
STATUTORY INSTRUMENTS

1994 No. 1975 (L.10)

SUPREME COURT OF ENGLAND AND WALES

The Rules of the Supreme Court (Amendment) 1994

Made - - - - *18th July 1994*
Laid before Parliament *28th July 1994*
Coming into force - - *1st September 1994*

We, the Supreme Court Rule Committee, having power under section 85 of the Supreme Court Act 1981(1) to make rules of court under sections 51(2) and 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 and interpretation

1. These Rules may be cited as the Rules of the Supreme Court (Amendment) 1994 and shall come into force on 1st September 1994.
2. In these Rules, an Order referred to by number means the Order so numbered in the Rules of the Supreme Court 1965(3) and Appendix A means Appendix A to those Rules.

Duration of writ

3. In Order 6, rule 8(1)(b), after the words “Order 11” there shall be inserted the words “or Order 75, rule 4”.

Derivative actions

4. After Order 15, rule 12 there shall be inserted the following new rule—

“Derivative actions

12A.—(1) This rule applies to every action begun by writ by one or more shareholders of a company where the cause of action is vested in the company and relief is accordingly sought on its behalf (referred to in this rule as a “derivative action”).

(1) 1981 c. 54; section 85 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 36(1).
(2) Section 51 was substituted by the Courts and Legal Services Act 1990, section 4.
(3) S.I.1965/1776; the relevant amending instruments are S.I. 1969/1894; 1971/1269; 1972/813; 1972/1194; 1972/1898; 1975/911; 1976/337; 1979/522; 1979/1716; 1980/2000; 1982/1111; 1982/1786; 1983/1181; 1984/1051; 1985/69; 1986/632; 1987/1423; 1988/1340; 1989/177; 1989/1307; 1990/2599; 1991/1531 and 1993/2133.

(2) Where a defendant in a derivative action has given notice of intention to defend, the plaintiff must apply to the Court for leave to continue the action.

(3) The application must be supported by an affidavit verifying the facts on which the claim and the entitlement to sue on behalf of the company are based.

(4) Unless the Court otherwise orders, the application must be issued within 21 days after the relevant date, and must be served, together with the affidavit in support and any exhibits to the affidavit, not less than 10 clear days before the return day on all defendants who have given notice of intention to defend; any defendant so served may show cause against the application by affidavit or otherwise.

(5) In paragraph (4), “the relevant date” means the later of–

- (a) the date of service of the statement of claim;
- (b) the date when notice of intention to defend was given (provided that, where more than one notice of intention to defend is given, that date shall be the date when the first notice was given).

(6) Nothing in this rule shall prevent the plaintiff from applying for interlocutory relief pending the determination of an application for leave to continue the action.

(7) In a derivative action, Order 18, rule 2(1) (time for service of defence) shall not have effect unless the Court grants leave to continue the action and, in that case, shall have effect as if it required the defendant to serve a defence within 14 days after the order giving leave to continue, or within such other period as the Court may specify.

(8) On the hearing of the application under paragraph (2), the Court may–

- (a) grant leave to continue the action, for such period and upon such terms as the Court may think fit;
- (b) subject to paragraph (11), dismiss the action;
- (c) adjourn the application and give such directions as to joinder of parties, the filing of further evidence, discovery, cross-examination of deponents and otherwise as it may consider expedient.

(9) If the plaintiff does not apply for leave to continue the action as required by paragraph (2) within the time laid down in paragraph (4), any defendant who has given notice of intention to defend may apply for an order to dismiss the action or any claim made in it by way of derivative action.

(10) On the hearing of such an application for dismissal, the Court may–

- (a) subject to paragraph (11), dismiss the action;
- (b) if the plaintiff so requests, grant the plaintiff (on such terms as to costs or otherwise as the Court may think fit) an extension of time to apply for leave to continue the action; or
- (c) make such other order as may in the circumstances be appropriate.

