

2001 No. 1388 (L. 23)

**SUPREME COURT OF ENGLAND AND WALES
COUNTY COURTS, ENGLAND AND WALES**

The Civil Procedure (Amendment No. 2) Rules 2001

Made - - - - - *30th March 2001*

Laid before Parliament *6th April 2001*

Coming into force *in accordance with rule 1*

The Civil Procedure Rule Committee, having power under section 2 of the Civil Procedure Act 1997^(a) to make rules of court under section 1 of that Act, after consulting in accordance with section 2(6)(a) of that Act, make the following Rules—

Citation, commencement and interpretation

1. These Rules may be cited as the Civil Procedure (Amendment No. 2) Rules 2001 and shall come into force—

- (a) for the purposes of rules 17 and 18, on 1st June 2001;
- (b) for the purposes of rules 13, 14, 15 and 19, on 15th October 2001; and
- (c) for all other purposes on 31st May 2001.

2. In these Rules—

- (a) a reference to a Part or rule by number alone means the Part or rule so numbered in the Civil Procedure Rules 1998^(b);
- (b) a reference to an Order by number and prefixed by “RSC” means the RSC Order so numbered in Schedule 1 to those Rules; and
- (c) a reference to an Order by number and prefixed by “CCR” means the CCR Order so numbered in Schedule 2 to those Rules.

Amendments to the Civil Procedure Rules 1998

3. After paragraph (e) of rule 6.18, insert—

“(ea) “the Service Regulation” means Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters;”.

4. In rule 6.20(18), after “claim” insert “is”.

^(a) 1997 c.12.

^(b) S.I. 1998/3132 as amended by S.I. 1999/1008, S.I. 2000/221, S.I. 2000/940, S.I. 2000/1317, S.I. 2000/2092 and S.I. 2001/256.

5. In rule 6.24(1)—
 - (a) in sub-paragraph (b)(i) delete “or”;
 - (b) sub-paragraph (b)(ii) shall stand as sub-paragraph (b)(iii);
 - (c) before sub-paragraph (b)(iii), insert—
 - “(ii) rule 6.26A (service in accordance with the Service Regulation); or”.

6. In rule 6.25—
 - (a) in paragraph (4)—
 - (i) at the end of sub-paragraph (b), insert “or”;
 - (ii) in sub-paragraph (c) for “; or” substitute “.”; and
 - (iii) omit sub-paragraph (d); and
 - (b) after paragraph (4), insert—

“(5) This rule does not apply where service is to be effected in accordance with the Service Regulation.”.

7. After paragraph (6) of rule 6.26, insert—

“(7) This rule does not apply where service is to be effected in accordance with the Service Regulation.”.

8. After rule 6.26, insert—

“Service in accordance with the Service Regulation

6.26A (1) This rule applies where a claim form is to be served in accordance with the Service Regulation.

(2) The claimant must file the claim form and any translations or other documents required by the Service Regulation.

(3) When the claimant files the documents referred to in paragraph (2), the court officer will—

 - (a) seal^(GL) the copy of the claim form; and
 - (b) forward the documents to the Senior Master.

(4) Rule 6.31 does not apply.

(The Service Regulation is annexed to the relevant practice direction)”.

9. In rule 12.3, after the cross-reference at the end of that rule, insert—

“(Article 19(1) of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters applies in relation to judgment in default where the claim form is served in accordance with that Regulation)”.

10. In rule 13.3, after the cross-reference, insert—

“(Article 19(4) of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters applies to applications to appeal a judgment in default when the time limit for appealing has expired)”.

11. In rule 22.1, in paragraph (1)—
 - (a) in sub-paragraph (c), delete “and”; and
 - (b) at the end of sub-paragraph (d), insert—

“; and
 - (c) An acknowledgment of service in a claim begun by way of the Part 8 procedure.”.

12. After rule 39.7, insert—

“Claims under the Race Relations Act 1976

39.8 In a claim brought under section 57(1) of the Race Relations Act 1976, the court may, where it considers it expedient in the interests of national security—

- (a) exclude from all or part of the proceedings—
 - (i) the claimant;
 - (ii) the claimant’s representatives; or
 - (iii) any assessors appointed under section 67(4) of that Act;
- (b) permit a claimant or representative to make a statement to the court before the start of the proceedings (or part of the proceedings) from which he is to be excluded; or
- (c) take steps to keep secret all or part of the reasons for its decision in the claim.

