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STATUTORY INSTRUMENTS

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**1988 No. 1340 (L. 16)**

**SUPREME COURT OF ENGLAND AND WALES**

**The Rules of the Supreme Court (Amendment No. 2) 1988**

<i>Made</i>	- - - -	<i>27th July 1988</i>
<i>Laid before Parliament</i>		<i>11th August 1988</i>
<i>Coming into force</i>	- -	<i>1st October 1988</i>

We, the Supreme Court Rule Committee, having power under section 85 of the Supreme Court Act 1981<sup>(1)</sup> to make rules of court under section 60 of that Act and under section 84 of that Act for the purpose of regulating and prescribing the practice and procedure to be followed in the High Court and the civil division of the Court of Appeal, 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) 1988 and shall come into force on 1st October 1988.

(2) In these Rules an Order referred to by number means the Order so numbered in the Rules of the Supreme Court 1965<sup>(2)</sup>.

**Exchange of witnesses' statements**

2. Order 38, rule 2A shall be amended by omitting paragraph (1).

3. Order 38, rule 2A shall be further amended by deleting the words “to which this rule applies” in paragraph (2).

**Return to writ of execution**

4. Order 46, rule 9(1) shall be amended by inserting, after the words “at whose instance”, the words “or against whom”.

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<sup>(1)</sup> 1981 c. 54.

<sup>(2)</sup> S.I.1965/1776; the relevant amending instruments are S.I. 1968/1244, 1971/1269, 1976/337, 1977/532, 1980/629, 1010, 1908, 2000, 1981/1734, 1982/1111, 1983/531, 1181, 1984/1051, 1985/69, 1986/632, 1187, 1987/1423.

### **Appeals under section 6(3), Civil Jurisdiction and Judgments Act 1982(3)**

5. Order 56, rule 5 shall be amended by inserting, after the words in paragraph (2)(b) “the two last-mentioned Acts,” the words “or registered in such a court under the Civil Jurisdiction and Judgments Act 1982.”

### **Appeals from official referees**

6. Order 58 shall be amended by substituting for rule 4 the following rule—

#### **“Appeals from official referees**

4. Subject to section 18 of the Act (which shall apply in relation to a decision of an official referee as if he were a judge of the High Court), an appeal shall lie to the Court of Appeal from a decision of an official referee—

- (a) on a question of law or, where section 18(1)(f) does not apply, as to costs only; and
- (b) with the leave of the official referee or the Court of Appeal, on any question of fact or, where section 18(1)(f) applies, as to costs only.”

### **Final and interlocutory orders**

7. Order 59 shall be amended by inserting after rule 1 the following new rule—

#### **“Final and interlocutory orders**

1A.—(1) For all purposes connected with appeals to the Court of Appeal, a judgment or order shall be treated as final or interlocutory in accordance with the following provisions of this rule.

(2) In this rule, unless the context otherwise requires—

- (a) “order” includes a judgment, decree, decision or direction;
- (b) references to an order giving specified directions or granting a specified form of remedy or relief shall include an order—
  - (i) refusing to give such directions or grant such remedy or relief;
  - (ii) giving such directions or granting such remedy or relief on terms;
  - (iii) varying, suspending or revoking such an order, and
  - (iv) determining an appeal from such an order.

(3) A judgment or order shall be treated as final if the entire cause or matter would (subject only to any possible appeal) have been finally determined whichever way the court below had decided the issues before it.

(4) For the purposes of paragraph (3), where the final hearing or the trial of a cause or matter is divided into parts, a judgment or order made at the end of any part shall be treated as if made at the end of the complete hearing or trial.

