

1990 No. 2599 (L.23)

SUPREME COURT OF ENGLAND AND WALES

**The Rules of the Supreme Court
(Amendment No. 3) 1990**

Made - - - - 19th December 1990

Laid before Parliament 20th December 1990

Coming into force in accordance with rule 1

We, the Supreme Court Rule Committee, having power under section 85 of the Supreme Court Act 1981(a) 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. 3) 1990 and shall come into force on 1st February 1991, except for rule 20 which shall come into force on such date as may be appointed for the coming into force of section 2 of the Contracts (Applicable Law) Act 1990(b) in so far as it relates to the Brussels Protocol referred to in section 1 of that Act.

(2) In these Rules, an Order referred to by number means the Order so numbered in the Rules of the Supreme Court 1965(c).

Issue of writs out of Admiralty and Commercial Registry

2. In Order 1, rule 4(1), after the definition of “Crown Office” there shall be inserted the following definition—

““FAX” means the making of a facsimile copy of a document by the transmission of electronic signals;”.

3. In Order 6, rule 7(3), before the words “Issue of writ”, there shall be inserted the words “Subject to rule 7A”.

4. In Order 6, the following rule shall be inserted after rule 7:

“Issue of Writ out of Admiralty and Commercial Registry when that Registry is closed

7A.—(1) When the Admiralty and Commercial Registry (in this rule referred to as “the Registry”) is closed to the public, a writ may be issued out of the Registry in accordance with the provisions of this rule.

(2) A writ issued under this rule must—

(a) be signed by a solicitor acting on behalf of the plaintiff, and

(b) not require the leave of the court to be issued, unless such leave has already been given.

(a) 1981 c.54.

(b) 1990 c.36.

(c) S.I. 1965/1776; the relevant amending instruments are S.I. 1968/1224, 1969/1894, 1972/1898, 1976/337, 1977/960, 1979/35, 402, 522, 1716, 1982/1111, 1983/1181, 1986/632, 1187, 2289, 1987/1423, 1988/298, 1340, 1989/386, 1990/1689.

(3) A solicitor causing a writ to be issued under this rule (in this rule referred to as “the issuing solicitor”) shall:

- (a) endorse on the writ to be issued an endorsement in accordance with Form No. 2C in Appendix B and sign the same; and
- (b) transmit a copy of the writ, including the said endorsement, to the Registry by FAX for issue under this rule; and
- (c) when he has received a transmission report stating that the transmission of the writ to the Registry was completed in full and the time and date of transmission, complete and sign the certificate in Form No. 2C in Appendix B with the date and time that, according to the transmission report, the FAX was transmitted to the Registry.

(4) Subject to paragraph (7) of this rule, the issue of a writ under this rule takes place when the FAX under paragraph (3)(b) is recorded at the Registry as having been received, and the writ bearing an endorsement under paragraph (3)(a) shall have the same effect for all purposes as a writ issued under rule 7 of this Order.

(5) When the Registry is next open to the public after the issue of a writ in accordance with this rule, the issuing solicitor or his agent shall:

- (a) attend and deliver to the Registry—
 - (i) the document which was transmitted by FAX, or, if the same has been served, a true copy thereof (including the endorsement and certificate referred to in paragraph (3)(a) and (c) above) endorsed by the issuing solicitor with the words “true copy of writ served on day of 19 ”, for sealing in accordance with paragraph 5(b); together with as many copies thereof as are required by these rules;
 - (ii) the transmission report.
- (b) upon receipt of the documents under sub-paragraph (a) and evidence that the proper fee for issue of the writ has been paid, and upon satisfying himself that the document delivered fully accords with the document received by the Registry under paragraph 3(b), the proper officer shall allocate a folio number to the action, seal as the writ with the seal of the Registry the document delivered, stamp the same with the time and date when the writ was issued under paragraph (4), mark the same “original” and stamp the copies referred to in sub-paragraph (a)(i).

(6) Unless otherwise ordered by the Court, the sealed writ retained by the Court shall be conclusive proof that the writ was issued at the time and on the date stated.

(7) Notwithstanding Order 2, rule 1, if the issuing solicitor does not comply with the provisions of paragraphs (2) and (3) or if the document delivered under paragraph (5)(a)(i) is not sealed under paragraph (5)(b), the writ shall be deemed never to have been issued.

