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STATUTORY INSTRUMENTS

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**1989 No. 2427 (L. 20)**

**SUPREME COURT OF ENGLAND AND WALES**

**The Rules of the Supreme Court (Amendment No. 4) 1989**

<i>Made</i>	- - - -	<i>18th December 1989</i>
<i>Laid before Parliament</i>		<i>11th January 1990</i>
<i>Coming into force</i>		
<i>As to all provisions except</i>		
<i>Rules 2 to 16</i>		<i>5th February 1990</i>
<i>Rules 2 to 16</i>		<i>4th June 1990</i>

We, the Supreme Court Rule Committee, having power under section 85 of the Supreme Court Act 1981<sup>(1)</sup> to make rules of court under section 84 of that Act for the purpose of regulating and prescribing the practice and procedure to be followed in the Supreme Court, hereby exercise that power as follows:

**Citation and commencement**

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Amendment No. 4) 1989 and shall come into force on 5th February 1990 except for Rules 2 to 16 which shall come into force on 4th June 1990.

(2) In these Rules, an Order referred to by number means the Order so numbered in the Rules of the Supreme Court 1965<sup>(2)</sup> and a reference to Appendix A or B is a reference to Appendix A or B to those Rules.

**Service of process**

2. For Order 6, rule 8(1), there shall be substituted the following—

“(1) For the purposes of service, a writ (other than a concurrent writ) is valid in the first instance—

- (a) where leave to serve the writ out of the jurisdiction is required under Order 11, for 6 months,
- (b) in any other case, for 4 months

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<sup>(1)</sup> 1981 c. 54.

<sup>(2)</sup> S.I.1965/1776; the relevant amending instruments are S.I. 1969/1105, 1970/944, 1971/1955, 1974/295, 1979/402, 522, 1716, 1980/1010, 2000, 1981/1734, 1982/1111, 1786, 1984/1051, 1985/69, 846, 1986/632 and 1987/1423.

beginning with the date of its issue.

(1A) A concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.”.

**3.** For Order 6, rule 8(2), there shall be substituted the following—

“(2) Subject to paragraph (2A), where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period, not exceeding 4 months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later day (if any) as the Court may allow.

(2A) Where the Court is satisfied on an application under paragraph (2) that, despite the making of all reasonable efforts, it may not be possible to serve the writ within 4 months, the Court may, if it thinks fit, extend the validity of the writ for such period, not exceeding 12 months, as the Court may specify.”.

**4.** For Order 97, rule 6(3), there shall be substituted the following—

“(3) Order 7, rule 6, shall not apply to an originating summons under this rule and Order 6, rule 8 (1) and (2) shall apply to such a summons as it applies to a writ but with the substitution for the references to 6 months and to 4 months of references to 2 months.”.

**5.** Forms 1, 8 and 10 in Appendix A shall be amended by substituting, for the words “12 calendar months”, the words “4 calendar months(*or, if service is to be effected out of the jurisdiction, 6 months*)”.

**6.** Forms 1 and 2 in Appendix B shall be amended by substituting, for the words “12 calendar months”, the words “4 calendar months(*or, if service is to be effected out of the jurisdiction, 6 months*)”.

**7.** Nothing in Rules 2 to 6 shall apply to proceedings commenced by a writ or an originating summons issued before those Rules come into force.

### **More informative pleading**

**8.** For Order 18, rule 12(1), there shall be substituted the following—

“**12.**—(1) Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing,

- (a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies;
- (b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies; and
- (c) where a claim for damages is made against a party pleading, particulars of any facts on which the party relies in mitigation of, or otherwise in relation to, the amount of damages.”.

**9.** In Order 18, rule 13(4), the words “and any allegation as to the amount of damages” shall be omitted.

**10.** Order 82, rule 7 shall be revoked.

**11.** Nothing in Rules 8 to 10 shall apply to a pleading served before those Rules come into force.

## **Provision of medical reports**

**12.** After Order 18, rule 12(1), there shall be inserted the following—

“(1A) Subject to paragraph (1B), a plaintiff in an action for personal injuries shall serve with his statement of claim—

- (a) a medical report, and
- (b) a statement of the special damages claimed.

