
STATUTORY INSTRUMENTS

1995 No. 2206 (L.9)

SUPREME COURT OF ENGLAND AND WALES

The Rules of the Supreme Court (Amendment) 1995

<i>Made</i>	- - - -	<i>18th August 1995</i>
<i>Laid before Parliament</i>		<i>24th August 1995</i>
<i>Coming into force</i>		
<i>Rules 52 and 53</i>		<i>1st December 1995</i>
<i>Remainder</i>		<i>1st October 1995</i>

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 18(2), 51(3) 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.—(1) These Rules may be cited as the Rules of the Supreme Court (Amendment) 1995.
- (2) These Rules shall come into force on 1st October 1995, except for rules 52 and 53 which shall come into force on 1st December 1995.
2. In these Rules, an Order referred to by number means the Order so numbered in the Rules of the Supreme Court 1965(4) and Appendix A means Appendix A to those Rules.

PART 1

REVENUE PROCEEDINGS

3. After Order 59, rule 24(5), there shall be inserted the following new rule—

(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 18 was amended by the Children Act 1989 (c. 41), Schedule 13 and by the Courts and Legal Services Act 1990 (c. 41), sections 7(2) and 125(7) and Schedule 13 to that Act.
(3) Section 51 was substituted by the Courts and Legal Services Act 1990, section 4.
(4) S.I. 1965/1776; the relevant amending instruments are S.I. 1967/1809; 1969/1894; 1971/1269 and 1955; 1972/813 and 1898; 1975/911; 1976/1196; 1977/1955; 1978/251 and 359; 1979/1716; 1980/1010, 1982/1111 and 1786; 1983/1811; 1984/1051; 1985/69; 1986/632, 1187, 1908 and 2289; 1987/1423; 1988/298; 1989/386, 1307 and 2427; 1990/492 and 2599; 1991/1329 and 1884; 1992/638 and 1907 and 1993/2133 and 2760.
(5) Order 59, rule 24 was inserted by S.I. 1993/2760.

“Appeals from Special Commissioners

25.—(1) An application to the Court of Appeal for leave to appeal from the Special Commissioners direct to that court under section 56A of the Taxes Management Act 1970(6) shall be made within 28 days from the date on which the Special Commissioners certify that their decision involves a point of law relating wholly or mainly to the construction of an enactment which was fully argued before them and fully considered by them.

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

(3) 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 applicant shall within 14 days after such notification serve the notice of appeal on the Clerk to the Special Commissioners as well as on all parties directly affected by the proceedings before the Special Commissioners;
- (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.”.

4. Order 61, rule 4 shall be omitted.

5. Order 91 shall be amended as follows—

(a) for rule 1 there shall be substituted the following—

“1. The following proceedings, namely—

- (a) any case stated for the opinion of the High Court under—
 - (i) section 13 of the Stamp Act 1891(7), or
 - (ii) section 705A of the Income and Coporation Taxes Act 1988(8), or
 - (iii) regulation 22 of the General Commissioners (Jurisdiction and Procedure) Regulations 1994(9);
- (b) any appeal to the High Court under—
 - (i) section 53(10), 56A or 100C(4)(11) of the Taxes Management Act 1970, or
 - (ii) section 222(3), 225, 249(3) or 251 of the Inheritance Tax Act 1984(12), or
 - (iii) regulation 8(3) or 10 of the Stamp Duty Reserve Tax Regulations 1986(13);
- (c) any application for leave to appeal under the said section 222(3) or the said regulation 8(3); and

(6) 1970 c. 9; section 56A was inserted by paragraph 7 of Schedule 22 to the Finance Act 1984 (c. 43) and was substituted by paragraph 11 of Schedule 1 to S.I. 1994/1813.

(7) 1891 c. 39; section 13 was amended by Schedule 3 to the Administration of Justice (Miscellaneous Provisions) Act 1933 (c. 36).

(8) 1988 c. 1; section 705A was inserted by paragraph 24 of Schedule 1 to S.I. 1994/1813.

(9) S.I. 1994/1812.

(10) Section 53 was substituted by paragraph 8 of Schedule 1 to S.I. 1994/1813.

(11) Section 100C(4) was substituted by section 167 of the Finance Act 1989 (c. 26).

(12) 1984 c. 51; section 225 was substituted by paragraph 21 and section 251 by paragraph 22 of Schedule 1 to S.I. 1994/1813.

(13) S.I. 1986/1711, amended by S.I. 1988/835, 1989/1301, 1991/724, 1992/3287, 1993/3110 and 1994/1813. Regulation 8 was amended by paragraph 28 of Schedule 1 to S.I. 1994/1813 and regulation 10 was substituted by paragraph 29 of that Schedule.

- (d) proceedings to which the provisions of section 56A of the Taxes Management Act 1970 apply under any enactment or regulation, shall be assigned to the Chancery Division and heard and determined by a single judge.”;
- (b) for rule 3(1) there shall be substituted the following—
- “(1) At any time after a case stated under section 705A of the Income and Corporation Taxes Act 1988 or regulation 22 of the General Commissioners (Jurisdiction and Procedure) Regulations 1994 has been filed in Chancery Chambers either party may set down the case for a hearing.”;
- (c) in rule 5(1), for “section 249(3) or 251(2) of the Inheritance Tax Act 1984” there shall be substituted “section 249(3) or 251 of the Inheritance Tax Act 1984”;
- (d) after rule 5 there shall be inserted the following new rule—

“Appeals under section 56A of the Taxes Management Act 1970, section 225 of the Inheritance Tax Act 1984 and regulation 10 of the Stamp Duty Reserve Tax Regulations 1986

5A.—(1) This rule applies to appeals under section 56A of the Taxes Management Act 1970, section 225 of the Inheritance Tax Act 1984 and regulation 10 of the Stamp Duty Reserve Tax Regulations 1986.

(2) The notice of motion by which such an appeal is brought must be issued out of Chancery Chambers.