(11) Where only part of the relief claimed in the action is sought on behalf of the company, the Court may dismiss the claim for that part of the relief under paragraphs (8) and (10), without prejudice to the plaintiff’s right to continue the action as to the remainder of the relief, and Order 18, rule 2(1) shall apply as modified by paragraph (7).

(12) If there is a material change in circumstances after the Court has given leave to the plaintiff to continue the action in pursuance of an application under paragraph (2), any defendant who has given notice of intention to defend may make an application supported by affidavit requiring the plaintiff to show cause why the Court should not dismiss the action or any claim made in it by way of derivative action. On such application the Court shall have the same powers as it would have had upon an application under paragraph (2).

(13) The plaintiff may include in an application under paragraph (2) an application for an indemnity out of the assets of the company in respect of costs incurred or to be incurred in the action and the Court may grant such indemnity upon such terms as may in the circumstances be appropriate.

(14) So far as possible, any application under paragraph (13) and any application by the plaintiff under Order 14 shall be made so as to be heard at the same time as the application under paragraph (2).”.

5. At the end of Order 18, rule 2, there shall be inserted the following new paragraph—

“(4) Paragraph (1) is subject to the provisions of Order 15, rule 12A(7) (derivative actions).”.

Payment into Court to await the outcome of an action

6. In Order 22, at the end of rule 8, there shall be inserted the following new paragraph—

“(4) If the Court so orders, paragraph (3) shall apply, with the necessary modifications, where a party has paid money to another person to abide the outcome of the action.”.

Service of summons

7. For Order 32, rule 3, there shall be substituted the following—

“3.—(1) A summons asking only for the extension or abridgment of any period of time may be served on the day before the day specified in the summons for the hearing of the application.

(2) Except as provided by paragraph (1), and unless the court otherwise orders or any of these rules otherwise provides—

- (a) a summons must be served on every other party not less than two days before the day specified in the summons for the hearing of the application;
- (b) it must be so served within 14 days of its issue; and
- (c) any evidence relied on in support of the application must be served with the summons.”.

Prescribed hourly rate

8. For Order 62, rule 17(4), there shall be substituted the following—

“(4) This rule and the provisions contained in Appendix 2 to this Order shall not apply to the extent that regulations made under the Legal Aid Act 1988(4) determine the amount of costs payable to legal representatives in relation to proceedings to which this Order applies.”.

Notice of change of solicitor

9. Order 67, rule 1 shall be amended as follows—

(1) in paragraph (3), for the words, “The party giving the notice” there shall be substituted “The new solicitor”; and

(2) in paragraph (4), for the words “The party giving the notice” there shall be substituted “The party on whose behalf notice has been given”.

Service out of the jurisdiction in arbitration proceedings

10. In Order 73, rule 7(3), for the words “5, 6 and 8” there shall be substituted “5 to 8”.

Attachment of debts due from Crown

11. Order 32 shall be amended as follows—

(1) in rule 11(1)(d), for the words “and Order 51, rule 2” there shall be substituted “, Order 51, rule 2 and Order 77, rule 16”; and

(2) in rule 14(1)(d), for the words “and Order 51, rule 2” there shall be substituted “, Order 51, rule 2 and Order 77, rule 16”.

12. In Order 77, rule 16, after paragraph (2B) there shall be inserted the following new paragraph—

“(2C) A master, the Admiralty Registrar and a district judge of the Family Division shall have power to hear an application under paragraph (2).”.

Defamation

13. Order 82 shall be amended as follows—

(1) in rule 3—

(a) after paragraph (2) there shall be inserted the following new paragraphs—

“(2A) Without prejudice to Order 18, rule 8, but subject to paragraph (2B), where the defendant makes an allegation as described in paragraph (2), the plaintiff shall serve a reply specifically admitting or denying any such allegation raised by the defendant and specifying any fact or matter upon which he relies in opposition to the defendant’s allegations.

