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STATUTORY INSTRUMENTS

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**1989 No. 1307 (L.14)**

**SUPREME COURT OF ENGLAND AND WALES**

**The Rules of the Supreme Court (Amendment No. 3) 1989**

*Made* - - - - - *27th July 1989*

*Laid before Parliament* *1st August 1989*

*Coming into force in accordance with rule 1*

We, the Supreme Court Rule Committee, having power under section 85 of the Supreme Court Act 1981<sup>(1)</sup> to make rules of court under section 84 of that Act for the purpose of regulating and prescribing the practice and procedure to be followed in the Supreme Court, hereby exercise that power as follows:

**Citation and commencement**

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Amendment No. 3) 1989 and shall come into force on 1st October 1989, except for rules 3 to 7, 19 and 20 which shall come into force on 1st September 1989.

(2) In these Rules, an Order referred to by number means the Order so numbered in the Rules of the Supreme Court 1965<sup>(2)</sup>.

**Rules of the Supreme Court (Amendment No. 2) 1989**

2. In rule 1(2) of the Rules of the Supreme Court (Amendment No. 2) 1989<sup>(3)</sup>, for the figures “1981”, there shall be substituted the figures “1965”.

**Prevention of Terrorism (Temporary Provisions) Act 1989<sup>(4)</sup>**

3. The Arrangement of Orders at the beginning of the Rules of the Supreme Court shall be amended by substituting, for the words “and Part VI of the Criminal Justice Act 1988”<sup>(5)</sup>, the words “, Part VI of the Criminal Justice Act 1988 and the Prevention of Terrorism (Temporary Provisions) Act 1989”.

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(1) 1981 c. 54.

(2) S.I.1965/1776; the relevant amending instruments are S.I. 1967/1809, 1968/1244, 1970/944, 1971/1955, 1975/911, 1977/1955, 1978/251, 1979/402, 522, 1542, 1716, 1980/629, 1908, 2000, 1981/1734, 1982/1111, 1983/1181, 1986/1187, 2289, 1987/1423, 1988/298 and 1989/386.

(3) S.I. 1989/386.

(4) 1989 c. 4.

(5) 1988 c. 33.

4. In the title to Order 115, there shall be substituted for the words “AND PART VI OF THE CRIMINAL JUSTICE ACT 1988” the words “, PART VI OF THE CRIMINAL JUSTICE ACT 1988 AND THE PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1989”.

5. In Order 115, rule 4(1), for the word “plaintiff”, there shall be substituted the word “prosecutor”.

6. In Order 115, rule 16(2), for the words from “, of any variation” to “such an order”, there shall be substituted the words “and of any execution issued on a registered order”.

7. After Order 115, rule 23, there shall be added the following new Part—

### “III.

## PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1989

### **Interpretation**

24. In this Part of this Order—

- (a) “the Act” means the Prevention of Terrorism (Temporary Provisions) Act 1989;
- (b) “Schedule 4” means Schedule 4 to the Act; and
- (c) expressions used have the same meanings as they have in Part III of, and Schedule 4 to, the Act.

### **Assignment of proceedings**

25.—(1) Subject to paragraph (2), the jurisdiction of the High Court under the Act shall be exercised by a judge of the Queen’s Bench Division or of the Chancery Division in chambers.

(2) The jurisdiction conferred on the High Court by paragraph 9 of Schedule 4 may also be exercised by a master of the Queen’s Bench Division.

### **Application for restraint order**

26.—(1) An application for a restraint order under paragraphs 3 and 4 of Schedule 4 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, as the case may be, either that proceedings have been instituted against a person for an offence under Part III of the Act and that they have not been concluded or that, whether by the laying of an information or otherwise, a person is to be charged with such an offence; and, in either case, give particulars of the offence;
- (b) state, as the case may be, that a forfeiture order has been made in the proceedings or the grounds for believing that such an order may be made;
- (c) to the best of the deponent’s ability, give full particulars of the property in respect of which the order is sought and specify the person or persons holding such property and any other persons having an interest in it;
- (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**

27.—(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 prosecutor 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.

(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 persons affected by the order.

### **Discharge or variation of order**

28.—(1) Subject to paragraph (2), an application to discharge or vary a restraint order shall be made by summons.

(2) Where the case is one of urgency, an application under this rule by the prosecutor may be made ex parte.

