The Reserve and Auxiliary Forces (Protection of Civil Interests) Rules, 1951

1951 No. 1401

Made - - - -	*2nd August*, 1951
Laid before Parliament	*2nd August*, 1951
Coming into Operation	*15th August*, 1951

I, William Allen Viscount Jowitt, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by sections 5 and 25 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951(**a**), section 17 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920(**b**), and of all other powers enabling me in this behalf, do hereby make the following Rules:—

PART I

PRELIMINARY

Citation and commencement

1. These Rules may be cited as the Reserve and Auxiliary Forces (Protection of Civil Interests) Rules, 1951, and shall come into operation on the fifteenth day of August, 1951.

Interpretation

2.—(1) In these Rules, unless the context otherwise requires:—

"the Act" means the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951;

a section referred to by number means the section so numbered in the Act;

a rule referred to by number means the rule so numbered in these Rules;

a form referred to by number means the form so numbered in the Appendix to these Rules;

"judgment" includes "order", and "judgment given" includes "order made";

"leave to proceed" means leave to proceed to execution on, or otherwise to the enforcement of, a judgment;

"declaratory order" means an order under paragraph (*c*) of subsection (1) of section 3, directing that the provisions of subsection (1), (2) or (3), as the case may be, of section 2 shall apply to the exercise of the right or remedy in respect of which the order is made;

"relevant service" has the meaning assigned to it by section 64;

"wife" includes "husband";

"court" in Rules 38, 39 and 40 means, in relation to the High Court, "court or a judge".

(2) The Interpretation Act, 1889(**c**), shall apply to the interpretation of these Rules as if they were an Act of Parliament.

(a) 14 & 15 Geo. 6. c. 65. (b) 10 & 11 Geo. 5. c. 17. (c) 52 & 53 Vict. c. 63.

PART II

APPROPRIATE COURT

Judgments

3. The appropriate court for the giving of leave to proceed shall be—

(*a*) the court in which the judgment has been obtained ; or

(*b*) if the judgment has been obtained in a court outside England and Wales and is registered in a court in England and Wales for the purpose of enforcement, the court in which the judgment is registered.

Mortgage proceedings

4. The appropriate court for the giving of leave to institute, or take a step in, proceedings under paragraph (*b*) of subsection (2) of section 2 shall be the court in which the proceedings are to be instituted or are pending.

Rates

5. The appropriate court for the giving of leave to levy a distress for rates shall be the court having jurisdiction to issue the warrant of distress.

Remedies

6.—(1) The appropriate court for the giving of leave to exercise any remedy other than levying distress for rates shall, subject to the following paragraphs of this Rule, be the High Court in any case, and the county court as an alternative to the High Court in the following cases—

(*a*) for the levying of distress, where the amount for which distress is sought to be levied does not exceed £200, or where the distress is for rent of premises in respect of which the county court would have jurisdiction to hear and determine an action for recovery of land ;

(*b*) for entering into possession of land or for the appointment of a receiver of land or for re-entry upon land, where neither the value of the land nor the rent payable in respect thereof exceeds £100 a year ;

(*c*) for the realisation of any security, where the amount owing in respect of the mortgage, charge or lien does not exceed £500 ;

(*d*) for taking possession of any property other than land or for the appointment of a receiver of any such property where the sum sought to be recovered does not exceed £200 ;

(*e*) for the forfeiture of any deposit where the total amount payable in respect of which the deposit has been made does not exceed £200.

(2) Where the county court is the appropriate court, the application for leave to exercise the remedy shall be made in the county court for the district in which the person or one of the persons liable to pay the rent or other debt, or to perform the obligation, in question resides or carries on business or the subject-matter of the application is situate:

Provided that nothing in this paragraph shall prejudice any power of transferring proceedings from one court to another or of retaining proceedings commenced in the wrong court.

(3) Where the High Court and a county court have concurrent jurisdiction under this Rule, the application shall not be made to the High Court except in special circumstances.

(4) Where an application is made to the High Court and the court or a judge is of opinion that it ought to have been made to a county court, the court or judge may order the matter to be transferred to the county court.

Declaratory orders

7. The appropriate court for the making of a declaratory order in respect of the exercise of a right or remedy shall be the court which would have jurisdiction under these Rules to give leave for the exercise of the right or remedy if the provisions of subsection (1), (2) or (3) of section 2 applied thereto.

Directions for restoration of property, etc.

8. The appropriate court for the giving of directions for restoration of property, repayment of money or other measures under subsection (4) of section 13 shall—

(*a*) where there has been an omission to obtain leave required under section 2 or section 25, be the court having jurisdiction under these Rules to give leave ;

(*b*) where there has been a failure to observe a restriction or condition subject to which leave so required was given, be the court which imposed the restriction or condition ; and

(*c*) where there has been a contravention of the prohibition in subsection (5) of section 4 against dealing with goods, be the court having jurisdiction to make a declaratory order in respect of the taking of possession of the goods:

Provided that where any action or other proceedings which lie by virtue of any such omission, failure or contravention has or have been instituted in any court, that court shall have jurisdiction to give such directions as aforesaid.