(Section 67A(2) of the Race Relations Act 1976 provides that the Attorney General may appoint a person to represent the interests of a claimant in any proceedings from which he and his representatives are excluded”).

13. In Part 49—

- (a) at the end of paragraph (2)(f), for “; and” substitute “.”; and
- (b) omit paragraph (2)(g).

14. After Part 56, insert Part 57 (Probate) as set out in the Schedule to these Rules.

15. RSC Order 93, rule 20 is revoked.

16. In RSC Order 115—

- (a) after rule 23, for the heading of Section III substitute “III: TERRORISM ACT 2000**(a)**”;
- (b) in rule 24—
 - (i) in paragraph (a), for “Prevention of Terrorism (Temporary Provisions) Act 1989**(b)**” substitute “Terrorism Act 2000”;
 - (ii) at the end of paragraph (b), delete “and”;
 - (iii) after paragraph (b), insert—
 - “(ba) ‘the prosecutor’ means the person with conduct of proceedings which have been instituted in England and Wales for an offence under any of sections 15 to 18 of the Act, or the person who the High Court is satisfied will have the conduct of proposed proceedings for such an offence; and”;
 - (iv) at the beginning of paragraph (c), insert “other”; and
 - (v) in paragraph (c), for “Part III of, and Schedule 4 to,” substitute “Schedule 4 to”;
- (c) in rule 26(1), for “paragraphs 3 and 4” substitute “paragraph 5”;
- (d) in rule 26(2)(a), for “Part III” substitute “any of sections 15 to 18”;
- (e) in rule 27(2), after “a restraint order made without notice of” insert “the application for”;
- (f) in rule 29—
 - (i) for “paragraph 7 of Schedule 4” substitute “paragraph 9 or 10 of Schedule 4”;
 - and
 - (ii) for “the relevant authority under paragraph 7(5)” substitute “the person or body by whom compensation, if ordered, will be payable under paragraph 9(6) or 10(4)”;

(a) 2000 c.11.
(b) 1989 c.4.

- (g) in rule 32(1), for “Crown Office” substitute “Administrative Court”; and
- (h) in rule 35(3)—
 - (i) for “paragraph 5 or 6” substitute “paragraph 7 or 8”; and
 - (ii) for “paragraph 9(6)” substitute “paragraph 13(6)”.

17. In CCR Order 48B—

- (a) for the title substitute “Enforcement of traffic penalties”;
- (b) for “parking enforcement centre”, wherever it appears, substitute “traffic enforcement centre”;
- (c) in rule 1(1)—
 - (i) in sub-paragraph (a) delete “and”; and
 - (ii) at the end of sub-paragraph (b) insert—
 - “; and
 - (c) increased penalty charges provided for in a charge certificate issued under paragraph 8 of Schedule 1 to the 1996 Act**(a)** (relating to a contravention or failure to comply with an order made under a provision referred to in section 4(2) of that Act reserving all or part of a carriageway of a road as a bus lane).”.
- (d) in rule 1(2)—
 - (i) for the definition of “order”, substitute—
 - ““order” means, as the case may be, an order made under—
 - (a) paragraph 7 of Schedule 6 to the 1991 Act**(b)**;
 - (b) paragraph 9 of Schedule 1 to the 1996 Act; or
 - (c) section 73 of the 1991 Act**(c)**.”;
 - (ii) for the definition of “relevant period”, substitute—
 - ““relevant period” means, as the case may be—
 - (a) the period of 21 days allowed for serving a statutory declaration by—
 - (i) paragraph 8(1) of Schedule 6 to the 1991 Act; or
 - (ii) paragraph 10(1)(c) of Schedule 1 to the 1996 Act; or
 - (b) where a longer period has been allowed pursuant to—
 - (i) paragraph 8(4) of Schedule 6 to the 1991 Act; or
 - (ii) paragraph 10(4) of Schedule 1 to the 1996 Act,
- (iii) in the definition of “specified debts”, delete “Part II”;
- (iv) in the definition of “statutory declaration”, after “the 1991 Act” insert “or paragraph 10(2) of Schedule 1 to the 1996 Act, as the case may be”;
- (v) in the definition of “statutory declaration”, delete “and”; and
- (vi) at the end of the definition of “the 1991 Act”, insert—
 - “and;
 - “the 1996 Act” means the London Local Authorities Act 1996.”;

(a) The London Local Authorities Act 1996 (c.ix); paragraph 8 of Schedule 1 was amended by paragraph 7 of Schedule 2 to the London Local Authorities Act 2000 (c.vii) and Schedule 1 is repealed by Schedule 31 to the Transport Act 2000 (c.38) on such day as the Secretary of State may by order provide.