(3) Order 55, rule 3(2) shall apply in relation to the notice of motion as if the decision or determination appealed against were the decision of a court.

(4) Order 55, rule 4(2) shall apply in relation to such an appeal as if for the period of 28 days specified in that rule there were substituted a period of 56 days, except where the appeal is made following the refusal of the Special Commissioners to issue a certificate under section 56A(2)(b) of the Taxes Management Act 1970 or the refusal of leave to appeal to the Court of Appeal under section 56A(2)(c) of that Act.

(5) Where the appeal is made following the refusal of the Special Commissioners to issue a certificate under section 56A(2)(b) of the Taxes Management Act 1970, the period of 28 days specified in Order 55, rule 4(2) shall be calculated from the date of the release of the decision of the Special Commissioners containing the refusal.

(6) Where the appeal is made following the refusal of leave to Court of Appeal under section 56A(2)(c) of the Taxes Management Act 1970, the period of 28 days specified in Order 55, rule 4(2) shall be calculated from the date when leave is refused.

(7) Order 57 shall not apply to proceedings to which this rule applies.”;

- (e) for rule 6(3) there shall be substituted the following—

“(3) Order 55, rule 4(2) shall apply in relation to any such appeal as if for the period of 28 days specified in that rule there were substituted a period of 56 days, except where the appeal is made following the refusal of the Value Added Tax Tribunal to grant a certificate under article 2(b) of the Value Added Tax Tribunal Appeals Order 1986(14).

(3A) Where the tribunal has refused to grant a certificate under article 2(b) of the Value Added Tax Tribunal Appeals Order 1986, the 28 days period mentioned in Order 55, rule 4(2) shall be calculated from the date of the release of the decision of the tribunal containing the refusal.”.

Transitional provisions

6.—(1) Rules 3 to 5 apply only to proceedings to which the Special Commissioners (Jurisdiction and Procedure) Regulations 1994(15) or the General Commissioners (Jurisdiction and Procedure) Regulations 1994 apply.

(2) Rule 3 shall not apply to any proceedings in which the Special Commissioners' certificate issued under section 56A(2)(b) of the Taxes Management Act 1970 is issued before the date on which these Rules come into force.

(3) Rule 5(e) shall apply to all proceedings in which the decision of the tribunal is made on or after the date on which these Rules come into force.

PART 2

LEAVE TO APPEAL

7. Order 58, rule 2 (appeals from certain decisions of Masters, etc. to the Court of Appeal) shall be amended as follows—

- (a) after the words “An appeal shall lie” there shall be inserted “with leave”;
- (b) the text of Order 58, rule 2 (as amended by paragraph (a)) shall stand as paragraph (1) of that rule and, after it, there shall be inserted the following new paragraph—

“(2) Leave to appeal to the Court of Appeal may be given by the Master from whose judgment, order or decision the appeal is sought or by the Court of Appeal.”.

8. Order 59, rule 1B (classes of case where leave to appeal is required) shall be amended as follows—

- (a) in paragraph (1)—
 - (i) in sub-paragraph (c), the words from “except in proceedings” to the end shall be omitted;
 - (ii) sub-paragraphs (f)(ii) and (iii) shall be omitted;
 - (iii) after sub-paragraph (f) there shall be inserted the following new sub-paragraphs—
 - “(g) an order made on an appeal to a judge from any order of a Master, the Admiralty Registrar or a District Judge of the Family Division or a District Registry;
 - (h) orders under section 42(1) of the Supreme Court Act 1981(16) (restriction of vexatious legal proceedings);
 - (i) orders relating to—
 - (i) the existence, position, form, extent or course of a boundary; or
 - (ii) the existence or terms of an easement.”;

- (b) for paragraph (2) there shall be substituted the following—

“(2) In this rule, ‘order’ includes a judgment, decree, decision or direction.”.

9. Rules 7 and 8 shall apply regardless of when the order which is sought to be appealed was made, except where an appeal against that order was set down or an application in respect of that order was lodged before the date on which these Rules come into force.

(15) S.I. 1994/1811.

(16) 1981 c. 54; section 42 was amended by section 24 of the Prosecution of Offences Act 1985 (c. 23).

PART 3

CONDITIONAL FEES

10. Order 62 shall be amended in accordance with rules 11 to 14 and in those rules a reference to a rule by number means the rule so numbered in Order 62.

11. For rule 15(1), there shall be substituted the following—

“(1) This rule applies to every taxation of a solicitor’s bill to his own client except—

- (a) a bill which is to be paid out of the legal aid fund under the Legal Aid Act 1988(17); or
- (b) where the solicitor and his client have entered into a conditional fee agreement as defined by section 58 of the Courts and Legal Services Act 1990(18).”.

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

“Conditional fee agreements

15A.—(1) This rule applies to every taxation of a solicitor’s bill to his own client where the solicitor and his client have entered into a conditional fee agreement as defined by section 58 of the Courts and Legal Services Act 1990.

(2) In this rule—

- (a) ‘the base costs’ means the costs other than a percentage increase;
- (b) ‘percentage increase’ means a percentage increase pursuant to a conditional fee agreement entered into between the solicitor and his client or, as the case may be, between counsel and the solicitor.

(3) On a taxation to which this rule applies, the client may apply for taxation of either the base costs or a percentage increase, or of both.

(4) Where the client applies for taxation of a percentage increase, he—

- (a) may give reasons why the percentage increase should be reduced; and
- (b) may state what he believes the percentage increase should be.

(5) On a taxation to which this rule applies—

- (a) where the client applies for taxation of the base costs, the base costs shall be taxed on an indemnity basis as if the solicitor and his client had not entered into a conditional fee agreement and rule 15(2) shall apply to the taxation of the base costs;
- (b) where the client applies for taxation of a percentage increase, the percentage increase may be reduced where it is disproportionate having regard to all relevant factors, including—
 - (i) the risk that the circumstances in which the fees or expenses would be payable might not occur;
 - (ii) the disadvantages relating to the absence of payments on account;
 - (iii) whether the amount which might be payable under the conditional fee agreement is limited to a certain proportion of any damages recovered by the client;

(17) 1988 c. 34.