PART III

HIGH COURT

Enforcement of Judgments

Application for leave to proceed

9.—(1) Where the plaintiff in an action obtains leave to enter judgment or obtains judgment at the trial and leave to proceed is required, he may apply for leave to proceed at the time when leave to enter judgment is given or at the trial when judgment is given, as the case may be, on notice given in accordance with the provisions of the next following paragraph.

(2) The notice shall be in Form 1 and shall be served on the defendant not less than four clear days before the hearing of the application or summons for leave to enter judgment or before the trial, as the case may be, unless the court or a judge otherwise orders.

(3) Where leave to proceed is required and has not been obtained under paragraph (1) of this Rule, the plaintiff may, at any time after judgment, apply for leave to proceed by summons in the proceedings in Form 2.

Application for declaratory order

10.—(1) Where the plaintiff in an action obtains leave to enter judgment or obtains judgment at the trial, the defendant may, at the time when leave to enter judgment is given or at the trial when judgment is given, as the case may be, apply for a declaratory order in respect of the enforcement of the judgment.

(2) If a declaratory order has not been obtained under paragraph (1) of this Rule, the defendant may, at any time after judgment, apply by summons in the proceedings for a declaratory order in respect of the enforcement of the judgment.

Proceedings other than actions

11. Rules 9 and 10 shall apply to a counterclaim and to proceedings other than an action as they apply to an action with such modifications as may be necessary or as may be directed by the court or a judge.

Exercise of Remedies

Application for leave or for a declaratory order

12.—(1) An application—

(*a*) under subsection (2) of section 2 for leave to exercise a remedy specified in paragraph (*a*) of that subsection or to institute proceedings specified in paragraph (*b*) thereof, or under subsection (1) of section 25 for leave to exercise a remedy specified in paragraph (*b*) of that subsection ; or

(*b*) for a declaratory order in respect of the exercise of any such remedy or the institution of any such proceedings under the said subsection (2),

shall be made by originating summons.

(2) The summons shall be issued out of the Division of the High Court which ordinarily deals with proceedings the subject-matter of which is similar to the subject-matter of the application:

Provided that where a summons has been issued out of a Division which, in the opinion of the court or a judge, is inappropriate, the court or judge may order that the proceedings shall either continue in that Division or be transferred to the Division out of which the summons ought to have been issued.

(3) The respondent shall not be required to enter an appearance to the summons, and accordingly Rule 4E of Order LIV of the Rules of the Supreme Court shall apply thereto.

(4) In the Chancery Division any application under the Act affecting mortgaged land and any action affecting the same mortgaged land shall be assigned to the same group.

(5) Where in the course of proceedings relating to any mortgage (whether before or after judgment) a party to the proceedings desires to apply for—

(*a*) leave under subsection (2) of section 2 to exercise in relation to the mortgaged property any right or remedy specified in that subsection, or

(*b*) a declaratory order in the respect of the exercise in relation to the mortgaged property of any right or remedy specified in the said subsection,

the application may, if the respondent thereto is a party to the proceedings, be made by summons in the proceedings.

(6) An application for leave under paragraph (*b*) of subsection (2) of section 2 to take a step in proceedings for foreclosure or sale in lieu of foreclosure, or for a declaratory order in respect of the taking of such a step as aforesaid, shall be made by summons in the proceedings.

(7) A summons under paragraph (1), (5) or (6) of this Rule, other than a summons for a declaratory order, shall include a statement in Form 3.

(8) Where an originating summons—

(*a*) for leave to exercise a remedy under paragraph (*a*) of subsection (2) of section 2, or to institute proceedings for possession of mortgaged property, or for leave to exercise a remedy under paragraph (*b*) of subsection (1) of section 25 ; or

(*b*) for a declaratory order in respect of the exercise of a remedy under the said paragraph (*a*) or of the institution of any such proceedings as aforesaid,

relates to land or goods within the district of a district registry, the originating summons may be issued in the district registry.

(9) Where the registered office of a company is situated within the district of a district registry, an originating summons for leave to appoint a receiver for the debenture holders of the company, or for a declaratory order in respect of the appointment of such a receiver, may be issued in the district registry.

(10) Nothing in the last two foregoing paragraphs shall be construed as restricting the jurisdiction of the district registry at Liverpol or Manchester.

General Provisions as to Procedure

Attendance of other creditors

13.—(1) Where upon an application for leave to exercise a right or remedy specified in subsection (1), (2) or (3) of section 2, it appears to the court or a judge that the defendant or respondent desires that his liabilities, other than the liability to which the application relates, should be taken into account, and that he has given notice of the application to persons having claims against him in respect of those other liabilities, the court or judge may permit any such person to be present at the hearing of the application, and may permit him to make representations in relation to the subject-matter of the application:

Provided that nothing in this Rule shall be construed as preventing the court or judge from taking a liability into account by reason only of the fact that notice of the application has not been given by the defendant or respondent to the person having a claim against him in respect of that liability.

(2) The last foregoing paragraph shall apply to an application for a declaratory order as if for the reference to the respondent there was substituted a reference to the applicant.

