

1970 No. 1861 (L.35)

## SUPREME COURT OF JUDICATURE, ENGLAND

## PROCEDURE

## The Rules of the Supreme Court (Amendment No. 4) 1970

*Made* - - - - - 2nd December 1970

*Laid before Parliament* 18th December 1970

*Coming into Operation—*

*Rules 1, 2, 4 to 8 and 9(2)* 1st January 1971

*Rules 3, 9(1) and 10* 1st February 1971

We, the Rule Committee of the Supreme Court, being the authority having for the time being power under section 99(4) of the Supreme Court of Judicature (Consolidation) Act 1925<sup>(a)</sup> to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature, hereby exercise those powers and all other powers enabling us in that behalf as follows :—

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Amendment No. 4) 1970.

(2) In these Rules an Order referred to by number means the Order so numbered in the Rules of the Supreme Court 1965<sup>(b)</sup>, as amended <sup>(c)</sup>, and Appendices A and B mean respectively Appendices A and B to those Rules.

(3) The Interpretation Act 1889<sup>(d)</sup> shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

2. The following rule shall be added to Order 1 :—

*“Rules not to exclude conduct of business by post*

10. Nothing in these rules shall prejudice any power to regulate the practice of the Court by giving directions enabling any business or class of business to be conducted by post.”

3. In Order 12, rule 5<sup>(a)</sup>, for the words “8 days” there shall be substituted the words “14 days”.

4. The following rule shall be inserted in Order 15 after rule 6 :—

*“Proceedings against estates*

6A.—(1) Where any person against whom an action would have lain has died but the cause of action survives, the action may, if no grant of probate or administration has been made, be brought against the estate of the deceased.

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<sup>(a)</sup> 1925 c. 49.

<sup>(b)</sup> S.I. 1965/1776 (1965 III, p. 4995).

<sup>(c)</sup> The relevant amending instrument is S.I. 1968/1244 (1968 II, p. 3360).

<sup>(d)</sup> 1889 c. 63.

(2) Without prejudice to the generality of paragraph (1), an action brought against “the personal representatives of A.B. deceased” shall be treated, for the purposes of that paragraph, as having been brought against his estate.

(3) An action purporting to have been commenced against a defendant who has died shall, if the cause of action survives and no grant of probate or administration has been made, be treated as having been brought against his estate in accordance with paragraph (1).

(4) In any such action as is referred to in paragraph (1) or (3)—

(a) the plaintiff shall, during the period of validity for service of the writ or originating summons, apply to the Court for an order appointing a person to represent the deceased’s estate for the purpose of the proceedings or, if a grant of probate or administration has been made since the commencement of the action, for an order that the personal representative of the deceased be made a party to the proceedings, and in either case for an order that the proceedings be carried on against the person so appointed or, as the case may be, against the personal representative, as if he had been substituted for the estate ;

(b) the Court may, at any stage of the proceedings and on such terms as it thinks just and either of its own motion or on application, make any such order as is mentioned in sub-paragraph (a) and allow such amendments (if any) to be made and make such other order as the Court thinks necessary in order to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon.

(5) Before making an order under paragraph (4) the Court may require notice to be given to any insurer of the deceased who has an interest in the proceedings and to such (if any) of the persons having an interest in the estate as it thinks fit.

(6) Where an order is made under paragraph (4), rules 7(4) and 8(3) and (4) shall apply as if the order had been made under rule 7 on the application of the plaintiff.

(7) Where no grant of probate or administration has been made, any judgment or order given or made in the proceedings shall bind the estate to the same extent as it would have been bound if a grant had been made and a personal representative of the deceased had been a party to the proceedings.”

**5. Order 34 shall be amended as follows :—**

(1) In rule 3(5), sub-paragraph (c) shall be omitted and the following sub-paragraphs shall be re-lettered accordingly and in sub-paragraph (c), as so re-lettered, for the words “(a), (b) or (c)” there shall be substituted the words “(a) or (b)”.

(2) Rule 6 shall be revoked.

(3) In rule 7(1) the words “or a home counties town within the meaning of rule 6” shall be omitted.

(4) In rule 7(2) for the words “Glamorgan, Suffolk, Somerset or Wilts” there shall be substituted the words “Glamorgan or Suffolk”.

6. The following rules shall be added to Order 93 :—

*“Proceedings under the Commons Registration Act 1965*

16.—(1) Proceedings in the High Court under section 14 or 18 of the Commons Registration Act 1965(a) shall be assigned to the Chancery Division.

