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STATUTORY INSTRUMENTS

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**1992 No. 1965 (L.12)**

**COUNTY COURTS**

**PROCEDURE**

**The County Court (Amendment No. 2) Rules 1992**

*Made - - - - 5th August 1992*

*Coming into force*

*As to all provisions except  
Rules 2 to 5*

*26th October 1992*

*Rules 2 to 5*

*16th November 1992*

**Citation and interpretation**

1.—(1) These Rules may be cited as the County Court (Amendment No. 2) Rules 1992.

(2) In these Rules, unless the context otherwise requires, an Order referred to by number means the Order so numbered in the County Court Rules 1981<sup>(1)</sup>.

**Exchange of witness statements**

2. In Order 14, rule 4—

(1) in the heading, for the words “**and affidavits**” there shall be substituted “, **affidavits and witness statements**”; and

(2) in paragraph (1), for the words “or affidavits” there shall be substituted “, affidavits or witness statements”.

3. In Order 17, rule 11(3), for sub-paragraph (b) there shall be substituted the following—

“(b) except with the leave of the court or where all parties agree—

(i) no expert evidence may be adduced at the trial unless the substance of that evidence has been disclosed to the other parties in the form of a written report within 10 weeks;

(ii) subject to paragraph (7), the number of expert witnesses of any kind shall be limited to two; and

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<sup>(1)</sup> S.I.1981/1687; the relevant amending instruments are S.I. 1982/1140, 1794, 1983/1716, 1984/878, 1985/566, 1269, 1986/1189, 1987/493, 1989/236, 1838, 2426, 1990/516, 1764, 1991/1126, 1328, 1882 and 1992/793.

(iii) any party who intends to place reliance at the trial on any other oral evidence shall, within 10 weeks, serve on the other parties written statements of all such oral evidence which he intends to adduce;”.

4. After Order 17, rule 11(3) there shall be inserted the following new paragraph—

“(3A) Paragraphs (4) to (16) of Order 20, rule 12A shall apply with respect to statements and reports served under sub-paragraph (3)(b) as they apply with respect to statements served under that rule.”.

5. For Order 20, rule 12A, there shall be substituted the following—

**“Exchange of witness statements**

**12A.—**(1) The powers of the court under this rule shall be exercised for the purpose of disposing fairly and expeditiously of the action or matter before it, and saving costs, having regard to all the circumstances of the case, including (but not limited to)—

- (a) the extent to which the facts are in dispute or have been admitted;
- (b) the extent to which the issues of fact are defined by the pleadings;
- (c) the extent to which information has been or is likely to be provided by further and better particulars, answers to interrogatories or otherwise.

(2) At the pre-trial review the court shall direct every party to serve on the other parties, within 10 weeks (or such other period as the court may specify) thereafter and on such terms as the court may specify, written statements of the oral evidence which the party intends to adduce on any issues of fact to be decided at the trial.

The court may give a direction to any party under this paragraph at any other stage of such an action or matter.

(3) Directions under paragraph (2) or (17) may make different provision with regard to different issues of fact or different witnesses.

(4) Statements served under this rule shall—

- (a) be dated and, except for good reason (which should be specified by letter accompanying the statement), be signed by the intended witness and shall include a statement by him that the contents are true to the best of his knowledge and belief;
- (b) sufficiently identify any documents referred to therein; and
- (c) where they are to be served by more than one party, be exchanged simultaneously.

(5) Where a party is unable to obtain a written statement from an intended witness in accordance with paragraph (4)(a), the court may direct the party wishing to adduce that witness’s evidence to provide the other party with the name of the witness and (unless the court otherwise orders) a statement of the nature of the evidence intended to be adduced.

(6) Subject to paragraph (9), where the party serving a statement under this rule does not call the witness to whose evidence it relates, no other party may put the statement in evidence at the trial.

(7) Subject to paragraph (9), where the party serving the statement does call such a witness at the trial—

- (a) except where the trial is with a jury, the trial judge may, on such terms as he 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;

- (b) the party may not without the consent of the other parties or the leave of the trial judge adduce evidence from that witness the substance of which is not included in the statement served, except—
    - (i) where the court’s directions under paragraph (2) or (17) specify that statements should be exchanged in relation to only some issues of fact, in relation to any other issues;
    - (ii) in relation to new matters which have arisen since the statement was served on the other party;
  - (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.
- (8) Nothing in this rule shall make admissible evidence which is otherwise inadmissible.
- (9) Where any statement served is one to which the Civil Evidence Acts 1968 and 1972 apply, paragraphs (6) and (7) shall take effect subject to the provisions of those Acts and Parts III and IV of this Order.