(8) As soon as practicable after the sealing of a writ under paragraph (5) the issuing solicitor shall inform any person served with the unsealed writ of the folio number of the action and, on request, serve any such person with a copy of the sealed writ at such address in England and Wales as he may request; and any such person may, without paying a fee, inspect and take copies of the documents lodged at the Registry under paragraphs (3) and (5).”

5. In Order 75, rule 11 the following paragraph shall be added after paragraph (3):

“(4) Where in an action in rem a writ has been issued pursuant to Order 6, rule 7A and it is desired to serve the writ before it has been sealed by the Court, a copy of it endorsed in accordance with Order 6, rule 7A(3)(a) may be treated as if it were the original writ for the purpose of the foregoing paragraphs of this rule.”

6. In Appendix B the following form shall be inserted after Form No. 2B:

**ENDORSEMENT ON WRIT ISSUED WHEN ADMIRALTY AND
COMMERCIAL REGISTRY IS CLOSED**

1. This writ is issued under Order 6, rule 7A and may be served notwithstanding that it does not bear the seal of the Court.

2. A true copy of this writ and endorsement has been transmitted to the Admiralty and Commercial Registry, Royal Courts of Justice, Strand, London WC2A 2LL, at the time and date certified below by the undersigned solicitor.

3. It is the duty of the undersigned solicitor or his agent to attend at the Registry when it is next open to the public for the writ to be sealed.

4. Any person upon whom this unsealed writ is served will be notified by the undersigned solicitor of the folio number of the action and may require the undersigned solicitor to serve a copy of the sealed writ at an address in England and Wales and may inspect without charge the documents which have been lodged at the Registry by the undersigned solicitor.

5. I, the undersigned solicitor, undertake to the Court, to the defendants named in this writ and to any other person upon whom this writ may be served:

- (i) that the statement in paragraph 2 above is correct;
- (ii) that the time and date given in the certificate at the foot of this endorsement are correct;
- (iii) that this writ is a writ which may be issued under Order 6, rule 7A;
- (iv) that I will comply in all respects with the requirements of Order 6, rule 7A;
- (v) that I will indemnify any person served with the writ before it is sealed against any loss suffered as a result of the writ being or becoming invalid in accordance with Order 6, rule 7A(7).”.

(Signed)
Solicitor for the Plaintiff

Certificate.

I, the undersigned solicitor certify that I have received a transmission report confirming that the transmission of a copy of this writ to the Registry by FAX was fully completed and that the time and date of transmission to the Registry were [time] [date].

Dated the day of 19

(Signed)
Solicitor for the Plaintiff”.

Service of writs

7. In Order 11, rule 1(1)(r) after the word “under” the words “the Financial Services Act 1986(a) or” shall be inserted.

Disposal of case on point of law

8.—(1) The Arrangement of Orders at the beginning of the Rules of the Supreme Court shall be amended by inserting after the words “14. Summary judgment” the words “14A. Disposal of case on point of law”.

(2) After Order 14 the following Order shall be inserted:

(a) 1986 c.60.

“ORDER 14A
DISPOSAL OF CASE ON POINT OF LAW

Determination of questions of law or construction

1.—(1) The Court may upon the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that—

- (a) such question is suitable for determination without a full trial of the action, and
- (b) such determination will finally determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.

(2) Upon such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks just.

(3) The Court shall not determine any question under this Order unless the parties have either—

- (a) had an opportunity of being heard on the question, or
- (b) consented to an order or judgment on such determination.

(4) The jurisdiction of the Court under this Order may be exercised by a master.

(5) Nothing in this Order shall limit the powers of the Court under Order 18, rule 19 or any other provision of these rules.

Manner in which application under rule 1 may be made

2. An application under rule 1 may be made by summons or motion or (notwithstanding Order 32, rule 1) may be made orally in the course of any interlocutory application to the Court.”.

9. In Order 59, rule 1A(6)(aa) after the words “Order 14” there shall be added the words “, Order 14A”.

10. In Order 77, rule 7 the following shall be substituted for paragraph (1)—

“No application shall be made against the Crown—

- (a) under Order 14, rule 1, or Order 86, rule 1, in any proceedings against the Crown,
- (b) under Order 14, rule 5, in any proceedings by the Crown, or
- (c) under Order 14A, rule 1, in any proceedings by or against the Crown”.