Appointment of receiver

14.—(1) Where a mortgagee of a dwelling-house has, in relation to the mortgage or the dwelling-house, commenced proceedings for leave to exercise any of the rights or remedies specified in subsection (2) of section 2 and he satisfies the court or a judge that prompt service of the summons cannot be effected or that it is otherwise expedient, the court or a judge may, upon the ex parte application of the mortgagee, give leave to exercise any remedy which may be available to him by way of the appointment of a receiver of the rents and profits, or the taking of possession, of the mortgaged dwelling-house.

(2) Leave may be given for the appointment of a receiver subject to such conditions as the court or a judge may think fit to impose, and, without prejudice to the generality of this provision, the court or a judge may require the mortgagee to give an undertaking—

(*a*) to remove a receiver appointed, if so directed by the court or judge;

(*b*) to direct the receiver to pay to such person as the court or judge may direct any sums which may become applicable in or towards the discharge of the principal money due under the mortgage in accordance with paragraph (*v*) of section 109 (8) of the Law of Property Act, 1925(**a**).

(**a**) 15 & 16 Geo. 5. c. 20.

Notice to persons affected by mortgage proceedings

15.—(1) Where a mortgagee applies for leave to exercise any of the rights or remedies mentioned in subsection (2) of section 2, he shall, on applying at the chambers of the judge for an appointment to hear the application, leave at chambers with a copy of the summons a statement showing—

(*a*) the name of any person, not being a respondent to the summons, who would, to the knowledge of the applicant, be affected by the exercise of the right or remedy;

(*b*) what the interest of that person is in the mortgaged property, and

(*c*) if known to the applicant, whether that person is for the time being performing a period of relevant service,

and the court or a judge may direct that such person or any other person who the court or judge may think would be affected by the granting of the application shall be given notice of the application.

(2) Any person to whom notice is given and any other person claiming to be affected may apply by summons in the proceedings for a declaratory order in respect of the exercise of the right or remedy.

Removal to district registry

16. Where a defendant to a cause or matter proceeding in London resides or carries on business within the district of a district registry and any question under these Rules arises in or in relation to the cause or matter, the court or a judge may, on or without an application for that purpose, order the cause or matter to be removed to the district registry, if in the circumstances the court or judge thinks it just to do so.

Service

17.—(1) Except as otherwise provided in this Rule, service of every summons and notice under this Part of these Rules shall be personal service, and accordingly the Rules of the Supreme Court relating to personal service, including Order LXVII, Rules 5 and 6 (which relate to the manner of service and substituted service), shall apply.

(2) Where in any action the defendant has entered an appearance, notice in Form 1 may be delivered or sent to the address for service instead of being served personally.

(3) No proof of service of a summons shall be required if the respondent by his solicitor undertakes in writing to accept service and to attend upon the hearing.

(4) Where a defendant or respondent on whom a summons or notice (including notice of the further hearing of an originating summons under Rule 12) is to be served is for the time being performing a period of relevant service, the summons or notice may, by leave of the court or a judge, be served by delivering it—

(*a*) to the wife of the defendant or respondent if it appears to the court or judge that she has been entrusted with the management of the defendant's or respondent's affairs in general, or of the premises or property to which the summons relates, or

(*b*) to any other person who appears to the court or judge to have been so entrusted.

(5) Where a summons for leave to exercise any right or remedy specified in subsection (1), (2) or (3) of section 2 or subsection (1) of section 25 relates to land, the summons may, by leave of the court or judge, in a case of vacant

possession, if service cannot be effected in any other manner, be served by posting a copy of the summons upon the door of the dwelling-house or other conspicuous part of the property or, if the summons relates to more than one dwelling-house or property, upon the door of every dwelling-house or other conspicuous part of every property to which the summons relates.

(6) If on any application in the Chancery Division for leave to exercise any such right or remedy as aforesaid the judge in person is satisfied that service cannot be effected in accordance with this Rule and is of opinion that in the interests of justice an order ought to be made, he may dispense with service of the application on the person named as respondent to the application or may direct notice of the application to be given to any person who in his opinion ought to have notice thereof.

(7) Where in the course of proceedings the defendant or respondent or any person mentioned in paragraph (2) of Rule 15 applies by summons for a declaratory order in respect of the exercise of any such right or remedy as aforesaid, the summons may be served in accordance with Order LXVII, Rule 2, of the Rules of the Supreme Court (which relates to service at the address for service).

Application on behalf of service man

18.—(1) Where a person who would be entitled to apply for a declaratory order is for the time being performing a period of relevant service, the court or a judge may, for the purpose of enabling him to obtain the protection afforded by subsection (8) or (9) of section 3, treat as an application made by him for a declaratory order an application for that purpose made on his behalf by his wife or by any other person acting in good faith in his interest.

(2) An application so made on behalf of a person performing relevant service shall be treated for the purposes of sub-paragraph (ii) of paragraph (*c*) of subsection (1) of section 3 as an application made by that person, unless the court or a judge on the hearing of the application otherwise determines.