(1B) Where the documents to which paragraph (1A) applies are not served with the statement of claim, the Court may—

- (a) specify the period of time within which they are to be provided, or
- (b) make such other order as it thinks fit (including an order dispensing with the requirements of paragraph (1A) or staying the proceedings).

(1C) For the purposes of this rule,—

“medical report” means a report substantiating all the personal injuries alleged in the statement of claim which the plaintiff proposes to adduce in evidence as part of his case at the trial;

“a statement of the special damages claimed” means a statement giving full particulars of the special damages claimed for expenses and losses already incurred and an estimate of any future expenses and losses (including loss of earnings and of pension rights).”.

**13.** In Order 18, rule 18(a), there shall be substituted, for the words “Rule 15(1) shall apply”, the words “Rules 12(1A), (1B), and (1C) and 15(1) shall apply”.

**14.** After Order 25, rule 8(1), there shall be inserted the following—

“(1A) Nothing in paragraph (1) shall require a party to produce a further medical report if he proposes to rely at the trial only on the report provided pursuant to Order 18, rule 12(1A) or (1B) but, where a party claiming damages for personal injuries discloses a further report, that report shall be accompanied by a statement of the special damages claimed and, in this paragraph, “statement of the special damages claimed” has the same meaning as in Order 18, rule 12(1C).”.

**15.** For Order 38, rule 37, there shall be substituted the following—

“(1) Subject to paragraph (2), where in any cause or matter an application is made under rule 36(1) in respect of oral expert evidence, then, unless the Court considers that there are special reasons for not doing so, it shall direct that the substance of the evidence be disclosed in the form of a written report or reports to such other parties and within such period as the Court may specify.

(2) Nothing in paragraph (1) shall require a party to disclose a further medical report if he proposes to rely at the trial only on the report provided pursuant to Order 18, rule 12(1A) or (1B) but, where a party claiming damages for personal injuries discloses a further report, that report shall be accompanied by a statement of the special damages claimed and, in this paragraph, “statement of the special damages claimed” has the same meaning as in Order 18, rule 12(1C).”.

**16.** Nothing in Rules 12 to 15 shall apply to proceedings commenced by a writ issued before those Rules come into force.

### **Split Trials**

17. Order 25, rule 3 shall be amended by substituting a comma for the full stop at the end of paragraph (c) and by adding the following—

“(d) Order 33, rule 4(2).”.

18. After Order 33, rule 4(2), there shall be inserted the following new paragraph—

“(2A) In an action for personal injuries, the Court may at any stage of the proceedings and of its own motion make an order for the issue of liability to be tried before any issue or question concerning the amount of damages to be awarded and—

- (a) notwithstanding the provisions of Order 42, rule 5(5), an order so made in the absence of the parties shall be drawn up by an officer of the Court who shall serve a copy of the order on every party; and
- (b) where a party applies within 14 days after service of the order upon him, the Court may confirm or vary the order or set it aside.”.

### **Interrogatories**

19. For Order 26, rules 1 to 6, there shall be substituted the following—

#### **“INTERROGATORIES**

#### **Discovery by interrogatories**

1.—(1) A party to any cause or matter may in accordance with the following provisions of this Order serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter which are necessary either—

- (a) for disposing fairly of the cause or matter, or
- (b) for saving costs.

(2) Without prejudice to the provisions of paragraph (1), a party may apply to the Court for an order giving him leave to serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter.

(3) A proposed interrogatory which does not relate to such a matter as is mentioned in paragraph (1) may not be administered notwithstanding that it might be admissible in oral cross-examination of a witness.

