

1988 No. 278 (L. 1)

**COUNTY COURTS
PROCEDURE**

The County Court (Amendment) Rules 1988

Made - - - - 11th February 1988

*Coming into force in accordance with the Table
following these Rules*

Citation and interpretation

1.—(1) These Rules may be cited as the County Court (Amendment) Rules 1988.

(2) In these Rules, unless the context otherwise requires, an Order referred to by number means the Order so numbered in the County Court Rules 1981(a) and Appendix A means Appendix A to those Rules.

Request for time for payment

2. Order 9, rule 2 shall be amended by inserting after paragraph 3 the following new paragraph—

“(4) A request for time for payment under this Order means a request containing a proposal as to the date of payment or, if it is proposed to pay by instalments, the frequency and amount of the instalments.”.

Provision of documents on discovery

3. After Order 14, rule 5 there shall be inserted the following new rule—

“Provision of copies of documents

5A.—(1) Any party who is entitled to inspect any documents under any provision of this Order, or of any order made thereunder, may, at or before the time when inspection takes place, serve on the party who is required to produce such documents for inspection a notice (which shall contain an undertaking to pay the proper charges) requiring him to supply a true copy of any such document as is capable of being copied by photographic or similar process.

(2) The party on whom such a notice is served must within 7 days after receipt thereof supply the copy requested together with an account of the proper charges.

(3) Where a party fails to supply to another party a copy of any document under paragraph (2), the Court may, on the application of either party, make such order as to the supply of that document as it thinks fit.

(4) The proper charges referred to in paragraph (1) shall not exceed the sum shown in Appendix A Item 4.”.

4. Order 14, rule 8(1) shall be amended by substituting for the words "2 or 5" the words "2, 5 or 5A".

5. Order 14, rule 8(1) shall be further amended by substituting for the words "disclosure or production", in both places where they appear, the words "disclosure, production or supply".

6. Order 14, rule 10(1) shall be amended by inserting after the words "any other purpose" the words "or to supply a copy of any document".

Discovery of documents and disclosure

7. Order 14 shall be amended by inserting, after rule 8, the following new rule—

"Use of documents

8A. Any undertaking, whether express or implied, not to use a document for any purposes other than those of the proceedings in which it is disclosed shall cease to apply to such document after it has been read to or by the Court, or referred to, in open court, unless the Court for special reasons has otherwise ordered on the application of a party or of the person to whom the document belongs."

Amendment of pleadings by consent

8. Order 15, rule 2 shall be amended by substituting for paragraph (1) the following paragraph—

"(1) Subject to Order 9, rule 2(3) and the following provisions of this rule, in any action or matter in which a return day has been fixed or a defence has been filed, a party may, without an order, amend any pleading of his—

(a) at any time before the return day, by filing the amended pleading and serving a copy on every other party, or

(b) at any stage of the proceedings, by filing the amended pleading endorsed with the consent of every party to the proceedings.

Where a day has been fixed for the pre-trial review of the action or matter, that day shall be treated as the return day for the purpose of this paragraph."

Oral examination proceedings

9. Order 25, rule 3 shall be amended by substituting for paragraph (5) the following paragraph—

"(5) Nothing in Order 29, rule 1(2) to (7) shall apply to an order made under paragraph (4), but Order 27, rule 8 shall apply, with the necessary modifications, as it applies to orders made under section 23(1) of the Attachment of Earnings Act 1971(a), except that for the period of 5 days specified in paragraph (1) thereof there shall be substituted a period of 10 days."

10. Order 25, rule 3 shall be further amended by inserting after paragraph (5) the following new paragraphs—

"(5A) Where an examination has been adjourned, the judgment creditor, if requested to do so by the person to be examined not less than 7 days before the day fixed for the adjourned examination, shall pay to him a sum reasonably sufficient to cover his expenses in travelling to and from the court, unless such a sum was paid to him at the time of service of the order for oral examination.

(5B) The judgment creditor shall, not more than 4 days before the day fixed for the adjourned examination, file a certificate stating either that no request has been made under paragraph (5A) or that a sum has been paid in accordance with such a request.