The service of a witness statement under this rule shall not, unless expressly so stated by the party serving the same, be treated as a notice under the said Acts of 1968 and 1972; and where a statement or any part thereof would be admissible in evidence by virtue only of the said Act of 1968 or 1972 the appropriate notice under Part IV of this Order shall be served with the statement notwithstanding any provision of that Part as to the time for serving such a notice. Where such a notice is served a counter-notice shall be deemed to have been served under Order 20, rule 17(1).

(10) Where a party fails to comply with a direction for the exchange of witness statements the shall not be entitled to adduce evidence to which the direction related without the leave of the court.

(11) Where a party serves a witness statement under this rule, no other person may make use of that statement for any purpose other than the purpose of the proceedings in which it was served—

- (a) unless and to the extent that the party serving it gives his consent in writing or the court gives leave; or
- (b) unless and to the extent that it has been put in evidence (whether pursuant to a direction under paragraph (7)(a) or otherwise).

(12) Subject to paragraph (13), the judge shall, if any person so requests during the course of the trial, direct that any witness statement which was ordered to stand as evidence in chief under paragraph (7)(a) shall be certified as open to inspection.

A request under this paragraph may be made orally or in writing.

(13) The judge may refuse to give a direction under paragraph (12) in relation to a witness statement, or may exclude from such a direction any words or passages in a statement, if he considers that inspection should not be available —

- (a) in the interests of justice or national security,
- (b) because of the nature of any expert medical evidence in the statement, or
- (c) for any other sufficient reason.

(14) Where a direction is given under paragraph (12) that a witness statement shall be certified as open to inspection—

- (a) a certificate shall be attached by the proper officer to a copy (“the certified copy”) of that witness statement; and

(b) the certified copy shall be made available for inspection.

(15) Subject to any directions issued by the Lord Chancellor under Order 50, rule 1 and to any conditions which the court may by special direction impose, any person may inspect and (subject to payment of the prescribed fee) take a copy of the certified copy of a witness statement during office hours from the time when the certificate is given until the end of 7 days after the conclusion of the trial.

(16) In this rule—

- (a) any reference in paragraphs (12) to (15) to a witness statement shall, in relation to a witness statement of which only part has been ordered to stand as evidence in chief under paragraph (7)(a), be construed as a reference to that part;
- (b) any reference to inspecting or copying the certified copy of a witness statement shall be construed as including a reference to inspecting or copying a copy of that certified copy.

(17) The court shall have power to vary or override any of the provisions of this rule (except paragraphs (1), (8) and (12) to (16)) and to give such alternative directions as it thinks fit.”

### **Small claims**

6. For Order 19 Part I there shall be substituted the following—

“ORDER 19

REFERENCE TO ARBITRATION OR FOR INQUIRY  
AND REPORT OR TO EUROPEAN COURT

PART I—

COUNTY COURT ARBITRATION

#### **Interpretation and application**

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

“lay representative” means a person exercising a right of audience by virtue of an order made under section 11 of the Courts and Legal Services Act 1990(2) (representation in county courts),

“reference” means the reference of proceedings to arbitration under section 64 of the Act,

“order” means an order referring proceedings to arbitration under that section and

“outside arbitrator” means an arbitrator other than the judge or district judge.

2. In this Part of this Order—

(a) Rules 3 and 4 apply only to small claims automatically referred to arbitration under rule 3, and

(b) Rules 5 to 10 apply to all arbitrations.

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(2) 1990 c. 41.

### **Automatic reference of small claims**

3.—(1) Any proceedings in which the sum claimed or amount involved does not exceed £1000 (leaving out of account the sum claimed or amount involved in any counterclaim) shall stand referred for arbitration by the district judge upon the receipt by the court of a defence to the claim.

(2) Where any proceedings are referred for arbitration by the district judge under paragraph (1), he may, after considering the defence and whether on the application of any party or of his own motion, order trial in court if he is satisfied—

- (a) that a difficult question of law or a question of fact of exceptional complexity is involved; or
- (b) that fraud is alleged against a party; or
- (c) that the parties are agreed that the dispute should be tried in court; or
- (d) that it would be unreasonable for the claim to proceed to arbitration having regard to its subject matter, the size of any counterclaim, the circumstances of the parties or the interests of any other person likely to be affected by the award.

