STATUTORY INSTRUMENTS

1971 No. 1955 (L.44)

SUPREME COURT OF JUDICATURE, ENGLAND

PROCEDURE

The Rules of the Supreme Court (Amendment No. 5) 1971

Made - - - -	*29th November* 1971
Laid before Parliament	*10th December* 1971
Coming into Operation	
All except rule 42	*1st January* 1972
Rule 42	*1st March* 1972

We, the Rule Committee of the Supreme Court, being the authority having for the time being power under section 99(4) of the Supreme Court of Judicature (Consolidation) Act 1925(a) to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature, hereby exercise these powers and all other powers enabling us in that behalf as follows:—

PART I

CITATION, COMMENCEMENT AND INTERPRETATION

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Amendment No. 5) 1971.

(2) These Rules (except rule 42) shall come into operation on 1st January 1972, and rule 42 shall come into operation on 1st March 1972.

(3) In these Rules an Order referred to by number means the Order so numbered in the Rules of the Supreme Court 1965(b), as amended (c) and a form referred to by number means the form so numbered in Appendix A to those Rules.

(4) The Interpretation Act 1889(d) shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

PART II

AMENDMENTS CONSEQUENTIAL ON THE COURTS ACT 1971(e)

2. The following definition shall be inserted in Order 1, rule 4(1), after the definition of "folio":—

> " "the Lancashire area" means the area comprising the districts of the district registries of Barrow in Furness, Blackburn, Blackpool, Bolton, Burnley, Bury, Lancaster, Liverpool, Manchester, Oldham, Preston, Rochdale, St. Helens, Southport, Warrington and Wigan."

(a) 1925 c. 49. (b) S.I. 1965/1776 (1965 III, p. 4995).
(c) The relevant amending instruments are 1966/1514, 1967/1809, 1968/1244, 1970/1861, 1971/1269 (1966 III, p. 4196; 1967 III, p. 4832; 1968 II, p. 3360; 1970 III, p. 6081; 1971 II, p. 3634). (d) 1889 c. 63. (e) 1971 c. 23.

3. Order 4 shall be amended as follows:—

(1) For paragraph (3) of rule 1 there shall be substituted the following paragraph:—

"(3) A cause or matter begun in the district registry of Leeds, Liverpool, Manchester, Newcastle upon Tyne or Preston shall be assigned to the group of judges known as group B, unless by virtue of any other provision of these rules it is required to be assigned to the group of judges known as group A."

(2) In rule 6(4) after the word "matter" there shall be inserted the words "(whether begun by writ, originating summons or otherwise)".

(3) At the beginning of rule 6(5) there shall be inserted the words "Without prejudice to paragraph (4)".

4. In Order 6, rule 4, after the words "that registry" there shall be inserted the words "(or, in the case of a writ issued out of the Liverpool, Manchester or Preston district registry, in the Lancashire area)".

5. In Order 7, rule 5(2), Order 9, rule 3(1), Order 42, rule 6(3), Order 86, rule 3, Order 92, rule 5(4), Order 102, rule 18, and Order 106, rule 2(3), for the words "Liverpool or the district registry of Manchester" there shall be substituted the words "Leeds, Liverpool, Manchester, Newcastle upon Tyne or Preston".

6. For paragraph (4) of Order 8, rule 3, there shall be substituted the following paragraphs:—

"(4) The notice of an originating motion by which proceedings assigned to the Queen's Bench Division are begun must be issued in the Central Office.

(5) The notice of an originating motion by which proceedings assigned to the Chancery Division are begun may be issued either out of the Central Office or out of the district registry of Leeds, Liverpool, Manchester, Newcastle upon Tyne, or Preston.

(6) Issue of the notice of an originating motion takes place upon its being sealed by an officer of the office out of which it is issued."

7. The following paragraph shall be added to Order 12, rule 2:—

"(6) In relation to a writ in the Chancery Division which is issued out of the district registry of Liverpool, Manchester or Preston, paragraphs (2), (3) and (5) shall have effect as if for the references to the district of that registry there were substituted references to the Lancashire area."

8. In Order 22, rule 1(7), for the words "an assize town" where they appear in sub-paragraphs (*a*) and (*b*) there shall be substituted the words "a town"; and for the words "the assize town" there shall be substituted the words "the town".

9. Order 28, rule 9, shall be amended as follows:—

(1) In paragraph (2) for the words from "the cause clerk" to "that clerk" there shall be substituted the words "the proper officer, who".