(18) 1990 c. 41.

(iv) whether there is a conditional fee agreement between the solicitor and counsel.

(6) A percentage increase may be reduced notwithstanding that it does not exceed the maximum percentage permissible pursuant to section 58(2) of the Courts and Legal Services Act 1990.

(7) When considering the factors mentioned in paragraph (5)(b)(i) and (ii), the taxing officer shall have regard to the risk or disadvantages (as the case may be) as they reasonably appeared to the solicitor or counsel when the conditional fee agreement was entered into or at the time of any variation of the agreement.

(8) Taxations under this rule may be carried out only by a taxing master or district judge.”.

13. In rule 16(2) (costs payable where money is claimed by or on behalf of a minor or a patient)—

(a) for “paragraphs (1) and (2) of rule 15”, there shall be substituted “rule 15(1) and (2) or (if applicable) rule 15A”, and

(b) for “paragraph (3) of that rule”, there shall be substituted “rule 15(3)”.

14. At the end of rule 29(7) (documents to be lodged on taxation) there shall be inserted the following—

“(e) on a taxation to which rule 15A applies, a copy of any relevant conditional fee agreement.”.

PART 4

DRUG TRAFFICKING ACT 1994⁽¹⁹⁾

15. Order 115 shall be amended in accordance with rules 16 to 34 below, and in those rules a reference to a rule by number means the rule so numbered in Order 115.

16. The title of Part I of Order 115 shall be amended by substituting, for “Drug Trafficking Offences Act 1986⁽²⁰⁾”, “Drug Trafficking Act 1994”.

17. In rule 1(1), for “Drug Trafficking Offences Act 1986” there shall be substituted “Drug Trafficking Act 1994”.

18. After rule 2 there shall be inserted the following new rules—

“Title of proceedings

2A. An originating process under this Part of this Order 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.

Application for confiscation order

2B.—(1) An application by the prosecutor for a confiscation order under section 19 shall be made by summons, where there have been proceedings against the defendant in the High Court, and shall otherwise be made by originating motion.

(2) The application shall be supported by an affidavit giving full particulars of the following matters—

⁽¹⁹⁾
⁽²⁰⁾ 1986 c. 32.

1994 c. 37.

- (a) the grounds for believing that the defendant has died or absconded;
- (b) the date or approximate date on which the defendant died or absconded;
- (c) where the application is made under section 19(2), the offence or offences of which the defendant was convicted, and the date and place of conviction;
- (d) where the application is made under section 19(4), the proceedings which have been initiated against the defendant (including particulars of the offence and the date and place of institution of those proceedings); and
- (e) where the defendant is alleged to have absconded, the steps taken to contact him.

(3) The prosecutor's statement under section 11 shall be exhibited to the affidavit and shall include the following particulars—

- (a) the name of the defendant;
- (b) the name of the person by whom the statement is given;
- (c) such information known to the prosecutor as is relevant to the determination whether the defendant has benefited from drug trafficking and to the assessment of the value of his proceeds of drug trafficking.

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

(5) The application and the affidavit in support shall be served not less than 7 days before the date fixed for the hearing of the application on—

- (a) the defendant (or on the personal representatives of a deceased defendant);
- (b) any person who the prosecutor reasonably believes is likely to be affected by the making of a confiscation order; and
- (c) the receiver, where one has been appointed in the matter.”.

19. Rule 3 shall be amended as follows—

- (a) in paragraph (1), for “section 8” and “section 9” there shall be substituted “section 26” and “section 27” respectively;
- (b) for paragraph (2) there shall be substituted the following—

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

 - (a) give the grounds for the application; and
 - (b) 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.”;
- (c) paragraph (3) shall be omitted; and
- (d) paragraph (4) shall be re-numbered paragraph (3).

20. At the end of rule 5 there shall be inserted the following new paragraph—

“(4) The Court may also discharge a restraint order or a charging order upon receiving notice from the prosecutor that it is no longer appropriate for the restraint order or the charging order to remain in place.”.

21. Rule 6(1) shall be amended as follows—

- (a) after the words “where the case is one of urgency” there shall be inserted “or the giving of notice would cause a reasonable apprehension of dissipation of assets”; and
- (b) in sub-paragraph (a), the words “discharge or” shall be omitted.

- 22.** Rule 7 shall be amended as follows—
- (a) in paragraph (1), for “section 11” there shall be substituted “section 29”;
 - (b) in paragraph (3), for “section 4(2)” there shall be substituted “section 5(2)”; and
 - (c) for paragraph (4) there shall be substituted the following—
 - “(4) The Court may, on an application under section 29—
 - (a) exercise the power conferred by section 30(2) to direct the making of payments by a receiver;
 - (b) give directions in respect of the property interests to which the application relates; and
 - (c) make declarations in respect of those interests.”.
- 23.** Rule 8 shall be amended as follows—
- (a) in paragraph (1), for “section 8 or 11” there shall be substituted “section 26 or 29”; and
 - (b) after paragraph (4) there shall be inserted the following new paragraph—
 - “(5) A receiver may apply for an order to discharge him from his office by making an application, which shall be served, together with any evidence in support, on all persons affected by his appointment not less than 7 days before the day fixed for the hearing of the application.”.
- 24.** Rule 9 shall be amended as follows—
- (a) in paragraph (1)—
 - (i) after the word “defendant”, there shall be inserted “or a receiver appointed under section 26 or 29 or in pursuance of a charging order”;
 - (ii) for “section 14(1)” there shall be substituted “section 17(1)”; and
 - (b) in paragraph (2), for the words from “and on the receiver” to the end, there shall be substituted “and, as the case may be, on either the defendant or the receiver (where one has been appointed)”.
- 25.** After rule 9 there shall be inserted the following new rule—
- “Certificate under section 16**
- 9A.** An application under section 16(2) (increase in realisable property) shall be served with any supporting evidence not less than 7 days before the date fixed for the hearing of the application on the defendant and, as the case may be, on either the prosecutor or (where one has been appointed in the matter) on the receiver.”.
- 26.** In rule 10—
- (a) for “section 19” where it first appears in rule 10 there shall be substituted “section 18”; and
 - (b) for “section 19(4)” there shall be substituted “section 18(5)”.
- 27.** Rule 11 shall be amended as follows—
- (a) in paragraph (1)—
 - (i) for “section 30” there shall be substituted “section 59”;
 - (ii) for “section 8 or 11” there shall be substituted “section 26 or 29”; and
 - (iii) for “section 30(8)” there shall be substituted “section 59(8)”;
 - (b) in paragraph (3)—
 - (i) for “section 30(4)” there shall be substituted “section 59(4)”; and