(3) Where the district judge is minded to order trial in court of his own motion—

- (a) the proper officer shall notify the parties in writing specifying on which of the grounds mentioned in paragraph (2) the district judge is minded to order trial in court;
- (b) within 14 days after service of the proper officer's notice on him, a party may give written notice stating his reasons for objecting to the making of the order;
- (c) if in any notice under sub-paragraph (b) a party so requests, the proper officer shall fix a day for a hearing at which the district judge—
  - (i) shall decide whether to order trial in court, and
  - (ii) may give directions regarding the steps to be taken before or at any subsequent hearing as if he were conducting a preliminary appointment or, as the case may be, a pre-trial review;

and, in the absence of any request under sub-paragraph (c), the district judge may, in the absence of the parties, order trial in court.

(4) For the purposes of paragraph (1), “a defence to the claim” includes a document admitting liability for the claim but disputing or not admitting the amount claimed.

### **Restriction on allowance of costs in small claims**

4.—(1) In this rule, “costs” means—

- (a) solicitors' charges,
- (b) sums allowed to a litigant in person pursuant to Order 38, rule 17,
- (c) a fee or reward charged by a lay representative for acting on behalf of a party in the proceedings.

(2) No costs shall be allowed as between party and party in respect of any proceedings referred to arbitration under rule 3, except—

- (a) the costs which were stated on the summons or which would have been stated on the summons if the claim had been for a liquidated sum;
- (b) the costs of enforcing the award, and
- (c) such further costs as the district judge may direct where there has been unreasonable conduct on the part of the opposite party in relation to the proceedings or the claim therein.

(3) Nothing in paragraph (2) shall be taken as precluding the award of the following allowances—

- (a) any expenses which have been reasonably incurred by a party or a witness in travelling to and from the hearing or in staying away from home;
- (b) a sum not exceeding £29.00 in respect of a party's or a witness's loss of earnings when attending a hearing;
- (c) a sum not exceeding £112.50 in respect of the fees of an expert.

(4) Where trial in court is ordered, paragraph (2) shall not apply to costs incurred after the date of the order.

(5) Where costs are directed under paragraph (2)(c), those costs shall not be taxed and the amount to be allowed shall be specified by the arbitrator or the district judge.

### **The arbitrator**

5.—(1) Unless the court otherwise orders, the district judge shall be the arbitrator.

(2) An order shall not be made referring proceedings to the Circuit judge except by or with the leave of the judge.

(3) An order shall not be made referring proceedings to an outside arbitrator except with the consent of the parties.

(4) Where proceedings are referred to an outside arbitrator, the order shall be served on the arbitrator as well as on the parties, but it shall not, unless the court directs, be served on anyone until each party has paid into court such sum as the district judge may determine in respect of the arbitrator's remuneration.

### **Preparation for the hearing**

6.—(1) Paragraph (2) of this rule shall apply unless the district judge—

- (a) is minded to order trial in court under rule 3(3) or
- (b) decides that a preliminary appointment should be held.

(2) Upon the reference to arbitration the district judge shall consider the documents filed and give an estimate of the time to be allowed for the hearing and the proper officer shall—

- (a) give the parties not less than 21 days' notice of the day fixed for the hearing; and
- (b) issue directions under paragraph (3) in the appropriate form regarding the steps to be taken before or at any subsequent hearing.

(3) Where proceedings stand referred to arbitration, the following directions shall take effect—

- (a) each party shall not less than 14 days before the date fixed for the hearing send to every other party copies of all documents which are in his possession and on which that party intends to rely at the hearing;
- (b) each party shall not less than 7 days before the date fixed for the hearing send to the court and to every other party a copy of any expert report on which that party intends to rely at the hearing and a list of the witnesses whom he intends to call at the hearing.

(4) A preliminary appointment shall only be held—

- (a) where directions under paragraph (3) are not sufficient and special directions can only be given in the presence of the parties, or
- (b) to enable the district judge to dispose of the case where the claim is ill-founded or there is no reasonable defence.

In deciding whether to hold a preliminary appointment, the district judge shall have regard to the desirability of minimising the number of court attendances by the parties.

(5) Where the district judge decides to hold a preliminary appointment, the proper officer shall fix a date for the appointment and give to the plaintiff and the defendant not less than 8 days' notice of the day so fixed.

(6) On the preliminary appointment the district judge shall have the same powers as he has under Order 17 on a pre-trial review and he shall—

- (a) give an estimate of the time to be allowed for the hearing (unless the parties consent to his deciding the dispute on the statements and documents submitted to him); and
- (b) whether of his own motion or at the request of a party, give such additional directions regarding the steps to be taken before and at the hearing as may appear to him to be necessary or desirable.