Representatives

19.—(1) Where a summons or notice is served in manner provided by paragraph (4) of Rule 17 or an application is made in manner provided by paragraph (1) of Rule 18, the person to whom the summons or notice is delivered or by whom the application is made, as the case may be (in this Rule called "the representative"), shall be entitled to attend and be heard at the hearing of the summons as if he were the respondent or the person on whose behalf the application is made.

(2) If the court or a judge is of opinion that the representative has acted unreasonably in opposing, making or prosecuting the application, the court or judge may make an order for payment by him of the costs of any other party, but save as aforesaid the representative shall not be personally liable for such costs.

Costs

20. Where costs are awarded on any application under these Rules, the costs shall, unless otherwise ordered, be fixed and allowed without taxation according to such table as may from time to time be prescribed by the Masters of the Division to which the application is assigned.

PART IV

COUNTY COURTS

Enforcement of Judgments

Application for leave to proceed at hearing

21.—(1) Where leave to proceed is required, the plaintiff may apply for leave at the time of judgment on notice in Form 4.

(2) The notice may be served in any manner prescribed by Order VIII for the service of the summons in the action and, if not served with the summons, shall be served not less than seven clear days before the day fixed for the hearing.

Application for leave to proceed after judgment

22.—(1) Where leave to proceed is required and has not been obtained under Rule 21, an application for leave to proceed may be made at any time after judgment on notice in Form 5.

(2) The notice may be served in any manner prescribed by Order VIII for the service of the summons in the action and shall be served not less than seven clear days before the day fixed for the hearing of the application.

(3) The application may be heard and determined notwithstanding that there is no appearance by the plaintiff or defendant.

(4) The application may be heard and determined by the registrar whether the judgment was given by the judge or the registrar.

Application for declaratory order

23.—(1) Where judgment has been obtained against a defendant in an action, he may apply at the time of judgment or subsequently for a declaratory order in respect of the enforcement of the judgment.

(2) If the application is made after judgment, it shall be on notice under Order XIII, Rule 1.

(3) The application may be heard and determined notwithstanding that there is no appearance by the plaintiff or defendant.

(4) The application shall be heard by the judge:

Provided that, with leave of the judge, the registrar may make such order as he thinks just—

(*a*) if the judge is not present, or

(*b*) if the plaintiff does not oppose the making of the order.

Proceedings other than actions

24. Rules 21, 22 and 23 shall apply to a counterclaim and to proceedings other than an action as they apply to an action, with such modifications as may be necessary or as may be directed by the court.

Reference for inquiry and report

25.—(1) Where an application for leave to proceed or for a declaratory order in respect of the enforcement of a judgment is pending before any court (in this Rule called the home court) and the defendant resides or carries on business in the district of another court (in this Rule called the foreign court), the home court may, of its own motion, order the application to be referred to the registrar of the foreign court for inquiry and report.

(2) Where such an order is made, the registrar of the home court shall send the order with the documents in the action or matter to the registrar of the foreign court.

(3) On receipt of the order and documents the registrar of the foreign court shall give the defendant notice of a time and place at which the inquiry will be held, and, after the date fixed for the inquiry, shall make a report in writing and send it with the documents to the registrar of the home court.

Service of order

26. An order made on an application for leave to proceed or for a declaratory order in respect of the enforcement of a judgment shall be served by the registrar in accordance with Order XXIV, Rule 8:

Provided that it shall not be necessary to serve the order where unconditional leave to proceed is given or where the order is incorporated in the judgment.

Exercise of remedies

Proceedings for foreclosure

27.—(1) An application for leave to take a step in proceedings for foreclosure or sale in lieu of foreclosure shall be made on notice in Form 6.

(2) The provisions of Order VIII shall apply with the necessary modifications to the service of the notice as if it were a summons in an action for the recovery of land, so however that the notice shall be served not less than seven clear days before the day fixed for the hearing of the application.

(3) An application for a declaratory order in respect of the taking of such a step as aforesaid shall be made on notice under Order XIII, Rule 1.

Leave to distrain

28.—(1) An application for leave to distrain shall be made by originating application.

(2) The application shall be in Form 7 and the notice required by Order VI, Rule 4 (2) (*c*) (ii), to be served on the respondent with a copy of the application shall be in Form 8 in lieu of the form prescribed in that sub-paragraph.

(3) A person regularly employed by the applicant to collect the rent of the premises to which the application relates shall be deemed to be a person in the permanent and exclusive employ of the applicant within the meaning of Order VIII, Rule 2 (*b*) (ii).

(4) Where service is effected otherwise than by a bailiff—

(*a*) the documents shall be delivered to the respondent or to some person apparently not less than 16 years old at the premises to which the application relates, and

(*b*) the person effecting service shall make an indorsement to the effect of Form 31 in the County Court Rules, 1936(a), on the copy of the notice retained by him and shall state therein his qualification to serve the documents, and shall, within three days of the date of service or such further time as may be allowed by the registrar, file in the court office the indorsed copy of the notice and any unserved notice.

(a) S.R. & O. 1936 (No. 626) I, p. 282.

