c. 54.

(b) 1971 c. 62.

(c) S.I. 1986/2288.

*Arbitration proceedings*

7. Order 73, rule 5 shall be amended by adding at the end the following new paragraphs:

“(6) Without prejudice to paragraph (5), in an appeal under section 1(2) of the Arbitration Act 1979(a) the statement of the grounds of the appeal shall specify the relevant parts of the award and reasons, and a copy of the award and reasons, or the relevant parts thereof, shall be lodged with the court and served with the notice of originating motion.

(7) Without prejudice to paragraph (5), in an application for leave to appeal under section 1(2) of the Arbitration Act 1979, any affidavit verifying the facts in support of a contention that the question of law concerns a term of a contract or an event which is not a one-off term or event must be lodged with the court and served with the notice of originating motion.

(8) Any affidavit in reply to an affidavit under paragraph (7) shall be lodged with the court and served on the applicant not less than two clear days before the hearing of the application.

(9) A respondent to an application for leave to appeal under section 1(2) of the Arbitration Act 1979 who desires to contend that the award should be upheld on grounds not expressed or not fully expressed in the award and reasons shall not less than two clear days before the hearing of the application lodge with the court and serve on the applicant a notice specifying the grounds of his contention.”.

*Admiralty proceedings: Merchant Shipping Act 1979(b)*

8. Order 75 shall be amended as follows.

(1) In rule 1(2) for the words “the Merchant Shipping Acts 1894 to 1981” there shall be substituted the words “the Merchant Shipping Act 1979”.

(2) In rule 37A(1) for the words “the Merchant Shipping Acts 1894 to 1981 and may also pay into Court interest” there shall be substituted the words “the Merchant Shipping Act 1979 together with interest”.

(3) In rule 37A(4) for the words “and the amount and, where interest is also paid in, the amount of such interest, the rate” there shall be substituted the words, “the amount paid in, the amount of interest included therein, the rate of such interest”.

(4) For rule 39(5) there shall be substituted the following paragraph—

“Save as aforesaid, on the making of any decree limiting the plaintiff's liability arising out of an occurrence the Court may distribute the limitation fund and may stay any proceedings relating to any claim arising out of that occurrence which are pending against the plaintiff.”.

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(a) 1979 c. 42.

(b) 1979 c. 39.

*Admiralty proceedings: warrant of arrest*

9. Order 75, rule 5, shall be amended as follows.

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

“(1) In an action in rem the plaintiff or defendant, as the case may be, may after the issue of the writ in the action and subject to the provisions of this rule issue a warrant in Form No. 3 in Appendix B for the arrest of the property against which the action or any counterclaim in the action is brought.”.

(2) For the words in paragraph (3) from “A party applying” to “any property shall” there shall be substituted the words “Before a warrant to arrest any property is issued the party intending to issue it must”.

(3) In paragraph (4) for the words “applying for it” there shall be substituted the words “intending to issue the same” and for the words from “paragraph (8), so,” to “warrant to issue” there shall be substituted the words “paragraph (9); however, the Court may, if it thinks fit, give leave to issue the warrant”.

(4) For paragraph (6) there shall be substituted the following new paragraph—

“(6) A warrant of arrest may not be issued as of right in the case of property whose beneficial ownership has, since the issue of the writ, changed as a result of a sale or disposal by any court exercising Admiralty jurisdiction.”.

(5) For the words in paragraph (7) from “no application” to “action in rem” there shall be substituted the words “no warrant of arrest shall be issued”.

(6) After paragraph 7 there shall be substituted the following new paragraph 8, and the existing paragraphs 8 and 9 shall be renumbered accordingly—

“(8) Issue of a warrant of arrest takes place upon its being sealed by an officer of the registry or district registry.”.

(7) In the new paragraph 10 the words from “(b) a certified copy” to “paragraph (6);” shall be omitted.