Directions given under sub-paragraph (b) may include (but shall not be limited to) a requirement that a party should clarify his claim or, as the case may be, his defence.

(7) After the preliminary appointment, the proper officer shall—

- (a) give the parties not less than 21 days' notice of the day fixed for the hearing; and
- (b) issue directions under paragraph (3) in the appropriate form regarding the steps to be taken before or at that hearing together with any additional directions given pursuant to paragraph (6)(b).

(8) The district judge may from time to time whether on application or of his own motion amend or add to any directions issued if he thinks it necessary to do so in the circumstances of the case.

(9) The following provisions of these rules shall not apply where proceedings stand referred to arbitration:

- (a) Order 6, rule 7 (further particulars),
- (b) Order 9, rule 11 (particulars of defence),
- (c) Order 14, rules 1(2), 3 to 5, 5A and 11 (discovery and interrogatories), and
- (d) Order 20, rules 2 and 3 (notices to admit facts and documents),
- (e) Order 20, rule 12A (exchange of witness statements).

Order 11, rules 1, 1A, 3 to 5, 7, 8 and 10 (payments into court) and Order 13, rule 1(8)(a) (security for costs) shall not apply where proceedings stand referred to arbitration under rule 3.

(10) If it appears to the court at any time after a reference has been made (whether by order or otherwise) that there are any other matters within the jurisdiction of the court in dispute between the parties, the court may order them also to be referred to arbitration.

### **Conduct of hearing**

7.—(1) Any proceedings referred to arbitration shall be dealt with in accordance with the following paragraphs of this rule unless the arbitrator otherwise orders.

(2) The hearing may be held at the court house, at the court office or at any other place convenient to the parties.

(3) The hearing shall be informal and the strict rules of evidence shall not apply; unless the arbitrator orders otherwise, the hearing shall be held in private and evidence shall not be taken on oath.

(4) At the hearing the arbitrator may adopt any method of procedure which he may consider to be fair and which gives to each party an equal opportunity to have his case presented; having considered the circumstances of the parties and whether (or to what extent) they are represented, the arbitrator—

- (a) may assist a party by putting questions to the witnesses and the other party; and
- (b) should explain any legal terms or expressions which are used.

(5) If any party does not appear at the arbitration, the arbitrator may, after taking into account any pleadings or other documents filed, make an award on hearing any other party to the proceedings who may be present.

(6) With the consent of the parties and at any time before giving his decision, the district judge may consult any expert or call for an expert report on any matter in dispute or invite an expert to attend the hearing as assessor.

(7) The arbitrator may require the production of any document or thing and may inspect any property or thing concerning which any question may arise.

(8) The arbitrator shall inform the parties of his award and give his reasons for it to any party who may be present at the hearing.

#### **Setting awards aside**

**8.—**(1) Where proceedings are referred to arbitration, the award of the arbitrator shall be final and may only be set aside pursuant to paragraph (2) or on the ground that there has been misconduct by the arbitrator or that the arbitrator made an error of law.

(2) Where an award has been given in the absence of a party, the arbitrator shall have power, on that party's application, to set the award aside and to order a fresh hearing as if the award were a judgment and the application were made pursuant to Order 37, rule 2.

(3) An application by a party to set aside an award made by a district judge or an outside arbitrator on the ground mentioned in paragraph (1) shall be made on notice and the notice shall be served within 14 days after the day on which the award was entered as the judgment of the court.

(4) An application under paragraph (3) shall, giving sufficient particulars, set out the misconduct or error of law relied upon.

(5) Order 37, rule 1 (rehearing of proceedings tried without a jury) shall not apply to proceedings referred to arbitration.

#### **Mode of voluntary reference**

**9.—**(1) Except as provided by rule 3, a reference shall be made only on the application of a party to the proceedings sought to be referred.

(2) Unless the court otherwise directs, an application by a party to any proceedings for a reference may be made—

- (a) in the case of a plaintiff, by request incorporated in his particulars of claim;
- (b) in the case of a defendant, by request incorporated in any defence or counterclaim of his;
- (c) in any case, on notice under Order 13, rule 1.

(3) Where an application for a reference is made under paragraph (1) and the proceedings are not referred to arbitration under rule 3, the following provisions shall apply:—

- (a) Subject to rule 5(2) and sub-paragraphs (b) and (c) below, an order may be made by the district judge.