(5) The day fixed for hearing the application need not be a court day, and the application may be heard and determined by the registrar, in court or in chambers, whether the judge is holding a court or not.

(6) Where leave to distrain for the rent of any premises is required both by the Act and by the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, the application shall be made in accordance with these Rules and not in accordance with the Increase of Rent and Mortgage Interest (Restriction) Rules, 1920(a), as amended.

(7) An order giving leave to distrain shall be in Form 9 and shall be served on the applicant and the respondent.

Other remedies

29.—(1) An application—

(*a*) under subsection (2) of section 2 for leave to exercise a remedy specified in paragraph (*a*) of that subsection (other than the levying of distress) or to institute proceedings for possession of mortgaged property, or under subsection (1) of section 25 for leave to exercise a remedy specified in paragraph (*b*) of that subsection ; or

(*b*) for a declaratory order in respect of the exercise of any such remedy (including the levying of distress) or the institution of any such proceedings under the said subsection (2),

shall be made by originating application.

(2) An originating application for leave to exercise a remedy or to institute proceedings as aforesaid shall be in Form 7 and the notice required by Order VI, Rule 4 (2) (*c*) (ii), to be served on the respondent with a copy of the application shall be in Form 8 in lieu of the form prescribed in that subparagraph.

(3) Where default has been made in the payment of mortgage money or the performance of a mortgage obligation, then, without prejudice to the generality of any other provisions relating to the joinder of causes of action—

(*a*) an application for leave to realise the security by selling the mortgaged property may be joined with an application for leave to take possession, or to institute proceedings for possession, of the property ; and

(*b*) an application for a declaratory order in respect of the realisation of the security by selling the mortgaged property may be joined with an application for a declaratory order in respect of the taking of possession, or the institution of proceedings for possession, of the property.

(4) The application shall be heard by the judge:

Provided that, with leave of the judge, the registrar may make such order as he thinks just—

(*a*) if the judge is not present, or

(*b*) if the respondent does not oppose the making of the order.

Power to dispense with notice of doubtful service

30. Where service of an originating application for leave to exercise a remedy or to institute proceedings to which Rule 28 or 29 applies has been effected by delivering the documents to some person other than the respondent, the registrar may, if it appears to him that that person has been

(a) S.R. & O. 1920 (No. 1261) I, p. 1072.

entrusted with the management of the respondent's affairs in general, or of the premises or property to which the application relates, dispense with the notice of doubtful service prescribed by Order VIII, Rule 30 (1), and if the respondent does not appear on the day fixed for the hearing, the application may proceed, if the court thinks fit, notwithstanding anything in Rule 30 (2) of that Order.

General Provisions as to Procedure in the County Court

Certain rules in Part III to apply

31. Rules 13, 14 and 18 shall apply to proceedings in a county court as they apply to proceedings in the High Court with such modifications as may be necessary.

Notice to persons affected by mortgage proceedings

32.—(1) Where a mortgagee applies for leave to exercise any of the rights or remedies mentioned in subsection (2) of section 2, he shall include in his application a statement showing—

(*a*) the name of any person, not being a respondent to the summons, who would, to the knowledge of the applicant, be affected by the exercise of the right or remedy,

(*b*) what the interest of that person is in the mortgaged property, and

(*c*) if known to the applicant, whether that person is for the time being performing a period of relevant service,

and the registrar may direct that such person, or any other person who the registrar may think would be affected by the granting of the application, be given notice of the application.

(2) On the filing of an application which includes a statement under paragraph (1) of this Rule, the registrar may, after entering the application in the books of the court but before fixing a day for the hearing of the application, fix a day for the consideration by him of the question what persons (if any) are to be given notice of the application.

(3) Any person to whom notice is given and any other person claiming to be affected may apply on notice under Order XIII, Rule 1, for a declaratory order in respect of the exercise of the right or remedy.

Costs

33.—(1) No solicitor's charges shall be allowed as between party and party in connection with an application under Rule 21 or with an application under Rule 23 made at the time of judgment.

(2) Where costs are awarded in an application under Rule 22, 23, 24, 27 or 28, the costs shall be fixed and allowed without taxation, and if in any such application the party to whom costs have been awarded has employed a solicitor, the following provisions shall apply:—

(*a*) Where the application is made under Rule 22, 23, 24 or 27, the amount to be fixed for the solicitor's charges shall be regulated by the scale on which the costs of the action were awarded, according to the following Table:—

Scale of Costs of the Action	*Amount of Fixed Charges* s.	d.
Scale 1	5	0
Scale 2	7	6
Scale 3	12	6

(*b*) Where the application is made under Rule 28, the amount to be fixed for the solicitor's charges shall be regulated by the sum sought to be distrained for at the date of the filing of the application according to the following Table:—

Sum sought to be distrained for	*Amount of Fixed Charges*
	s. d.
Exceeding £2 and not exceeding £10	5 0
Exceeding £10 and not exceeding £20	7 6
Exceeding £20	12 6

(*c*) The amount so fixed for solicitor's charges shall include all work done by the solicitor in connection with the preparation, service and hearing of the application.

