
STATUTORY INSTRUMENTS

1992 No. 638 (L.3)

SUPREME COURT OF ENGLAND AND WALES

The Rules of the Supreme Court (Amendment) 1992

Made - - - - *10th March 1992*

Laid before Parliament *11th March 1992*

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(1) 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 those powers as follows:

Citation, commencement, transitional provision and interpretation

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Amendment) 1992 and shall come into force on 1st April 1992, except for—

- (a) rules 5, 10, 11, 14 and 15, which shall come into force on 1st June 1992,
- (b) sub-paragraph (b) of the new rule 13(9) inserted into Order 94 by rule 3, which shall come into force on the day appointed for the commencement of section 2 of the Planning and Compensation Act 1991(2),
- (c) sub-paragraph (c) of the new Order 110, rule 1(1) inserted by rule 4, which shall come into force on the day appointed for the commencement of section 26AA of the Hazardous Substances Act 1990(3).

(2) Rule 8 shall not apply to any appeal in respect of which notice of appeal has been issued before the coming into force of that rule.

(3) In these Rules, an Order referred to by number means the Order so numbered in the Rules of the Supreme Court 1965(4) and a reference to Appendix A is a reference to Appendix A to those Rules.

(1) 1981 c. 54; section 85 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 36(1).
(2) 1991 c. 34.
(3) 1990 c. 10; section 26AA was inserted by the Planning and Compensation Act 1991 (c. 34), Schedule 3, paragraph 15.
(4) S.I.1965/1776; the relevant amending instruments are S.I. 1967/829, 1970/1861, 1971/1269, 1975/911, 1976/337, 1977/1955, 1978/359, 1979/1542, 1716, 1980/2000, 1982/1111, 1983/1181, 1986/632, 1987/1423, 1989/2427, 1991/531, 1329 and 1884.

Planning and Compensation Act 1991

2. The Arrangement of Orders at the beginning of the Rules of the Supreme Court 1965 shall be amended by inserting after the entry for Order 109 the following new entry—

“110. Environmental Control Proceedings”.

3. For Order 94, rule 12, there shall be substituted the following new rules—

“Applications for leave under section 289(6) of the Town and Country Planning Act 1990(5) and section 65(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990(6)

12.—(1) An application for leave to appeal to the High Court under section 289 of the Town and Country Planning Act 1990 or section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990 shall be made within 28 days after the date on which notice of the decision was given to the applicant.

(2) An application shall—

- (a) include, where necessary, any application to extend the time for applying,
- (b) be in writing setting out the reasons why leave should be granted, and if the time for applying has expired, the reasons why the application was not made within that time,
- (c) be made by filing it in the Crown Office together with the decision, a draft originating notice of motion, and an affidavit verifying any facts relied on,
- (d) before being filed under sub-paragraph (c), be served together with the draft originating notice of motion and a copy of the affidavit to be filed with the application, upon the persons who are referred to in rule 13(5), and
- (e) be accompanied by an affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the application and, if any person who ought to be served has not been served, the affidavit must state that fact and the reason for it.

(3) An application shall be heard—

- (a) by a single judge sitting in open court;
- (b) unless the Court otherwise orders, not less than 21 days after it was filed at the Crown Office.

Any person served with the application shall be entitled to appear and be heard.

(4) If on the hearing of an application the Court is of opinion that any person who ought to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the application may be served on that person.

(5) If the Court grants leave—

- (a) it may impose such terms as to costs and as to giving security as it thinks fit;
- (b) it may give directions; and
- (c) the originating notice of motion by which the appeal is to be brought shall be served and entered within 7 days of the grant.

(5) 1990 c. 8; section 289 was amended by the Planning and Compensation Act 1991 (c. 34), section 6(4) and (5).
(6) 1990 c. 9; section 65 was amended by the Planning and Compensation Act 1991, Schedule 3, paragraph 8.

(6) Any respondent who intends to use an affidavit at the hearing shall file it in the Crown Office and serve a copy thereof on the applicant as soon as is practicable and in any event, unless the Court otherwise allows, at least 2 days before the hearing.

The Court may allow the applicant to use a further affidavit.

Proceedings under sections 289 and 290 of the Town and Country Planning Act 1990 and under section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990

13.—(1) In this rule a reference to “section 65” is a reference to section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990, but, save as aforesaid, a reference to a section by number is a reference to the section so numbered in the Town and Country Planning Act 1990.

(2) An appeal shall lie to the High Court on a point of law against a decision of the Secretary of State under subsection (1) or (2) of section 289 or under subsection (1) of section 65 at the instance of any person or authority entitled to appeal under any of those subsections respectively.