(2B) No reply shall be required under paragraph (2A) where all the facts or matters on which the plaintiff intends to rely in opposition to the defendant’s allegations as described in paragraph (2) are already particularised elsewhere in the pleadings.”;

(b) after paragraph (3) there shall be inserted the following new paragraph—

“(3A) Without prejudice to Order 18, rule 12, the plaintiff must give full particulars in the statement of claim of the facts and matters on which he relies in support of his claim for damages, including details of any conduct by the defendant which it is alleged has increased the loss suffered and of any loss which is peculiar to the plaintiff’s own circumstances.”;

(2) after rule 3 there shall be inserted the following new rule—

“Ruling on meaning

3A.—(1) At any time after service of the statement of claim either party may apply to a judge in chambers for an order determining whether or not the words complained of are capable of bearing a particular meaning or meanings attributed to them in the pleadings.

(2) If it appears to the judge on the hearing of an application under paragraph (1) that none of the words complained of are capable of bearing the meaning or meanings attributed to them in the pleadings, he may dismiss the claim or make such other order or give such judgment in the proceedings as may be just.

(3) Subject to paragraph (4), each party to the proceedings may make only one application under paragraph (1).

(4) Where a party has made an application under paragraph (1) and the respondent to that application subsequently amends his pleadings to allege a new meaning, the Court may

allow the other party to make a further application under paragraph (1) in relation to that new meaning.

(5) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the plaintiff and the party against whom it is made the defendant, and as if the counterclaim were the statement of claim.”.

14. In Order 59, rule 1A(6), at the end of sub-paragraph (gg), for “paragraph 5(c).” there shall be substituted the following–

“paragraph 5(c);

(hh) an order made on an application under Order 82, rule 3A.”.

Applications with respect to funds in court

15. In Order 92, rule 5(3), for the figure “£5,000” there shall be substituted the figure “£15,000”.

Proceedings relating to solicitors

16. Order 106 shall be amended as follows–

(1) in rule 2–

(a) paragraph (1) shall be omitted;

(b) in paragraph (2)–

(i) for the words “In the Queen’s Bench Division and the Family Division the” there shall be substituted “The”;

(ii) in sub-paragraph (b), for the word “registrar” there shall be substituted “district judge”; and

(iii) in sub-paragraph (c), for the words “district registrar” and “registrar” there shall be substituted “district judge”;

(2) in rule 3, at the end of paragraph (2) there shall be inserted the words “or a summons in the proceedings to which the application relates”;

(3) rule 4 shall be omitted; and

(4) for rule 5 there shall be substituted the following–

“Where an application under the Act or an application for an order under rule 3 is made by way of originating summons, the originating summons shall be in Form No. 10 in Appendix A.”.

Miscellaneous amendments

17. In Order 32, rule 7(1), after the words “Central Office”, there shall be inserted “, Chancery Chambers”.

18. Order 41, rule 5(1) shall be amended as follows–

(1) at the end of sub-paragraph (b), there shall be inserted the words “and 4(1A)”;

(2) after sub-paragraph (b), there shall be inserted the following new sub-paragraph–

“(ba) Order 88, rule 5(2A);”.

19. In Order 86, after rule 4(1), there shall be inserted the following new paragraph–

“(1A) Unless the Court otherwise orders, an affidavit for the purposes of paragraph (1) may contain statements of information or belief with the sources and grounds thereof.”.

20. Order 92, rule 3 shall be omitted.

21. Order 93 shall be amended as follows–

(1) rules 3, 7, 8, 10(2)(a), (i) and (k) and 14 shall be omitted;

(2) in rule 11–

(a) in the heading, the words “7 or” shall be omitted; and

(b) for paragraph (1), there shall be substituted the following–

“(1) An application to the judge for leave to appeal to the High Court against a direction of the Commissioner under section 17(3) of the Industrial Assurance Act 1923⁽⁵⁾ must be made within 21 days after the date of the Commissioner’s refusal or direction.”;

(3) in rule 12(1)–

(a) at the end of sub–paragraph (c), there shall be inserted the word “or”; and

(b) sub–paragraph (d) shall be omitted;

(4) in rule 18, in the heading and paragraph (1), for the words “section 16 of the Civil Aviation Act 1968⁽⁶⁾”, there shall be substituted “section 86 of the Civil Aviation Act 1982⁽⁷⁾”.