(5C) Where the person to be examined has made a request under paragraph (5A), he shall not be committed to prison under Order 29, rule 1(1) for having failed to attend at the time and place fixed for the adjourned examination unless the judgment creditor has paid to him a sum reasonably sufficient to cover his travelling expenses before the day fixed for the adjourned examination."

(a) 1971 c.32.

Committal

11. Order 29 rule 1 shall be amended by adding after paragraph (7) the following new paragraph—

“(8) Where service of a notice to show cause is dispensed with under paragraph (7) and a committal order is made, the judge may of his own motion fix a date and time when the person to be committed is to be brought before him or before the court.”.

Section 53, Administration of Justice Act 1985(a)

12. Order 38 shall be amended by inserting after rule 17 the following new rule—

“Reimbursement of additional costs under section 53, Administration of Justice Act 1985

17A.—(1) In default of agreement between the Lord Chancellor and a person as to the amount of additional costs to be reimbursed under section 53 of the Administration of Justice Act 1985, either of them may make a written request to the proper officer that such costs be taxed.

(2) Notwithstanding RSC Order 62, rule 3(4), such costs shall be taxed on an indemnity basis.”.

Landlord and Tenant Acts 1985(b) and 1987(c)

13. Order 43 shall be amended by substituting for the title the words “THE LANDLORD AND TENANT ACTS 1927(d), 1954(e), 1985 and 1987”.

14. Order 43, rule 1 shall be amended by substituting for paragraph (1) the following paragraph—

“(1) In this Order “the Act of 1927” means the Landlord and Tenant Act 1927, “the Act of 1954” means the Landlord and Tenant Act 1954, “the Act of 1985” means the Landlord and Tenant Act 1985 and “the Act of 1987” means the Landlord and Tenant Act 1987.”.

15. Order 43, rule 2(1) shall be amended by substituting for the words “or 1954” the words “or of 1954, or of 1985 or of 1987”.

16. Order 43, rule 14(1) shall be amended by inserting after the words “the Act of 1954” the words “or the Act of 1987”.

17. Order 43 shall be amended by adding after rule 15 the following new rule—

“Application under section 12(2) of the Act of 1985

16. An application under section 12 (2) of the Act of 1985 for an order authorising the inclusion in a lease of provisions excluding or modifying the provisions of section 11 of that Act may be heard and determined by the registrar and may, if the court thinks fit, be dealt with in chambers.”.

18. Order 43 shall be amended by adding after rule 16 the following new rules—

“Application under section 19 of the Act of 1987

17. A copy of the notice served under section 19 (2) (a) of the Act of 1987 shall be appended to the originating application under section 19(1) thereof, and an additional copy of the notice shall be filed.

Application for order under section 24 of the Act of 1987

18.—(1) An application for an order under section 24 of the Act of 1987 shall state—

- (a) the premises to which the application relates,
- (b) the name and address of the applicant and of the landlord of the premises, or, where the landlord cannot be found or his identity ascertained, the steps taken to find him or ascertain his identity,
- (c) the name and address of every person known to the applicant who is likely to be affected by the application, including, but not limited to, the other tenants of

(a) 1985 c.61. (b) 1985 c.70. (c) 1987 c.31. (d) 1927 c.36. (e) 1954 c.56.

flats contained in the premises, any mortgagee or superior landlord of the landlord, and any tenants' association,

- (d) the name, address and qualifications of the person it is desired to be appointed manager of the premises,
- (e) the functions which it is desired that the manager should carry out, and
- (f) the grounds of the application,

and a copy of the notice served on the landlord under section 22 of the Act of 1987 shall be appended to the originating application, unless the requirement to serve such a notice has been dispensed with, and an additional copy of the notice shall be filed.

(2) The respondent to an application for an order under section 24 of the Act of 1987 shall be the landlord of the premises.

(3) A copy of the application shall be served on—

- (a) each of the persons named by the applicant under paragraph (1) (c), together with a notice stating that he may apply under rule 14 to be made a party to the proceedings, and
- (b) the person named under paragraph (1) (d).

