STATUTORY INSTRUMENTS

1981 No. 1734 (L. 21)

SUPREME COURT OF ENGLAND AND WALES

The Rules of the Supreme Court (Amendment No. 2) 1981

Made - - - - -	30*th November* 1981
Laid before Parliament -	10*th December* 1981
Coming into Operation-	
as to Rules 1, 25 *to* 39	1*st January* 1982
as to Rules 2 *to* 24 -	20*th April* 1982

We, the Supreme Court Rule Committee, having power under section 84 of the Supreme Court Act 1981(**a**) to make rules of court for the purpose of regulating and prescribing the practice and procedure to be followed in the Supreme Court, hereby exercise those powers as follows:—

Citation and commencement

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Amendment No. 2) 1981 and shall come into operation on 1st January 1982, except for Rules 2 to 24, which shall come into operation on 20th April 1982.

(2) In these Rules an Order referred to by number means the Order so numbered in the Rules of the Supreme Court 1965(**b**) and, unless the context otherwise requires, a form referred to by number means the form so numbered in Appendix A or, as the case may be, Appendix B to those Rules.

Court of Appeal

2. Order 3, rule 5(4) shall be amended by adding, after the words "Court of Appeal", a comma and the words "a single judge of that Court and the registrar of civil appeals".

3. Order 32, rule 8(1) shall be amended by inserting, after the words "Family Division,", the words "the registrar of civil appeals,".

4. Order 59, rule 1 shall be amended by inserting, after the words "made by these rules" the words ", and references to "the court below" apply to any court, tribunal or person from which such an appeal lies".

(**a**) 1981 c. 54.

(**b**) S.I. 1965/1776; the relevant amending instruments are S.I. 1969/1105, 1970/671, 1971/354, 1269, 1974/295, 1360, 1975/911, 1976/337, 1977/960, 1978/359, 1979/35, 402, 522, 1716, 1980/1010, 1908, 2000.

5. Order 59 shall be amended by inserting, after rule 2, the following new rule:—

"Interpretation

2A. In this Order "a single judge" means a single judge of the Court of Appeal and "the registrar" means the registrar of civil appeals.".

6. Order 59, rule 3(3) shall be amended by inserting, after the words "Court of Appeal", a comma and the words "a single judge or the registrar".

7. Order 59, rule 4 shall be amended as follows:—

(1) For paragraphs (1) and (2) there shall be substituted the following paragraph:—

"(1) Except as otherwise provided by this Order, every notice of appeal must be served under rule 3(5) within 4 weeks from the date on which the judgment or order of the court below was signed, entered or otherwise perfected.".

(2) Paragraph (3) shall be renumbered (2).

8. Order 59, rule 5 shall be amended as follows:—

(1) For the words "proper officer", wherever they occur, there shall be substituted the word "registrar".

(2) In paragraph (1) the words "or his deputy" shall be omitted.

(3) In paragraph (2) for the words "a judge of that Court" there shall be substituted the words "a single judge or the registrar".

(4) Paragraph (5) shall be omitted.

9. Order 59, rule 6 shall be amended as follows:—

(1) In paragraph (2) after the words "Court of Appeal" there shall be inserted the words "or a single judge or the registrar".

(2) In paragraph (3) for the words from "and must be served—" to the end there shall be substituted the words "and must be served within 21 days after the service of the notice of appeal on the respondent.".

(3) In paragraph (4) for the words from "proper officer" to the end there shall be substituted the word "registrar.".

10. Order 59, rule 7 shall be amended as follows:—

(1) In paragraph (1)(*a*), after the words "Court of Appeal" there shall be inserted a comma and the words "a single judge or the registrar".

(2) In paragraph 1(*b*) the words "the expiration of one week after" shall be omitted, and for the words "daily cause list as one of the cases to be heard" there shall be substituted the words "List of Forthcoming Appeals referred to in rule 9(1)".

(3) In pararaph (2) for the words from "proper officer" to the end there shall be substituted the word "registrar.".

11. Order 59, rule 8 shall be amended as follows:—

(1) In paragraph (1) after the words "Court of Appeal" there shall be inserted the words "or a single judge or the registrar".

