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STATUTORY INSTRUMENTS

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**1990 No. 1689 (L. 16)**

**SUPREME COURT OF ENGLAND AND WALES**

**The Rules of the Supreme Court (Amendment No. 2) 1990**

<i>Made</i>	- - - -	<i>23rd August 1990</i>
<i>Laid before Parliament</i>		<i>7th September 1990</i>
<i>Coming into force</i>	- -	<i>1st October 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. 2) 1990 and shall come into force on 1st October 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.

**Admiralty proceedings**

2. In Order 1, rule 4(1), in the definition of “pleading”, after the words “summons or”, there shall be inserted the words “Part One of a”.

3. In Order 75, rule 6(1), for the words “A person”, there shall be substituted “Except in a case to which paragraph (1A) applies, a person”.

4. After Order 75, rule 6(1), there shall be inserted the following new paragraph—

“(1A) Where a plaintiff in a limitation action has constituted a limitation fund in accordance with Article 11 of the Convention on Limitation of Liability for Maritime Claims 1976 (as set out in Schedule 4 to the Merchant Shipping Act 1979<sup>(3)</sup>) and rule 37A of this Order, and desires to prevent the arrest of any property for a claim which may be or has been

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(1) 1981 c. 54.

(2) S.I. 1965/1776; the relevant amending instruments are S.I. 1966/1055, 1968/1244, 1971/1269, 1955, 1972/1194, 1974/295, 1975/911, 1976/337, 1196, 1979/402, 1542, 1716, 1980/629, 1908, 2000, 1982/1111, 1786, 1983/1181, 1984/1051, 1986/632, 1187, 2289, 1987/1423, 1988/298, 1989/177, 386, 1307 and 1990/492.

(3) 1979 c. 39.

made against the fund, he must file in the registry a praecipe, in Form No. 5A in Appendix B, signed by him or his solicitor—

- (a) stating that a limitation fund in respect of damage arising from the relevant incident has been constituted, and
- (b) undertaking to acknowledge issue or service (as may be appropriate) of the writ in any action that may be begun against the property described in the praecipe;

and on the filing of the praecipe a caveat against the issue of a warrant to arrest the property described in the praecipe shall be entered in the caveat book.”.

5. For Order 75, rule 18, there shall be substituted the following new rule—

**“Preliminary Acts**

**18.—**(1) In an action to enforce a claim for damage, loss of life or personal injury arising out of a collision between ships, the following provisions of this rule shall apply unless the Court otherwise orders.

(2) The plaintiff must within two months after service of the writ on any defendant and the defendant must within two months of acknowledging issue or service of the writ file in the appropriate registry a document in two parts (in these rules referred to as a preliminary act) containing a statement of the following:

## Part One

- (i) the names of the ships which came into collision and their ports of registry;
- (ii) the length, breadth, gross tonnage, horsepower and draught at the material time of the ship and the nature and tonnage of any cargo carried by the ship;
- (iii) the date and time (including the time zone) of the collision;
- (iv) the place of the collision;
- (v) the direction and force of the wind;
- (vi) the state of the weather;
- (vii) the state, direction and force of the tidal or other current;
- (viii) the position, the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier;
- (ix) the lights or shapes (if any) carried by the ship;
- (x)
  - (a) the distance and bearing of the other ship if and when her echo was first observed by radar;
  - (b) the distance, bearing and approximate heading of the other ship when first seen;
- (xi) what light or shape or combination of lights or shapes (if any) of the other ship was first seen;
- (xii) what other lights or shapes or combinations of lights or shapes (if any) of the other ship were subsequently seen before the collision, and when;
- (xiii) what alterations (if any) were made to the course and speed of the ship after the earlier of the two times referred to in article (viii) up to the time of the collision, and when, and what measures (if any) other than alterations of course or speed, were taken to avoid the collision, and when;

- (xiv) the heading of the ship, the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact;
- (xv) what sound signals (if any) were given, and when;
- (xvi) what sound signals (if any) were heard from the other ship, and when.

