
STATUTORY INSTRUMENTS

1951 No. 1401

The Reserve and Auxiliary Forces (Protection of Civil Interests) Rules 1951

PART III

HIGH COURT

Exercise of Remedies

Application for leave or for a declaratory order

12.—(1) An application—

- (a) under subsection (2) of section 2 for leave to exercise a remedy specified in paragraph (a) of that subsection or to institute proceedings specified in paragraph (b) thereof, or under subsection (1) of section 25 for leave to exercise a remedy specified in paragraph (b) of that subsection; or
- (b) for a declaratory order in respect of the exercise of any such remedy or the institution of any such proceedings under the said subsection (2),

shall be made by originating summons.

(2) The summons shall be issued out of the Division of the High Court which ordinarily deals with proceedings the subject-matter of which is similar to the subject-matter of the application:

Provided that where a summons has been issued out of a Division which, in the opinion of the court or a judge, is inappropriate, the court or judge may order that the proceedings shall either continue in that Division or be transferred to the Division out of which the summons ought to have been issued.

(3) The respondent shall not be required to enter an appearance to the summons, and accordingly Rule 4E of Order LIV of the Rules of the Supreme Court shall apply thereto.

(4) In the Chancery Division any application under the Act affecting mortgaged land and any action affecting the same mortgaged land shall be assigned to the same group.

(5) Where in the course of proceedings relating to any mortgage (whether before or after judgment) a party to the proceedings desires to apply for—

- (a) leave under subsection (2) of section 2 to exercise in relation to the mortgaged property any right or remedy specified in that subsection, or
- (b) a declaratory order in the respect of the exercise in relation to the mortgaged property of any right or remedy specified in the said subsection,

the application may, if the respondent thereto is a party to the proceedings, be made by summons in the proceedings.

(6) An application for leave under paragraph (b) of subsection (2) of section 2 to take a step in proceedings for foreclosure or sale in lieu of foreclosure, or for a declaratory order in respect of the taking of such a step as aforesaid, shall be made by summons in the proceedings.

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(7) A summons under paragraph (1), (5) or (6) of this Rule, other than a summons for a declaratory order, shall include a statement in Form 3.

(8) Where an originating summons—

- (a) for leave to exercise a remedy under paragraph (a) of subsection (2) of section 2, or to institute proceedings for possession of mortgaged property, or for leave to exercise a remedy under paragraph (b) of subsection (1) of section 25; or
- (b) for a declaratory order in respect of the exercise of a remedy under the said paragraph (a) or of the institution of any such proceedings as aforesaid,

relates to land or goods within the district of a district registry, the originating summons may be issued in the district registry.

(9) Where the registered office of a company is situated within the district of a district registry, an originating summons for leave to appoint a receiver for the debenture holders of the company, or for a declaratory order in respect of the appointment of such a receiver, may be issued in the district registry.

(10) Nothing in the last two foregoing paragraphs shall be construed as restricting the jurisdiction of the district registry at Liverpool or Manchester.