(b) The Road Traffic Act 1991 (c.40).

(c) 1991 c.40; section 73 was amended by the Greater London Authority Act 1999 (c.29), section 283 and Schedule 34, Part VI.

- (e) in sub-paragraph (a) of rule 1(4), after “London authority”, insert “(within the meaning of section 82(1) of the Road Traffic Act 1991(a))”;
- (f) in sub-paragraph (c) of rule 2(3) for “the parking attendant who issued the penalty charge notice believed”, substitute “it is claimed that”;
- (g) in rule 4—
 - (i) in paragraph (1), after “the 1991 Act” insert “and paragraphs 10(4) and (5)(d) of Schedule 1 to the 1996 Act”; and
 - (ii) in paragraph (2), after “the 1991 Act” insert “or paragraph 10(4) of the Schedule 1 to the 1996 Act”; and
- (h) in rule 5(7)—
 - (i) after “Schedule 6 to the 1991 Act”; and
 - (ii) after “Schedule 6” in sub-paragraph (c), insert “or, as the case may be, paragraph 10(5) of Schedule 1 to the 1996 Act”.

18. In CCR Order 48D—

- (a) for “parking enforcement centre”, wherever it occurs, substitute “traffic enforcement centre”; and
- (b) in rule 1(2), in the definition of “specified debts”, delete “Part II”.

Transitional provisions

19. Where a claim form—

- (a) relates to proceedings to which Part 57 would apply if it was issued on or after 15th October 2001, but
- (b) is issued before that date,

that Part shall not apply to the proceedings, and the rules of court in force immediately before that date shall apply as if they had not been amended or revoked.

Phillips of Worth Matravers, M.R.
Andrew Morritt, V-C
Anthony May, L.J.
Richard Holman
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John Leslie
Michael Black
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Michelle Stevens-Hoare
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Alan Street

I allow these Rules

Dated 30th March 2001

Irvine of Lairg, C

(a) 1991 c.40; the definition of “London authority” is substituted by the Greater London Authority Act 1999 (c.29), section 287(2).

SCHEDULE

PART 57

PROBATE CLAIMS

RECTIFICATION OF WILLS

SUBSTITUTION AND REMOVAL OF PERSONAL REPRESENTATIVES

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Scope of this Part and definitions

57.1—(1) This Part contains rules about—

- (a) probate claims;
- (b) claims for the rectification of wills; and
- (c) claims and applications to—
 - (i) substitute another person for a personal representative; or
 - (ii) remove a personal representative.

(2) In this Part:

- (a) “probate claim” means a claim for—
 - (i) the grant of probate of the will, or letters of administration of the estate, of a deceased person;
 - (ii) the revocation of such a grant; or
 - (iii) a decree pronouncing for or against the validity of an alleged will;

not being a claim which is non-contentious (or common form) probate business;

(Section 128 of the Supreme Court Act 1981^(a) defines non-contentious (or common form) probate business.)

- (b) “relevant office” means—
- (i) in the case of High Court proceedings in a Chancery district registry, that registry;
 - (ii) in the case of any other High Court proceedings, Chancery Chambers at the Royal Courts of Justice, Strand, London, WC2A 2LL; and
 - (iii) in the case of county court proceedings, the office of the county court in question;
- (c) “testamentary document” means a will, a draft of a will, written instructions for a will made by or at the request of, or under the instructions of, the testator, and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed;
- (d) “will” includes a codicil.

SECTION I—PROBATE CLAIMS

General

57.2—(1) This Section contains rules about probate claims.

(2) Probate claims in the High Court are assigned to the Chancery Division.

(3) Probate claims in the county court must only be brought in a county court where there is also a Chancery district registry.

(4) All probate claims are allocated to the multi-track.

How to start a probate claim

57.3 A probate claim must be commenced—

- (a) in the relevant office; and
- (b) using the procedure in Part 7.

Acknowledgment of service and defence

57.4—(1) A defendant who is served with a claim form must file an acknowledgment of service.

(2) Subject to paragraph (3), the period for filing an acknowledgment of service is—

- (a) if the defendant is served with a claim form which states that particulars of claim are to follow, 28 days after service of the particulars of claim; and
- (b) in any other case, 28 days after service of the claim form.