(5) Notwithstanding anything in paragraph (3), the following orders shall be treated as final—

- (a) an order for discovery of documents made in an action for discovery only;
- (b) an order granting any relief made at the hearing of an application for judicial review;

- (c) an order made on an originating summons under Order 85, rule 2(2)(b) or (c);
  - (d) an order for the winding up of a company;
  - (e) a decree absolute of divorce or nullity of marriage;
  - (f) an order absolute for foreclosure;
  - (g) an order as to costs made as part of a final judgment or order;
  - (h) an order of committal.
- (6) Notwithstanding anything in paragraph (3), but without prejudice to paragraph (5), the following judgments and orders shall be treated as interlocutory—
- (a) an order extending or abridging the period for the doing of any act;
  - (b) an order for or relating to the transfer or consolidation of proceedings;
  - (c) an order for or relating to the validity, service (including service out of the jurisdiction) or renewal of a writ or other originating process;
  - (d) an order granting leave under section 139 of the Mental Health Act 1983(4) to bring proceedings against a person;
  - (e) an order for or relating to the amendment of an acknowledgment of service;
  - (f) any judgment in default or any “unless” order;
  - (g) an order for or relating to the joinder of causes of action;
  - (h) an order for or relating to the addition, substitution or striking out of parties;
  - (i) subject to Order 58, rule 7, an order granting relief by way of interpleader;
  - (j) an order for or relating to the service or amendment of any pleading;
  - (k) an order striking out an action or other proceedings or any pleading under Order 18, rule 19 or under the inherent jurisdiction of the court;
  - (l) an order dismissing or striking out an action or other proceedings for want of prosecution;
  - (m) an order staying proceedings or execution;
  - (n) an order for or relating to a payment into or out of court;
  - (o) an order for or relating to security for the costs of an action or other proceedings;
  - (p) subject to paragraph (5)(a), an order for or relating to the discovery or inspection of documents, including an order under Order 24, rule 7A(1) for the disclosure of documents before the commencement of proceedings;
  - (q) an order for or relating to the service of or answer to interrogatories;
  - (r) a judgment or order on admissions under Order 27, rule 3;
  - (s) an order granting an interlocutory injunction or for the appointment of a receiver;
  - (t) an order for or relating to an interim payment under Order 29;
  - (u) an order made under or relating to a summons for directions;
  - (v) an order directing a trial with a jury;
  - (w) an order for or relating to the fixing or adjournment of trial dates;
  - (x) an order directing a new trial or a re-hearing;
  - (y) an order relating to access to, or the custody, care, education or welfare of, a minor whether in matrimonial, wardship, guardianship, custodianship or any

- other proceedings, or a certificate under section 41 of the Matrimonial Causes Act 1973<sup>(5)</sup>;
- (z) an order for or relating to ancillary relief in matrimonial proceedings, including a property adjustment order, an order for the payment of a lump sum and any other order making or relating to financial provision whether of a capital or income nature;
- (aa) subject to section 18(2)(a) of the Act, a judgment or order under Order 14 or Order 86 or under Order 9, rule 14 of the County Court Rules 1981<sup>(6)</sup>;
- (bb) an order setting aside or refusing to set aside another judgment or order (whether such other judgment or order is final or interlocutory);
- (cc) an order made for or relating to the enforcement of an earlier order (whether such earlier order is final or interlocutory) or giving further directions as to such an order and (without prejudice to the generality of the foregoing)—
- (i) a garnishee order nisi or a garnishee order absolute;
  - (ii) a charging order nisi or a charging order absolute;
  - (iii) an order for the sale of any property by way of enforcement of an earlier order (whether such earlier order is final or interlocutory) or an order giving directions regarding any such sale or an order designed to regulate or facilitate any such sale;
- (dd) an order for or relating to the taxation of costs or the delivery, withdrawal or amendment of bills of costs;
- (ee) without prejudice to paragraph (5)(d), an order made in the course of or by way of regulation of a liquidation and any other order ancillary to or consequential on a winding up order;
- (ff) an order directing or otherwise determining an issue as to limitation of actions other than as part of a final judgment or order within the meaning of paragraph (3);
- (gg) an order made on an originating summons under Order 85, rule 2, other than such an order as is mentioned in paragraph (5)(c).
- (7) Notwithstanding anything in paragraph (3)—
- (a) orders made on an appeal to the High Court under section 1(2) of the Arbitration Act 1979<sup>(7)</sup> shall be treated as final orders;
  - (b) all other orders made in connection with or arising out of an arbitration or arbitral award shall be treated as interlocutory orders; without prejudice to the generality of the foregoing, such orders shall include—
    - (i) orders made in connection with the appointment or removal of an arbitrator or umpire;
    - (ii) orders made on or in connection with applications for an extension of time for commencing arbitration proceedings;
    - (iii) orders setting aside an arbitral award or remitting the matter to an arbitrator or umpire (other than orders setting aside the award or remitting the matter made on an appeal in pursuance of the said section 1(2)); and
    - (iv) orders made on or in connection with applications for leave to enforce an award.”.