(4) In this Order,

“interrogatories without order” means interrogatories served under paragraph (1);

“ordered interrogatories” means interrogatories served under paragraph (2) or interrogatories which are required to be answered pursuant to an order made on an application under rule 3(2) and, where such an order is made, the interrogatories shall not, unless the Court orders otherwise, be treated as interrogatories without order for the purposes of rule 3(1).

(5) Unless the context otherwise requires, the provisions of this Order apply to both interrogatories without order and ordered interrogatories.

#### **Form and nature of interrogatories**

2.—(1) Where interrogatories are served, a note at the end of the interrogatories shall specify—

- (a) a period of time (not being less than 28 days from the date of service) within which the interrogatories are to be answered;
- (b) where the party to be interrogated is a body corporate or unincorporate which is empowered by law to sue or be sued whether in its own name or in the name of an officer or other person, the officer or member on whom the interrogatories are to be served; and
- (c) where the interrogatories are to be served on two or more parties or are required to be answered by an agent or servant of a party, which of the interrogatories each party or, as the case may be, an agent or servant is required to answer, and which agent or servant.

(2) Subject to rule 5(1), a party on whom interrogatories are served shall, unless the Court orders otherwise on an application under rule 3(2), be required to give within the period specified under rule 2(1)(a) answers, which shall (unless the Court directs otherwise) be on affidavit.

#### **Interrogatories without order**

3.—(1) Interrogatories without order may be served on a party not more than twice.

(2) A party on whom interrogatories without order are served may, within 14 days of the service of the interrogatories, apply to the Court for the interrogatories to be varied or withdrawn and, on any such application, the Court may make such order as it thinks fit (including an order that the party who served the interrogatories shall not serve further interrogatories without order).

(3) Interrogatories without order shall not be served on the Crown.

#### **Ordered interrogatories.**

4.—(1) Where an application is made for leave to serve interrogatories, a copy of the proposed interrogatories shall be served with the summons or the notice under Order 25, rule 7, by which the application is made.

(2) In deciding whether to give leave to serve interrogatories, the Court shall take into account any offer made by the party to be interrogated to give particulars, make admissions or produce documents relating to any matter in question and whether or not interrogatories without order have been administered.

#### **Objections and insufficient answers**

5.—(1) Without prejudice to rule 3(2), where a person objects to answering any interrogatory on the ground of privilege he may take the objection in his answer.

(2) Where any person on whom ordered interrogatories have been served answers any of them insufficiently, the Court may make an order requiring him to make a further answer, either by affidavit or on oral examination as the Court may direct.

(3) Where any person on whom interrogatories without order have been served answers any of them insufficiently, the party serving the interrogatories may ask for further and better particulars of the answer given and any such request shall not be treated as service of further interrogatories for the purposes of rule 3(1).

#### **Failure to comply with order**

6.—(1) If a party fails to answer interrogatories or to comply with an order made under rule 5(2) or a request made under rule 5(3), the Court may make such order as it thinks just

including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

(2) Without prejudice to paragraph (1), where a party fails to answer ordered interrogatories or to comply with an order made under rule 5(2), he shall be liable to committal.

(3) Service on a party's solicitor of an order to answer interrogatories made against the party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) A solicitor on whom an order to answer interrogatories made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.”.

**20.** Order 77, rule 12(5) shall be omitted.

### **Provisional damages**

**21.** Order 37, rule 9(1)(a) shall be amended by inserting, after the words “in section 32A”, the words “and identifying the disease or deterioration in question”.

### **Costs sanction for failure to admit facts**

**22.** For Order 62, rule 6(7) and (8), there shall be substituted the following—

“(7) If a party on whom a notice to admit facts is served under Order 27, rule 2, refuses or neglects to admit the facts within 14 days after the service on him of the notice or such longer time as may be allowed by the Court, the costs of proving the facts and the costs occasioned by and thrown away as a result of his failure to admit the facts shall be borne by him.