(3) The application and any affidavit in support shall be lodged with the court and, where the application is made by summons, shall be served on the following persons (other than the applicant)—

- (a) the prosecutor;
- (b) the defendant; and
- (c) all other persons restrained or otherwise affected by the order;

not less than two clear days before the date fixed for the hearing of the summons.

(4) Where a restraint order has been made and has not been discharged, the prosecutor shall notify the court when proceedings for the offence have been concluded, and the court shall thereupon discharge the restraint order.

(5) Where an order is made discharging or varying a restraint order, the applicant shall serve copies of the order of discharge or variation on all persons restrained by the earlier order and shall notify all other persons affected of the terms of the order of discharge or variation.

### **Compensation**

29. An application for an order under paragraph 7 of Schedule 4 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 paragraph 7(5) not less than 7 days before the date fixed for the hearing of the summons.

### **Application for registration**

**30.** An application for registration of a Scottish order, a Northern Ireland order or an Islands order may be made ex parte.

### **Evidence in support of application**

**31.** An application for registration of any such order as is mentioned in rule 30 must be supported by an affidavit—

- (a) exhibiting the order or a certified copy thereof, and
- (b) which shall, to the best of the deponent's ability, give particulars of such property in respect of which the order was made as is in England and Wales, and specify the person or persons holding such property.

### **Register of orders**

**32.—(1)** There shall be kept in the Central Office under the direction of the Senior Master a register of the orders registered under the Act.

(2) There shall be included in such register particulars of any variation or setting aside of a registration, and of any execution issued on a registered order.

### **Notice of registration**

**33.—(1)** Notice of the registration of an order must be served on the person or persons holding the property referred to in rule 31(b) and any other persons appearing to have an interest in that property.

(2) Service of such a notice out of the jurisdiction is permissible without leave, and Order 11, rules 5, 6 and 8 shall apply in relation to such a notice as they apply in relation to a writ.

(3) The notice shall state the period within which an application may be made to vary or set aside the registration.

### **Application to vary or set aside registration**

**34.** An application to vary or set aside the registration of an order must be made to a judge by summons supported by affidavit.

This rule does not apply to a variation or cancellation under rule 36.

### **Enforcement of order**

**35.—(1)** An order registered under the Act shall not be enforced until after the expiration of the period specified in accordance with rule 33(3) or, if that period has been extended by the Court, until after the expiration of the period so extended.

(2) If an application is made under rule 34, an order shall not be enforced until after such application is determined.

(3) This rule does not apply to the taking of steps under paragraph 5 or 6 of Schedule 4, as applied by paragraph 9(6) of that Schedule.

### Variation and cancellation of registration

36. If effect has been given (whether in England and Wales or elsewhere) to a Scottish, Northern Ireland or Islands order, or if the order has been varied or discharged by the court by which it was made, the applicant for registration shall inform the court and—

- (a) if such effect has been given in respect of all the money or other property to which the order applies, or if the order has been discharged by the court by which it was made, registration of the order shall be cancelled;
- (b) if such effect has been given in respect of only part of the money or other property, or if the order has been varied by the court by which it was made, registration of the order shall be varied accordingly.”.

### Application of the Rules of the Supreme Court

8. Order 1, rule 2 shall be amended as follows—

- (a) in paragraph (1)—
  - (i) for the words “the following provisions of this rule”, there shall be substituted the words “paragraph (2)”; and
  - (ii) for the words “the Supreme Court”, there shall be substituted the words “the High Court and the civil division of the Court of Appeal”; and
- (b) for paragraphs (3) and (4), there shall be substituted the following—

“(3) Nothing in this rule shall be taken as affecting any statutory provision whereby the Rules of the Supreme Court 1965(6), or any provisions of them, are applied to proceedings other than those to which they are applied by this rule.”.

### Summary judgment

9. After Order 15, rule 3(5), there shall be inserted the following—

“(5A) Where by virtue of paragraph (2) a copy of a counterclaim is required to be served on any person other than the plaintiff who before service is already a party to the action, the provisions of Order 14, rule 5 shall apply in relation to the counterclaim and the proceedings arising therefrom, as if the party against whom the counterclaim is made were the plaintiff in the action.”.