*Inheritance Tax and Stamp Duty Reserve Tax*

10. Order 91 shall be further amended as follows.

(1) In rule 1 for the words “or paragraph 10 of Schedule 4 to the Finance Act 1975(a);” there shall be substituted the words “, section 225 of the Inheritance Tax Act 1984(b) or Regulation 11 of the Stamp Duty Reserve Tax (Administration) Regulations 1986(c);”, and for the words “paragraph 7(3), 32(3) or 35(2) of Schedule 4 to the Finance Act 1975” there shall be substituted the words “section 222(3), 249(2) or 251(2) of the Inheritance Tax Act 1984 or Regulation 8 of the Stamp Duty Reserve Tax (Administration) Regulations 1986”.

(2) For the heading to rule 2 there shall be substituted the following heading  
“*Appeal under section 222 of the Inheritance Tax Act 1984*”.

(a) 1975 c. 7.

(b) 1984 c. 51, renamed by s. 100 Finance Act 1986 (c. 41).

(c) S.I. 1986/1711.

(3) In rule 2(1) for the words from “paragraph 7(3)” to “Act 1975” there shall be substituted the words “section 222(3) of the Inheritance Tax Act 1984 or Regulation 8 of the Stamp Duty Reserve Tax (Administration) Regulations 1986”.

(4) In rule 2(2) for the words “paragraph 6 of the said Schedule” there shall be substituted the words “section 221 of the said Act or Regulation 6 of the said Regulations”.

(5) In rule 2(2) and rule 2(4) for the words “paragraph 7(1) of the said Schedule” there shall be substituted the words “section 222(1) of the said Act or Regulation 8(1) of the said Regulations”.

(6) In rule 3 for the words from “paragraph 10” to “Act 1975” there shall be substituted the words “section 225 of the Inheritance Tax Act 1984 or Regulation 11 of the Stamp Duty Reserve Tax (Administration) Regulations 1986”.

(7) In rule 5(1) and rule 5(3)(a) for the words “paragraph 32(3) or 35(2) of Schedule 4 to the Finance Act 1975” there shall be substituted the words “section 249(2) or 251(2) of the Inheritance Tax Act 1984”.

*Proceedings under section 48 of the Administration of Justice Act 1985(a)*

11. Order 93 shall be amended by adding at the end the following new rule:

*“Proceedings under section 48 of the Administration of Justice Act 1985*

21. Proceedings by which an application is made to the High Court under section 48 of the Administration of Justice Act 1985 shall be assigned to the Chancery Division and shall be begun by *ex parte* originating summons.”.

*Companies Act 1985(b)*

12. The Arrangement of Orders at the beginning of the Rules of the Supreme Court shall be amended by substituting for the title to Order 102 the words “The Companies Act 1985”.

13. For Order 102 there shall be substituted the Order set out in the Schedule to these Rules.

*Summary proceedings for the possession of land*

14. Order 113 shall be amended as follows.

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

*“Jurisdiction of masters*

1A. Proceedings under this Order may be heard and determined by a

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(a) 1985 c. 61.

(b) 1985 c. 6.

master, who may refer them to a judge if he thinks they should properly be decided by the judge.”.

(2) For rule 4(2) there shall be substituted the following paragraph—

“(2) Where any person not named as a defendant is in occupation of the land, the summons shall be served (whether or not it is also required to be served in accordance with paragraph (1)), unless the court otherwise directs, by—

- (a) affixing a copy of the summons and a copy of the affidavit to the main door or other conspicuous part of the premises and, if practicable, inserting through the letter-box at the premises a copy of the summons and a copy of the affidavit enclosed in a sealed transparent envelope addressed to “the occupiers”, or
- (b) placing stakes in the ground at conspicuous parts of the occupied land, to each of which shall be affixed a sealed transparent envelope addressed to “the occupiers” and containing a copy of the summons and a copy of the affidavit.”.

(3) For rule 6(1) there shall be substituted the following paragraph—

“(1) A final order for possession in proceedings under this Order shall, except in case of emergency and by leave of the court, not be made—

- (a) in the case of residential premises, less than five clear days after the date of service, and
- (b) in the case of other land, less than two clear days after the date of service.”.

(4) For the words in rule 8 from “The Judge” to “thinks just” there shall be substituted the words “The court may, on such terms as it thinks just”.

