PROCEDURE

1956 No. 1425 (L. 16)

The Chancery of Lancaster Rules, 1956

Made - - - -	31*st July*, 1956
Laid before Parliament	20*th September*, 1956
Coming into Operation	1*st October*, 1956

The Right Honourable George Nigel Earl of Selkirk, O.B.E. A.F.C. Chancellor of the Duchy and County Palatine of Lancaster, with the advice and consent of Sir Leonard Stone O.B.E., Vice-Chancellor of the said County Palatine of Lancaster, and with the approval of the authority empowered to make rules for the Supreme Court and in pursuance of the powers and authorities conferred by Section 1 of the Court of Chancery of Lancaster Act 1850(a), Section 6 of the Chancery of Lancaster Act 1890(b), Section 35 of the Crown Proceedings Act 1947(c) and all other powers and authorities enabling him in that behalf doth hereby order and direct as follows:

1. There shall be added at the end of Order I (which relates to form and commencement of action) the following rule:

"4. Save as provided by the Crown Proceedings Act 1947 or by these Rules—

(*a*) The Rules of the Court of Chancery of the County Palatine of Lancaster, except those contained in Rules 1 and 3 of this Order shall, so far as may be, apply to all civil proceedings by or against the Crown instituted in the said Court on or after the 1st day of October, 1956.

(*b*) Such civil proceedings as aforesaid shall, so far as may be, take the same form as civil proceedings between subjects, and shall, if no special form is applicable, take the form of an action commenced by writ of summons."

2. In Order III (which relates to indorsements of claim) there shall be inserted after Rule 3 the following rule:

"3A. Notwithstanding anything in Rule 2 or Rule 3 of this Order, the indorsement of claim in proceedings against the Crown shall contain information as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the Government departments and officers of the Crown concerned. In such proceedings if the defendant considers that the indorsement of claim does not contain sufficient information as aforesaid, the defendant may, at any time before the time limited by the writ of summons for appearance has expired, by notice in writing to the plaintiff request further information as specified in the notice. Where such a notice has been given the time for appearance shall expire four days after the defendant has notified the plaintiff in writing that the defendant is satisfied or four days after the Court or Vice-Chancellor has, on the application of the plaintiff by summons served on the defendant not less than seven days before the return day, decided that no further information as to the matters aforesaid is reasonably required."

3. In Order X (which relates to service of a writ of summons) there shall be inserted after Rule 5 the following rule:

"5A. The provisions of this Order shall have effect subject to the provisions of Section 18 of the Crown Proceedings Act 1947, which provides

(a) 13 & 14 Vict. c. 43. (b) 53 & 54 Vict. c. 23. (c) 10 & 11 Geo. 6. c. 44.

for the service of documents on the Crown for the purposes of or in connection with any civil proceedings by or against the Crown."

4. In Order XII there shall be inserted—

(i) after Rules 1 to 8 (which as amended by the Chancery of Lancaster Rules (No. 2) 1938(a) relate to service out of the jurisdiction of the Court and not within that of the High Court) the following rule:

"8A. The foregoing Rules of this Order apply in the case of proceedings by the Crown, but do not apply in the case of proceedings against the Crown"

(ii) after Rule 9 (which relates to service out of the jurisdiction of the Court and within that of the High Court) the following proviso:

"Provided always that for the purposes of proceedings under the Crown Proceedings Act 1947 the Crown shall be deemed to be a body corporate within the jurisdiction of the Court within the meaning of Section 3 of the Chancery of Lancaster Act 1890".

5. In Order XIII there shall be added at the end of Rule 13 (which regulates the time for appearance) the following clause:

"Where the Crown appears after the time limited by the writ for appearance but within the time allowed under these rules for appearance by the Crown, this Rule shall apply as if the Crown had appeared within the time limited by the Writ".

6. In Order XIV (which relates to default of appearance) there shall be added at the end of Rule 3 the following proviso:—

"Provided that in proceedings against the Crown the Plaintiff shall, in lieu of filing his statement of claim, serve the same in accordance with Section 18 of the Crown Proceedings Act 1947 as required by the proviso to Rule 4 of Order LIV".