## Part Two

- (i) a statement that the particulars in Part One are incorporated in Part Two;
- (ii) any other facts and matters upon which the party filing the preliminary act relies;
- (iii) all allegations of negligence or other fault which the party filing the preliminary act makes;
- (iv) the remedy or relief which the party filing the preliminary act claims;

(3) Part Two of the preliminary act shall be deemed to be the pleading of the person filing the preliminary act (in the case of the plaintiff his statement of claim and in the case of the defendant his defence and, where appropriate, his counterclaim) and the provisions of these rules relating to pleadings shall apply to it save insofar as this rule and rule 20 provide otherwise.

(4) The Court may order that Part Two of the preliminary act need not be filed by the plaintiff or defendant and give directions for the further conduct of the action.

(5) Every preliminary act shall before filing be sealed by the proper officer and be filed in a sealed envelope which shall not be opened except as provided in paragraph (7) or by order of the court.

(6) A plaintiff must serve notice of filing his preliminary act on every defendant who acknowledges issue or service of the writ within 3 days of receiving notice of that acknowledgement or upon filing his preliminary act, whichever is the later. A defendant must, upon filing his preliminary act, serve notice that he has done so on the plaintiff and on every other defendant who has acknowledged issue or service of the writ.

(7) Any party may inspect and bespeak a copy of the preliminary act of any other party upon filing in the appropriate registry a consent signed by that other party or his solicitor.

(8) Order 18, rule 20 (close of pleadings) shall not apply; and for the purposes of Order 18, rule 14 (denial by joinder of issue), Order 20, rule 3 (amendment of pleadings without leave) and Order 24, rules 1 and 2 (discovery of documents) the pleadings shall be deemed to be closed—

- (a) at the expiration of 7 days after service of the reply or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim pursuant to leave given under rule 20, or
- (b) if neither a reply nor a defence to counterclaim is served, at the expiration of 7 days after the last preliminary act in the action was served pursuant to paragraph (9) below.

(9) Within 14 days after the last preliminary act in the action is filed each party must serve on every other party a copy of his preliminary act.

(10) At any time after all preliminary acts have been filed any party may apply to the Court for an order that—

- (a) one or more parties file in the registry particulars of the damages claimed by them and serve a copy thereof on every other party, and
- (b) that the damages be assessed prior to or at the trial on liability.

The application must be made by summons to the appropriate registrar even if it is made after the issue of a summons for directions.

(11) When an order is made under paragraph (10) the claim or claims concerned shall be treated as referred to the appropriate registrar for assessment and rules 41 and 42 shall apply unless the registrar otherwise directs.

(12) In this rule “the appropriate registry” means the Admiralty and Commercial Registry or, if the action is proceeding in a district registry, that registry; and references to “the appropriate registrar” shall be construed accordingly.”.

6. In Order 75, rule 19(7), for “18(1)” there shall be substituted “18(2)”.

7. For Order 75, rule 20(2), there shall be substituted the following paragraphs—

“(2) Subject to paragraph (3), in any such action Order 18, rule 13(3) shall not apply to any allegation of fact made in—

(a) a statement of claim contained in Part Two of a preliminary act, or

(b) a counterclaim (whether contained in Part Two of a preliminary act or not),

and notwithstanding Order 18, rule 14(3) but without prejudice to the other provisions of that rule, there is an implied joinder of issue on the statement of claim or counterclaim.

(3) Paragraph (2) does not apply to a counterclaim if the plaintiff has served a defence to counterclaim pursuant to leave given under paragraph (1).”.

8. In Order 75, rule 26(3)(a), for the words “any notice given under rule 18(3) or filed under rule 18(4)”, there shall be substituted the words “any particulars filed pursuant to an order under rule 18(10)(a)”.