(3) If the claim form is served out of the jurisdiction under rule 6.19, the period for filing an acknowledgment of service is 14 days longer than the relevant period specified in rule 6.22 or the practice direction supplementing Section 3 of Part 6.

(4) Rule 15(4) (which provides the period for filing a defence) applies as if the words “under Part 10” were omitted from rule 15.4(1)(b).

Lodging of testamentary documents and filing of evidence about testamentary documents

57.5—(1) Any testamentary document of the deceased person in the possession or control of any party must be lodged with the court.

^(a) 1981 c.54.

(2) Unless the court directs otherwise, the testamentary documents must be lodged in the relevant office—

- (a) by the claimant when the claim form is issued; and
- (b) by a defendant when he acknowledges service.

(3) The claimant and every defendant who acknowledges service of the claim form must in written evidence—

- (a) describe any testamentary document of the deceased of which he has any knowledge or, if he does not know of any such testamentary document, state that fact, and
- (b) if any testamentary document of which he has knowledge is not in his possession or under his control, give the name and address of the person in whose possession or under whose control it is or, if he does not know the name or address of that person, state that fact.

(A specimen form for the written evidence about testamentary documents is annexed to the practice direction.)

(4) Unless the court directs otherwise, the written evidence required by paragraph (3) must be filed in the relevant office—

- (a) by the claimant, when the claim form is issued; and
- (b) by a defendant when he acknowledges service.

(5) Except with the permission of the court, a party shall not be allowed to inspect the testamentary documents or written evidence lodged or filed by any other party until he himself has lodged his testamentary documents and filed his evidence.

(6) The provisions of paragraphs (2) and (4) may be modified by a practice direction under this Part.

Revocation of existing grant

57.6—(1) In a probate claim which seeks the revocation of a grant of probate or letters of administration every person who is entitled, or claims to be entitled, to administer the estate under that grant must be made a party to the claim.

(2) If the claimant is the person to whom the grant was made, he must lodge the probate or letters of administration in the relevant office when the claim form is issued.

(3) If a defendant has the probate or letters of administration under his control, he must lodge it in the relevant office when he acknowledges service.

(4) Paragraphs (2) and (3) do not apply where the grant has already been lodged at the court, which in this paragraph includes the Principal Registry of the Family Division or a district probate registry.

Contents of statements of case

57.7—(1) The claim form must contain a statement of the nature of the interest of the claimant and of each defendant in the estate.

(2) If a party disputes another party's interest in the estate he must state this in his statement of case and set out his reasons.

(3) Any party who contends that at the time when a will was executed the testator did not know of and approve its contents must give particulars of the facts and matters relied on.

(4) Any party who wishes to contend that—

- (a) a will was not duly executed;
- (b) at the time of the execution of a will the testator was not of sound mind, memory and understanding; or
- (c) the execution of a will was obtained by undue influence or fraud,

must set out the contention specifically and give particulars of the facts and matters relied on.

- (5)(a) A defendant may give notice in his defence that he does not raise any positive case, but insists on the will being proved in solemn form and, for that purpose, will cross-examine the witnesses who attested the will.
- (b) If a defendant gives such a notice, the court will not make an order for costs against him unless it considers that there was no reasonable ground for opposing the will.

Counterclaim

57.8—(1) A defendant who contends that he has any claim or is entitled to any remedy relating to the grant of probate of the will, or letters of administration of the estate, of the deceased person must serve a counterclaim making that contention.

(2) If the claimant fails to serve particulars of claim within the time allowed, the defendant may, with the permission of the court, serve a counterclaim and the probate claim shall then proceed as if the counterclaim were the particulars of claim.

Probate counterclaim in other proceedings

57.9—(1) In this rule “probate counterclaim” means a counterclaim in any claim other than a probate claim by which the defendant claims any such remedy as is mentioned in rule 57.1(2)(a).

(2) Subject to the following paragraphs of this rule, this Part shall apply with the necessary modifications to a probate counterclaim as it applies to a probate claim.

(3) A probate counterclaim must contain a statement of the nature of the interest of each of the parties in the estate of the deceased to which the probate counterclaim relates.

(4) Unless an application notice is issued within 7 days after the service of a probate counterclaim for an order under rule 3.1(2)(e) or 3.4 for the probate counterclaim to be dealt with in separate proceedings or to be struck out, and the application is granted, the court shall order the transfer of the proceedings to either—

- (a) the Chancery Division (if it is not already assigned to that Division) and to either the Royal Courts of Justice or a Chancery district registry (if it is not already proceeding in one of those places); or
- (b) if the county court has jurisdiction, to a county court where there is also a Chancery district registry.