(2) In paragraph (3) the words from the beginning to "Family Division" shall be omitted.

10. Order 32 shall be amended as follows:—

(1) The following paragraph shall be added to rule 2(3):—

"For the purposes of this paragraph, a cause or matter in which any jurisdiction is to be exercised by virtue of Order 34, rule 5(4), by a master or by the registrar of a district registry shall be treated, in relation to that jurisdiction, as proceeding in the Central Office or in that district registry respectively."

(2) Rule 25 shall be revoked.

(3) In rule 26 for the words "Liverpool or in the district registry of Manchester", there shall be substituted the words "Leeds, Liverpool, Manchester, Newcastle upon Tyne or Preston" and for the words "Group B" there shall be substituted the words "the group to which the cause or matter is assigned".

11. Order 33 shall be amended as follows:—

(1) In rule 1 for the words "or such" to the end there shall be substituted the words "or one of the other places at which sittings of the High Court are authorised to be held for the trial of those proceedings or proceedings of the class to which they belong".

(2) In rule 4 paragraph (3) shall be omitted and paragraphs (4) and (5) shall be renumbered accordingly.

12. Order 34 shall be amended as follows:—

(1) In rule 1 the figure "(1)" and paragraph (2) shall be omitted.

(2) In rule 3(5) for sub-paragraphs (*b*) and (*c*) there shall be substituted the following sub-paragraph:—

"(*b*) in relation to an action (in whatever Division) which is to be tried outside the Royal Courts of Justice, the district registrar for the district comprising the place of trial;"

and sub-paragraph (*d*) shall stand as sub-paragraph (*c*).

(3) In rule 4(*b*) for the words "that Division" there shall be substituted the words "the Chancery Division".

(4) For rule 5 there shall be substituted the following rule:—

"*Further provisions as to lists*

5.—(1) The district registrar for the district comprising each place at which sittings of the High Court are held outside the Royal Courts of Justice shall keep a list of the actions for the time being set down for trial before a judge at that place.

(2) Where, after an action has been set down for trial—

(*a*) an order is made under Order 33, rule 4(1), varying the order determining the place of trial; or

(*b*) the place of trial is changed under paragraph (5) of this rule,

the action shall be treated, unless the Court otherwise directs, as having been set down at the new place of trial on the date on which it was first set down for trial elsewhere.

(3) At any time after an action has been set down for trial and before it is tried, the Court may require the parties to furnish the Court or an officer thereof, by personal attendance or otherwise, with such information as may be necessary to show whether the action is ready for trial, and if any party fails to comply with any such requirement, the Court may—

(*a*) of its own motion, on 7 days' notice to the parties, direct that the action be removed from the list, or

(*b*) on the application of any party, dismiss the action for want of prosecution or strike out the defence or counterclaim or make such other order as the Court thinks fit.

Where a direction is given under sub-paragraph (*a*), the Court may subsequently direct the action to be restored to the list on such terms, if any, as it thinks fit.

(4) Where an action proceeding in a district registry has been set down for trial at the Royal Courts of Justice or at a place comprised in the district of another district registry, or an action proceeding in the Central Office has been set down for trial outside the Royal Courts of Justice, a master or the district registrar at the place where the action has been set down for trial may, if it appears to him to be desirable having regard to the proximity of the date of trial or otherwise, exercise any jurisdiction which is exercisable in the action by a master or the district registrar at the place where the action is proceeding.

(5) Without prejudice to Order 33, rule 4(1), a judge, or a master or the district registrar at the place where an action has been set down for trial, may, if it appears to him that the action cannot conveniently be tried at the place of trial which has been ordered, change the place of trial to some other place mentioned in Order 33, rule 1.

(6) The power conferred by paragraph (5) may be exercised by the Court of its own motion or on the application of a party, but before acting of its own motion the Court shall give to every party concerned an opportunity of being heard on the question whether the power should be exercised and for that purpose the Court may cause him to be given notice of a date, time and place at which the question will be considered."

(5) Rule 7 shall be omitted.

(6) In rule 8(1) the words from "and must also" to the end shall be omitted.

13. Order 35 shall be amended as follows:—

(1) Rules 4, 5 and 6 shall be omitted.

(2) In rule 10 for the words "at assizes" there shall be substituted the words "outside the Royal Courts of Justice".

14. In Order 38, rule 14(3), for the words "at any assizes" there shall be substituted the words "outside the Royal Courts of Justice".