(3) Where costs are awarded in an originating application under Rule 29, the costs shall be fixed and allowed without taxation, and the amount to be fixed for solicitor's charges shall be such amount as the registrar thinks reasonable.

Meaning of references to County Court Rules

34. In this Part of these Rules words have the same meaning as in the County Court Rules, 1936, and an Order and Rule referred to by number mean the Order and Rule so numbered in those Rules.

PART V

OTHER COURTS

Courts of summary jurisdiction

35.—(1) Where in proceedings in a court of summary jurisdiction leave to proceed is required—

(*a*) an application for leave to proceed may be made at the time when judgment is given if, at the request of the complainant, a notice adapted from Form 1 has been served on the defendant with the summons; or

(*b*) if judgment has been given against the defendant, an application for leave to proceed may be made at the hearing of a summons in a form adapted from Form 2.

(2) In proceedings for the recovery of rates, an application for leave to levy a distress may be made at the hearing of the summons for non-payment of rates if a notice in Form 10 has been served on the defendant in the manner in which such a summons may be served not less than four clear days before the hearing of the summons.

(3) If a warrant of distress for rates has been issued without leave to levy the distress having been given under the Act and leave is or subsequently becomes necessary, an application for leave may be made to the court at the hearing of a summons in a form adapted from Form 2 and served on the defendant in the manner in which a summons for non-payment of rates may be served.

(4) If a notice or summons under paragraph (2) or (3) of this Rule is not served on the defendant personally, the rating authority shall, before the court decides whether to give leave to distrain, call the attention of the court to the date and manner of service and to any circumstances within the knowledge of the authority bearing on the question whether and when the notice or summons came to the knowledge of the defendant.

Other courts

36. Rules 9 to 15 and Rules 17 to 19 and the forms prescribed therein shall apply with such modifications as may be necessary to courts other than the High Court, county courts and courts of summary jurisdiction.

PART VI

GENERAL

Rules of court to apply subject to these Rules

37. In any proceedings to which these Rules apply in any court the procedure shall be regulated by the rules of procedure appropriate for that court subject to the provisions of these Rules.

Power to hear in private

38. Any court to which an application under these Rules is made may at any stage of the proceedings order that the case shall thenceforward be heard in private.

Power to admit letters as evidence

39. For the purpose of hearing and determining an application or exercising its discretion under these Rules, the court may, if it thinks fit, look at any letter or other document sent or tendered to the court, and may admit the letter or document as *prima facie* evidence of any facts stated therein, if in all the circumstances the court thinks it just to do so.

Power to vary orders

40.—(1) Any court by which an order has been made under these Rules may, on application or of its own motion, suspend, discharge or vary the order, if, having regard to the circumstances, the court thinks it just to do so.

(2) The power conferred by the last foregoing paragraph in relation to a judgment shall be in addition to, and not in derogation of, any power which the court may have independently of the Act to suspend, or stay execution on, the judgment.

(3) Where leave to proceed has been given, and the court subsequently makes an order independently of the Act suspending, or staying execution on, the judgment, the court may make any consequential alterations in the order giving leave to proceed which may be necessary to avoid a conflict between the two orders.

Use of forms

41. The forms in the Appendix to these Rules shall be used wherever applicable with such variations as the circumstances may require:

Provided that no form shall be varied in such a way as to impose on any party or other person an obligation to which he is not subject by virtue of the Act or these Rules or otherwise by law.

Dated the second day of August, 1951.

Jowitt, C.

APPENDIX

Rule 9 (2). FORM 1

Notice of Intention to Apply for Leave to Proceed at the time when Judgment is given

(Title of Action.)

Take notice that under the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951, if the person liable on a judgment to which the Act applies satisfies the court that it ought not to be enforced immediately because of circumstances attributable to service to which the Act applies, the court may refuse leave to enforce the judgment or may give leave subject to restrictions and conditions.

And further take notice that if the plaintiff obtains judgment or leave to enter judgment in the action, he intends to apply at the time when judgment, or leave to enter judgment, is given for leave to enforce it.

If you desire to take advantage of the protection afforded by the Act and appear at the hearing, in person or by counsel, or if the hearing is in chambers, in person or by solicitor or counsel, you will have an opportunity of showing cause why the discretion of the court should be exercised in your favour. If this notice has been delivered to your wife or other person having the management of your affairs or of the property to which the proceedings relate, the court will hear such person on your behalf.

The court will consider any letter received before the hearing, but if you fail to satisfy the court that discretion should be exercised in your favour, the plaintiff will be at liberty to enforce the judgment without further notice.

Rule 9 (3). FORM 2

Summons for Leave to Proceed

(Title of action or matter.)

Let all parties attend Master at the Chambers of Mr. Justice in Room No. (*or* the Master in Chambers, Central Office), Royal Courts of Justice, Strand, London, on the day of 19 , at o'clock in the noon, on the hearing of an application under the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951, for leave to proceed to execution or otherwise to the enforcement of [*set out particulars of the judgment sought to be enforced*].