9. After Form No. 5 in Appendix B, there shall be inserted the following new form—

“No. 5APraeipe for caveat against arrest (O.75 r.6(1A))[Description of property giving name, if a ship]

We of [Solicitor for  
of ] request a caveat against the arrest of  
[description of property giving name, if a ship], having constituted a limitation fund  
in Action 19  
[ District Registry] in respect of damage arising from the relevant  
incident, namely [describe briefly the incident]; and undertake hereby to acknowledge  
issue or service of the writ in any action that may be begun against the property  
described in this praecipec. We consent that the writ of summons and any other  
document may be left for us at

Dated the day of 19  
(Signed)

10. Rules 2 and 5 to 8 shall not apply to any action in which the writ is issued before they come into force.

### **Exclusion of August from time for service etc. of pleadings**

11. Order 3, rule 3 and Order 18, rule 5 shall be revoked.

### **Service abroad**

12. After Order 11, rule 1(1)(s), there shall be added the following new sub-paragraph—

“(t) the claim is brought for money had and received or for an account or other relief against the defendant as constructive trustee, and the defendant’s alleged liability arises out of acts committed, whether by him or otherwise, within the jurisdiction.”.

## **Counterclaims and notices of judgment**

### **13. Order 15, rule 3 shall be amended as follows—**

- (a) in paragraph (2) for the words from “a form of acknowledgement” to “circumstances may require” there shall be substituted the words “the defendant must issue the counterclaim out of the appropriate office and serve on the person concerned a sealed copy of the counterclaim, together with a form of acknowledgement of service in Form No. 14 in Appendix A (with such modifications as the circumstances may require) and a copy of the writ or originating summons by which the action was begun and of all other pleadings served in the action”;
- (b) in paragraph (4) for the words “acknowledging service of a counterclaim by” there shall be substituted the words “issuing and acknowledging service of a counterclaim against”;
- (c) in paragraph (5) after the word “namely,” there shall be inserted the words “Order 6, rule 7(3) and (5).”.

**14.** In Order 15, rule 7(4) after the words “by which the cause or matter was begun” there shall be inserted the words “and of all other pleadings served in the proceedings.”.

### **15. After Order 15, rule 8(2), there shall be inserted the following new paragraph—**

“(2A) Together with the writ of summons served under paragraph (2) shall be served a copy of all other pleadings served in the action.”.

### **16. Order 15, rule 13A shall be amended as follows—**

- (a) in paragraph (3) after the words “Form No. 52 in Appendix A and” there shall be inserted the words “; and the copy to be served shall be a sealed copy”;
- (b) in paragraph (3) after the words “originating summons or writ and” there shall be inserted the words “of all other pleadings served in the action, and by”;
- (c) in paragraph (5) after the words “amended writ or originating summons is” there shall be inserted the words “issued and”;
- (d) after paragraph (6), there shall be added the following new paragraph—

“(7) Order 6, rule 7(3) and (5) shall apply in relation to a notice of an action under this rule as if the notice were a writ and the person by whom the notice is issued were the plaintiff.”.

### **17. Order 44, rule 2 shall be amended as follows—**

- (a) after paragraph (2) there shall be inserted the following new paragraph—

“(2A) Order 6, rule 7(3) and (5) shall apply in relation to a notice of judgment under this rule as if the notice were a writ and the person by whom the notice is issued were the plaintiff.”;
- (b) at the end of paragraph (3) there shall be added the following words—

“; and the copy of the notice to be served shall be a sealed copy.”;
- (c) in paragraph (4) for the words “without acknowledging service” there shall be substituted the words “after acknowledging service”.

## **Recovery of social security benefits**

### **18. Order 22, rule 5 shall be amended as follows—**

- (a) the present text shall stand as paragraph (1);
- (b) after paragraph (1), there shall be inserted the following new paragraph—

“(2) In a case where a payment into court has been made as mentioned in paragraph 12(2) of Schedule 4 to the Social Security Act 1989(4) and an application is made for the money remaining in court to be paid out, the court may treat the money in court as being reduced by a sum equivalent to any further relevant benefits (within the meaning of section 22(3) of that Act) paid to the plaintiff since the date of payment into court and direct payment out accordingly.”.