15. In Order 53, rule 2(1),—

(1) for the words "quarter sessions" there shall be substituted the words "the Crown Court"; and

(2) for the words "first day of the sessions at which" there shall be substituted the words "the day on which".

16. Order 56 shall be amended as follows:—

(1) In rule 1(1), (3) and (5) and rules 4 and 4A for the words "a court of quarter sessions", "quarter sessions" and "the court of quarter sessions", wherever they appear, there shall be substituted the words "the Crown Court".

(2) Paragraph (2) of rule 1, and rule 3, shall be omitted.

(3) In rule 2 for the words "a court of quarter sessions" there shall be substituted the words "the Crown Court"; and for the words "over the court of quarter sessions" there shall be substituted the words "at the hearing in the Crown Court".

17. Order 62 shall be amended as follows:—

(1) In rule 2(1) the words "other than proceedings to which section 15 of the Costs in Criminal Cases Act 1952 applies" shall be omitted.

(2) In rule 12(5), for the words "the registrar of the district registry of Liverpool and the registrar of the district registry of Manchester" there shall be substituted the words "the registrar of each of the following district registries, namely Leeds, Liverpool, Manchester, Newcastle upon Tyne and Preston".

18. In Order 63 rule 12(2), for the words "Liverpool or Manchester" there shall be substituted the words "Leeds, Liverpool, Manchester, Newcastle upon Tyne or Preston".

19. The following rule shall be substituted for Order 64, rule 5:—

"*Exclusion of trial outside Royal Courts of Justice*

5. The foregoing rules of this Order shall not apply in relation to the trial or hearing of causes, matters or applications outside the Royal Courts of Justice."

20. In Order 67, rule 8(1), the words "with the omission of sub-paragraphs (*e*) and (*f*) thereof" shall be omitted.

21. In Order 68, rule 1(1), the words "(including any such proceeding tried or heard by a court of assize)" shall be omitted.

22. Order 72, rule 9, shall be omitted.

23. Order 79 shall be amended as follows:—

(1) Rules 1 to 7 shall be omitted.

(2) In rule 9(8)(*a*) and (10)(*a*), for the words "clerk of the court to which the defendant stands committed" there shall be substituted the words "appropriate officer of the Crown Court".

(3) In rule 9(11) for the words "a court of quarter sessions" there shall be substituted the words "the Crown Court".

24. In Order 102, rules 2(4), 3(3), 4(2) and 5(2), for the words "the district registry of Liverpool or the district registry of Manchester" there shall be substituted the words "or the district registry of Leeds, Liverpool, Manchester, Newcastle upon Tyne or Preston".

25. In relation to a writ in the Chancery Division which is issued out of the district registry of Liverpool, Manchester or Preston, Forms 2, 7 and 15 shall have effect as if for the references to the district of that registry there were substituted references to the Lancashire area.

26. In Form No. 28 (Writ of subpoena) for the words from "[at the Royal Courts of Justice" to "for the county of]" there shall be substituted the words "at the sittings of the Division of Our High Court of Justice [at the Royal Courts of Justice, Strand, London] *or* [at *name of town and address of Court outside the Royal Courts of Justice*]."

27. In Form No. 46 (Judgment after trial before judge with jury) the words "of the county of " shall be omitted.

28. Form 60 (Writ of fieri facias on order of quarter sessions removed into Queen's Bench Division) and Form 61 (Writ of fieri facias on judgment of Mayor's and City of London Court) shall be omitted.

29. In Form No. 97 (Summons to admit to bail) for the words "court of quarter sessions for the county or borough of" there shall be substituted the words "Crown Court at".

30. Form No. 98 (Order of judge in chambers to admit prisoner to bail) shall be amended as follows:—

(1) For the words "to the next quarter sessions for the county of" there shall be substituted the words "to the Crown Court at".

(2) For the words "appeal to quarter sessions" there shall be substituted the words "appeal to the Crown Court".

(3) For the words "at the next quarter sessions for the county of" there shall be substituted the words "before the Crown Court at".

(4) For the words "clerk of the peace" there shall be substituted the word "Court".

(5) For the words "court of quarter sessions for the county of" there shall be substituted the words "Crown Court at".

31. In Form No. 98A (Order varying arrangements for bail) for the words "next quarter sessions for the county of" there shall be substituted the words "Crown Court at", and for the words "appeal to quarter sessions" there shall be substituted the words "appeal to the Crown Court".

32. Form No. 101 (Witness summons) shall be amended as follows:—

(1) In the heading for the words "Central Criminal Court or Assizes (Crown Court)" there shall be substituted the words "Crown Court".