(ii) for “section 30(7)” there shall be substituted “section 59(7)”;

28. After rule 11 there shall be inserted the following new rule—

“Compensation for, discharge and variation of compensation order

11A.—(1) An application under section 21, 22 or 23 shall be made by summons which, together with any evidence in support, shall be lodged with the Court and served on the prosecutor not less than 7 days before the day fixed for the hearing of the summons.

(2) Notice shall also be served on any receiver appointed in pursuance of a charging order or under section 26 or 29.

(3) An application for an order under section 22 shall be supported by an affidavit giving details of—

- (a) the confiscation order made under section 19(4);
- (b) the acquittal of the defendant;
- (c) the realisable property held by the defendant; and
- (d) the loss suffered by the applicant as a result of the confiscation order.

(4) An application for an order under section 23 shall be supported by an affidavit giving details of—

- (a) the confiscation order made under section 19(4);
- (b) the date on which the defendant ceased to be an absconder;
- (c) the date on which proceedings against the defendant were instituted and a summary of the steps taken in the proceedings since then; and
- (d) any indication given by the prosecutor that he does not intend to proceed against the defendant.

(5) An application made under section 21 shall be supported by an affidavit giving details of—

- (a) the confiscation order made under section 19(4);
- (b) the circumstances in which the defendant ceased to be an absconder; and
- (c) the amounts referred to in section 21(2).

(6) Where an application is made for an order under section 23(3) or 24(2)(b), the affidavit shall also include—

- (a) details of the realisable property to which the application relates; and
- (b) details of the loss suffered by the applicant as a result of the confiscation order.

(7) Unless the Court otherwise orders, an affidavit under paragraphs (3) to (6) may contain statements of information and belief, with the sources and grounds thereof.”

29. In rule 12, for “sections 24A and 26A” where those words appear in the title and the body of the rule there shall be substituted “sections 37 and 40”.

30. In rule 13, for “section 24A” and “section 26A(1)” there shall be substituted “section 37” and “section 40(1)” respectively.

31. In rule 14, for “section 24A” where those words appear in the title and the body of the rule there shall be substituted “section 37”.

32. In rule 15, in the title, for “section 26A(1)” there shall be substituted “section 40(1)”.

33. In rule 21, for “section 24A” and “section 26” there shall be substituted “section 37” and “section 39” respectively.

34. In rule 23(b)—

(a) for “Drug Trafficking Offences Act 1986” there shall be substituted “Drug Trafficking Act 1994”; and

(b) for “sections 4(2), 8, 9, 11, 12(1), 14(1), 19, 19(4), 26 and 26A of the 1986 Act” there shall be substituted “section 5(2), 26, 27, 29, 30(2), 17(1), 18, 18(5), 39 and 40 of the 1994 Act”.

35.—(1) Rules 15 to 34, except rules 20, 21, 22(c) (so far as that rule enables the Court to give directions and make declarations) and 23(b), shall not apply to any proceedings to which Part I of the Drug Trafficking Act 1994 does not apply.

(2) Except as provided by paragraph (1), Order 115 shall continue to apply to such proceedings as if rules 15 to 34 had not been made.

PART 5

MISCELLANEOUS AMENDMENTS

Automatic directions

36. In Order 25, rule 8(4)(a), for the words “sickness benefit” there shall be substituted “incapacity benefit”(21).

Powers of the Court in originating summons proceedings

37. For Order 28, rule 10 there shall be substituted the following—

“Failure to comply with rules or court orders

10. If any party to a cause or matter begun by originating summons, or a counterclaim under rule 7, does not comply with this Order, or with any order or direction of the Court as to the conduct of the proceedings, the Court may order that the cause or matter or counterclaim be dismissed or, as the case may be, the defendant be debarred from adducing such evidence in the cause or matter or counterclaim as the Court may specify, or (if it thinks appropriate) that the defence or counterclaim be struck out and judgment entered accordingly.”.

Application for an injunction

38. In Order 29, rule 1(2), the words “the applicant is the plaintiff and” shall be omitted.

Costs of charging orders absolute

39. At the end of Order 62, Appendix 3, Part III, item 4, there shall be inserted the words, “together with such reasonable disbursements in respect of search fees and the registration of the order as the Court may allow.”.

(21) This amendment is made as a consequence of the Social Security (Incapacity for Work) Act 1994 (c. 18).

Bail

40. In Order 79, rules 9(6)(a), (8)(a) and (10)(a), for the words “where the defendant has been committed to the Crown Court for trial or to be sentenced” there shall be substituted “where the proceedings in respect of the defendant have been transferred to the Crown Court for trial or where the defendant has been committed to the Crown Court to be sentenced”.