(4) Order 32, rules 2 and 3 shall apply to proceedings in which an application is made for an order under section 24 of the Act of 1987 as they apply to proceedings in which an application is made for the appointment of a receiver, and as if for the references in those rules to a receiver there were references to a manager under the Act of 1987.

Application for acquisition order under section 29 of the Act of 1987

19.—(1) An application for an acquisition order under section 29 of the Act of 1987 shall—

- (a) identify the premises to which the application relates and give such details of them as are necessary to show that section 25 of the Act of 1987 applies thereto,
- (b) give such details of the applicants as are necessary to show that they are constitute the requisite majority of qualifying tenants,
- (c) state the name and address of the applicants and of the landlord of the premises, or, where the landlord cannot be found or his identity ascertained, the steps taken to find him or ascertain his identity,
- (d) state the name and address of the person nominated by the applicants for the purposes of Part III of the Act of 1987,
- (e) state the name and address of every person known to the applicants who is likely to be affected by the application, including, but not limited to, the other tenants of flats contained in the premises (whether or not they could have made an application), any mortgagee or superior landlord of the landlord, and any tenants' association, and
- (f) state the grounds of the application,

and a copy of the notice served on the landlord under section 27 of the Act of 1987 shall be appended to the originating application unless the requirement to serve such a notice has been dispensed with, and an additional copy of the notice shall be filed.

(2) The respondents to an application for an acquisition order under section 29 of the Act of 1987 shall be the landlord of the premises and the nominated person, where he is not an applicant.

(3) A copy of the application shall be served on each of the persons named by the applicant under paragraph (1) (e), together with a notice stating that he may apply under rule 14 to be made a party to the proceedings.

(4) Where the nominated person pays money into court in accordance with an order under section 33 (1) of the Act of 1987, he shall file a copy of the certificate of the surveyor selected under section 33 (2) (a) thereof.

Application for order under section 38 or section 40 of the Act of 1987

20.—(1) An application for an order under section 38 or section 40 of the Act of 1987 shall state—

- (a) the name and address of the applicant and of the other current parties to the lease or leases to which the application relates,
- (b) the date of the lease or leases, the premises demised thereby, the relevant terms thereof and the variation sought,
- (c) the name and address of every person who the applicant knows or has reason to believe is likely to be affected by the variation, including, but not limited to, the other tenants of flats contained in the premises of which the demised premises form a part, any previous parties to the lease, any mortgagee or superior landlord of the landlord, any mortgagee of the applicant, and any tenants' association, and
- (d) the grounds of the application.

(2) The other current parties to the lease or leases shall be made respondents to the application.

(3) A copy of the application shall be served by the applicant on each of the persons named by the applicant under paragraph (1) (c) and by the respondent on any other person who he knows or has reason to believe is likely to be affected by the variation, together, in each case, with a notice stating that the person may apply under rule 14 to be made a party to the proceedings.

(4) Any application under section 36 of the Act of 1987 shall be contained in the respondent's answer, and paragraphs (1) to (3) shall apply to such an application as if the respondent were an applicant.

Service of documents in proceedings under the Act of 1987

21.—(1) Where an originating application or answer is to be served in proceedings under the Act of 1987 it shall be served by the applicant or, as the case may be, by the respondent.

(2) Where a notice is to be served in or before proceedings under the Act of 1987, it shall be served in accordance with section 54 and, in the case of service on a landlord, it shall be served at the address furnished under section 48(1).

Tenants' associations

22. In rules 18, 19 and 20 a reference to a tenants' association is a reference to a recognised tenants' association within the meaning of section 29 of the Act of 1985 which represents tenants of the flats of which the demised premises form a part."

19. Order 49 shall be amended by revoking rule 7.

Adoption Act 1976(a)

20. Order 47, rule 7(1) shall be amended by inserting after the words "Children Act 1975" the words "and of section 62(2) of the Adoption Act 1976".