(3) In the case of a decision to which section 290 applies, the person who made the application to which the decision relates, or the local planning authority, if dissatisfied with the decision in point of law, may appeal against the decision to the High Court.

(4) Any appeal under section 289(1) or (2), section 65(1) or section 290, and any case stated under section 289(3) or section 65(2), shall be heard and determined by a single judge unless the Court directs that the matter shall be heard and determined by a Divisional Court.

(5) The persons to be served with notice of the originating motion by which an appeal to the High Court is brought by virtue of section 289(1) or (2), section 65(1) or section 290 are—

- (a) the Secretary of State;
- (b) the local planning authority who served the notice or gave the decision, as the case may be, or, where the appeal is brought by that authority, the appellant or applicant in the proceedings in which the decision appealed against was given;
- (c) in the case of an appeal brought by virtue of section 289(1) or section 65(1), any other person having an interest in the land to which the notice relates, and;
- (d) in the case of an appeal brought by virtue of section 289(2), any other person on whom the notice to which those proceedings related was served.

(6) The Court hearing any such appeal may remit the matter to the Secretary of State to the extent necessary to enable him to provide the Court with such further information in connection with the matter as the Court may direct.

(7) Where the Court is of opinion that the decision appealed against was erroneous in point of law, it shall not set aside or vary that decision but shall remit the matter to the Secretary of State with the opinion of the Court for re-hearing and determination by him.

(8) Order 55, rule 7(5) shall not apply in relation to any such appeal.

(9) The Court may give directions as to the exercise, until an appeal brought by virtue of section 289(1) is finally concluded and any re-hearing and determination by the Secretary of State has taken place, of the power to serve, and institute proceedings (including criminal proceedings) concerning—

- (a) a stop notice under section 183, and;

(b) a breach of condition notice under section 187A(7).”.

4. After Order 109, there shall be inserted the following new Order—

“ORDER 110

ENVIRONMENTAL CONTROL PROCEEDINGS

Injunctions to prevent environmental harm

1.—(1) An injunction under—

- (a) section 187B or 214A of the Town and Country Planning Act 1990(8);
- (b) section 44A of the Planning (Listed Buildings and Conservation Areas) Act 1990(9); or
- (c) section 26AA of the Planning (Hazardous Substances) Act 1990(10) applicant; and in the following provisions of this rule such an injunction against such a person is referred to as “an injunction under paragraph (1)”, and the person against whom it is sought is referred to as “the defendant”.

(2) An applicant for an injunction under paragraph (1) shall, in the originating summons commencing the application, describe the defendant by reference to—

- (a) a photograph,
- (b) a thing belonging to or in the possession of the defendant, or
- (c) any other evidence, the form of originating summons used (which may be in Form No. 8, Form No. 10 or Form No. 11 in Appendix A, as appropriate) shall be modified accordingly.

(3) An applicant for an injunction under paragraph (1) shall file in support of the originating summons evidence by affidavit—

- (a) verifying that he was unable to ascertain, within the time reasonably available to him, the defendant’s identity,
- (b) setting out the action taken to ascertain the defendant’s identity, and
- (c) verifying the means by which the defendant has been described in the originating summons and that the description is the best that the applicant is able to provide.

(4) Paragraph (2) is without prejudice to the power of the Court to make an order for substituted service or dispensing with service.”.

Summary judgment in fraud cases

5. Order 14, rule 1(2)(b) shall be omitted.

Cross examination on assets disclosure affidavit

6. After Order 29, rule 1, there shall be inserted the following new rule—

(7) Section 187A was inserted by the Planning and Compensation Act 1991 (c. 34), section 2.
(8) 1990 c. 8; section 187B was inserted by the Planning and Compensation Act 1991 (c. 34), section 3; and section 214A was inserted by section 23(7) of that Act.
(9) 1990 c. 9; section 44A was inserted by the Planning and Compensation Act 1991 (c. 34), Schedule 3, paragraph 7.
(10) 1990 c. 10; section 26AA was inserted by the Planning and Compensation Act 1991 (c. 34), Schedule 3, paragraph 15.

“Cross-examination on assets disclosure affidavit

1A.—(1) Where—

- (a) the Court has made an order restraining any party from removing from the jurisdiction of the High Court, or otherwise dealing with, any assets,
- (b) that party has in compliance with the order, or any order made in connection with it, filed affidavit evidence as to his or any other assets, and
- (c) the Court has ordered that that party shall be cross-examined on his affidavit, otherwise than before a judge, in which case the cross-examination shall take place before a master or, if a master so orders, before an examiner of the Court.

(2) The following provisions of Order 68 shall apply to across-examination of a kind referred to in paragraph (1)(c) as if it were a trial with witnesses in the Queen’s Bench or Chancery Division and as if the person presiding were the judge—

- (a) rule 1(1) (except the words “unless the judge otherwise directs”); and
- (b) rules 2(2) and (3) and 8.