41. In Appendix A—

(a) in Form No. 98 (Order of judge in chambers to release prisoner on bail)—

(i) for the words “A. B. [*state the circumstances in which the applicant was committed as, for example, was remanded in custody or was committed in custody by a magistrates' court sitting at for trial at the Crown Court*]” there shall be substituted the words “[*state the circumstances in which the applicant was remanded in custody as, for example, A.B. was remanded in custody or whilst A.B. was in custody the proceedings in respect of A.B. were transferred by a magistrates' court sitting at for trial at the Crown Court*]”;

(ii) before the words “was convicted by” there shall be inserted “A.B.”; and

(b) in Form No. 98A (Order of judge in chambers varying arrangements for bail)—

(i) for the words “[*state the circumstances in which the committal was made as, for example, A.B. was remanded in custody or was committed in custody by a magistrates' court sitting at for trial at the Crown Court*]” there shall be substituted “[*state the circumstances in which the applicant was remanded in custody as, for example, A.B. was remanded in custody or whilst A.B. was in custody the proceedings in respect of A.B. were transferred by a magistrates' court sitting at for trial at the Crown Court*]”;

(ii) before the words “was convicted by” there shall be inserted “A.B.”.

42. Rule 40 shall not apply where the defendant has been committed to the Crown Court for trial and the relevant provisions of Order 79 shall continue to apply to such proceedings as if rule 40 had not been made.

Summary judgement in actions for specific performance

43. After Order 86, rule 7 there shall be inserted the following new rule—

“Application for summary judgement on counterclaim

8.—(1) Where a defendant to proceedings in the Chancery Division has served a counterclaim on the plaintiff including any claim such as is specified in rule 1(1), the defendant may apply to the Court for judgment on the ground that the plaintiff has no defence to the claim.

(2) Rules 2 to 7 shall apply in relation to an application under paragraph (1) as if the counterclaim were an action.”.

44. In Order 14, rule 1(3), for the word “action”, there shall be substituted “claim”.

Mortgage action for payment of money

45. Order 88, rule 5 shall be amended as follows—

(1) for paragraph (6) there shall be substituted the following—

“(6) Where the plaintiff claims payment of money secured by the mortgage the affidavit must show how the claim is calculated including—

- (a) the amount of the advance and the amount and dates of any periodic repayments and any interest claimed;
- (b) the amount which would have to be paid (after taking into account any adjustment for early settlement) in order to redeem the mortgage at the date of commencement of the proceedings and at a stated date not more than 14 days after the date of commencement of the proceedings, specifying the amount of solicitor's costs and administrative charges which would be payable;
- (c) the dates between which a particular rate of interest applied, the number of days in that period, and the capital on which the interest was calculated.”.

Applications under section 651 of the Companies Act 1985(22)

46. Order 102, rule 3(1)(f) shall be omitted.

Patents proceedings

47. At the end of Order 104, rule 4, there shall be inserted the following new paragraphs—

“(3) Order 10 shall apply to petitions for revocation of a patent, but the address for service may be the address for service appearing in the register of patents whether or not the patentee is within the jurisdiction.

(4) After the expiry of the period fixed by or under these rules for service of an answer, the petitioner may apply for judgment against any respondent who has failed to serve an answer on the petitioner, and on the hearing of the application the Court shall give such judgment as the petitioner appears entitled to on his petition and particulars of objections.”.

48. For Order 104, rule 11 there shall be substituted the following—

“11.—(1) Order 24, rules 1 and 2 shall apply in an action for infringement of a patent or a declaration of non-infringement of a patent or any proceedings where the validity of a patent is in issue, except that—

- (a) the list of documents must be served by each party within 21 days after service of the notice of admissions under rule 10(2), or within 21 days after the close of pleadings; and
 - (b) documents from the exempt classes shall not be listed.
- (2) For the purposes of paragraph (1)(b), the exempt classes are—
- (a) documents relating to the infringement of a patent by a product or process if, before serving a list of documents, the party against whom the allegation of infringement is made has served on the other parties full particulars of the product or process alleged to infringe, including if necessary drawings or other illustrations;
 - (b) documents relating to any ground on which the validity of a patent is put in issue, except documents which came into existence within the period beginning two years before the earliest claimed priority date and ending two years after that date; and
 - (c) documents relating to the issue of commercial success.

(22) 1985 c. 6; section 651 was amended by the Insolvency Act 1985 (c. 65), Schedule 6 and the Companies Act 1989 (c. 40), section 141 and Schedule 24.

(3) Where the issue of commercial success arises in any proceedings specified in paragraph (1), the patentee shall, within the time limit specified in paragraph (1)(a), serve a schedule containing the following details—

- (a) where the commercial success relates to an article or product—
 - (i) an identification of the article or product (for example by product code number) which the patentee asserts has been made in accordance with the claims of the patent;
 - (ii) a summary by convenient periods of sales of any such article or product;
 - (iii) a summary for the equivalent periods of sales, if any, of any equivalent prior art article or product marketed before the article or product mentioned in sub-paragraph (i); and
 - (iv) a summary by convenient periods of any expenditure on advertising and promotion which supported the marketing of the articles or products mentioned in sub-paragraphs (i) and (iii),
- (b) where the commercial success relates to the use of a process—
 - (i) an identification of the process the patentee asserts has been used in accordance with the claims of the patent;
 - (ii) a summary by convenient periods of the revenues received from the use of such process;
 - (iii) a summary for the equivalent periods of the revenues, if any, received from the use of any equivalent prior art process; and
 - (iv) a summary by convenient periods of any expenditure which supported the use of the process mentioned in sub-paragraphs (i) and (iii).

(4) Notwithstanding paragraphs (1) and (2), any party may apply under Order 24 for further and better discovery or specific discovery of any document in an exempt class, but the Court shall only order such discovery if it is satisfied that justice is unlikely to be done unless the discovery is ordered.

(5) Paragraphs (1) and (2) shall not create any privilege in a document in an exempt class.

(6) If, notwithstanding paragraphs (1) and (2), a party produces for inspection a document from an exempt class, that party shall, if so requested in writing by any other party, serve on the requesting party, within 14 days of such a request, a supplementary list of all the other documents within the same class as the document so produced, unless the Court otherwise orders.

(7) This rule is without prejudice to the Court’s power to limit discovery on any other ground.”.