Family Law Act 1986(b)

21. Order 47 shall be amended by inserting, after rule 10, the following new rule—

"Registration and enforcement of custody orders

11. (1) In this rule, unless the context otherwise requires—

"the Act" means the Family Law Act 1986;

"the appropriate court" means, in relation to Scotland, the Court of Session and, in relation to Northern Ireland, the High Court;

"the Deputy Principal Clerk" means the Deputy Principal Clerk of Session;

"custody order" means a custody order within the meaning of section 1, 32, 40, 42(5) or 42(6) of the Act;

(a) 1976 c.36. (b) 1986 c.55.

“the Master” means the Master (Care and Protection) of the High Court in Northern Ireland;

“registration” means registration under Part I of the Act, and “registered” shall be construed accordingly.

(2) An application under section 27 of the Act for the registration of a custody order made by a county court shall be made by filing in the office of that court a certified copy of the order, together with a copy of any order which has varied any of the terms of the original order and an affidavit by the applicant, and a copy thereof, which shall state—

- (a) the name and address of the applicant and his interest under the order;
- (b) the name and date of birth of the child in respect of whom the order was made, his whereabouts or suspected whereabouts and the name of any person with whom he is alleged to be;
- (c) the name and address of any other person who is known to the applicant to have an interest under the order and whether it has been served on him;
- (d) whether the order is to be registered in Scotland or Northern Ireland or in both jurisdictions;
- (e) that, to the best of the applicant's information and belief, the order is in force;
- (f) whether, and if so where, the order is already registered; and
- (g) details of any order known to the applicant which affects the child and is in force in the jurisdiction in which the custody order is to be registered,

and there shall be exhibited to the affidavit any document relevant to the application.

(3) Where the documents referred to in paragraph (2) are to be sent to the appropriate court, the proper officer shall—

- (a) retain the affidavit in the records of the court and send the copy thereof and the other documents to the Deputy Principal Clerk or to the Master, as the case may be, indicating, where the order relates to more than one child, with respect to which child or children it is to be registered, and
- (b) record the fact of transmission in the records of the court.

(4) On receipt of notice of the registration of a custody order in the appropriate court the proper officer shall record the fact of registration in the records of the court.

(5) If it appears to the proper officer that the custody order is no longer in force with respect to a child or more than one child or that a child or more than one child has attained the age of 16, he shall refuse to send the documents referred to in paragraph (2) to the appropriate court or shall indicate thereon with respect to which child or children the order is not to be registered, and he shall within 14 days give notice to the applicant of his refusal or indication and the reason for it.

(6) If the proper officer refuses to send the documents to the appropriate court, the applicant may apply to the judge for an order that the documents be sent to the appropriate court, or that they be sent with respect to a particular child or children.

(7) Where a custody order which is registered in the appropriate court is revoked or varied by a county court, the proper officer of the court making the subsequent order shall—

- (a) send a copy of the subsequent order to the Deputy Principal Clerk or to the Master, as the case may be, and to the court which made the custody order, if that court is different from the court making the subsequent order, for filing by that court,
- (b) record the fact of transmission in the records of the court, and
- (c) retain the subsequent order in the records of the court.

(8) On receipt of notice from the appropriate court of any amendment of its register, the proper officers of the court which made the custody order and of the court which made any subsequent order shall each record the fact of amendment.

(9) A party to proceedings in a county court for or relating to a custody order who knows of other proceedings (including proceedings out of the jurisdiction and concluded proceedings) which relate to the child concerned shall file an affidavit which shall state—

- (a) in which jurisdiction and court the other proceedings were instituted,
- (b) the nature and current state of such proceedings and the relief claimed or granted,
- (c) the names of the parties to such proceedings and their relationship to the child, and
- (d) if applicable, and if known, the reasons why the relief claimed in the proceedings for or relating to the custody order was not claimed in the other proceedings.”.

22. Order 47, rule 6 shall be amended by inserting as paragraph (1) the following paragraph—

“(1) For the purposes of section 15(1) of the Guardianship of Minors Act 1971(a), a county court which is authorised to hear an application under that Act shall be—

- (a) the county court for the district in which the minor to whom the application relates has his habitual residence, or
- (b) where the minor has no habitual residence in any district, the county court for the district in which he is present at the time when the proceedings are commenced, or
- (c) where the minor, having been habitually resident in a district, leaves or remains outside, or is removed from or retained outside that district either without the agreement of the person or of all the persons having the right to determine where he is to reside or in contravention of an order made by a court in any part of the United Kingdom, the county court for that district, for the period of one year beginning with the date of leaving, remaining, removal or retention.”.

and the existing paragraphs (1), (1A), (2) and (3) shall be renumbered as (2), (3), (4) and (5).