(3) A cross-examination of a kind referred to in paragraph (1)(c) shall take place in chambers and no transcript or other record of it may be used by any person other than the party being cross-examined for any purpose other than the purpose of the proceedings in which the order for the cross-examination was made, unless and to the extent that that party consents or the Court gives leave.”.

Payments to receivers

7. For Order 30, rule 3, there shall be substituted the following—

“Remuneration of receiver

3.—(1) A person appointed receiver shall be allowed such proper remuneration, if any, as may be authorised by the Court.

(2) The Court may direct that such remuneration shall be—

- (a) fixed by reference to such scales or rates of professional charges as it thinks fit; or
- (b) assessed by a taxing officer.

(3) Where remuneration is assessed by a taxing officer pursuant to a direction under paragraph (2)(b), Order 62, rule 13 shall apply as it applies to an assessment by a master; and an appeal shall lie from the assessment to a judge in chambers under Order 58, rule 1 (where the assessment was by a taxing master) or rule 3 (where the assessment was by a district judge).

(4) In this rule, “taxing officer” means a taxing master or a district judge.”.

Appeals from masters on accounts and inquiries

8. In Order 44, the following shall be substituted for rule 12—

“Appeal against master’s order

12. Subject to Order 58, rule 2, rule 1 of that Order shall apply to an order made pursuant to rule 11 above, save that—

- (a) except where paragraph (e) below applies, the notice referred to in Order 58, rule 1(2) shall state the grounds of the appeal, and must be issued within 14 days after the order is made;

- (b) the hearing shall be in open court unless the Court directs otherwise;
- (c) no fresh evidence (other than evidence as to matters which have occurred after the date of the master’s order) shall be admitted except on special grounds;
- (d) the judge hearing the appeal shall have the same power to draw inferences of fact as has the Court of Appeal under Order 59, rule 10(3);
- (e) if the order is to be acted on by the Accountant-General or is an order passing a receiver’s account, notice of appeal must be issued not later than two clear days after the making of the order and, where the order is to be acted on by the Accountant-General, a copy of it must be served on the Accountant-General as soon as practicable after it is made.”.

9. In Order 58, rule 2, the following shall be substituted for paragraph (b)—

“(b) on an assessment of damages or of the value of goods under Order 37 or otherwise, or an assessment of interest; paragraph (b) includes or involves a determination of any other matter, an appeal shall lie to the Court of Appeal in relation to such othermatter.”.

Penal notices

10. For Order 45, rule 7(4) there shall be substituted the following—

“(4) There must be prominently displayed on the front of the copy of an order served under this rule a warning to the person on whom the copy is served that disobedience to the order would be a contempt of court punishable by imprisonment, or (in the case of an order requiring a body corporate to do or abstain from doing an act) punishable by sequestration of the assets of the body corporate and by imprisonment of any individual responsible.”.

Collection of court fees

11. At the end of Order 62, rule 11(7) there shall be inserted (on a newline) the following—

“The power of the Court under this paragraph may be exercised by a taxing officer and rule 28(5) shall apply to an order made by a taxing officer under this paragraph as it applies to a decision made by a taxing officer.”.

Costs

12. Order 62, rule 18(3) shall be amended by substituting, for the sum “£8.00”, the sum “£8.25”.

13. Appendix 3 to Order 62 shall be amended as follows—

(1) For Table A (Basic Costs) in Part I there shall be substituted the following Table—

“A. Basic Costs

	Amount to be allowed in cases under following sub-paragraphs of paragraph 1 of this Appendix		
	(a) £p	(b) £p	(c) £p
If the amount recovered is— not less than £600 but less than £2,000—			
(i) where the writ was served by post	55.00	72.50	127.75

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	(a) £p	Amount to be allowed in cases under following sub-paragraphs of paragraph 1 of this Appendix	
		(b) £p	(c) £p
(ii) where the writ was served on the defendant personally not less than £2,000 but less than £3,000—	62.00	78.25	133.50
(i) where the writ was served by post	62.00	80.25	133.50
(ii) where the writ was served on the defendant personally not less than £3,000	68.00	85.00	140.00
	80.25	116.00	165.25”

(2) Table B (Additional costs) in Part I shall be amended by substituting, for the figures shown in columns (i) and (ii), the following figures—

	(i)	(ii)
(1)	8.50	11.00
(2)	20.00	43.00
(3)(a)	31.00	55.00
(b)	36.50	62.00
(4)	14.50	16.50
(5)	14.50	16.50
(6)	11.00	20.00

(3) Part III, paragraph 1 shall be amended by substituting, for the sum of “£7.50”, the sum of “£7.75”.