#### *Drug Trafficking Offences Act 1986(a)*

15. The Arrangement of Orders at the beginning of the Rules of the Supreme Court 1965 shall be amended by adding at the end “115. Drug Trafficking Offences Act 1986”.

16. Order 11, rule 1 shall be amended by substituting a comma for the semi-colon at the end of item (p) and by adding thereafter the following—

“(q) the claim is made under the Drug Trafficking Offences Act 1986.”.

17. The following Order shall be added after Order 114—

#### “ORDER 115

#### DRUG TRAFFICKING OFFENCES ACT 1986

##### *Interpretation*

1. (1) In this Order “the Act” means the Drug Trafficking Offences Act 1986 and a section referred to by number means the section so numbered in the Act.

(2) Expressions used in this Order which are used in the Act have the same meanings in this Order as in the Act.

*Assignment of proceedings*

2. The jurisdiction of the High Court under the Act shall be exercised by a judge of the Chancery Division or of the Queen's Bench Division in chambers.

*Application for restraint order or charging order*

3.— (1) An application for a restraint order under section 8 or for a charging order under section 9 (to either of which may be joined an application for the appointment of a receiver) may be made by the prosecutor ex parte by originating motion.

(2) An application under paragraph (1) shall be supported by an affidavit, which shall:—

- (a) state the grounds for believing that the defendant has benefited from drug trafficking;
- (b) state, as the case may be, either that proceedings have been instituted against the defendant for a drug trafficking offence (giving particulars of the offence) and that they have not been concluded or that an information is to be laid that the defendant has or is suspected of having committed a drug trafficking offence;
- (c) to the best of the deponent's ability, give full particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property;
- (d) where proceedings have not been instituted, verify that the prosecutor is to have the conduct of the proposed proceedings;
- (e) where proceedings have not been instituted, indicate when it is intended that they should be instituted.

(3) An originating motion under paragraph (1) shall be entitled in the matter of the defendant, naming him, and in the matter of the Act, and all subsequent documents in the matter shall be so entitled.

(4) Unless the Court otherwise directs, an affidavit under paragraph (2) may contain statements of information or belief with the sources and grounds thereof.

*Restraint order and charging order*

4.— (1) A restraint order may be made subject to conditions and exceptions, including but not limited to conditions relating to the indemnifying of third parties against expenses incurred in complying with the order, and exceptions relating to living expenses and legal expenses of the defendant, but the plaintiff shall not be required to give an undertaking to abide by any order as to damages sustained by the defendant as a result of the restraint order.

(2) Unless the Court otherwise directs, a restraint order made ex parte shall have effect until a day which shall be fixed for the hearing inter partes of the application and a charging order shall be an order to show cause, imposing the charge until such day.

(3) Where a restraint order is made the prosecutor shall serve copies of the order and of the affidavit in support on the defendant and on all other named persons restrained by the order and shall notify all other persons or bodies affected by the order of its terms.

(4) Where a charging order is made the prosecutor shall, unless the Court otherwise directs, serve copies of the order and of the affidavit in support on the defendant and, where the property to which the order relates is held by another person, on that person and shall serve a copy of the order on such of the persons or bodies specified in Order 50, rule 2(1)(b) to (d) as shall be appropriate.

#### *Discharge or variation of order*

5.— (1) Any person or body on whom a restraint order or a charging order is served or who is notified of such an order may apply by summons to discharge or vary the order.

(2) The summons and any affidavit in support shall be lodged with the court and served on the prosecutor and, where he is not the applicant, on the defendant, not less than two clear days before the date fixed for the hearing of the summons.

(3) Upon the court being notified that proceedings for the offences have been concluded or that the amount payment of which is secured by a charging order has been paid into court, any restraint order or charging order, as the case may be, shall be discharged.

#### *Further application by prosecutor*

6.— (1) Where a restraint order or a charging order has been made the prosecutor may apply by summons or, where the case is one of urgency, ex parte:—

- (a) to discharge or vary such order, or
- (b) for a restraint order or a charging order in respect of other realisable property, or
- (c) for the appointment of a receiver.