7. In Order XIVA (which was substituted for the original Order by the Chancery of Lancaster Rules, 1955(b) and relates to summary judgment in actions for specific performance) there shall be inserted after Rule 1 the following rule:

"1A. Where an application is made under this Rule in proceedings by the Crown, the cause of action shall be deemed to be sufficiently verified if an affidavit is made by:

(*a*) an officer duly authorised by the department concerned; or

(*b*) the solicitor acting for the Crown; or

(*c*) an officer duly authorised by the solicitor acting for the Crown, stating that to the best of his knowledge and belief the plaintiff is entitled to the relief claimed and there is no defence to the action".

8. In Order XVI (which relates to the parties to an action) there shall be inserted after Rule 48 the following rules:

"48A. In respect of civil proceedings by or against the Crown, the provisions of this Order shall have effect subject to the provisions of section 17 of the Crown Proceedings Act, 1947, which relates to the parties to such proceedings,

48B. An application under sub-section (4) of section 17 of the Crown Proceedings Act, 1947:

(*a*) on behalf of Her Majesty's Attorney General to have such of the authorised Government departments as may be specified in the application substituted for him as defendant to the proceedings;

(a) S.R. & O. 1938/1396 (1938 I, p. 1621). (b) S.I. 1955/1348 (1955 I, p. 1051).

(*b*) on behalf of an authorised Government department to have Her Majesty's Attorney General or any other authorised Government department substituted for the applicant as defendant to the proceedings;

shall be made by Summons".

9. In Order XVI there shall be inserted after Rule 49 (which relates to Third-Party Procedure) the following rule:

49A. Notwithstanding anything in Rule 49 of this Order, leave to issue a third party notice for service on the Crown shall not be granted except upon an application to the Court or Vice-Chancellor by summons served upon the plaintiff and the Crown. Such leave shall not be granted unless the Court or Vice-Chancellor is satisfied that the Crown is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned".

10. In Order XVI there shall be added at the end of Rule 53 (which relates to proceedings on default by a third party) the following proviso:

"Provided that in the case of third-party proceedings against the Crown the foregoing provisions of this Rule shall not apply unless the Court or Vice-Chancellor so orders; and any application for such an order shall be made by summons served not less than 7 days before the return day".

11. In Order XIX there shall be inserted after Rule 3 (which relates to set-off and counterclaim) the following rule:

"3A.—(1) A person shall not be entitlel to avail himself of any set-off or counterclaim in any proceedings by the Crown for the recovery of taxes, duties or penalties, or to avail himself in proceedings by the Crown of any other nature of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties.

(2) A person shall not be entitled without the leave of the Court or Vice-Chancellor to avail himself of any set-off or counterclaim in any proceedings by the Crown, if either the subject matter of the set-off or counterclaim does not relate to the Government department in the name of which the proceedings are brought or the proceedings are brought in the name of Her Majesty's Attorney General.

(3) The Crown when sued in the name of a Government department, shall not be entitled without the leave of the Court or Vice-Chancellor to avail itself of any set-off or counterclaim if the subject matter thereof does not relate to that department.

(4) The Crown, when sued in the name of Her Majesty's Attorney General, shall not be entitled without the leave of the Court or Vice-Chancellor to avail itself of any set off or counterclaim.

(5) Any application for leave pursuant to paragraphs (2) (3) or (4) of this Rule shall be made by summons".

12. There shall be added at the end of Order XXVI (which as amended by the Chancery of Lancaster Rules (No. 1), 1937(a) provides for judgment in default of pleading) the following rule:

"8. In proceedings against the Crown no motion for judgment shall be made by the plaintiff under this Order without the leave of the Court which may be granted on application to the Court or Vice-Chancellor by summons served on the defendant not less than seven clear days before the return day".

(a) S.R. & O. 1937/552 (1937, p. 1497).