(2) The time within which a person aggrieved by the decision of a Commons Commissioner may require the Commissioner to state a case for the opinion of the High Court pursuant to the said section 18 shall be six weeks from the date on which notice of the decision was sent to the person aggrieved.

(3) An appeal by way of case stated under the said section 18 shall be heard and determined by a single judge.

*Proceedings under section 21 or 25 of the Law of Property Act 1969*

17. Proceedings in the High Court under section 21 or 25 of the Law of Property Act 1969(b) shall be assigned to the Chancery Division.”

7. The following rule shall be added to Order 94 :—

*“Applications under Children and Young Persons Act 1969*

13.—(1) Subject to the provisions of this rule, every application to the High Court for the discharge of an interim order under section 22(4), or a warrant of committal to a remand centre under section 22(6), of the Children and Young Persons Act 1969(c) must be made by summons before a judge in chambers to show cause why the order should not be discharged.

(2) Subject to paragraph (5), the summons (in Form No. 107 in Appendix A) must, at least 48 hours before the day named therein for the hearing, be served—

(a) in the case of an application for the discharge of an interim order, on the local authority to whose care the applicant is committed under the order (in this rule called “the local authority”) and, if the proceedings in which the interim order was made were not brought by that local authority, on the person who brought the proceedings ;

(b) in the case of an application for the discharge of a warrant of committal to a remand centre, on the person who brought the proceedings ;

and Order 32, rule 5, shall apply in relation to the summons.

(3) Subject to paragraph (5), every application must be supported by affidavit.

(4) Where a person to whom an interim order or a warrant of committal to a remand centre relates or a parent or guardian acting on his behalf under section 70(2) of the said Act of 1969 desires to apply for the discharge of that order or warrant and is unable through lack of means to instruct a solicitor, he may give notice in writing to the judge in chambers stating his desire to apply for the discharge of the said order or warrant and requesting that the Official Solicitor shall act for him in the application, and the judge may, if he thinks fit, assign the Official Solicitor to act for the applicant accordingly.

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(a) 1965 c. 64.  
(c) 1969 c. 54.

(b) 1969 c. 59.

(5) Where the Official Solicitor has been so assigned, the judge may, if he thinks fit, dispense with the requirements of paragraphs (1) to (3) and deal with the application in a summary manner.

(6) Without prejudice to paragraph (4), the judge in chambers by whom an application for the discharge of an interim order or a warrant of committal to a remand centre is heard or to be heard may, if he considers that it may be in the interests of the person to whom such order or warrant relates to do so, direct the Official Solicitor to investigate the circumstances concerning the application and report to the judge thereon and to perform such other duties in relation thereto as the judge may direct, and the judge may make such order as he thinks fit as to the payment of the Official Solicitor's costs.

(7) The judge in chambers by whom an application for the discharge of an interim order or a warrant of committal to a remand centre is heard may order that the order or warrant shall be discharged unconditionally or on such conditions as he may think fit as to entering into a recognizance, with or without sureties, or giving other security before—

(a) a justice of the peace, or

(b) any other person authorised by virtue of section 95(1) of the Magistrates' Courts Act 1952<sup>(a)</sup> to take a recognizance where a magistrates' court having power to take it has, instead of taking it, fixed the amount in which the principal and his sureties, if any, are to be bound.

An order such as is referred to in this paragraph must be in Form 108 in Appendix A.

(8) Where in pursuance of an order by a judge in chambers a recognizance is entered into or other security given before a justice of the peace or other person, it shall be the duty of that person to cause the recognizance or, as the case may be, a statement of the other security given, to be transmitted forthwith to the clerk of the court specified in the interim order or warrant of committal as the court before which the person subject to the order was to be brought and, unless the recognizance is entered into at the place where the person is accommodated by the local authority under the order or, in the case of a person detained in a remand centre, at that remand centre, a copy of such recognizance or statement shall at the same time be sent to the local authority or, as the case may be, to the governor of the remand centre in which the person is detained.

(9) Where in pursuance of such an order as aforesaid a person is released from custody subject to conditions as to entering into a recognizance or giving other security for his appearance before a magistrates' court, and in breach of his undertaking fails to appear, the recognizance or, as the case may be, payment of any sum due in respect of the security, may be enforced by that court—

(a) in the case of a recognizance, in manner provided by section 96 of the Magistrates' Courts Act 1952, and

(b) in the case of other security, in the same manner as payment of the sum due in respect of the security would have been enforceable if the person giving the security had instead entered into a recognizance, and the said section 96 shall in that case apply accordingly with the necessary modifications.

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(a) 1952 c. 55.