(2) For paragraph (2) there shall be substituted the following paragraph:—

"(2) Where a direction is given under paragraph (1) the hearing of the appeal may be postponed or adjourned for such period and on such terms as may be just and such judgment may be given and such order made on the appeal as might have been given or made if the persons served in pursuance of the direction had originally been parties.".

12. Order 59, rule 9 shall be amended as follows:—

(1) In paragraph (1) for the words "Not less than 7 days before the appeal is likely to be listed for hearing" there shall be substituted the words "Not more than 7 days after the appeal first appears in a list to be called "the List of Forthcoming Appeals" " and for the words "clerks to the Lords Justices of Appeal" there shall be substituted the word "registrar".

(2) In paragraph (2) for the words "The number" there shall be substituted the words "Unless otherwise directed, the number" and for the words from "except in the case of" to the end there shall be substituted the following words:—

"except—

(*a*) where the appeal is to be heard by two judges in which case it is two copies; or

(*b*) in the case of an appeal in an Admiralty cause or matter, in which case it is four copies or, if the Court of Appeal is to hear the appeal with assessors, six.".

(3) For paragraph (3) there shall be substituted the following paragraphs:—

"(3) After the documents have been lodged the registrar shall give such directions in relation to the documents to be produced at the appeal, and the manner in which they are to be presented, and as to other matters incidental to the conduct of the appeal, as appear best adapted to secure the just, expeditious and economical disposal of the appeal.

(4) The directions referred to in paragraph (3) may be given without a hearing provided always that the registrar may at any time issue a summons requiring the parties to an appeal to attend before him and any party to an appeal may apply at any time for an appointment before the registrar.".

13. Order 59, rule 10 shall be amended by adding the following paragraph as paragraph (9):—

"(9) In any proceedings incidental to any cause or matter pending before the Court of Appeal, the powers conferred by this rule on the Court may be exercised by a single judge or the registrar.

Provided that the said powers of the Court of Appeal shall be exercisable only by that Court or a single judge in relation to

(*a*) the grant, variation, discharge or enforcement of an injunction, or an undertaking given in lieu of an injunction; and

(*b*) the grant or lifting of a stay of excecution or proceedings.".

14. Order 59, rule 12 shall be amended by inserting, after the words "Court of Appeal", wherever occurring, the words "or a single judge or the registrar" and by substituting, for the words from "printed copies" to "not been printed" in sub-paragraph (*a*), the words "a true copy of such affidavit".

15. Order 59, rule 12A(2) shall be amended by omitting the words ", or from which it can be inferred,".

16. Order 59, rule 13(1) shall be amended by inserting after the words "the court below or the Court of Appeal", the words "or a single judge".

17. Order 59, rule 14 shall be amended as follows:—

(1) In paragraph (1) after the words "Court of Appeal" there shall be inserted the words "or a single judge" and after the word "thereto" there shall be added the words "and every application to the registrar which is not made *ex parte* shall be by summons".

(2) After paragraph (6) there shall be added the following paragraphs:—

"(7) An application which may under the provisions of this Order be heard by a single judge shall unless otherwise directed be heard in chambers.

(8) An application which may under the provisions of this Order be heard by the registrar shall be heard in chambers.

(9) The registrar may refer to a single judge any matter which he thinks should properly be decided by a single judge, and, following such reference, the judge may either dispose of the matter or refer it back to the registrar with such direction as the single judge thinks fit.

(10) A single judge may refer to the Court of Appeal any matter which he thinks should properly be decided by that Court, and, following such reference, that Court may either dispose of the matter or refer it back to a single judge or the registrar, with such directions as that Court thinks fit.

(11) An appeal shall lie to a single judge from any determination made by the registrar and shall be brought by way of fresh application made within 10 days of the determination appealed against.

(12) An appeal shall lie to the Court of Appeal from any determination by a single judge under this Order and shall be brought by way of fresh application made within 10 days of the determination appealed against.

Provided that an appeal shall not lie to the Court of Appeal without the leave of that Court in respect of a determination of the registrar which has been reviewed by a single judge.".

18. Order 59, rule 15 shall be amended as follows:—

(1) After the words "power of the Court of Appeal" there shall be inserted a comma and the words "a single judge or the registrar".