(2) An application under paragraph (1) shall be supported by an affidavit which, where the application is for a restraint order or a charging order, shall to the best of the deponent's ability give full particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property.

(3) The summons and affidavit in support shall be lodged with the court and served on the defendant and, where one has been appointed in the matter, on the receiver, not less than two clear days before the date fixed for the hearing of the summons.

(4) Rule 4(3) and (4) shall apply to the service of restraint orders and charging orders respectively made under this rule on persons other than the defendant.



*Realisation of property*

7.— (1) An application by the prosecutor under section 11 shall, where there have been proceedings against the defendant in the High Court, be made by summons and shall otherwise be made by originating motion.

(2) The summons or originating motion, as the case may be, shall be served with the evidence in support not less than 7 days before the date fixed for the hearing of the summons on:—

- (a) the defendant,
- (b) any person holding any interest in the realisable property to which the application relates, and
- (c) the receiver, where one has been appointed in the matter.

(3) The application shall be supported by an affidavit, which shall, to the best of the deponent's ability, give full particulars of the realisable property to which it relates and specify the person or persons holding such property, and a copy of the confiscation order, of any certificate issued by the Crown Court under section 4(2) and of any charging order made in the matter shall be exhibited to such affidavit.

(4) The court may, on an application under section 11, exercise the power conferred by section 12(1) to direct the making of payments by the receiver.

*Receivers*

8.— (1) Subject to the provisions of this rule, the provisions of Order 30, rules 2 to 8 shall apply where a receiver is appointed in pursuance of a charging order or under section 8 or 11.

(2) Where the receiver proposed to be appointed has been appointed receiver in other proceedings under the Act, it shall not be necessary for an affidavit of fitness to be sworn or for the receiver to give security, unless the Court otherwise orders.

(3) Where a receiver has fully paid the amount payable under the confiscation order and any sums remain in his hands, he shall apply by summons for directions as to the distribution of such sums.

(4) A summons under paragraph (3) shall be served with any evidence in support not less than 7 days before the date fixed for the hearing of the summons on:—

- (a) the defendant, and
- (b) any other person who held property realised by the receiver.

*Certificate of inadequacy*

9.— (1) The defendant may apply by summons for a certificate under section 14(1).

(2) A summons under paragraph (1) shall be served with any supporting evidence not less than 7 days before the date fixed for the hearing of the

summons on the prosecutor and on the receiver, where one has been appointed in the matter.

### *Compensation*

10. An application for an order under section 19 shall be made by summons, which shall be served, with any supporting evidence, on the person alleged to be in default and on the relevant authority under section 19(4) not less than 7 days before the date fixed for the hearing of the summons.

### *Disclosure of information*

11.— (1) An application by the prosecutor under section 30 shall be made by summons, which shall state the nature of the order sought and whether material sought to be disclosed is to be disclosed to a receiver appointed under section 8 or 11 or in pursuance of a charging order or to a person mentioned in section 30(8).

(2) The summons and affidavit in support shall be served on the authorised Government Department in accordance with Order 77, rule 4 not less than 7 days before the date fixed for the hearing of the summons.

(3) The affidavit in support of an application under paragraph (1) shall state the grounds for believing that the conditions in section 30(4) and, if appropriate, section 30(7) are fulfilled.”.

*Hailsham of St Marylebone, C.*  
*Lane, C.J.,*  
*John F. Donaldson, M.R.,*  
*John Arnold, P.,*  
*Nicolas Browne-Wilkinson, V-C.,*  
*Dillon, L.J.,*  
*Hirst, J.,*  
*Steyn, J.,*  
*John R. Cherryman,*  
*R. J. P. Aikens,*  
*Michael S. Howells,*  
*Harvey M. Crush.*

Dated 18th December 1986.

## Rule 13

## SCHEDULE

## "ORDER 102

## THE COMPANIES ACT 1985

*Definitions*

## 1. In this Order—

"the Act" means the Companies Act 1985;

"the companies court registrar" means any officer of the High Court who is a registrar within the meaning of any rules for the time being in force relating to the winding up of companies;

"the Court", without prejudice to Order 1, rule 4(2), includes the companies court registrar.