49. Rule 48 shall apply to—

- (a) proceedings in which the obligation to make discovery under Order 24, rules 1 and 2 arises on or after the date on which these Rules come into force; and
- (b) proceedings in which that obligation arose before the date on which these Rules come into force, if the parties agree that the rule will apply or the Court makes an order to that effect.

50. In Order 62, Appendix 2, Part I, item 3(3), for the word “breaches” there shall be substituted “infringements”.

References to the European Court

51. For the definition of “order” in Order 114, rule 1, there shall be substituted the following—

““order” means an order referring a question to the European Court for a preliminary ruling under article 177 of the Treaty establishing the European Community, Article 150 of the Treaty establishing the European Atomic Energy Community or Article 41 of the Treaty establishing the European Coal and Steel Community or for a ruling on the interpretation of any of the Brussels Conventions (within the meaning of s.1(1) of the Civil Jurisdiction and Judgments Act 1982⁽²³⁾) or any of the instruments referred to in s.1 of the Contracts (Applicable Law) Act 1990⁽²⁴⁾.”

Acknowledgement of service

52. In Appendix A, for Forms No. 14 (acknowledgement of service of writ of summons) and No. 15 (acknowledgement of service or originating summons), there shall be substituted the forms contained in the Schedule to these Rules.

53. Rule 52 shall not apply to proceedings issued before 1st December 1995.

Notice of Motion

54. In Appendix A, in Form No. 38, after the word “heard”, there shall be inserted “[at]”.

Dated 18th August 1995

Mackay of Clashfern, C

*Taylor, C.J.
Bingham, M.R.
Stephen Brown, P.
Richard Scott
Rattee, J.
Bell, J.
Colman, J.
Jean H. Ritchie
A. Boyle
K.C.R. Gibson
J.A. Wall*

⁽²³⁾ 1982 c. 27; section 1(1) was amended by S.I. 1989/1346 and 1990/2591 and section 2 of the Civil Jurisdiction and Judgments Act 1991 (c. 12).

⁽²⁴⁾ 1990 c. 36.

SCHEDULE

Rule 52

SCHEDULE

Rule 52

**Acknowledgement of Service of
Writ of Summons (O.12 r.3)**

Guidance notes for the Plaintiff

Read these notes carefully

The notes explain what you have to do before this form is sent to (“served” on) the defendant.

Form heading

You must fill in the heading of the form with:

- the action number,
- the name of the appropriate High Court Division, for example, Queen’s Bench Division, Queen’s Bench Division (Commercial Court), Queen’s Bench Division (Admiralty Court) or Chancery Division, or
- if the writ issued in a District Registry, the name of the District Registry, and
- the names of the parties in the action (the “title”) as they appear on the writ.

Part 3

If the claim is not for a fixed amount, you must delete part 3 and the notes relating to it.

Part 4

You must delete part 4 and the notes relating to it if the writ was:

- issued at any office in the Royal Courts of Justice (Strand, London), or
- issued at the District Registry for the area where the defendant lives, carries on business, or, if a limited company, has its registered office and
- the plaintiff’s cause of action arose in that area.

Part 5

Return address

Write in the full address of the District Registry or office in the Royal Courts of Justice to which the form should be returned.

On the reverse of acknowledgement form

Plaintiff’s (Plaintiff’s solicitor’s) details

Fill in your name and the address to which papers about the case should be sent. Detach these guidance notes before the form is sent to the defendant.

Perforations

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

Acknowledgement of Service of Writ of Summons

Guidance notes for the Defendant

Read these notes carefully

They will help you to fill in the form attached and tell you what other steps you need to take.

Act quickly

You have only a limited time to return the form. If you do not return the form promptly, the plaintiff may obtain a court order that you pay what is being claimed immediately (called “entering judgment by default”).

Help and advice

You can get help and legal advice from:

- a solicitor (who can fill in the form and return it to the court for you) or
- a Citizen’s Advice Bureau.

They will also tell you if you qualify for help with your legal costs (“legal aid”). Staff at any District Registry or office in the Royal Courts of Justice (Strand, London) will help you to fill in the form.

Time for returning the form

You have **14 days** from the day you receive the writ of summons to **return the completed form to the court**. The day on which the 14 day period begins depends on how you received the writ (how it was “served” on you).

If the writ was:

- handed to you personally, the 14 days begins on the day you were given the writ;
- delivered by post, the 14 days begins 7 days from the date of the postmark;
- put through your letterbox, the 14 days begins 7 days from the day this was done.

If you are a limited company and the writ was delivered by post, the 14 days begins:

- on the second working day from the date of the postmark if first class post was used;
- on the fourth working day from the date of the postmark if the second class post was used.

If the writ was served on you at an address outside England and Wales, the writ will tell you how long you have to return the acknowledgement form.

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

Filling in the form

Read these notes carefully.

They will help you to fill in the form opposite and tell you what other steps you need to take.

You can use the same form of acknowledgement for two (or more) defendants provided the form makes this clear and they all wish to reply in the same way.

If you are **under 18 or a mental patient** (“under a disability”) you must ask an **adult** to act for you. The adult, who is called a “next friend” or “guardian ad litem”, can be any friend or relative who is not a co-defendant in the same claim. But they must act on your behalf with the help of a solicitor. **The solicitor must fill in the form of acknowledgement.**

<p>Part 1 Write in your full name. If your name was incorrect on the writ, add the words “sued as” followed by the name stated on the writ.</p> <p>If you are: – a person trading in a name other than your own, write in your name followed by the words “trading as” and the name under which you trade;</p> <p>– a partner in a firm, write in your name followed by the words “partner in the firm of” and the name of the firm. If you are sued as a partner but are not, say so.</p>	→
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<p>Part 2 Tick the appropriate box to show whether you intend to contest all, or part, of the claim. If you contest any part of the claim, read note 2 below on preparing your defence.</p>	→
---	---