13. There shall be added at the end of Order XXVIIIA. (which relates to summonses for directions) the following rule ;—

" 8.—(1) Where an Order is made pursuant to Section 20 of the Crown Proceedings Act 1947 for the transfer of any proceedings from the Palatine Court to the High Court the Registrar shall ;—

(*a*) send notice of the transfer to all parties and

(*b*) make and certify copies of all entries in the books of the Court relating to the proceedings and send them to the proper officer of the High Court together with all documents filed in the proceedings.

(2) In the case of any such transfer ;—

(*a*) the costs of the certified copies of the entries in the books of the Court and of the transmission thereof to the High Court shall be paid in the first instance by the Crown and ultimately by the party ordered to pay the same by the Court by whom the proceedings are tried and

(*b*) the costs of the proceedings incurred before the transfer and not already dealt with shall be in the discretion of the Court by whom the proceedings are tried and (without prejudice to the provisions of Section 68 of the Solicitors Act 1932(**a**) shall be taxed by that Court."

14. In Order XXIX there shall be inserted after Rule 5 (which relates to discovery by interrogatories) the following rules:

" 5A. In proceedings in which the Crown is a party, if an Order is made for interrogatories to be answered by the Crown, the order shall direct by what officer of the Crown the interrogatories are to be answered."

15. There shall be added at the end of Order XXIX (which relates to discovery and inspection) the following rules:

" 30. In proceedings to which the Crown is a party any affidavit to be made in answer to an order for discovery against the Crown shall be made by such officer of the Crown as the Court or Vice-Chancellor shall direct.

31. In any proceedings in the Court to which the Crown is a party, any order of the Court made under the powers conferred by subsection (1) of the section 28 of the Crown Proceedings Act, 1947, shall be construed as not requiring disclosure of the existence of any document the existence of which it would in the opinion of a Minister of the Crown be injurious to the public interest to disclose ".

16. There shall be added at the end of Order XXXIV (which relates to evidence) the following rules:

" 39. In all actions to perpetuate testimony touching any honour, title, dignity or office or any other matter or thing in which the Crown may have an estate or interest, the plaintiff may proceed against the Crown under section 17 of the Crown Proceedings Act, 1947, and the provisions of that Act and these Rules shall apply accordingly.

40. For the avoidance of doubt it is hereby declared that any powers exercisable by the Court or Vice-Chancellor in regard to the taking of evidence are exercisable in proceedings by or against the Crown as they are exercisable in proceedings between subjects ".

(a) 22 & 23 Geo. 5. c. 37.

17. There shall be inserted after Order XXXVII the following new Order:

"ORDER XXXVIIA

ORDERS, &C. AGAINST THE CROWN

1. In this Order the following expressions have the following meanings:

"Order against the Crown" means any order (including an order for costs) made in any civil proceedings by or against the Crown, or in connection with any arbitration to which the Crown is a party, in favour of any person against the Crown or against a Government department or against an officer of the Crown as such.

"Order" includes a judgment, decree, rule, award, or declaration.

2. Nothing in any of the following orders—

XXXVIII (execution and discovery in aid of execution);

XXXIX (writs of fieri facias, elegit and sequestration);

XL (attachment);

XLA (attachment of debts);

XLI (charging orders and stop orders);

XLII (writ of possession);

XLIII (writ of delivery)

shall apply in respect of any order against the Crown.

3. Any application for a certificate under section 25 of the Crown Proceedings Act, 1947 (which relates to satisfaction of orders against the Crown) shall be made to the Vice-Chancellor at the Chambers of the Registrar, and may be made ex parte without summons. Any such certificate shall be in one of the Forms Nos. 6 & 7 in Apendix F with such variations as circumstances may require.

4.—(1) No order for the attachment of debts under Order XLA or for the appointment of a sequestrator under Order XXXIX or for the appointment of a receiver under Order XLIV shall be made or have effect in respect of any money due or accruing or alleged to be due or accruing from the Crown.