(2) After the words "to extend" there shall be inserted the words "or abridge".

(3) After the words "may be extended" there shall be inserted the words "or abridged".

19. Order 59, rule 16 shall be amended as follows:—

(1) In paragraph (2) for the figure "6" there shall be substituted the figure "4".

(2) In paragraph (3) for the words "chief registrar of the Chancery Division" there shall be substituted the words "registrar of civil appeals".

(3) In paragraph (5) for the words "proper officer of that Court" there shall be substituted the words "registrar of civil appeals".

(4) In paragraph (6)(*b*) for the words "principal registrar" there shall be substituted the words "senior registrar".

20. Order 59, rule 19 shall be amended as follows:—

(1) In paragraph (4) after the words "Except where the Court of Appeal" there shall be inserted the words "or a single judge or the registrar of civil appeals".

(2) After paragraph (4) there shall be inserted the following paragraph (4A):—

"(4A) Rule 12A shall apply in any case where money was paid into court by the defendant before judgment in county court proceedings in satisfaction of the plaintiff's cause of action or of one or more causes joined in one action or on account of a sum admitted by the defendant to be due to the plaintiff.".

(3) In paragraph (6) for the words "proper officer of that Court" there shall be substituted the words "registrar of civil appeals".

21. Order 59, rule 20 shall be amended as follows:—

(1) In paragraph (5) for the words "section 95(1) of the Magistrates' Courts Act 1952" there shall be substituted the words "section 119(1) of the Magistrates' Courts Act 1980(**a**)".

(2) After paragraph (7) there shall be added the following paragraph:—

"(8) Subject to paragraph (7), the powers conferred on the Court of Appeal by paragraphs (2), (4), (5) and (6) of this rule may be exercised by a single judge.".

22. Order 60 shall be amended as follows:—

(1) In rule 1 for the words from "the question of law" to the end there shall be substituted the words 'any question of law and, in the case of proceedings under Part III of the Fair Trading Act 1973(**b**), any question of fact on which the appeal is brought together in each case with the appellant's contentions thereon.".

(2) In rule 2(1) for the words "Within 21 days" there shall be substituted the words "Within 28 days".

(3) In rule 3 for the words "proper officer (as defined by Order 59, rule 5(5)) of the Court of Appeal" and "proper officer of the Court of Appeal" there shall be substituted, in each case, the words "registrar of civil appeals".

23. Order 61 shall be amended as follows:—

(1) In rule 1(1) for the figure "6" there shall be substituted the figure "4".

(2) In rule 2(1) after the words "apply to the Court of Appeal" there shall be inserted the words "or a single judge of that Court".

(3) In rule 2(2) for the figures "21" there shall be substituted the figures "28".

(4) In rule 2(3) and 3(2), for the words "proper officer (as defined by Order 59, rule 5(5)) of the Court of Appeal", and, in rule 3(6) for the words "proper officer of the Court of Appeal", there shall be substituted, in each case, the words "registrar of civil appeals".

24. Order 68 shall be amended as follows:—

(1) In rule 1 there shall be inserted, after pararaph (2), the following paragraph (3):—

"(3) The powers of the Court of Appeal under this Order may be exercised by a single judge of that Court or by the registrar of civil appeals.".

(**a**) 1980 c. 43.

(**b**) 1973 c. 41.

(2) In rule 6(1), for the words "clerks to the Lord Justices of Appeal", there shall be substituted the words "registrar of civil appeals".

Transfer of proceedings

25. Order 25, rule 3 shall be amended as follows:—

(1) in subparagraph (*b*):—

(*a*) after the words "Order 20, rule 5", the comma shall be omitted and the word "and" shall be inserted;

(*b*) the words ", and Order 75, rule 25(4)" shall be omitted;

(2) the following subparagraph shall be added after subparagraph (*b*):—

"(*c*) subject to Order 107, rule 2, section 75A of the County Courts Act 1959(a).".

26. Rule 1 of Order 78 shall be amended as follows:—

(1) in pararaph (1) for the words "section 43, 44, 49, 58, 65, 66 or 85" there shall be substituted the words "section 75B or 75C";

(2) in paragraph (2) the words "under section 65 of the said Act of 1959" shall be omitted.