(5) If an order is made that a probate counterclaim be dealt with in separate proceedings, the order shall order the transfer of the probate counterclaim as required under paragraph (4).

Failure to acknowledge service or to file a defence

57.10—(1) A default judgment cannot be obtained in a probate claim and rule 10.2 and Part 12 do not apply.

(2) If any of several defendants fails to acknowledge service the claimant may—

- (a) after the time for acknowledging service has expired; and
- (b) upon filing written evidence of service of the claim form and (if no particulars of claim were contained in or served with the claim form) the particulars of claim on that defendant;

proceed with the probate claim as if that defendant had acknowledged service.

(3) If no defendant acknowledges service or files a defence then, unless on the application of the claimant the court orders the claim to be discontinued, the claimant may, after the time for acknowledging service or for filing a defence (as the case may be) has expired, apply to the court for an order that the claim is to proceed to trial.

(4) When making an application under paragraph (3) the claimant must file written evidence of service of the claim form and (if no particulars of claim were contained in or served with the claim form) the particulars of claim on each of the defendants.

(5) Where the court makes an order under paragraph (3), it may direct that the claim be tried on written evidence.

Discontinuance and dismissal

57.11—(1) Part 38 does not apply to probate claims.

(2) At any stage of a probate claim the court, on the application of the claimant or of any defendant who has acknowledged service, may order that—

- (a) the claim be discontinued or dismissed on such terms as to costs or otherwise as it thinks just; and
- (b) a grant of probate of the will, or letters of administration of the estate, of the deceased person be made to the person entitled to the grant.

SECTION II—RECTIFICATION OF WILLS

57.12—(1) This Section contains rules about claims for the rectification of a will.

(Section 20 of the Administration of Justice Act 1982^(a) provides for rectification of a will. Additional provisions are contained in rule 55 of the Non-Contentious Probate Rules 1987^(b).)

(2) Every personal representative of the estate shall be joined as a party.

(3) The practice direction makes provision for lodging the grant of probate or letters of administration with the will annexed in a claim under this Section.

SECTION III—SUBSTITUTION AND REMOVAL OF PERSONAL REPRESENTATIVES

57.13—(1) This Section contains rules about claims and applications for substitution or removal of a personal representative.

(2) Claims under this Section must be brought in the High Court and are assigned to the Chancery Division.

(Section 50 of the Administration of Justice Act 1985^(c) gives the High Court power to appoint a substitute for, or to remove, a personal representative.)

(3) Every personal representative of the estate shall be joined as a party.

(4) The practice direction makes provision for lodging the grant of probate or letters of administration in a claim under this Section.

(5) If substitution or removal of a personal representative is sought by application in existing proceedings, this rule shall apply with references to claims being read as if they referred to applications.

^(a) 1982 c.53.

^(b) S.I. 1987/2024 as amended by S.I. 1991/1876, S.I. 1998/1903 and 1999/1015.

^(c) 1985 c.61.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make the following amendments to the Civil Procedure Rules 1998:

- New rules are added to give effect to Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.
- The rules relating to statements of truth are amended to require such a statement in an acknowledgment of service in a claim begun by way of the Part 8 procedure.
- A new rule is added giving effect to 67A of the Race Relations Act 1976 and enabling a county court hearing a claim under section 57(1) of that Act to exclude a claimant or his representative from the hearing in the interests of national security.
- A new Part 57 is added dealing with contentious probate, rectification of wills and substitution and removal of personal representatives, and the previous rules are revoked.
- Amendments are made to the rules about applications for restraint orders and for the discharge and variation of such orders, and about applications for the registration and enforcement of restraint and forfeiture orders made in other parts of the United Kingdom against terrorists and persons who assist them. These amendments are consequential on the implementation of the Terrorism Act 2000 which replaces the Prevention of Terrorism (Temporary Provisions) Act 1989.
- Amendments are made to the rules about enforcement of road traffic penalties to provide for the enforcement in the county courts of increased penalty charges provided for in charge certificates issued under paragraph 8 of Schedule 1 to the London Local Authorities Act 1996 (which deals with increased penalty charges for breach of provisions about bus lanes).

2001 No. 1388 (L. 23)

SUPREME COURT OF ENGLAND AND WALES

COUNTY COURTS, ENGLAND AND WALES

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