(2) In a case where it is alleged that such an Order could have been obtained and would have had effect in respect of such money if it had been due or accruing from a subject the Court or Vice-Chancellor may on the application by summons of the judgment creditor make an order restraining the judgment debtor from receiving such money and directing payment by the Crown to the judgment creditor or to a sequestrator or receiver; and the Court or Vice-Chancellor may appoint a sequestrator or receiver for that purpose.

(3) No such order shall be made in respect of:

(*a*) wages or salary payable to any officer of the Crown as such;

(*b*) money which is subject to the provisions of any enactment prohibiting or restricting assigning or charging or taking in execution; or

(*c*) money payable by the Crown to any person on account of a deposit in the Post Office Savings Bank.

(4) Any such summons shall be served at least four days before the return day on the Crown, and, unless otherwise ordered, on the judgment debtor or his solicitor. Service on the judgment debtor or his solicitor shall be effected in the manner provided for such service by Order LXA,

Rule 1. Service on the Crown shall be effected by service on the appropriate authorised Government department or on Her Majesty's Attorney General in accordance with sections 17 and 18 of the Crown Proceedings Act, 1947.

(5) If the Crown disputes liability, the Court or Vice-Chancellor may order that any issue or question necessary for determining the Crown's liability be tried or determined in any manner in which any issue or question in an action may be tried or determined, or may refer the matter to the Registrar. Where it is suggested by the Crown that the debt with reference to which the proceedings are taken belongs to some third person or that any third person has a claim upon it, the Court or Vice-Chancellor may order such third person to appear and state the nature and particulars of his claim upon such debt. After hearing any such third person as aforesaid, and any other person whom by the same or any subsequent order the Court or Vice-Chancellor may require to appear, the Court or Vice-Chancellor may bar the claim of the third person, or make such other order with respect to his claim as the Court or Vice-Chancellor thinks fit, upon such terms in all cases, with respect to the third person's claim (if any), and to costs, as the Court or Vice-Chancellor thinks just and reasonable. If the third person does not appear when ordered, the Court or Vice-Chancellor may exercise any powers which the Court or Vice-Chancellor might have exercised if he had appeared.

(6) In this Rule the expression "judgment debtor" means the person against whom the order for the attachment of debts or for the appointment of a sequestrator or receiver could have been obtained as aforesaid, and the expression "judgment creditor" means the person in whose favour it could have been obtained."

18. In Order XLIV there shall be inserted (i) after Rule 11A (which was added by the Chancery of Lancaster Rules, 1955) the following rule:

"11B. Leave to compound a penal action shall not be given in cases where part of the penalty goes to the Crown, unless notice shall first have been given to the proper officer or a Government department or Her Majesty's Attorney General or an officer of the Crown as such is a party to the action; but in other cases it may be given without notice to any officer".

(ii) after Rules 12 to 18A (which relate to the appointment of receivers) the following rule:

"18B. Rules 12 to 18A (inclusive) of this Order shall have effect subject to Rule 4 of Order XXXVIIA".

19. In Order XLVIIIB there shall be added at the end of Rule 10 (which relates to failure by a claimant to appear or obey an order in interpleader proceedings) the following proviso:

"Provided that no order shall be made against the Crown under the foregoing provisions of this Rule except upon an application by summons served not less than 7 days before the return day".

20. In Order LIV (which relates to service of orders, &c.) (i) there shall be inserted after Rule 1 the following rule:

"1A. (1) The provisions of these Rules relating to the service of documents shall have effect subject to the provisions of Section 18 of the Crown Proceedings Act, 1947, which provides for the service of documents on the Crown for the purpose of or in connection with civil proceedings by or against the Crown.

2. Service of a document in accordance with the said Section 18 shall be effected (*a*) by leaving the document within the prescribed hours at the office of the person to be served, or of any agent whom he has nominated for the purpose, but in either case with a person belonging to the office where the document is left, or (*b*) by posting it in a prepaid registered envelope addressed to the person to be served or any such agent as aforesaid; and where service under this Rule is made by post the time at which the document so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof.