Service of defence

11.—(1) Order 18, rule 2(1) shall be amended by substituting for the words “the plaintiff”, the words “every other party to the action who may be affected thereby”.

(2) Order 18, rule 2(1), as substituted by paragraph (1) of this rule, shall not apply to any proceedings begun before the coming into force of this rule.

Appeals to High Court by case stated

12.—(1) In Order 56, rule 10(1), after the words “served in accordance with rule 9(2)” there shall be added the following—

“or, where the case is stated without a request being made, by the Minister, secretary of the tribunal, arbitrator or other person by whom the case is stated”.

(2) The following shall be substituted for Order 56, rule 10(2)—

“(2) The applicant shall serve notice of a motion under paragraph (1), together with a copy of the case, on—

- (a) the Minister, secretary of the tribunal, arbitrator or other person by whom the case was stated, unless that Minister, tribunal, arbitrator or other person is the applicant,
- (b) every party (other than the applicant) to the proceedings in which the question of law to which the case relates arose, and
- (c) any other person (other than the applicant) served with the case under rule 9(2).”.

(3) The following shall be substituted for Order 56, rule 12—

“ 12. In proceedings for the determination of a case stated, or of a question of law referred by way of case stated, the Minister, chairman or president of the tribunal, arbitrator or other person by whom the case was stated shall be entitled to appear and be heard.”.

Powers of the Court of Appeal

13.—(1) In Order 59, rule 11, the following shall be substituted for paragraph (4)—

“(4) In any case where the Court of Appeal has power to order a new trial on the ground that damages awarded by a jury are excessive or inadequate, the Court may, instead of ordering a new trial, substitute for the sum awarded by the jury such sum as appears to the Court to be proper; but except as aforesaid the Court of Appeal shall not have power to reduce or increase the damages awarded by a jury.”.

(2) Order 59, rule 11(4), as substituted by paragraph (1) of this rule, shall not apply to any appeal set down before the coming into force of this rule.

Service of documents

14.—(1) Order 65, rule 5 shall be amended as follows.

(2) The following shall be substituted for paragraph (1)(c)—

“(c) through a document exchange in accordance with paragraph (2A), or
(ca) by FAX in accordance with paragraph (2B), or”.

(3) In paragraph (1) the words from “ In this rule “ document exchange ” ” to the end shall be omitted.

(4) The following shall be substituted for paragraph (2A)

“(2A) Where—

(a) the proper address for service includes a numbered box at a document exchange,
or

(b) there is inscribed on the writing paper of the party on whom the document is served (where such party acts in person) or on the writing paper of his solicitor (where such party acts by a solicitor) a document exchange box number, and such a party or his solicitor (as the case may be) has not indicated in writing to the party serving the document that he is unwilling to accept service through a document exchange,

service of the document may be effected by leaving the document addressed to that numbered box at that document exchange or at a document exchange which transmits documents every business day to that document exchange; and any document which is left at a document exchange in accordance with this paragraph shall, unless the contrary is proved, be deemed to have been served on the second business day following the day on which it is left.

(2B) Service by FAX may be effected where—

(a) the party serving the document acts by a solicitor,

(b) the party on whom the document is served acts by a solicitor and service is effected by transmission to the business address of such solicitor,

(c) the solicitor acting for the party on whom the document is served has indicated in writing to the solicitor serving the document that he is willing to accept service by FAX at a specified FAX number and the document is transmitted to that number; and for this purpose the inscription of a FAX number on the writing paper of a solicitor shall be deemed to indicate that such a solicitor is willing to accept service by FAX at that number in accordance with this paragraph unless he states otherwise in writing, and

(d) on the same day as the day of service by FAX the solicitor acting for the party serving the document serves a copy of it on the solicitor acting for the other party by any of the other methods of service set out in paragraph (1), and if he fails to do so, the document shall be deemed never to have been served by FAX.

Where the FAX is transmitted on a business day before 4 p.m., it shall, unless the contrary is shown, be deemed to be served on that day, and, in any other case, on the business day next following.”.

(5) In paragraph (3), the words from “In this rule “business day”” to the end shall be omitted.