(8) If a party—

(a) on whom a list of documents is served in pursuance of Order 24, or

(b) on whom a notice to admit documents is served under Order 27, rule 5,

gives notice of non-admission of any of the documents in accordance with Order 27, rule 4(2) or 5(2), as the case may be, the costs of proving that document and the costs occasioned by and thrown away as a result of his non-admission shall be borne by him.”.

**23.** After Order 62, rule 7(5), there shall be added the following—

“(6) Subject to paragraph (7), where a party is entitled to costs under rule 6(7) or (8) the amount of those costs may be assessed by the Court and be ordered to be paid forthwith.

(7) No order may be made under paragraph (6) in a case where the person against whom the order is made is an assisted person within the meaning of the statutory provisions relating to legal aid.”.

### **Informal pleadings**

**24.** After Order 28, rule 4(4), there shall be inserted the following—

“(5) The Court may at any stage of the proceedings order that any affidavit, or any particulars of any claim, defence or other matter stated in any affidavit, shall stand as pleadings or that points of claim, defence or reply be delivered and stand as pleadings.”.

### **Approved statements**

**25.** For Order 82, rule 5(1), there shall be substituted the following—

“(1) Where a party wishes to accept money paid into Court in satisfaction of a cause of action for libel or slander, malicious prosecution or false imprisonment, that party may before or after accepting the money apply to a Judge in Chambers by summons for leave to make in open Court a statement in terms approved by the judge.”.

**26.** Order 82, rule 5(2) shall be amended by inserting, after the word “slander”, the words “malicious prosecution or false imprisonment”.

### **Summary proceedings for the possession of land**

**27.** Rule 2 of Order 113 shall stand as paragraph (1) of that rule and after that paragraph there shall be inserted the following—

“(2) The originating summons shall be endorsed with or contain a statement showing whether possession is claimed in respect of residential premises or in respect of other land.”.

### **Form 14**

**28.** Paragraph 2 of the Notes for Guidance on Form 14 in Appendix A shall be amended by inserting, after the word “insertion”, the words “, unless the contrary is shown,”.

*Mackay of Clashfern, C.,  
Lane, C.J.,  
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Dated 18th December 1989

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

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

- (a) to reduce from 12 to 4 months the time for which a writ or an originating summons is valid for service (except an originating summons under Order 97, rule 6 where, as now, the summons is valid for 2 months) and to amend the rules on extending validity(*Rules 2 to 7*);
- (b) to require a party against whom a claim for damages is made to plead any facts on which he relies in mitigation of the amount of damages(*Rules 8 to 11*);
- (c) to require the provision of a medical report and of a detailed statement of special damages with the statement of claim in an action claiming damages for personal injuries(*Rules 12 to 16*);
- (d) to require the Court to consider whether a split trial should be ordered on the summons for directions and to enable the Court in an action for personal injuries to make of its own motion an order providing for the issue of liability to be tried before any issue as to damages(*Rules 17 and 18*);
- (e) to enable interrogatories to be administered (on not more than two occasions) without a court order(*Rules 19 and 20*);
- (f) to require a defendant to specify in an offer to submit to a provisional award the type of disease for which an application for an award of further damages may subsequently be made (Rule 21);
- (g) to strengthen the power of the Court to penalise in costs a party who unjustifiably fails to make admissions of facts or documents (Rules 22 and 23);
- (h) to extend to proceedings begun by originating summons the power of the Court to order affidavits or particulars of any claim to stand as informal pleadings and to enable the Court to require points of claim to be provided (Rule 24);
- (i) to enable a party to an action for libel or slander, who has not accepted a payment into court but is contemplating doing so, to apply to the judge for a statement to be made clearing his name(*Rule 25*);
- (j) to extend to actions for malicious prosecution and false imprisonment the procedure for actions for libel or slander whereby a party who is either contemplating accepting a payment into court or has already done so, to apply to the judge for a statement to be made clearing his name(*Rule 26*);
- (k) to require a party seeking summary possession of land to indicate whether or not residential premises are situated on the land(*Rule 27*);
- (l) to amend the form of acknowledgement of service (Rule 28).