**19.** In Order 22, rule 14(2), the words from “and the Court, shall,” to the end shall be omitted.

**20.** Order 62, rule 9 shall be amended as follows—

- (a) the present text, as amended in accordance with (b) below, shall stand as paragraph (1);
- (b) in paragraph (1)(d) there shall be inserted, after the words “provided that”, the words “, except in a case to which paragraph (2) applies,”;
- (c) after paragraph (1) there shall be inserted the following new paragraph—

“(2) This paragraph applies to a case where the party making the offer has applied for, but has not yet received, a certificate of total benefit given in accordance with Schedule 4 to the Social Security Act 1989; but this paragraph shall not apply with respect to any time after 7 days after that party has received the certificate.”.

**21.** Form No. 23 in Appendix A shall be amended by inserting, before the words “Dated the day of 19 .”, the following paragraph—

“[The defendant has withheld from this payment into court the sum of £ in accordance with paragraph 12(2)(a)(i) of Schedule 4 to the Social Security Act 1989.]”.

### **Originating summons procedure**

**22.** In Order 24, rule 7A(1) after the words “originating summons”, there shall be inserted the words “(in Form No. 10 in Appendix A)”.

**23.** In Order 28, rule 3(1) for “4 clear”, there shall be substituted “14” and everything after “every other party” shall be omitted.

**24.** After Order 28, rule 3(2), there shall be added the following new paragraphs—

“(3) Where notice in Form No. 12 in Appendix A is served in accordance with paragraph (1), such notice shall specify what orders or directions the party serving the notice intends to seek at the hearing; and any party served with such notice who wishes to seek different orders or directions must, not less than 7 days before the hearing, serve on every other party a notice specifying the other orders and directions he intends to seek.

(4) If the hearing of an originating summons which is in Form No. 8 or Form No. 10 in Appendix A is adjourned and any party to the proceedings desires to apply at the resumed hearing for any order or direction not previously asked for he must not less than 7 days before the resumed hearing of the summons serve on every other party a notice specifying those orders and directions.

(5) Where a party is required by any provision of this rule or rule 5(2) to serve a notice or a copy of a notice on “every other party” he must—

- (a) where he is the plaintiff, serve it on every defendant who has acknowledged service of the originating summons; and
- (b) where he is a defendant, serve it on the plaintiff and on every other defendant affected thereby.”.

25. For Order 28, rule 5(2) there shall be substituted the following—

“(2) If the hearing of the summons is adjourned generally, any party may restore it to the list on 14 days' notice to every other party, and rule 3(4) shall apply in relation to any such adjourned hearing.”.

26. For Form No. 12 in Appendix A, there shall be substituted the following—

“No. 12 Notice of appointment to hear originating summons [Heading as in summons]

(0.28, r.2)

To [name of defendant] of

(a) Take notice that the originating summons issued herein on the                      day of                      19                      , will be heard by the Judge [or master or Admiralty Registrar or District Registrar] at Room No.                      Royal Courts of Justice, Strand, London WC2A 2LL [or the District Registry of the High Court of Justice at                      ], on                      day,                      the day of                      19                      at                      o'clock.

(b) And take notice that at that hearing [name of plaintiff] will seek [an order in the terms of paragraphs                      of the originating summons] [the following directions or orders:—

- 1.
- 2.
- etc.]

(c) You may attend in person or by your solicitor or counsel. If you fail to attend or to be represented, the Court may proceed in your absence.

Dated the                      day of                      19                      .  
(Signed)

[Agent for                      ]  
Solicitor for the plaintiff

#### *Note*

At paragraph (b) above the notice must state the substance of the orders sought by setting out the proposed wording for these orders or by referring to the relevant paragraphs of the originating summons or to a draft order attached to the notice. Failure to comply with this note renders the notice defective.

#### **Taxation of costs**

27. After Order 32, rule 2(3)(d), there shall be inserted the following new sub-paragraph—

“(dd)                      in relation to a summons in taxation proceedings in the Supreme Court Taxing Office, that office;”.

28. After Order 41, rule 9(3A), there shall be inserted the following new paragraph—

“(3B) Every affidavit used in proceedings for taxation in the Supreme Court Taxing Office must be filed in that office.”.

29. After Order 62, rule 28(4), there shall be inserted the following new paragraphs—

“(4A) An appeal shall lie to a judge in chambers from the exercise by a taxing officer of the powers conferred by this rule; and Order 58, rule 1 (as modified, in the case of an appeal from a district registrar, by Order 58, rule 3(2)) shall apply to such an appeal as it applies to an appeal from a master.