27. For rule 2 of Order 107 there shall be substituted the following new rule:—

"*Transfer of proceedings to or from a county court*

2.—(1) The Court shall not order the transfer of any proceedings to a county court unless the parties have either (*a*) had an opportunity of being heard on the issue or (*b*) consented to such an order.

(2) Where an application is made under section 75B of the said Act of 1959 for the transfer of the whole or a part of any proceedings from a county court to the High Court, the Court hearing such application may order the proceedings in the county court to be stayed until after the final determination of the application.".

Fixed costs

28. In Order 47, rule 4, for the figure "£350" there shall be substituted the figure "£600".

29. Appendix 3 to Order 62 shall be amended as follows:—

(*a*) For the figures "£350" and "£1,200", wherever they appear, there shall be substituted the figures "£600" and "£3,000" respectively.

(*b*) In Part I—

(i) in paragraph 1 for the words "August 11, 1980" there shall be substituted the words "January 1st, 1982";

(ii) for Table A (Basic Costs) there shall be substituted the following Table:—

(a) 1959 c. 22, as amended by the Supreme Court Act 1981.

"A. *Basic costs*

	Amount to be allowed in cases under following sub-paragraphs of paragraph 1 of this Appendix		
	(*a*)	(*b*)	(*c*)
If the amount recovered is—	£ p	£ p	£ p
not less than £600 but less than £2,000—			
(i) where the writ was served by post	33·00	43·00	76·00
(ii) where the writ was served on the defendant personally	36·00	46·00	79·00
not less than £2,000 but less than £3,000—			
(i) where the writ was served by post	36·00	46·00	79·00
(ii) where the writ was served on the defendant personally	39·00	49·00	82·00
not less than £3,000—	50·00	70·00	100·00";

(iii) Table B (Additional Costs) shall be amended by substituting for the figures shown in columns (i) and (ii) the following figures:—

	(i)	(ii)
(1)	5·50	6·50
(2)	12·00	25·00
(3)(*a*)	18·50	34·00
(*b*)	22·00	37·50
(4)	8·00	9·00
(5)	8·00	9·00
(6)	7·00	12·00

30. Nothing in Rules 29(*b*) shall apply in relation to a writ of summons issued before 1st January 1982, unless judgment on failure to give notice of intention to defend or in default of defence or under Order 14 is obtained after that date.

Garnishee proceedings

31. Order 49, rule 1 shall be amended as follows:—

(1) In paragraph (1), for the words "of money, not being a judgment or order", there shall be substituted the words "of a sum of money amounting in value to at least £50, not being a judgment or order".

(2) In paragraph (3), for the words "section 38(1) of the Administration of Justice Act 1956", there shall be substituted the words "section 40 of the Supreme Court Act 1981"; for the words " a deposit account in a bank" there shall be substituted "certain types of account"; and there shall be inserted, after the words "conditions applicable to the account", the words "in question".

(3) After paragraph (3) there shall be inserted the following new paragraph:—

"(4) An order under this rule shall not require a payment which would reduce below £1 the amount standing in the name of the judgment debtor in an account with a building society or a credit union.".

32. Order 49, rule 2 shall be amended as follows:—

(1) For item (*a*) there shall be substituted the following item:—

"(*a*) stating the name and last known address of the judgment debtor,".

(2) Items (*a*), (*b*) and (*c*) shall be relettered (*b*), (*c*) and (*d*) respectively.

(3) In item (*b*) (as relettered) there shall be inserted, after the words "stating the amount", the words "of such judgment or order and the amount".

(4) In item (*d*) (as relettered) there shall be substituted, for the words "a bank", the words "a deposit-taking institution"; there shall be inserted, after the words "believed to be held", the words "and the number of that account"; and, after the words "the case, that", there shall be inserted the words "all or part of".

33. Order 49, rule 3 shall be amended as follows:—

(1) In paragraph (1) there shall be substituted, for the words "An order", the words "Unless the Court otherwise directs, an order" and the words", at least 7 days before the time appointed thereby for the further consideration of the matter," shall be omitted.

(2) In item (*a*) of paragraph (1), after the words "on the garnishee personally," there shall be inserted the words "at least 15 days before the time appointed thereby for the further consideration of the matter,".