*Applications to be made by originating summons*

2.— (1) Except in the case of the applications mentioned in rules 3 and 4, every application under the Act must, in accordance with Order 5, rule 3, be made by originating summons.

(2) An originating summons under this rule shall be in Form No. 10 in Appendix A unless the application made by summons is—

- (a) an application under section 427 of the Act for an order to make provision for all or any of the matters mentioned in subsection (3) of that section where an order sanctioning the compromise or arrangement to which the application relates has previously been made, or
- (b) an application under section 713 of the Act for an order directing a company and any officer thereof to make good any such default as is mentioned in that section, or
- (c) an application under section 244(1) of the Act for an order directing the directors of a company or any of them to make good any such default as is therein mentioned, or
- (d) an application under section 216 of the Act for an order directing that any shares in a company shall be subject to the restrictions imposed by Part XV of the Act.

(3) An application under section 721 of the Act may be made by ex parte originating summons.

(4) An originating summons under this rule may be issued out of the office of the companies court registrar or any Chancery district registry, and Order 7, rule 5(2), shall not apply in relation to such a summons.

*Applications to be made by originating motion*

3.— (1) The following applications under the Act must be made by originating motion, namely, applications—

- (a) under section 88(6) for an order extending the time for delivery to

the registrar of companies of any documents required by that section to be delivered,

- (b) under section 432 for an order declaring that the affairs of a company ought to be investigated by an inspector appointed by the Secretary of State,
- (c) under section 436 for an inquiry into any such case as is therein mentioned,
- (d) under section 456(1) for an order directing that any shares in or debentures of a company shall cease to be subject to restrictions imposed by Part XV,
- (e) under section 456(4) for an order directing that any shares in or debentures of a company shall, on a sale, cease to be subject to restrictions imposed by Part XV,
- (f) under section 651 for an order declaring a dissolution of a company which has not been wound up to have been void,
- (g) under section 359(1) for rectification of the register of members of a company, and
- (h) under section 217(5) for amendment of the register of interests in shares of a company.

(2) The notice of the motion by which any such application is made may be issued out of the office of the companies court registrar, or any Chancery district registry.

*Applications to be made by petition*

4.— (1) The following applications under the Act must be made by petition, namely, applications—

- (a) under section 5 to cancel the alteration of a company's objects,
- (b) under section 17 to cancel the alteration of a condition contained in a company's memorandum,
- (c) under section 130 to confirm a reduction of the share premium account of a company,
- (d) under section 136 to confirm a reduction of the share capital of a company,
- (e) under section 127 to cancel any variation or abrogation of the rights attached to any class of shares in a company,
- (f) under section 425 to sanction a compromise or arrangement between a company and its creditors or any class of them or between a company and its members or any class of them,
- (g) under section 653 for an order restoring the name of a company to the register where the application is made in conjunction with an application for the winding up of the company,
- (h) under section 690 to cancel the alteration of the form of a company's constitution,
- (i) under section 727 for relief from liability of an officer of a company or a person employed by a company as auditor,

- (j) under section 54(1) to cancel a special resolution to which that section applies,
- (k) under section 157(2) or section 176(1) to cancel a special resolution to which either of those sections applies, and
- (l) under section 170 in relation to the reduction of capital redemption reserve.

(2) A petition by which any such application is made may be presented in the office of the companies court registrar, or any Chancery district registry, and Order 9, rule 3, shall not apply in relation to such a petition.

#### *Assignment and entitlement of proceedings*

5.— (1) All proceedings to which this Order relates shall be assigned to the Chancery Division.

(2) Every originating summons, notice of originating motion and petition by which any such proceedings are begun and all affidavits, notices and other documents in those proceedings must be entitled in the matter of the company in question and in the matter of the Companies Act 1985.

#### *Summons for directions*

6.— (1) After presentation of a petition by which any such application as is mentioned in rule 4 is made, the petitioner, except where his application is one of those mentioned in paragraph (2), must take out a summons for directions under this rule.