(4B) In exercising his powers under this rule the taxing officer shall have all the powers available to the Court in the exercise of its discretion under rules 10 and 11.”.

**30.** In Order 62, rule 33(1) after the words “provisional taxation”, there shall be inserted the words “or a decision under rule 28”.

### Minor corrections

**31.** For Table A (Basic Costs) in Part I of Appendix 3 to Order 62 there shall be substituted the following—

#### “A. Basic Costs

Amount to be allowed in cases under following sub-paragraphs of paragraph 1 of this Appendix			
	(a)	(b)	(c)
	£p	£p	£p
If the amount recovered is—			
not less than £600			
but less than £2,000—			
(i) where the writ was served by post	50.00	66.00	116.00
(ii) where the writ was served on the defendant personally	56.00	71.00	121.00
not less than £2,000			
but less than £3,000—			
(i) where the writ was served by post	56.00	73.00	121.00
(ii) where the writ was served on the defendant personally	66.00	77.00	127.00
not less than £3,000	73.00	105.00	150.00”

**32.** After Order 88, rule 3(3), there shall be inserted the following new paragraph—

“(4) In relation to domestic property within the meaning of section 66 of the Local Government Finance Act 1988<sup>(5)</sup>, the reference in paragraph (3)(b) to the net annual value for rating shall be construed as a reference to the value shown on the valuation list in force on 31st March 1990 or, if no such value was so shown, to its value by the year.”.

**33.** Rule 2(3) of the Rules of the Supreme Court (Amendment) 1990<sup>(6)</sup> shall be omitted.

**34.** Paragraph 2 of the Notes for Guidance in Form No. 2B in Appendix B shall be amended by inserting, after the words “or insertion”, the words “, unless the contrary is shown.”.

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(5) 1988 c. 41.

(6) S.I. 1990/492.



Dated 23rd August 1990

*Mackay of Clashfern, C.,  
Lane, C.J.,  
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Stephen Brown, P.,  
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Jules Sher,  
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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) in Admiralty proceedings, to make special provision for the entry of a caveat against arrest of a ship or goods in cases where the owner thereof has established a limitation fund under the Convention on Limitation of Liability for Maritime Claims 1976 (*Rules 3, 4 and 9*), and to prescribe a new form of preliminary act, to include a pleading, in collision cases (*Rules 2, 5 to 8 and 10*);
- (b) to allow pleadings to be served during August (*Rule 11*);
- (c) to permit service out of the jurisdiction, with the leave of the Court, of a writ seeking certain remedies against a defendant in respect of acts committed, whether by him or otherwise, within the jurisdiction (*Rule 12*);
- (d) to require service of the writ and other pleadings on additional parties to an action; to require that counterclaims and notices of proceedings and judgments be issued at court offices and sealed; and to require that a person served with notice of judgment acknowledge service of it before being able to apply for its discharge or variation (*Rules 13 to 17*);
- (e) to make provision consequential upon section 22 of, and Schedule 4 to, the Social Security Act 1989 (recovery of social security benefits from tortfeasors) particularly with regard to payments into court and offers of settlement in such cases (*Rules 18 to 21*);
- (f) to alter the time limits for service of appointments to hear originating summonses and to require that certain notices of appointment to hear such summonses specify the relief sought (*Rules 22 to 26*);
- (g) to make it clear that summonses in proceedings for taxation of costs in London should be issued in the Supreme Court Taxing Office (*Rule 27*) and that affidavits in such proceedings should be filed in that Office (*Rule 28*);
- (h) to extend the powers of taxing officers in relation to cases involving misconduct and neglect and to provide that in such cases there should be a right of appeal to a judge in chambers from decisions of taxing officers (*Rules 29 and 30*);
- (i) to correct some minor errors in the Rules of the Supreme Court (Amendment) 1990 and an omission from the Rules of the Supreme Court (Amendment No. 4) 1989 (S.I. [1989/2427](#)) (*Rules 31 to 34*).