Under the Act, if the person liable on a judgment to which the Act applies satisfies the court that it ought not to be enforced immediately because of circumstances attributable to service to which the Act applies, the court may refuse leave to enforce the judgment or may give leave subject to restrictions and conditions.

If you desire to take advantage of the protection afforded by the Act and attend in person or by your solicitor or counsel at the place and time above-mentioned, you will have an opportunity of showing cause why the discretion of the court should be exercised in your favour. If this summons has been delivered to your wife or other person having the management of your affairs or of the property to which the proceedings relate, the court will hear such person on your behalf.

The court will consider any letter received before the time mentioned above, but if you fail to satisfy the court that discretion should be exercised in your favour, the plaintiff will be at liberty to enforce the judgment without further notice.

FORM 3 Rule 12 (7).

Statement to be included in a Summons under Section 2 (2) or 25 (1) (b) of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951.

Under the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951, certain remedies and the right to institute or take a step in certain proceedings (including the remedy or right to which this summons relates) may not be exercised without the leave of the court, and if the person who would be affected by the exercise of the remedy or right satisfies the court that it ought not to be exercised immediately because of circumstances attributable to service to which the Act applies, the court may refuse leave to exercise the remedy or right or may give leave subject to restrictions and conditions.

If you desire to take advantage of the protection afforded by the Act and attend the hearing of the summons in person or by counsel, or if the hearing is in chambers, in person or by solicitor or counsel, you will have an opportunity of showing cause why the discretion of the court should be exercised in your favour. If this summons has been delivered to your wife or other person having the management of your affairs or of the property to which the proceedings relate, the court will hear such person on your behalf.

The court will consider any letter received before the hearing of the summons, but if you fail to satisfy the court that discretion should be exercised in your favour, the applicant will be at liberty to exercise the remedy or right without further notice.

FORM 4 Rule 21.

Notice of intention to Apply for Leave to Proceed at the time when Judgment is given (County Court)

(Title of Action.)

(Seal)

Take notice that under the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951, if the person liable on a judgment for possession or delivery of property to which the Act applies satisfies the court that it ought not to be enforced immediately because of circumstances attributable to service to which the Act applies, the court may refuse leave to enforce the judgment or may give leave subject to restrictions and conditions.

And further take notice that if the plaintiff obtains judgment, he intends to apply at the time when judgment is given for leave to enforce it.

If you desire to take advantage of the protection afforded by the Act and attend the hearing of the accompanying summons [*or* the summons already served upon you], you will have an opportunity of showing cause why the discretion of the court should be exercised in your favour.

The court will consider any letter received before the hearing of the summons, but if you fail to satisfy the court that discretion should be exercised in your favour, the plaintiff will be at liberty to enforce the judgment without further notice.

Registrar.

To the Defendant.

Rule 22. FORM 5

Notice of Intention to Apply for Leave to Proceed after Judgment

(Title of Action.)

Take notice that the plaintiff intends to apply under the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951, to the court at on , the day of 19 , at the hour of o'clock for an order giving leave to proceed to the enforcement of [*give particulars of the judgment or order sought to be enforced*].

Under the Act if the person liable on a judgment for possession or delivery of property to which the Act applies satisfies the court that it ought not to be enforced immediately because of circumstances attributable to service to which the Act applies, the court may refuse leave to enforce the judgment or may give leave subject to restrictions and conditions.

If you desire to take advantage of the protection afforded by the Act and attend at the place and time above-mentioned, you will have an opportunity of showing cause why the discretion of the court should be exercised in your favour.

The court will consider any letter received before the time mentioned, but if you fail to satisfy the court that discretion should be exercised in your favour, the plaintiff will be at liberty to enforce the judgment without further notice.

To the Defendant.

Rule 27. FORM 6

Notice in Pending Action of Foreclosure or Sale in lieu of Foreclosure

(Title of Action.)

Take notice that the plaintiff intends to apply under the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951, to the court at on , the day of 19 , at the hour of o'clock for an order giving leave to proceed in the above action.

Under the Act a person is not entitled, except with the leave of the court, to take any step in certain proceedings for foreclosure (or for sale in lieu of foreclosure), and if the person who would be affected by the taking of the step satisfies the court that it ought not to be taken immediately because of circumstances attributable to service to which the Act applies, the court may refuse leave to take the step in the action or may give leave subject to restrictions and conditions.

If you desire to take advantage of the protection afforded by the Act and attend at the place and time above-mentioned, you will have an opportunity of showing cause why the discretion of the court should be exercised in your favour.

The court will consider any letter received before the time mentioned, but if you fail to satisfy the court that discretion should be exercised in your favour, the plaintiff will be at liberty to proceed without further notice.

To the Defendant.

FORM 7 Rules 28, 29.

Originating Application for Leave to Distrain, etc.

In the County Court.

No.

In the Matter of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951,

and

In the Matter of [*description of premises or subject-matter*].

Between Applicant

and

Respondent.