(10) If an application to the High Court for the discharge of an interim order has been refused by a judge in chambers and the local authority desire to exercise in relation to the same person their powers under section 13(2) of the Children Act 1948(a), an application to the High Court for consent to the exercise of those powers shall be made by summons supported by affidavit."

8. Order 97 shall be amended as follows:—

(1) In rule 2 for the words "rule 12" there shall be substituted the words "rules 9A and 12".

(2) After rule 9 there shall be inserted the following rule:—

*"Application to determine interim rent*

9A.—(1) An application under section 24A of the Act of 1954 to determine an interim rent shall—

(a) if the tenant has begun proceedings for a new tenancy under section 24 of the Act, be made by summons in those proceedings, and

(b) in any other case, be made by originating summons.

(2) The application may be heard and determined in chambers."

9. Appendix A shall be amended as follows:—

(1) In Forms 1, 8, 17, 20 and 21 for the words "8 days", wherever they appear, there shall be substituted the words "14 days".

(2) The following Forms shall be added at the end:—

"No. 107

Summons to discharge an interim order or a warrant of committal to a remand centre under section 22 of the Children and Young Persons Act 1969

(O.94, r.13(2))

In the High Court of Justice,

Queen's Bench Division.

Let all parties concerned attend the judge in chambers on the day of 19 , at o'clock, on the hearing of an application on behalf of A.B. for the discharge of an interim order [or a warrant of committal to remand centre] made on the day of by a juvenile court sitting at [or by C.D. a justice of the peace for the petty sessions area of ].

Dated the day of 19 .

This summons was taken out by of  
[agent for of ] solicitor for the said  
A.B.

No. 108

Order of judge in chambers for the discharge of an interim order or a warrant of committal to a remand centre

(O.94, r.13(7))

In the High Court of Justice,  
Queen's Bench Division.

The Honourable Mr. Justice

Judge in chambers.

Whereas on the            day of            19    A.B. was committed to the care of the council of the county/county borough of            by an interim order [or            remand centre] by a juvenile court sitting at            [or by C.D. a justice of the peace for the petty sessions area of            ]:

And whereas the said A.B. has applied to the judge in chambers for the discharge of the said order [or the warrant of committal to the said remand centre]:

Upon hearing counsel [or the solicitor] for the said A.B. and upon reading the affidavit of            filed the            day of            19    [and upon considering the report of the Official Solicitor]:

It is ordered that [upon the said A.B. [or            ] giving security [by his own recognizances] in the sum of £            [with [two] sufficient sureties in the sum of £            each] before a justice of the peace [or as may be] for the personal appearance of the said A.B. at the juvenile court sitting at            ], the said order [or warrant] be discharged and, accordingly, that he, the said A.B. be released from the care of the said council [or discharged out of the custody of the governor [or as may be] of the said remand centre in respect of the said warrant of committal].

Dated the            day of            19    .”

10. In Form 1 in Appendix B for the words “8 days” there shall be substituted the words “14 days”.

11.—(1) Rules 1, 2, 4 to 8 and 9(2) of these Rules shall come into operation on 1st January 1971 and, subject to paragraph (2), the remainder shall come into operation on 1st February 1971.

(2) Nothing in Rules 3, 9(1) and 10 of these Rules shall apply to any writ or originating summons issued before the coming into operation of those Rules.

Dated 2nd December 1970.

*Hailsham of St. Marylebone, C.*  
*Parker of Waddington, C.J.*  
*Denning, M.R.*  
*J. E. S. Simon, P.*  
*Cyril Salmon, L.J.*  
*John Pennycuik, V-C.*  
*Nigel Bridge, J.*  
*James Fox-Andrews.*  
*Oliver Lodge.*  
*W. O. Carter.*  
*H. Montgomery-Campbell.*

## EXPLANATORY NOTE

*(This Note is not part of the Rules.)*

These Rules make provision for the matters mentioned in section 2 of the Proceedings Against Estates Act 1970 (1970 c.17) (Rule 4) and prescribe the procedure to be followed on an application for the discharge of an interim order or warrant of committal to a remand centre under section 22 of the Children and Young Persons Act 1969 (Rules 7 and 9(2)). They also regulate proceedings in the High Court under section 14 or 18 of the Commons Registration Act 1965, section 21 or 25 of the Law of Property Act 1969 and section 24A of the Landlord and Tenant Act 1954 (Rules 6 and 8). The remaining provisions preserve the power to issue practice directions with regard to the conduct of business by post (Rule 2), increase from 8 to 14 days the time for entering an appearance to a writ or originating summons served within the jurisdiction (Rules 3, 9(1) and 10) and make amendments consequential on the Assizes Order 1970 (S.I. 1970/1679) (Rule 5).

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