3. All documents to be served on the Crown for the purpose of or in connection with any civil proceedings in the Court shall be treated for the purposes of these Rules as documents in respect of which personal service is not requisite.

4. In this Rule the expression "document" includes writs, notices, pleadings, orders, summonses, warrant and other documents, proceedings and written communications".

(ii) there shall be added at the end of Rule 2 (which relates to service when not personal) the following words:

"This Rule does not apply in the case of documents required to be served in accordance with S. 18 of the Crown Proceedings Act, 1947".

(iii) there shall be added at the end of Rule 4 (which relates to service where no appearance entered) the following proviso:

"Provided that the foregoing provisions of this Rule shall not have effect in the case of civil proceedings against the Crown when no appearance has been entered on behalf of the Crown and in any such case service shall be effected in the manner provided by Section 18 of the Crown Proceedings Act 1947 and the preceding Rules of this Order".

21. There shall be added at the end of Order LVI (which relates to interpretation of terms &c.) the following rule:

"3. "Civil proceedings by the Crown" and "civil proceedings against the Crown" and "civil proceedings by or against the Crown" have the same respective meanings as in Part II of the Crown Proceedings Act, 1947 and do not include any of the proceedings specified in subsection (3) of section 23 of that Act. "Civil proceedings to which the Crown is a party" has the same meaning as it has for the purposes of Part IV of the Crown Proceedings Act, 1947 by virtue of subsection (4) of section 38 of that Act. Except where the context otherwise requires, references in these Rules to actions for the recovery of land or for the recovery of possession of land shall be construed as including proceedings against the Crown for an order declaring that the Plaintiff is entitled as against the Crown to the land or to the possession thereof, and references in these Rules to actions for the recovery or delivery or specific delivery of property other than land or the possession of such property shall be construed as including proceedings against the Crown for an Order declaring that the Plaintiff is entitled as against the Crown to the property or to the possession thereof.

22. The forms Numbered 1 and 2 in the Schedule hereto shall be added to Appendix F and shall therein stand as forms Numbered 6 and 7 respectively.

23. These Rules may be cited as "the Chancery of Lancaster Rules, 1956" and shall come into operation on the 1st day of October, 1956.

Dated this 19th day of July, 1956.

Selkirk,
Chancellor.

Leonard Stone,
Vice-Chancellor.

Approved by the Authority empowered to make Rules for the Supreme Court.

George Coldstream.

Executed this 31st day of July, 1956.

SCHEDULE

1. CERTIFICATE OF ORDER AGAINST THE CROWN

Heading as in Form 1

By a judgment [order] of this Honourable Court dated the day of 19 , it was adjudged [ordered]:

[Give particulars of the judgment or order]

I hereby certify that the amount payable to by in pursuance of the said judgment [order] is [*together with interest thereon from the day of until the date of payment and together with costs which have been taxed and certified by the Registrar at . Interest is payable on the said costs from the day of until the date of payment]

[†This certificate does not include the amount payable under the said judgment [order] in respect of costs.]

* Omit so far as not required.

† To be included where a separate certificate has been directed to be issued as to costs.

2. CERTIFICATE OF ORDER FOR COSTS AGAINST THE CROWN

Heading as in Form 1

By a judgment [order] of this Honourable Court dated the day of 19 it was adjudged [ordered]:

[Give particulars of the judgment or order.]

I hereby certify that the costs payable to by in pursuance of the said judgment [order] have been taxed and certified by the Registrar at

[*Interest is payable on the said costs from the day of until the date of payment.]

* Omit where not required.

EXPLANATORY NOTE

(*This Note is not part of the Rules, but is intended to indicate their general purport.*)

These Rules make the amendments to the Rules of the Court of Chancery of the County Palatine of Lancaster which are required in order to give effect to the Crown Proceedings (Court of Chancery of Lancaster) Order 1956 (S.I. 1956/1215) enabling civil proceedings by or against the Crown to be instituted in the Palatine Court.