I, of apply to the Court for an order giving leave [to levy a distress for rent amounting to on premises situate at and known as] [*or to exercise some other remedy mentioned in Section* 2 (2) (*a*) *or* 25 (1) (*b*) *or to institute proceedings mentioned in Section* 2 (2) (*b*) *of the Act*].

The grounds on which I claim to be entitled to the order are [that the said premises are let by me to the respondent on a weekly tenancy at s. per week payable on Saturdays in advance and that the rent for weeks amounting to £ was, by Saturday, the day of 19 , and still is in arrear] (*or as the case may be*).

The name and address of the person on whom it is intended to serve this application is

My address for service is

Dated this day of , 19 .

(Signed)

Applicant.

FORM 8 Rules 28, 29.

Notice to Respondent of Day on which originating Application will be heard

(Seal.)

Take notice that this application will be heard at a court to be held at (*or* at the Court Office at) on the day of 19 , at the hour of o'clock.

A sealed copy of the originating application is attached.

Under the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951, certain remedies and the right to institute certain proceedings (including the remedy or right to which this application relates) may not be exercised without the leave of the court and if the person who would be affected by the exercise of the remedy or right satisfies the court that it ought not to be exercised immediately because of circumstances attributable to service to which the Act applies, the court may refuse leave to exercise the remedy or right or may give leave subject to restrictions and conditions.

If you desire to take advantage of the protection afforded by the Act and attend at the place and time above-mentioned, you will have an opportunity of showing cause why the discretion of the court should be exercised in your favour.

The court will consider any letter received before the time mentioned, but if you fail to satisfy the court that discretion should be exercised in your favour, such order will be made as the court thinks proper.

Registrar.

To the Respondent.

Rule 28 (7). FORM 9

Order on Originating Application for Leave to Distrain

In the County Court.

No.

(Seal.)

In the matter of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951,

and

[In the matter of the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939.]

(*Delete if not applicable.*)

and

In the matter of [*description of premises*]

Between Applicant

and

Respondent.

Upon hearing the application of [*add, if so,* and upon hearing the respondent].

It it is ordered that, notwithstanding any provisions of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951, [and Section 6 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920,] (*delete if not applicable*) the applicant be at liberty to levy a distress for rent amounting to £ due from the respondent to him on premises situate at [*here add conditions, if any*].

And it is ordered that the applicant be allowed the sum of £ for costs on this application, and that the respondent do pay the said sum to the applicant on or before the day of . 19 .

Registrar.

To the Applicant and Respondent.

Rule 35 (2). FORM 10

Notice to accompany Summons for Rates

(*Title as in Summons.*)

Under the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951, a person is not entitled in cases to which the Act applies to levy a distress for rates except with leave of the court, and if the person liable to pay such rates satisfies the court that the distress ought not to be levied immediately because of circumstances attributable to service to which the Act applies, the court may refuse leave to levy the distress, or may give leave subject to such restrictions and conditions as the court thinks proper.

If you desire to take advantage of the protection afforded by the Act and attend the hearing of this summons [*or* the accompanying summons] [*or,* the summons served upon you on the day of , 19], you will have an opportunity of showing cause why the discretion of the court should be exercised in your favour.

The court will consider any letter received before the hearing of the summons, but if you fail to satisfy the court that discretion should be exercised in your favour, the court may give leave to levy the distress without further notice.

EXPLANATORY NOTE

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

These Rules prescribe the procedure to be followed on an application to the court under Part I of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951, or under section 25 of that Act, whether by a creditor who wishes to obtain leave to enforce a judgment, or a remedy such as the levying of distress, against a service man performing service of a type to which the Act applies, or by a person claiming protection on the ground that he has been financially affected by the service man's call-up. Part II of the Rules defines the appropriate court to which applications should be made, while Part III prescribes the procedure on applications to the High Court and Parts IV and V on applications to the county court and courts of summary jurisdiction. The courts will have power to allow notice of a creditor's application to be delivered to a person who appears to have been entrusted with the management of the service man's affairs in his absence and to hear representations made by such person on behalf of the service man. Applications may be heard in private if the court so directs and the court may admit letters and other documents in evidence.

The Reserve and Auxiliary Forces (Protection of Civil Interests) (Business Premises) Regulations, 1951

1951 No. 1402

Made - - - -	*2nd August*, 1951
Coming into Operation	*2nd August*, 1951

I, William Allen, Viscount Jowitt, Lord High Chancellor of Great Britain, in exercise of the powers conferred on me by subsection (2) of section 29 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951(a), and all other powers enabling me in this behalf, hereby make the following Regulations:—

1. These Regulations may be cited as the Reserve and Auxiliary Forces (Protection of Civil Interests) (Business Premises) Regulations, 1951, and shall come into operation forthwith.

2. The Interpretation Act, 1889(b), applies to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

3. A notice served by a landlord on a tenant under subsection (2) of section 29 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951, requiring the tenant to elect whether or not to apply for the grant of a new tenancy, shall be in the form, and shall contain the particulars, specified in the Schedule to these Regulations.

Dated the second day of August, 1951.

Jowitt, C.

(a) 14 & 15 Geo. 6. c. 65. (b) 52 & 53 Vict. c. 63.