- (b) If the court is satisfied that an allegation of fraud against a party is in issue in the proceedings, an order shall not be made except with the consent of that party.
- (c) Where the district judge is minded to grant an application under paragraph (1), the proper officer shall notify the parties in writing accordingly and within 14 days after service of the proper officer's notice on him, a party may give written notice stating his reasons for objecting to the reference; if in any such notice a party so requests, the proper officer shall fix a day for a hearing at which the district judge shall decide whether to grant the application and, in the absence of any such request, the district judge may consider the application in the absence of the parties.

### **Costs**

**10.** Subject to rule 4, the costs of the action up to and including the entry of judgment shall be in the discretion of the arbitrator to be exercised in the same manner as the discretion of the court under the provisions of the County Court Rules.”.

**7.** Rules 7 to 11 of Order 19 shall stand as rules 11 to 15 of that Order.

**8.** Order 37, rule 7 shall be revoked.

### **Minor and consequential amendments**

**9.** Order 3, rule 3(8) shall be amended by substituting, for the words “the Conventions”, the words “the Brussels Conventions or the Lugano Convention”.

**10.** Order 6, rule 3(3) shall be omitted.

**11.** Order 6, rule 4 shall be amended by substituting, for the words “paragraph (a) and (b) of the last foregoing rule”, the words “paragraph (1)(a) of the last foregoing rule”.

**12.** Order 8, rule 2(2)(a)(ii) shall be amended by substituting—

- (a) for the words “of Schedule 1 or of Schedule 4”, the words “of Schedule 1, 3C or 4”;
- (b) for the words “Schedule 1 or Schedule 4”, the words “Schedule 1, 3C or 4”.

**13.** Order 8, rule 2(5) shall be amended by substituting, for the words “the Conventions”, the words “the Brussels Conventions or the Lugano Convention”.

**14.** At the end of Order 9, rule 3(6) there shall be inserted (on a new line) the following—

“Nothing in sub-paragraph (b) shall require the proper officer to fix a day for a pre-trial review in proceedings which are referred to arbitration under Order 19.”.

**15.** For Order 9, rule 14(1)(a), there shall be substituted the following—

“(a) an action which stands referred to arbitration under Order 19, rule 3;”.

**16.** In—

- (a) Order 11, rules 2(4) and 3(7),
- (b) Order 18, rule 2(1),
- (c) Order 38, rule 3(6), and
- (d) paragraph 1(a) of Appendix B Part I,

for the words “Order 19, rule 6”, there shall be substituted the words “Order 19, rule 4”.

**17.** In—

- (a) Order 13, rule 12(1),
- (b) Order 14, rule 11(1B), and

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(c) Order 38, rule 3(6),

for the words “Order 19, rule 2(3)” there shall be substituted the words “Order 19, rule 3”.

**18.** Order 23, rule 2(3) shall be amended by substituting for the words “Order 19, rule 9(a), (d) and (e)”, the words “Order 19, rule 13(a), (d) and (e)”.

**19.** Order 45, rule 1(1) and (5) shall be amended by substituting, for the words “the Treasury”, the words “the Secretary of State”.

We, the undersigned members of the Rule Committee appointed by the Lord Chancellor under section 75 of the County Courts Act 1984<sup>(3)</sup>, having by virtue of the powers vested in us in that behalf made the foregoing Rules, do hereby certify the same under our hands and submit them to the Lord Chancellor accordingly.

*C. S. Stuart-White  
R. H. Hutchinson  
Eifion Roberts  
J. H. Wroath  
R. Greenslade  
K. H. P. Wilkinson  
Peter Birts  
Henrietta Manners  
E. C. Gee*

I allow these Rules, which shall come into force on 26th October 1992, except for Rules 2 to 5 which shall come into force on 16th November 1992.

5th August 1992

*Mackay of Clashfern, C.*

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(3) 1984 c. 28; section 75 was amended by the Courts and Legal Services Act 1990 (c. 41), sections 2(4), 16, Schedule 18, paragraph 47.

## EXPLANATORY NOTE

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

These Rules amend the County Court Rules 1981 so as to—

- (a) provide for the compulsory exchange of witness statements (*rules 2 to 5*);
- (b) amend the provisions relating to proceedings referred to arbitration under Order 19 and, in particular, the small claims procedure following the recommendations of the Civil Justice Review Body (*rules 6 to 8*);
- (c) make minor amendments as a result of the coming into force of the Lugano Convention to which the Civil Jurisdiction and Judgments Act 1991 (c. 12) gave effect (*rules 9, 12 and 13*);
- (d) make some miscellaneous amendments removing or revising obsolete provisions (*rules 10, 11 and 19*) and amendments consequential upon the amendments to Order 19 (*rules 14 to 18*)