(3) For item (*b*) of paragraph (1) there shall be substituted the words "on the judgment debtor, at least 7 days after the order has been served on the garnishee and at least 7 days before the time appointed by the order for the further consideration of the matter.".

34. In Order 49, rule 4(1) the words", subject to rule 7," shall be omitted.

35. In Form 72 in Appendix A there shall be substituted for the words "[*Add where appropriate* The name and address of the branch of the garnishee bank at which the debtor's account is believed to be held is .]" the words "[*Add where appropriate* The name and address of the branch of the garnishee institution at which the debtor's account is believed to be held is . The number of that account is believed to be .]".

Admiralty proceedings

36. Order 75, rule 2(1) shall be amended by substituting, for the words "section 56(2) of the Act", the words "section 61 and 62(2) of the Supreme Court Act 1981".

37. In Order 75, rule 4(1) the words from "In this paragraph" to "Administration of Justice Act 1956." shall be omitted.

38. Order 75, rule 5 shall be amended as follows:—

(1) In paragraph (4) the words from "a praecipe" to "warrant together with" shall be omitted and there shall be substituted, for the words "by paragraphs (7), (8) (9) and (11)", the words "by paragraph (8)".

(2) In paragraph (5) for the words "under paragraph (11)" there shall be substituted the words "under paragraph (7)".

(3) Paragraphs (7), (8), (9) and (10) shall be omitted and the existing paragraph (11) shall be renumbered (7).

(4) In paragraph (7) (as renumbered) the words from "In a case" to "exhibited to the affidavit." shall be omitted.

(5) After paragraph (7) (as renumbered) there shall be added the following new paragraphs:—

"(8) An affidavit required by paragraph (4) must state—

(*a*) in every case:

(i) the nature of the claim or counterclaim and that it has not been satisfied and, if it arises in connection with a ship, the name of that ship; and

(ii) the nature of the property to be arrested and, if the property is a ship, the name of the ship and her port of registry; and

(*b*) in the case of a claim against a ship by virtue of section 21(4) of the Supreme Court Act 1981:

(i) the name of the person who would be liable on the claim in an action in personam ("the relevant person"); and

(ii) that the relevant person was when the cause of action arose the owner or charterer of, or in possession or in control of, the ship in connection with which the claim arose; and

(iii) that at the time of the issue of the writ the relevant person was either the beneficial owner of all the shares in the ship in respect of which the warrant is required or (where appropriate) the charterer of it under a charter by demise; and

(*c*) in the case of a claim for possession of a ship or for wages, the nationality of the ship in respect of which the warrant is required and that the notice (if any) required by paragraph (5) has been sent; and

(*d*) in the case of a claim where notice is required to be served on a consular officer under paragraph (7), that such notice has been served.

(9) The following documents shall, where appropriate, be exhibited to an affidavit required by paragraph (4)—

(*a*) a copy of any notice sent to a consul under paragraph (5);

(*b*) a certified copy of any bottomry bond, or of the translation thereof, produced under paragraph (6);

(*c*) a copy of any notice served on a consular officer under paragraph (7).".

39. Form No. 4 in Appendix B shall be revoked.

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Dated 30th November 1981.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

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

(*a*) to give effect to section 58 of the Supreme Court Act 1981 which enables the incidental jurisdiction of the Court of Appeal to be exercised either by a single judge or by the new registrar of civil appeals (Rules 2 to 24);

(*b*) to give effect to sections 75A to 75C of the County Courts Act 1959 as amended by Schedule 3 to the Supreme Court Act 1981, which relate to the transfer of proceedings between the High Court and county courts (Rules 25 to 27);

(*c*) to revise the fixed costs which may be allowed under Appendix 3 to Order 62 (Rules 28 to 30);

(*d*) to give effect to section 40 of the Supreme Court Act 1981 which extends the scope of garnishee proceedings, and to provide better protection to garnishees (Rules 31 to 35);

(*e*) to give effect to section 21 of the Supreme Court Act 1981 which provides for the mode of exercise of the Admiralty jurisdiction of the High Court, and to effect other minor amendments in relation to Admiralty proceedings (Rules 36 to 39).

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