<p>Part 3 Should only be filled in if the plaintiff is claiming a fixed amount of money and you do not contest the claim.</p> <p>Part 3 Tick the appropriate box to show whether you intend to ask the court to make an order preventing the plaintiff from enforcing any order for you to pay the amount claimed (called asking for a “stay of execution”). A stay of execution will allow you to pay the debt, perhaps by instalments. If you wish to apply for a stay of execution, read note 3 below. This tells you how to make your application.</p>	→
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<p>Part 4 can only be filled in:</p> <ul style="list-style-type: none"> – if the writ of summons was <u>not issued</u> in the Royal Courts of Justice or the District Registry for the area where you live, carry on business or have your registered office, <u>and</u> – the cause of the plaintiff’s action, or part of it, did not arise in that area. <p>Part 4 Tick the appropriate box to show whether you wish the case to be transferred to the Royal Courts of Justice (London) or to another District Registry. If you are unsure which is the District Registry for your area, staff at the District Registry which issued the writ will tell you. If the case is transferred, you will be told when this has happened and what your new case number is. The plaintiff may object to the transfer; if so, there may be a hearing.</p>	→
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<p>Part 5 Unless your solicitor is filling in the form on your behalf, you must sign the form and give an address to which court documents should be sent, and any reference, telephone or fax numbers. If you are being sued as an individual (that is in your own name rather than that of your firm or company) the address you give must be one in England and Wales. If you are a limited company, the form may be filled in by an authorised officer who must state his position in that company, or a solicitor. A solicitor may give his firm’s address; an authorised officer must give the registered or principal office of the company.</p>	→
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Perforations

What do to when you have filled in the form.

1. Return the form

Detach these guidance notes and send or take the acknowledgment form to the office in the Royal Courts of Justice or the District Registry which issued the writ.

2. Preparing the defence

If you contest the plaintiff’s claim, you must set out your reasons for doing so in writing (called a “defence”). You must send or take a copy of your defence to the plaintiff (or the plaintiff’s solicitor). The time in which you have to do this will depend on whether you were given full particulars of the plaintiff’s claim (called a “statement of claim”) with the writ.

If a statement of claim was **included** in the writ, or **accompanied it**, you must serve your defence within 14 days after the time for acknowledging service of the writ.

If a statement of claim is served on you **after** you received the writ, you must serve your defence 14 days from the date you received the statement of claim.

3. Applying for a stay of execution

If you agree that you owe the plaintiff the amount of money claimed but want a stay of execution to allow you time to pay, you must issue a summons asking the court to make this order. Your summons must be accompanied by a sworn statement (an “affidavit”) setting out details of your income and liabilities and any offer of payment you are making, for example, by instalments.

Copies of the form of summons and affidavit can be obtained from any firm of law stationers.

You must issue your summons at the appropriate office within 14 days of the court receiving your form of acknowledgment of service.

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

Acknowledgement of service of writ of summons

In the High Court of Justice

19

NO

Division
District Registry

Use black ink and capital letters

Plaintiff

Defendant

Part 1 (Your) (Defendant's) full name []

Part 2 (Do you) (Does the defendant) intend to contest: the whole of the plaintiff's claim? [] part of the plaintiff's claim? [] none of the plaintiff's claim? []

Part 3 If you have said that you do not intend to contest the whole, or part, of the plaintiff's claim will you (the defendant) be asking the court for a stay of execution? Yes [] No []

Part 4 (Do you) (Does the defendant) wish to have the case transferred to: the Royal Courts of Justice? Yes [] No [] another District Registry? Yes [] No []

If to a District Registry, say which one []

Part 5 I acknowledge that (I have) (the defendant has) been served with a copy of the writ of summons

Signed _____ Date _____ Defendant (Solicitor for the defendant) (Authorised officer)

Address to which papers about this case should be sent.

[]

Solicitor's ref. [] Telephone no. [] Fax no. []

When completed this form should be returned to:

Perforations

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

Perforations

Plaintiff's (Plaintiff's solicitor's) details

Address to which papers about this case should be sent

Solicitor's ref. Telephone no. Fax no.

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

**Acknowledgement of Service of
Originating Summons (O.10 r.5)**

Guidance notes for the Plaintiff

Read these notes carefully

The notes explain what you have to do before this form is sent to (“served” on) the defendant.

Form heading

You must fill in the heading of the form with:

- the action number,
- the name of the appropriate High Court Division, for example, Queen’s Bench Division, Queen’s Bench Division (Commercial Court), Queen’s Bench Division (Admiralty Court) or Chancery Division, or
- if the writ issued in a District Registry, the name of the District Registry, and
- the names of the parties in the action (the “title”) as they appear on the writ.

Part 3

Return address

Write in the full address of the District Registry or office in the Royal Courts of Justice to which the form should be returned.

On the reverse of acknowledgement form

Plaintiff’s (Plaintiff’s solicitor’s) details

Fill in your name and the address to which papers about the case should be sent. Detach these guidance notes before the form is sent to the defendant.

Perforations

Acknowledgement of Service of Originating Summons

Guidance notes for the Defendant

Read these notes carefully

They will help you to fill in the form attached and tell you what other steps you need to take.

Act quickly

You have only a limited time to return the form.

Help and advice

You can get help and legal advice from:

- a solicitor, or
- a Citizen’s Advice Bureau.

They will also tell you if you qualify for help with your legal costs (“legal aid”). Staff at any District Registry or office in the Royal Courts of Justice (Strand, London) will help you to fill in the form.

Time for returning the form

You have **14 days** from the day you receive the originating summons to **return the completed form to the court**. The day on which the 14 day period begins depends on how you received the summons (how it was “served” on you).

If the summons was:

- handed to you personally, the 14 days begins on the day you were given the summons;
- delivered by post, the 14 days begins 7 days from the date of the postmark;
- put through your letterbox, the 14 days begins 7 days from the day this was done.

If you are a limited company and the summons was delivered by post, the 14 days begins:

- on the second working day from the date of the postmark if first class post was used;
- on the fourth working day from the date of the postmark if the second class post was used.