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(5) 1973 c. 18.  
 (6) S.I. 1981/1687.  
 (7) 1979 c. 42.

8. Rule 7 shall apply to all proceedings in which an appeal is set down, or an application lodged, on or after 1st October 1988.

**Section 53, Administration of Justice Act 1985(8)**

9. Order 62 shall be amended by inserting after rule 7 the following new rule—

**“Reimbursement of additional costs under section 53, Administration of Justice Act 1985**

7A.—(1) In default of agreement between the Lord Chancellor and a person as to the amount of additional costs to be reimbursed under section 53 of the Administration of Justice Act 1985, either of them may make a written request to the appropriate office referred to in rule 29 that such costs be taxed.

(2) Only a taxing master or a registrar shall tax such costs.

(3) Notwithstanding rule 3(4), such costs shall be taxed on the indemnity basis.”.

10. Order 62 shall be further amended by inserting after paragraph 6 of Appendix 1 the following new paragraph—

“7. Where a person is entitled by virtue of section 53(4) of the Administration of Justice Act 1985 to require any costs to be taxed, the requisite document for the purposes of rule 29 is the written request made under rule 7A.”.

**Fixed costs**

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

(1) For Table A (Basic Costs) in Part I there shall be substituted the following Table—

**“A Basic Costs**

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Amount to be allowed in cases under following sub-paragraphs of paragraph 1 of this Appendix

(a)

£p

(b)

£p

(c)

£p

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If the amount recovered is—	44.00	58.00	102.00
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not less than £600

but less than £2,000—

(i) where the writ was served by post

(ii) where the writ was served on the defendant personally	48.50	62.00	106.00
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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Amount to be allowed in cases under following sub-paragraphs of paragraph 1 of this Appendix			
(a)			
£p			
(b)	£p		
(c)	£p		
not less than £2,000	48.50	64.50	106.00
but less than £3,000—			
(i) where the writ was served by post			
(ii) where the writ was served on the defendant personally	53.00	68.00	111.00
not less than £3,000	63.75	92.00	131.00”;

(2) Table B (Additional costs) in Part 1 shall be amended by substituting, for the figures shown in columns (i) and (ii), the following figures—

	(i)	(ii)
(1)	6.75	8.75
(2)	15.75	34.00
(3)(a)	24.75	44.00
(b)	29.00	49.00
(4)	11.50	13.00
(5)	11.50	13.00
(6)	8.75	16.00

(3) Part III, paragraph 1 shall be amended by substituting, for the sum of “£6.00”, the sum of “£6.25”;

(4) Part III, paragraph 2 shall be amended by substituting, for the sum of “£24.00”, the sum of “£25.00”;

(5) Part III, paragraph 3 shall be amended as follows—

(a) for the sum of “£14.50” in sub-paragraph (a) there shall be substituted the sum of “£15.25”;

(b) for the table “Basic Costs” in sub-paragraph (b) there shall be substituted the following table—

“(i) Basic Costs

If the amount recovered by the applicant from the garnishee is—

£p	
less than £124	one half of the amount recovered
not less than £124	63.00”;

- (c) for the sum of “£11.00” in the table “Additional costs” in sub-paragraph (b) there shall be substituted the sum of “£11.50”;
- (6) Part III, paragraph 4 shall be amended by substituting, for the sums of “£67.00” and “£11.00”, the sums of “£71.00” and “£11.50”.
- (7) Part III, paragraph 5 shall be amended by substituting, for the sums of “£25.50” and “£1.70”, the sums of “£27.00” and “£1.80”;
- (8) Part III, paragraph 6 shall be amended by substituting, for the sum of “£31.50”, the sum of “£33.25”.