(4) Part III, paragraph 2 shall be amended by substituting, for the sum of “£30.50”, the sum of “£31.50”.

(5) Part III, paragraph 3 shall be amended as follows—

(a) for the sum of “ £18.25” in sub-paragraph (a) there shall be substituted the sum of “£18.75”;

(b) for the table “Basic Costs” in sub-paragraph (b) there shall be substituted the following table—

“(i) Basic Costs

If the amount recovered by the applicant from the garnishee is—

less than £150.00..one half of the amount recovered

not less than £150.00£79.50”;

(c) for the sum of “£14.00” in the table “Additional costs” in sub-paragraph (b) there shall be substituted the sum of “£14.50”;

(6) Part III, paragraph 4 shall be amended by substituting, for the sums of “£86.50” and “£14.00”, the sums of “£89.00” and “£14.50”.

(7) Part III, paragraph 5 shall be amended by substituting, for the sums of “£33.25” and “£2.15”, the sums of “£34.25” and “£2.25”.

(8) Part III, paragraph 6 shall be amended by substituting, for the sum of “£40.50”, the sum of “£41.75”.

Exercise of power under section 50 Administration of Justice Act 1985(11) to be noted on original grant of representation

14. After Order 93, rule 20(4), there shall be inserted the following new paragraph—

“(5) On the hearing of an application under the said section 50 the personal representative shall produce to the Court the grant of representation to the deceased’s estate and, if an order is made under the said section, the grant (together with a sealed copy of the order) shall be sent to and remain in the custody of the principal registry of the Family Division until a memorandum of the order has been endorsed on or permanently annexed to the grant.”.

Judgment under Order 14 — Form No. 44

15. Form No. 44 in Appendix A shall be amended by substituting, for the words “and costs to be taxed” (in the first and second places where they occur), the words “and costs [in the assessment] or as may be according to the Court’s order.”.

Miscellaneous amendments

16. Order 41, rule 10(2) shall be omitted.

17. Order 68, rule 6 shall be amended by substituting, for the words “Order 50, rule 9A”, the words “Order 50, rule 9B”.

18. Order 97, rule 11(1) shall be amended by substituting for “section 63(3) or (4)”, “section 63(4)”.

19. Order 97, rule 13 shall be amended by omitting the words “, whether for the purposes of section 37(2) or of section 63 of that Act.”.

20. Order 99, rule 11 shall be revoked.

Mackay of Clashfern, C.,

Donaldson of Lymington, M.R.,

Stephen Brown, P.,

Donald Nicholls, V-C.,

Leggatt, L.J.,

Millett, J.,

Phillips, J.,

Hugh Bennett.,

C. R. Berry.,

Dated 10th March 1992

C. B. Chandler.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Rules)

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

- (a) pursuant to provisions of the Planning and Compensation Act 1991, to require leave to appeal to the High Court in some cases, to give the High Court and Court of Appeal powers to give certain directions in some such cases, pending the final determination of an appeal, and to enable injunctions to be granted in certain cases against persons whose identities are unknown to those applying for them (rules 2 to 4)—
- (b) to alter references to provisions of the Town and Country Planning Act 1971 (c. 78) which have been replaced by provisions of the Town and Country Planning Act 1990 (c. 8) and the Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9) (rule 3) —
- (c) to allow summary judgment to be given in civil actions for fraud (rule 5) —
- (d) to enable a cross-examination on a (Mareva) assets disclosure affidavit to be held before a master or examiner of the Court (rule 6) —
- (e) to enable payments to receivers to be assessed by a taxing master with an appeal to a judge in chambers (rule 7) —
- (f) to provide for appeals from masters on assessments of damages and related matters to lie to the Court of Appeal (rules 8 and 9) —
- (g) to clarify the provisions as to penal notices on injunctions (rule 10) —
- (h) to allow taxing masters to exercise the power of the Court to require legal representatives personally to pay court fees, with an appeal to a judge in chambers (rule 11) —
- (i) to increase the costs allowed to a litigant in person and the fixed costs recoverable under Appendix 3 to Order 62 (rules 12 and 13) —
- (j) to provide for grants of representation to be endorsed where the Court exercises its power under section 50 of the Administration of Justice Act 1985 to appoint a substitute for, or to remove, a personal representative (rule 14) —
- (k) to amend the form of judgment in Order 14 proceedings (Form No. 44) by removing the reference to “costs to be taxed” so that the making of the order for costs will normally be delayed until after the damages are assessed (rule 15) —
- (l) to make some miscellaneous amendments removing obsolete provisions and making a minor correction (rules 16 to 20).