(2) For the words from "Central Criminal Court" to "county of]" there shall be substituted the words "Crown Court at [*name of town and address of court*] [*or* the Central Criminal Court in the Old Bailey, Newgate Street, London E.C.4.]".

33. Form No. 102 (Witness summons—Court of quarter sessions) shall be omitted.

34. Form No. 103 (Witness summons—Court of quarter sessions: appeal) shall be amended as follows:—

(1) In the heading for the words "Court of quarter sessions" there shall be substituted the words "Crown Court".

(2) For the words "before the court of quarter sessions for the [county] [borough] of at [*address of court*]" there shall be substituted the words "before the Crown Court at [*name of town and address of court*]".

35. Any proceedings begun in the Lancaster Palatine Court or the Durham Palatine Court which are continued in the High Court by virtue of paragraph 2 of Schedule 5 to the Courts Act 1971 shall be treated—

(*a*) in the case of a cause or matter which was proceeding in the Liverpool, Manchester or Preston registry of the Lancaster Palatine Court, as proceeding in the corresponding district registry of the High Court;

(*b*) in the case of a cause or matter which was proceeding in the Durham Palatine Court, as proceeding in the district registry of Newcastle upon Tyne;

(*c*) in the case of a cause or matter which, if it had been begun in the High Court on or after 1st October 1971, would have been assigned to the Family Division, as assigned to that Division;

(*d*) in any case not mentioned in paragraph (*c*), as assigned to the Chancery Division and to the group of judges to which the proceedings would have been assigned if they had been begun in the High Court.

PART III

MISCELLANEOUS AMENDMENTS

36. In Order 11, rule 1(1), the following sub-paragraph shall be inserted after sub-paragraph (*m*):—

"(*n*) if the action begun by the writ is brought to enforce a claim in respect of a liability incurred under the Merchant Shipping (Oil Pollution) Act 1971(**a**)."

37. In Order 15, the following rule shall be added after rule 17:—

"*Stay of proceedings under Industrial Relations Act* 1971

18. In deciding whether to stay proceedings in tort under section 131 of the Industrial Relations Act 1971(**b**), the Court shall take into account all relevant circumstances, including the question whether, notwithstanding that the proceedings are framed in tort, the complaint is in substance one of an unfair industrial practice within the meaning of that Act, or whether the matters in issue in the proceedings are for any other reason more suitable to be determined by the National Industrial Relations Court or an industrial tribunal than by the appropriate mode of trial in the High Court (including, where applicable, trial with a jury)."

38. Order 29, rule 7A, shall be amended as follows:—

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

"(1) An application for an order under section 21(1) of the Administration of Justice Act 1969(**c**) in respect of property which may become

(**a**) 1971 c. 59. (**b**) 1971 c. 72. (**c**) 1969 c. 58.

the subject-matter of subsequent proceedings in the High Court or as to which any question may arise in any such proceedings shall be made by originating summons and the person against whom the order is sought shall be made defendant to the summons."

(2) Paragraphs (2) and (8) shall be omitted.

(3) For paragraph (4) there shall be substituted the following paragraph:—

"(3) A summons under paragraph (1) or (2) shall be supported by affidavit which must specify or describe the property in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings or subsequent proceedings, that it is property which is or may become the subject-matter of the proceedings or as to which any question arises or may arise in the proceedings."

(4) Paragraphs (3), (5), (6) and (7) shall stand as paragraphs (2), (4), (5) and (6) respectively and in paragraph (6) as so re-numbered for the references to paragraphs (2) and (3) there shall be substituted references to paragraphs (1) and (2) respectively.

39. Order 39, rule 19, shall be amended as follows:—

(1) The following table shall be substituted for the table set out in paragraph (1):—

"TABLE OF EXAMINERS' FEES

	£
1. Upon giving an appointment to take an examination ...	10.00
2. For each hour or part thereof (after the first hour) occupied in an examination within 3 miles from the principal entrance of the Royal Courts of Justice	2.50
3. For each day of 6 hours or part of a day occupied in an examination beyond 3 miles from the principal entrance of the Royal Courts of Justice	17.00"

(2) In paragraph (3) for the words "3 guineas" and "5 guineas" there shall be substituted the words "£7" and "£10" respectively.

40. In Order 90, rule 14(7), for the words "divorce registry" there shall be substituted the words "principal registry".

41. In Order 90, rule 16(1) and (4), for the word "two", wherever it appears, there shall be substituted the word "three".