### **Multilateral Investment Guarantee Agency Act 1988(9)**

12. Order 73 shall be amended by inserting after rule 9 the following new rule—

#### **“Registration of awards under Multilateral Investment Guarantee Agency Act 1988**

9A. Rule 9 shall apply, with the necessary modifications, in relation to an award rendered pursuant to the Convention referred to in section 1(1) of the Multilateral Guarantee Agency Act 1988 as it applies in relation to an award rendered pursuant to the Convention referred to in section 1(1) of the Arbitration (International Investment Disputes) Act 1966(10).”.

### **Control of Misleading Advertisements Regulations 1988(11)**

13. Order 93, rule 19 shall be amended by inserting, in the title, after the words “Fair Trading Act 1973” the words “and the Control of Misleading Advertisements Regulations 1988” and by inserting, in paragraph (2), after the words “that section applies” the words “, or under the Control of Misleading Advertisements Regulations 1988”.

### **Coroners Act 1988(12)**

14. Order 94 shall be amended by adding after rule 13 the following new rule—

#### **“Applications under section 13, Coroners Act 1988**

14.—(1) Any application under section 13 of the Coroners Act 1988 shall be heard and determined by a Divisional Court.

(2) The application must be made by originating motion and, without prejudice to Order 8, rule 3(2), the notice of such motion must state the grounds of the application and, unless the application is made by the Attorney General, shall be accompanied by his fiat.

(3) Notice of the motion must be entered in the Crown Office and served upon all persons directly affected by the application within six weeks after the grant of the fiat.”.

### **Vexatious litigants**

15. Order 94 shall be amended by adding after rule 14 the following new rule—

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(9) 1988 c. 8.  
(10) 1966 c. 41.  
(11) S.I. 1988/915.  
(12) 1988 c. 13.

**“Applications under section 42, Supreme Court Act 1981**

**15.**—(1) Every application to the High Court by the Attorney General under section 42 of the Supreme Court Act 1981 shall be heard and determined by a Divisional Court.

(2) The application must be made by originating motion, notice of which, together with an affidavit in support, shall be filed in the Crown Office and served on the person against whom the order is sought.”.

*Mackay of Clashfern, C.  
Lane, C.J.,  
Donaldson, M.R.,  
Stephen Brown, P.,  
Nicolas Browne-Wilkinson, V-C.,  
Dillon, L.J.,  
Hirst, J.,  
Steyn, J.,  
R. J. P. Aikens,  
Michael S. Howells,  
Harvey M. Crush*

Dated 27th July 1988

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

These Rules amend the Rules of the Supreme Court 1965 so as—

- (a) to extend to all cases in the Queen’s Bench Division the power to order the exchange of witnesses' statements (rules 2 and 3);
- (b) to enable a judgment debtor to require a sheriff to provide him with a statement of account of the execution against him (rule 4);
- (c) to provide that appeals under section 6(3) of the Civil Jurisdiction and Judgments Act 1982 are to be heard in the Family Division (rule 5);
- (d) to extend rights of appeal from official referees to all questions of fact, but with a requirement of leave (rule 6);
- (e) to define, for the purposes of appeals to the Court of Appeal, which orders are final and which interlocutory (rules 7 and 8);
- (f) to prescribe the procedure for the taxation of additional costs claimed under section 53 of the Administration of Justice Act 1985 (rules 9 and 10);
- (g) to increase the fixed costs recoverable under Appendix 3 to Order 62 (rule 11);
- (h) to prescribe the procedure for the registration and enforcement of awards under the Multilateral Investment Guarantee Agency Act 1988 (rule 12);
- (i) to assign proceedings under the Control of Misleading Advertisements Regulations 1988 to the Chancery Division (rule 13);
- (j) to allow applications under section 13 of the Coroners Act 1988 and section 42 of the Supreme Court Act 1981 (vexatious litigants) to be made to the Divisional Court of the Queen’s Bench Division (rules 14 and 15).