(2) The applications referred to in paragraph (1) are—

- (a) an application under section 425 of the Act to sanction a compromise or arrangement unless there is included in the petition for such sanction an application for an order under section 427 of the Act,
- (b) an application under section 653 of the Act for an order restoring the name of a company to the register,
- (c) an application under section 54(1) of the Act for an order cancelling a special resolution to which that section applies, and
- (d) an application under section 157(2) or 176(1) of the Act for an order cancelling a special resolution to which those sections apply.

(3) On the hearing of the summons the Court may by order give such directions as to the proceedings to be taken before the hearing of the petition as it thinks fit including, in particular, directions for the publication of notices and the making of any inquiry.

(4) Where the application made by the petition is to confirm a reduction of the share capital, the share premium account, or the capital redemption reserve of a company, then, without prejudice to the generality of paragraph (3), the Court may give directions—

- (a) for an inquiry to be made as to the debts of, and claims against, the company or as to any class or classes of such debts or claims;

- (b) as to the proceedings to be taken for settling the list of creditors entitled to object to the reduction and fixing the date by reference to which the list is to be made;

and the power of the Court under section 136(6) of the Act to direct that section 136(3) to (5) thereof shall not apply as regards any class of creditors may be exercised on any hearing of the summons.

(5) Rules 7 to 12 shall have effect subject to any directions given by the Court under this rule.

*Inquiry as to debts: company to make list of creditors*

7.— (1) Where under rule 6 the Court orders such an inquiry as is mentioned in paragraph (4) thereof, the company in question must, within 7 days after the making of the order, file in the office of the companies court registrar an affidavit made by an officer of the company competent to make it verifying a list containing—

- (a) the name and address of every creditor entitled to any debt or claim to which the inquiry extends,
- (b) the amount due to each creditor in respect of such debt or claim or, in the case of a debt or claim which is subject to any contingency or sounds only in damages or for some other reason does not bear a certain value, a just estimate of the value thereof, and
- (c) the total of those amounts and values.

(2) The deponent must state in the affidavit his belief that at the date fixed by the Court as the date by reference to which the list is to be made there is no debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, other than the debts or claims set out in the list and any debts or claims to which the inquiry does not extend, and must also state his means of knowledge of the matters deposed to.

(3) The list must be left at the office mentioned in paragraph (1) not later than one day after the affidavit is filed.

*Inspection of list of creditors*

8.— (1) Copies of the list made under rule 7 with the omission, unless the Court otherwise directs, of the amount due to each creditor and the estimated value of any debt or claim to which any creditor is entitled, shall be kept at the registered office of the company and at the office of that company's solicitor and of that solicitor's London agent, if any.

(2) Any person shall be entitled during ordinary business hours, on payment of a fee of 5p to inspect the said list at any such office and to take extracts therefrom.

*Notice to creditors*

9. Within 7 days after filing the affidavit required by rule 7 the company must send by post to each creditor named in the list exhibited to the affidavit, at his last known address, a notice stating—

- (a) the amount of the reduction sought to be confirmed,
- (b) the effect of the order directing an inquiry as to debts and claims,
- (c) the amount or value specified in the list as due or estimated to be due to that creditor, and
- (d) the time fixed by the Court within which, if he claims to be entitled to a larger amount, he must send particulars of his debt or claim and the name and address of his solicitor, if any, to the company's solicitor.

*Advertisement of petition and list of creditors*

10. After filing the affidavit required by rule 7 the company must insert, in such newspapers and at such times as the Court directs, a notice stating—

- (a) the date of presentation of the petition and the amount of the reduction thereby sought to be confirmed,
- (b) the inquiry ordered by the Court under rule 6,
- (c) the places where the list of creditors may be inspected in accordance with rule 9, and
- (d) the time within which any creditor not named in the list who claims to be entitled to any debt or claim to which the inquiry extends must send his name and address, the name and address of his solicitor, if any, and particulars of his debt or claim to the company's solicitor.