42. After Order 111 there shall be inserted the following Order:—

"ORDER 112

APPLICATIONS FOR USE OF BLOOD TESTS IN DETERMINING PATERNITY

Interpretation

1. In this Order—

"the Act" means Part III of the Family Law Reform Act 1969(a);

"blood samples" and "blood tests" have the meanings assigned to them by section 25 of the Act;

(a) 1969 c. 46.

"direction" means a direction for the use of blood tests under section 20(1) of the Act;

"the proper officer" means the officer of the court who draws up a direction.

Application for direction

2.—(1) Except with the leave of the Court, an application in any proceedings for a direction shall be made on notice to every party to the proceedings (other than the applicant) and to any other person from whom the direction involves the taking of blood samples.

(2) If the application is made otherwise than at the hearing of the proceedings it shall be made by summons.

(3) Any notice or summons required by this rule to be served on a person who is not a party to the proceedings shall be served on him personally.

Applications involving persons under disability

3. Where an application is made for a direction in respect of a person (in this rule referred to as a person under disability) who is either—

(*a*) under 16, or

(*b*) suffering from a mental disorder within the meaning of the Mental Health Act 1959**(a)** and incapable of understanding the nature and purpose of blood tests,

the notice of application or summons shall state the name and address of the person having the care and control of the person under disability and shall be served on him instead of on the person under disability.

Joinder of person to be tested

4. Where an application is made for a direction involving the taking of blood samples from a person who is not a party to the proceedings in which the application is made, the Court may at any time direct that person to be made a party to the proceedings.

Service of direction and adjournment of proceedings

5. Where the Court gives a direction in any proceedings, the proper officer shall send a copy to every party to the proceedings and to every other person from whom the direction involves the taking of blood samples and, unless otherwise ordered, further consideration of the proceedings shall stand adjourned until the court receives a report pursuant to the direction.

Service of copy of report

6. On receipt by the court of a report made pursuant to a direction, the proper officer shall send a copy to every party to the proceedings and to every other person from whom the direction involved the taking of blood samples."

(a) 1959 c. 72.

43. In Form 37 in Appendix A for the words "Principal Probate Registry" there shall be substituted the words "Principal Registry of the Family Division".

Dated 29th November 1971.

Hailsham of St. Marylebone, C.
Widgery, C. J.
Denning, M. R.
George Baker, P.
Cyril Salmon, L. J.
John Pennycuick, V-C.
Nigel Bridge, J.
James Fox-Andrews.
Donald K. Rattee.
H. Montgomery-Campbell.

EXPLANATORY NOTE

(*This Note is not part of the Rules.*)

The amendments in Part II of these Rules are consequential on the coming into operation of the Courts Act 1971. A cause or matter may be fixed for trial either at the Royal Courts of Justice or at one of the places at which sittings of the High Court are authorised to be held for the hearing of the particular proceedings or proceedings of the class to which they belong (rule 11(1)). The district registrar of the place of trial is given power to call for information about the readiness of an action for trial and, where desirable, to make interlocutory orders and to change the venue (rule 12(4)). For the purpose of Chancery proceedings the districts of the Liverpool, Manchester and Preston district registries are to comprise the whole of the Lancashire area (rules 2, 4, 7 and 25), and the district registries of Leeds, Newcastle upon Tyne and Preston are given in most respects the same jurisdiction in Chancery proceedings as the district registries of Liverpool and Manchester (rules 3(1), 5, 6, 10(3), 17(2), 18 and 24). Special provision is made for the hearing of Chancery proceedings at those places (rules 9 and 11(2)). Account is taken of the transfer of quarter sessions jurisdiction to the Crown Court (rules 15, 16, 23(2) and (3), 28 to 31, 33 and 34) and the new arrangements for summoning jurors (rules 12(6), 22 and 27).

In Part III the Court is empowered to grant leave to serve the writ out of the jurisdiction in an action under the Merchant Shipping (Oil Pollution) Act 1971 (rule 36). The circumstances to be taken into account by the Court in deciding whether to stay proceedings in tort under the Industrial Relations Act 1971 are defined (rule 37). The rule relating to the inspection etc. of property before the commencement of proceedings is extended to all kinds of actions instead of being confined to actions for personal injuries (rule 38). The fees for examiners of the Court are increased (rule 39). A new Order 112 is introduced to regulate the procedure on an application to the High Court for the use of blood tests to determine paternity under Part III of the Family Law Reform Act 1969 (rule 42).

A number of minor and consequential amendments are also made.