Note: You may have less than 14 days to return the form in certain kinds of proceedings where an early hearing date has been fixed. If in doubt, seek advice.

If the summons was served on you at an address outside England and Wales, the summons will tell you how long you have to return the acknowledgement form.

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

Filling in the form

Read these notes carefully.

They will help you to fill in the form opposite and tell you what other steps you need to take.

You can use the same form of acknowledgement for two (or more) defendants provided the form makes this clear and they all wish to reply in the same way.

If you are **under 18 or a mental patient** (“under a disability”) you must ask an **adult** to act for you. The adult, who is called a “next friend” or “guardian ad litem”, can be any friend or relative who is not a co-defendant in the same claim. But they must act on your behalf with the help of a solicitor. **The solicitor must fill in the form of acknowledgement.**

Part 1 Write in your full name. If your name was incorrect on the summons, add the words “sued as” followed by the name stated on the writ.
If you are: – a person trading in a name other than your own, write in your name followed by the words “trading as” and the name under which you trade;
– a partner in a firm, write in your name followed by the words “partner in the firm of” and the name of the firm. **If you are sued as a partner but are not, say so.**



Part 2 Tick the appropriate box to show whether you intend to contest all, or part, of the claim. **If you contest any part of the claim, read note 2 below on preparing your defence.**



Part 3 Unless your solicitor is filling in the form on your behalf, you must sign the form and give an address to which court documents should be sent, and any reference, telephone or fax numbers. If you are being sued as an individual (that is in your own name rather than of your firm or company) the address you give must be one in England and Wales. If you are a **limited company**, the form may be filled in by an authorised officer who must state his position in that company, or a solicitor. A solicitor may give his firm’s address, an **authorised officer** must give the registered or principal office of the company.



Perforations

What do to when you have filled in the form.

1. Return the form

Detach these guidance notes and send or take the acknowledgment form to the office in the Royal Courts of Justice or the District Registry which issued the writ.

2. Preparing the defence

If you wish to object to the plaintiff’s claim in writing (that is, by an affidavit) you must send or give a copy of the affidavit to the other parties and file a copy at the court. You must serve your affidavit within 28 days from the date you received the plaintiff’s affidavit in support of his claim.

Note: You may have less than 28 days to serve the affidavit in certain kinds of proceeding where an early hearing date has been fixed. If in doubt, seek advice.

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

Acknowledgement of service of originating summons

In the High Court of Justice

19

NO

**Division
District Registry**

Use black ink and capital letters

Plaintiff

Defendant

Part 1 (Your) (Defendant's) full name

Part 2 (Do you) (Does the defendant) intend to contest:

the whole of the plaintiff's claim?
part of the plaintiff's claim?
none of the plaintiff's claim?

Perforations

Part 3 I acknowledge that (I have) (the defendant has) been served with a copy of the originating summons

Signed _____ Date _____
Defendant (Solicitor for the defendant) (Authorised officer)

Address to which papers about this case should be sent.

Solicitor's ref. Telephone no. Fax no.

When completed this form should be returned to:

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

Perforations

Plaintiff's (Plaintiff's solicitor's) details

Address to which papers about this case should be sent

Solicitor's ref. Telephone no. Fax no.

EXPLANATORY NOTE

(This note is not part of the Rules)

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

- (1) Part 1 amends the rules relating to revenue appeals. In particular—
 - (a) rule 3 introduces a new rule for appeals direct to the Court of Appeal from the Special Commissioners;
 - (b) rule 5(a) to (d) amends Order 91 to take account of changes to the rules governing proceedings before the Special and General Commissioners; rule 5(d) also extends the time limit for certain appeals.
 - (c) rule 5(e) extends the time limit for certain appeals from the Value Added Tax Tribunal.
- (2) Part 2 imposes a requirement to seek leave to appeal in certain proceedings and clarifies the meaning of “order” for the purposes of that requirement.

(3) Part 3 introduces a new rule for the taxation of fees arising under a conditional fee agreement between a solicitor and his client.

(4) Part 4 amends Order 115 to take account of the Drug Trafficking Act 1994. The amendments update relevant statutory references. They also insert new provisions arising from changes made by that Act, particularly those relating to the making of confiscation orders against defendants who have died or absconded. Amendments are also made to the provisions of O.115 dealing with the recovery of property under the Drug Trafficking Act 1994.

(5) Part 5 makes miscellaneous amendments. The amendments—

- (a) substitute “incapacity benefit” for “sickness benefit” in Order 25, rule 8(4)(a) (automatic directions) (*rule 36*);
- (b) enable the Court to penalise a defaulting defendant in originating summons proceedings by debarring evidence or striking out the defence or counterclaim (*rule 37*);
- (c) enable a defendant to apply ex parte for an injunction (*rule 38*);
- (d) increase the costs which may be allowed in relation to a charging order absolute (*rule 39*);
- (e) amend the provisions relating to bail to take account of the new transfer for trial procedure provided for by section 44 of the Criminal Justice and Public Order Act 1994 (c. 33) (*rules 40 to 42*);
- (f) allow a defendant to apply for summary judgment on a counterclaim in an action for specific performance (*rules 43 and 44*);
- (g) amend Order 88, rule 5(6) (mortgage action for payment of money), which specifies the details to be shown in the plaintiff’s affidavit filed under that provision (*rule 45*);
- (h) omit the requirement for an application under section 651 of the Companies Act 1985 to be begun by originating motion (*rule 46*);
- (i) amend the procedure relating to applications for the revocation of a patent and make a minor change to the wording of the costs provisions relating to patents proceedings (*rule 47 and 50*);
- (j) modify the procedure for giving discovery in patents proceedings (*rules 48 and 49*);
- (k) clarify the orders to which Order 114 (references to European Court) applies (*rule 51*);
- (l) introduce new forms of acknowledgement of service (*rule 52 and 53*); and
- (m) amend the notice of motion so as to require the place of hearing to be specified (*rule 54*).