### Powers of Chancery masters

10. For Order 32, rule 14, there shall be substituted the following—

“14.—(1) The masters of the Chancery Division shall have power to transact all such business and exercise all such authority and jurisdiction as may be transacted and exercised by a judge in chambers except in respect of the following matters and proceedings, that is to say,—

- (a) matters relating to criminal proceedings,
- (b) matters relating to the liberty of the subject,
- (c) proceedings to which Order 57 applies and with respect to which a judge in chambers has jurisdiction,
- (d) subject to paragraph (2) below, Order 50, rule 9 and Order 51, rule 2, proceedings for the grant of an injunction,

- (e) appeals from district registrars,
  - (f) applications for review from a taxing officer's decision,
  - (g) applications under section 42 of the Act for leave to institute or continue legal proceedings,
  - (h) where an originating summons raises for the determination of the Court a question as to the construction of a document or a question of law, the determination of that question, and
  - (i) any other matter or proceeding which by any of these rules or by direction of the Vice-Chancellor is required to be heard only by a judge.
- (2) Any master of the Chancery Division shall have power to grant an injunction in the terms agreed by the parties to the proceedings in which the injunction is sought.
- (3) Rule 12 of this Order shall apply to a master of the Chancery Division as it applies to a master of the Queen's Bench Division."

### **Duration of writ of execution**

- 11.** Order 46, rule 8 shall be amended as follows—
- (a) in paragraphs (3) and (5), for the words "this rule", there shall be substituted the words "paragraph (2)";
  - (b) after paragraph (5), there shall be inserted the following—
 

“(6) If, during the validity of a writ of execution, an interpleader summons is issued in relation to an execution under that writ, the validity of the writ shall be extended until the expiry of 12 months from the conclusion of the interpleader proceedings.”.

### **Appeals in arbitration proceedings**

- 12.** For Order 55, rule 1(2), there shall be substituted the following—
- “(2) This Order shall not apply to an appeal by case stated or to any appeal to which Order 73 applies.”.

### **Extradition**

- 13.** After Order 56, rule 12, there shall be inserted the following new rule—

#### **“Extradition**

- 12A.**—(1) Rules 5 and 6 of this Order shall apply to appeals by case stated under—
- (a) section 7 of the Criminal Justice Act 1988<sup>(7)</sup> and
  - (b) section 7A of the Fugitive Offenders Act 1967<sup>(8)</sup>,
- as they apply to appeals by case stated from a magistrates' court and references in those rules to appellant and respondent shall be construed as references to the requesting state and the person whose surrender is sought respectively.
- (2) An application for an order under either of the sections mentioned in paragraph (1) or under section 2A of the Backing of Warrants (Republic of Ireland) Act 1965<sup>(9)</sup> requiring a court to state a case shall be made in accordance with rule 8 of this Order, the references

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(7) 1988 c. 33.

(8) 1967 c. 68; section 7A was inserted by the Criminal Justice Act 1988 (c. 33), Schedule 1, paragraph 11.

(9) 1965 c. 45; section 2A was inserted by the Criminal Justice Act 1988 (c. 33), Schedule 1, paragraph 5.

in that rule to a tribunal and the secretary of a tribunal being construed for this purpose as references to the court and the clerk of the court respectively.”.

14. After Order 79, rule 9(13), there shall be added the following—

“(14) In the case of a person whose return is sought under the Fugitive Offenders Act 1967 or whose surrender is sought under Part I of the Criminal Justice Act 1988, this rule shall apply as if references to the defendant were references to that person and references to the prosecutor were references to the state seeking the return or surrender of that person.”.

#### **Applications for leave to appeal**

15. For Order 59, rule 14(2), there shall be substituted the following new paragraphs—

“(2) An application to the Court of Appeal for leave to appeal shall—

- (a) include, where necessary, any application to extend the time for appealing, and
- (b) be made *ex parte* in writing setting out the reasons why leave should be granted and, if the time for appealing has expired, the reasons why the application was not made within that time;

and the Court may grant or refuse the application or direct that the application be renewed in open court either *ex parte* or *inter partes*.

(2A) If an application under paragraph (2) is refused otherwise than after a hearing in open court, the applicant shall be entitled, within 7 days after he has been given notice of the refusal, to renew his application; and such renewed application shall be heard *ex parte* in open court.