22. Order 108 shall be amended as follows–

(1) in the title and rule 1(1), for the words “Charities Act 1960⁽⁸⁾” there shall be substituted “Charities Act 1993⁽⁹⁾”;

(2) in rule 3–

(a) in paragraph (1), for the words “section 18(11)” there shall be substituted “section 16(13)”; and

(b) in paragraph (2), for the words “section 28(5)” there shall be substituted “section 33(5)”;

(3) in rule 4–

(a) in the title, after the word “order” there shall be inserted “or direction”;

(b) for the words “section 41” there shall be inserted “section 88”.

23. Form No. 111 in Appendix A shall be amended as follows–

(1) paragraph 4 shall be omitted; and

(2) paragraph 5 shall be re–numbered paragraph 4.

The Rules of the Supreme Court (Non–Contentious Probate Costs) 1956

24. The Rules of the Supreme Court (Non–Contentious Probate Costs) 1956⁽¹⁰⁾ shall be revoked.

Transitional provisions

25. Rules 3 and 4 shall not apply to any action commenced before the coming into force of these Rules.

26. Rule 7 shall not apply to any summons issued before the coming into force of these Rules.

(5) 1923 c. 8.
(6) 1968 c. 61.
(7) 1982 c. 10.
(8) 1960 c. 58.
(9) 1993 c. 10.
(10) S.I. 1956/552.

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Dated 18th July 1994

EXPLANATORY NOTE

(This note is not part of the Rules)

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

(1) rule 3 extends the period of validity of a writ in personam in admiralty proceedings served out of the jurisdiction with leave of the Court from 4 to 6 months;

(2) rule 4 inserts a new procedure in relation to derivative actions under which the plaintiff must apply for leave to continue the action if notice to defend is given;

(3) rule 6 allows a defendant to appropriate money paid to a third person to abide the outcome of the action towards a claim in the writ;

(4) rule 7 requires a party who issues a summons for an application in chambers to serve the summons and any evidence in support on the other party within 14 days of its issue;

(5) rule 8 disapplies the usual provisions relating to costs that may be recovered in cases where regulations under the Legal Aid Act 1988 determine the relevant amounts;

(6) rule 9 provides that notice of a change of solicitor must be served by the new solicitor, rather than by the litigant himself;

(7) rule 10 extends the application of the provisions dealing with the service of a writ on a foreign state to proceedings under the Arbitration Act 1950 (c. 27) and the Arbitration Act 1979 (c. 42);

(8) rules 11 and 12 permit Masters of the Queen’s Bench and Chancery Divisions and District Judges of the Family Division to make orders under section 27(1) of the Crown Proceedings Act 1948 (c. 44) to attach debts due from the Crown;

(9) rule 13 provides that in relation to defamation proceedings—

- (a) the plaintiff must serve a reply where the defendant pleads justification or fair comment;
- (b) either party may apply for a preliminary ruling on meaning;
- (c) the plaintiff must plead in greater detail matters relied on in support of his claim for damages;

(10) rule 15 amends the provisions relating to an application for payment or transfer out of funds in court; the maximum amount of funds which may be the subject of an ex parte application is increased from £5,000 to £15,000;

(11) rule 16 unifies the procedure in the three Divisions of the High Court in relation to applications under Part III of the Solicitors Act 1974 (c. 47);

(12) rule 17 provides that a subpoena relating to proceedings in chambers may be issued out of Chancery Chambers;

(13) rule 18 makes a consequential amendment to the rule relating to the contents of an affidavit;

(14) rule 19 provides that an affidavit in support of an application for summary judgment under Order 86 (specific performance and certain other claims) may contain statements of information and belief;

(15) rules 20 to 22 contain amendments consequential on the repeal of various enactments;

(16) rule 23 removes a tautologous provision in Form No. 111;

(17) rule 24 revokes the Rules of the Supreme Court (Non-Contentious Probate Costs) 1956.

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