*Affidavit as to claims made by creditors*

11. Within such time as the Court directs the company must file in the office of the companies court registrar an affidavit made by the company's solicitor and an officer of the company competent to make it—

- (a) proving service of the notices mentioned in rule 9 and advertisement of the notice mentioned in rule 10,
- (b) verifying a list containing the names and addresses of the person (if any) who in pursuance of such notices sent in particulars of debts or claims, specifying the amount of each debt or claim,
- (c) distinguishing in such list those debts or claims which are wholly, or as to any and what part thereof, admitted by the company, disputed by the company or alleged by the company to be outside the scope of the inquiry, and
- (d) stating which of the persons named in the list made under rule 7, and which of the persons named in the list made under this rule, have been paid or consent to the reduction sought to be confirmed.

*Adjudication of disputed claims*

12. If the company contends that a person is not entitled to be entered in the list of creditors in respect of any debt or claim or in respect of the full amount claimed by him in respect of any debt or claim, then, unless the company is willing to secure payment of that debt or claim by appropriating the full amount of the debt or claim, the company must, if the Court so

directs, send to that person by post at his last known address a notice requiring him—

- (a) within such time as may be specified in the notice, being not less than 4 clear days after service thereof, to file an affidavit proving his debt or claim or, as the case may be, so much thereof as is not admitted by the company, and
- (b) to attend the adjudication of his debt or claim at the place and time specified in the notice, being the time appointed by the Court for the adjudication of debts and claims.

*Certifying lists of creditors entitled to object to reduction*

13. The list of creditors entitled to object to such reduction as is mentioned in rule 6(4), as settled by the Court under section 136(4) of the Act, shall be certified and filed by the companies court registrar and his certificate shall—

- (a) specify the debts or claims (if any) disallowed by the court;
- (b) distinguish the debts or claims (if any) the full amount of which is admitted by the company, the debts or claims (if any) the full amount of which, though not admitted by the company, the company is willing to appropriate, the debts or claims (if any) the amount of which has been fixed by adjudication of the Court under section 136(4) of the Act and other debts or claims;
- (c) specify the total amount of the debts or claims payment of which has been secured by appropriation under the said section 136(4);
- (d) show which creditors consent to the reduction and the total amount of their debts or claims;
- (e) specify the creditors who sought to prove their debts or claims under rule 12 and state which of such debts or claims were allowed.

*Evidence of consent of creditor*

14. The consent of a creditor to such reduction as is mentioned in rule 6(4) may be proved in such manner as the Court thinks sufficient.

*Time, etc. of hearing of petition for confirmation of reduction*

15.— (1) A petition for the confirmation of any such reduction as is mentioned in rule 6(4) shall not, where the Court has directed an inquiry pursuant to that rule, be heard before the expiration of at least 8 clear days after the filing of the certificate mentioned in rule 13.

(2) Before the hearing of such a petition, a notice specifying the day appointed for the hearing must be published at such times and in such newspapers as the Court may direct.

*Affidavits to be filed in district registry*

16. Where an application to which this Order relates is proceeding in any Chancery district registry, all affidavits made in connection with the application must be filed in that registry.”.



## EXPLANATORY NOTE

*(This Note is not part of the Order.)*

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

- (a) make a consequential amendment relating to examinations and increase the fees payable to the examiners of the Court (rules 2 and 3);
- (b) provide for appeals from value added tax tribunals to the Court of Appeal under the Finance Act 1985 (rules 4 to 6);
- (c) incorporate into the Rules a practice direction on arbitration proceedings (rule 7);
- (d) make consequential amendments following the coming into force of the Merchant Shipping Act 1979 (rule 8);
- (e) amend the procedure for issuing warrants of arrest in Admiralty actions (rule 9);
- (f) provide for appeals to the High Court under the Stamp Duty Reserve Tax (Administration) Regulations 1986 (rule 10);
- (g) make consequential amendments relating to inheritance tax (rule 10);
- (h) give effect to section 48 of the Administration of Justice Act 1985 (action taken in reliance on counsel's opinion) (rule 11);
- (i) make consequential amendments following the coming into force of the Companies Act 1985 (rules 12 and 13);
- (j) amend the summary procedure for the possession of land (rule 14);
- (k) provide for applications to the High Court under the Drug Trafficking Offences Act 1986 (rules 15 to 17).