(2B) If an application under paragraph (2) is granted otherwise than after a hearing *inter partes*, notice of the order shall be served on the party or parties affected by the appeal and any such party shall be entitled, within 7 days after service of the notice, to apply to have the grant of leave reconsidered *inter partes* in open court.”.

#### **Assignment of certain appeals from the Crown Court**

16. Paragraph (7) of Order 59, rule 20 shall be omitted.

17. In Order 59, rule 20(8), for the words “Subject to paragraph (7), the”, there shall be substituted the word “The”.

#### **Applications under section 10 of the Administration of Justice Act 1920(10)**

18. In Order 71, rule 13(2), for the words from “that the judgment debtor is resident” to “territory”, there shall be substituted the words “that the judgment creditor wishes to secure the enforcement of the judgment in a part (stating which) of Her Majesty’s dominions outside the United Kingdom”.

#### **Applications under the Copyright, Designs and Patents Act 1988(11)**

19. After Order 93, rule 23, there shall be inserted the following new rule—

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(10) 1920 c. 81; section 10 was amended by the Civil Jurisdiction and Judgments Act 1982 (c. 27), section 35(2).

(11) 1988 c. 48.

**“Applications under section 114, 204 or 231 of the Copyright, Designs and Patents Act 1988**

24.—(1) Where an application is made under section 114, 204 or 231 of the Copyright, Designs and Patents Act 1988, the applicant shall serve notice of the application on all persons so far as reasonably ascertainable having an interest in the copy or other article which is the subject of the application, including any person in whose favour an order could be made in respect of the copy or other article under any of the said sections of the Act of 1988 or under section 58C of the Trade Marks Act 1938<sup>(12)</sup>.

(2) An application under the said section 114, 204 or 231 shall be made by originating summons or, if it is made in a pending action, by summons or motion in that action.”.

20. After Order 100, rule 2(6), there shall be inserted the following—

“(7) Where an application is made under section 58C of the Trade Marks Act 1938 the applicant shall serve notice of the application on all persons so far as reasonably ascertainable having an interest in the goods or material which are the subject of the application, including any person in whose favour an order could be made in respect of the goods or material under the said section of the Act of 1938 or under section 114, 204 or 231 of the Copyright, Designs and Patents Act 1988.

(8) An application under the said section 58C shall be made by originating summons or, if it is made in a pending action, by summons or motion in that action.”.

*Mackay of Clashfern, C.,  
Lane, C.J.,  
Donaldson of Lymington, M.R.,  
Stephen Brown, P.,  
N. Browne-Wilkinson, V-C.,  
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Steyn, J.,  
Millett, J.,  
Hugh Bennett,  
F.M. Ferris,  
Michael S. Howells,  
C.R. Berry.*

Dated 27th July 1989

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(12) 1938 c. 22; section 58C was inserted by the Copyright, Designs and Patents Act 1988 (c. 48), section 300.



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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

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

- (a) to correct an error in the Rules of the Supreme Court (Amendment No. 2) 1989 (rule 2);
- (b) to govern the making of compensation and restraint orders, and to provide for the registration of orders made, under the Prevention of Terrorism (Temporary Provisions) Act 1989 (rules 3 to 7);
- (c) to correct a drafting anomaly in Order 1, rule 2 (rule 8);
- (d) to allow a co-defendant to seek summary judgment on a counterclaim against another co-defendant or against others (rule 9);
- (e) to revise the powers of Chancery masters (rule 10);
- (f) to extend the validity of a writ of execution in cases where an interpleader summons is issued (rule 11);
- (g) to make it clear that the provisions of Order 55 (appeals to the High Court) do not apply to appeals in arbitration proceedings (rule 12);
- (h) to amend Orders 56 and 79 consequentially upon changes relating to extradition proceedings made by the Criminal Justice Act 1988 (rules 13 and 14);
- (i) to make provision for applications for leave to appeal whether or not an application to extend the time for appealing is also made to be dealt with without a hearing (rule 15);
- (j) to revoke Order 59, rule 20 (7) which has been rendered unnecessary by section 53(2)(b) of the Supreme Court Act 1981 (rules 16 and 17);
- (k) to amend the procedure for registering a judgment under section 10 of the Administration of Justice Act 1920 (rule 18); and
- (l) to provide for the making of applications under section 114, 204 or 231 of the Copyright, Designs and Patents Act 1988 and section 58C of the Trade Marks Act 1938 (rules 19 and 20).