23. Order 47, rule 7 shall be amended by inserting after paragraph (2) the following new paragraph—

“(2A) For the purposes of section 100 (7) of the Children Act 1975(b), a county court which is authorised to hear an application under Part II of the Act shall be—

- (a) the county court for the district in which the child to whom the application relates has his habitual residence, or
- (b) where the child has no habitual residence in any district, the county court for the district in which he is present at the date when the proceedings are commenced or
- (c) where the child, having been habitually resident in a district, leaves or remains outside, or is removed from or retained outside, that district either without the agreement of the person or of all the persons having the right to determine where he is to reside or in contravention of an order made by a court in any part of the United Kingdom, the county court for that district, for the period of one year beginning with the date of leaving, remaining, removal or retention.”.

24. Rules 22 and 23 shall not apply to proceedings commenced before 4th April 1988.

(a) 1971 c.3, substituted by paragraph 10(2) of Schedule 1 to the Family Law Act 1986.

(b) 1975 c.72, substituted by paragraph 20(3) of Schedule 1 to the Family Law Act 1986.

We, the undersigned members of the Rule Committee appointed by the Lord Chancellor under section 75 of the County Courts Act 1984(a), having by virtue of the powers vested in us in this behalf made the foregoing Rules, do hereby certify the same under our hands and submit them to the Lord Chancellor accordingly.

*Norman Francis,
Deirdre McKinney,
R. E. Hammerton,
P. G. Hebbert,
Timothy Stow,
R. C. Newport,*

*C. S. Stuart-White,
R. Lockett,
R. Greenslade,
Patrick Eccles,
Gillian Stuart-Brown.*

I allow these Rules, which shall come into force in accordance with the Table below.

Dated 11th February 1988

Mackay of Clashfern, C.

TABLE

<i>Rule</i>	<i>Commencement Date</i>
1 and 20 to 24	4th April 1988
2 to 11	11th May 1988
12	On the coming into force of section 53 of the Administration of Justice Act 1985
13 to 19	On the coming into force of Parts II to IV of the Landlord and Tenant Act 1987

(a) 1984 c.28.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the County Court Rules 1981 so as to—

- (a) make it clear that a defendant's request for time for payment must contain a specific proposal as to the time or rate of payment (rule 2);
- (b) permit a party to require his opponent to supply copies of documents which he is entitled to inspect (rules 3 to 6);
- (c) provide that the undertaking not to use documents for an ulterior purpose shall cease when the document is read or referred to in open court (rule 7);
- (d) permit parties to amend their pleadings by consent (rule 8);
- (e) enable a judgment debtor to request payment of conduct money to attend an adjourned oral examination direct from the judgment creditor and remove from the court the duty to tender such money (rules 9 and 10);
- (f) enable a judge to order that a contemnor on whom a notice to show cause has not been served to appear before him (rule 11);
- (g) provide for the taxation of costs under section 53 of the Administration of Justice Act 1985 (reimbursement of additional costs resulting from death or incapacity of presiding judge) (rule 12);
- (h) provide for applications under the Landlord and Tenant Act 1987 (tenants' rights of first refusal, appointment of managers, compulsory acquisition by tenants of landlord's interest, variation of leases) and transfer the provision relating to section 12 of the Landlord and Tenant Act 1985 from Order 49 to Order 43 (rules 13 to 19);
- (i) insert a reference in Order 47 to authorised courts under the Adoption Act 1976 (rule 20);
- (j) provide for applications under Part 1 of the Family Law Act 1986 (recognition and enforcement of custody orders in other parts of the United Kingdom) (rule 21);
- (k) provide for the internal allocation of custody proceedings as between county courts (rules 22 to 24).