(6) After paragraph (3) there shall be added the following new paragraph—

“(4) In this rule—

(a) “document exchange” means any document exchange for the time being approved by the Lord Chancellor;

(b) “business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday as defined in Order 3, rule 2(5).”.

Mortgage actions

15. In Order 88, rule 4:

(a) paragraph (3), and

(b) in paragraph (4) the words from “A copy of any affidavit” to the end, shall be omitted.

Proceedings under the Companies Act 1989(a)

16. After Order 93, rule 24 there shall be inserted the following rule:

“**Proceedings under the Companies Act 1989**

25.—(1) Proceedings in the High Court under sections 166(8) and 167(5) of the Companies Act 1989 shall be begun by writ and shall be assigned to the Chancery Division.

(2) No order shall be made under the said sections 166(8) and 167(5) against any person unless he is a party to the relevant proceedings.”.

Applications under the Companies Act 1985(b)

17.—(1) In Order 102, rule 2(2)(c) for the words “section 244(1)” there shall be substituted the words “section 242(3)”.

(2) In Order 102, rule 3(1) the following sub-paragraph shall be inserted after sub-paragraph (h):

“(i) under section 245B(1) for an order declaring that the annual accounts of a company do not comply with the requirements of the Act and requiring the directors of the company to prepare revised accounts.”.

Summary proceedings for the possession of land

18. The following shall be substituted for Order 41, rule 5(1)—

“(1) Subject to—

(a) Order 41, rule 2(2) and 4(2);

(b) Order 86, rule 2(1);

(c) Order 113, rule 3;

(d) paragraph (2) of this rule, and

(e) any Order made under Order 38, rule 3,

an affidavit may contain only such facts as the deponent is able of his own knowledge to prove.”.

19. In Order 113, rule 3, for sub-paragraph (c) there shall be substituted—

“(c) that he does not know the name of any person occupying the land who is not named in the summons;

and, unless the Court otherwise directs, any such affidavit may contain statements of information or belief with the sources and grounds thereof.”.

(a) 1989 c.40.

(b) 1985 c.6.

References to the European Court

20. In Order 114, rule 1, for the words “the Conventions referred to in section 1(1) of the Civil Jurisdiction and Judgments Act 1982(a)” there shall be substituted the words “any of the instruments referred to in section 1(1) of the Civil Jurisdiction and Judgments Act 1982 or in section 1 of the Contracts (Applicable Law) Act 1990(b)”.

Correction (notice of action to non-parties)

21. In Order 15, rule 13A(3) after the words “Form No. 52 Appendix A and” there shall be inserted the words “shall be issued out of the appropriate office”.

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Dated 19th December 1990

(a) 1982 c.27.
(b) 1990 c.36.

EXPLANATORY NOTE

(This note is not part of the Rules)

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

- (a) to make provision for the issue of writs when the Admiralty and Commercial registry is closed and for this and any other purposes to define the term "FAX" (*rules 2 to 6*);
- (b) to extend the circumstances in which service of a writ out of the jurisdiction is permissible to cover claims made under the Financial Services Act 1986 (*rule 7*);
- (c) to make provision for the disposal of cases on points of law or construction (*rules 8 to 10*);
- (d) to require a defendant to serve his defence on every other party to the action who may be affected by it (*rule 11*);
- (e) to clarify the procedure on appeal to the High Court where a case is stated by a tribunal or other body of its own motion (*rule 12*);
- (f) to enable the Court of Appeal to revise amounts of damages awarded by juries in all cases where the Court considers them excessive or inadequate (*rule 13*);
- (g) to provide for the service of documents by facsimile transmission and to amend the rules governing the service of documents through a document exchange (*rule 14*);
- (h) to abolish the requirement for specially endorsed affidavits in mortgage possession actions (*rule 15*);
- (i) to establish procedural requirements in relation to certain proceedings under the Companies Act 1989 (*rule 16*);
- (j) to provide that applications under section 245B(1) of the Companies Act 1985 be made by originating motion (*rule 17*);
- (k) to admit hearsay evidence in summary proceedings for the possession of land (*rules 18 and 19*);
- (l) to include those instruments referred to in the Contracts (Applicable Law) Act 1990 in the list of instruments whose interpretation may be referred to the European Court (*rule 20*);
- (m) to correct an error in the Rules of the Supreme Court (Amendment No. 2) 1990 (*rule 21*).

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