
STATUTORY INSTRUMENTS

1991 No. 1884 (L.29)

SUPREME COURT OF ENGLAND AND WALES

The Rules of the Supreme Court (Amendment No. 3) 1991

Made - - - - *17th August 1991*
2nd September
1991 into force in
accordance with rule
Laid before Parliament *1*
Coming into force in accordance with rule 1

We, the Supreme Court Rule Committee, having power under section 85 of the Supreme Court Act 1981(1) to make rules of court under section 84 of that Act 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, commencement and interpretation

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Amendment No. 3) 1991 and shall come into force on 1st October 1991, except for rules 2 to 8 which shall come into force immediately before the commencement of section 40 of the Matrimonial and Family Proceedings Act 1984(2).

(2) In these Rules, an Order referred to by number means the Order so numbered in the Rules of the Supreme Court 1965(3).

Family Proceedings

2. For item 6 in the Table in Order 1, rule 2(2), there shall be substituted the following—

Family Proceedings Rules.	Matrimonial and Family Proceedings Act 1984, section 40.”
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3. In Order 1, rule 4, the definition of “the matrimonial causes rules” shall be omitted.

(1) 1981 c. 54; section 85 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 36(1).
(2) 1984 c. 42; section 40 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 50.
(3) S.I. 1965/1776; the relevant amending instruments are S.I. 1968/1244, 1970/1861, 1971/1269, 1972/1194, 1974/295, 1976/337, 1196, 1978/579, 1979/35, 1542, 1716, 1980/629, 1010, 1981/1734, 1982/1111, 1786, 1983/1181, 1986/632, 1187, 2289, 1987/1423, 1988/298, 1340, 1989/386, 1307, 2427, 1990/1689, 2599, 1991/531 and 1329.

4. Order 59, rule 19(7) shall be amended by substituting, for the words “matrimonial causes rules”, the words “any statutory provision”.

5. In Order 63, rule 4A, the words “save where they are filed in a cause or matter to which Order 90 applies” shall be omitted.

6. The following shall be revoked—

- (1) Order 90,
- (2) Order 94, rule 13,
 - (a) Order 105, and
- (3) Order 109, rule 2(2).

7. Order 99, rule 10 shall be amended—

- (a) by substituting, for the words “Matrimonial Causes Rules”, the words “Family Proceedings Rules”; and
- (b) by adding at the end, on a new line, the following—

“In this rule “Family Proceedings Rules” means rules made under section 40 of the Matrimonial and Family Proceedings Act 1984.”.

8. In Order 109, rule 2(1), for the words “Except as provided by paragraph (2), an”, there shall be substituted the word “An”.

Costs against legal representatives

9. After Order 35, rule 10, there shall be inserted the following new rule—

“Reductions in costs under section 51(8) of the Act

10A. At the conclusion of the trial of an action, the associate in attendance at the trial shall record in his certificate under rule 10 any opinion expressed by the judge under section 51(8) of the Act (reduction in costs where proceedings should have been commenced in a county court).”.

10. In the heading to Order 45, rule 15, for the words “without an order”, there shall be substituted the words “under deemed order”.

11. For the heading to Order 62, rule 5, there shall be substituted the following—

“Cases where order for costs deemed to have been made.”

12. For Order 62, rule 5(1), there shall be substituted the following—

“(1) In each of the circumstances mentioned in this rule an order for costs shall be deemed to have been made to the effect respectively described and, for the purposes of section 17 of the Judgments Act 1838(4), the order shall be deemed to have been entered up on the date on which the event which gave rise to the entitlement to costs occurred.”.

13.—(1) For Order 62, rule 11, there shall be substituted the following—

“Personal liability of legal representative for costs

(a) **11.** (1) Where the Court decides to make an order under section 51(6) of the Supreme Court Act 1981(5) disallowing wasted costs or ordering a legal representative to meet such costs or part of them, it shall, subject to paragraph (4), specify in the order the costs which are to be so disallowed or met, and may make such other order as it thinks fit;

(b) before proceeding under sub-paragraph (a), the Court may direct a taxing officer to inquire into the matter and report to the Court.

(2) When conducting an inquiry pursuant to a direction under paragraph (1)(b), the taxing officer shall have all the powers and duties of the Court under paragraphs (6) and (8) of this rule; and references in those paragraphs and paragraphs (4) and (5) to the Court include references to the taxing officer.

(3) Instead of proceeding under paragraph (1) of this rule the Court may refer the matter to a taxing officer, in which case the taxing officer shall deal with the matter under paragraphs (2) and (3) of rule 28.

(4) No order may be made under section 51(6) unless the Court has given the legal representative concerned a reasonable opportunity to appear and show cause why an order should not be made.

(5) Without prejudice to Order 32, rule 5(3), the Court shall not be obliged to give the legal representative a reasonable opportunity to show cause where proceedings fail, cannot conveniently proceed or are adjourned without usefeful progress being made because the legal representative—

(a) fails to attend in person or by a proper representative;

(b) fails to deliver any document for the use of the Court, which ought to have been delivered or to be prepared with any proper evidence or account, or

(c) otherwise fails to proceed.

(6) The Court may direct the Official Solicitor to attend and take such part in any proceedings or inquiry under this rule as the Court may direct and the Court shall make such order as to the payment of the Official Solicitor’s costs as it thinks fit.

(7) If in any proceedings a party who is represented by a legal representative fails to pay the fees or any part of the fees prescribed by the orders as to court fees the Court may order the legal representative personally to pay that amount in the manner so prescribed.

(8) The Court may direct that notice of any proceedings or order against a legal representative under this rule be given to his client in such manner as may be specified in the direction.

(9) In this rule “taxing officer” means a taxing master or a district judge.”.

(2) For Order 62, rule 28, there shall be substituted the following—

“Powers of taxing officers in relation to misconduct, neglect, etc

28.—(1) Where, whether or not on a reference by the Court under rule 10(2), it appears to the taxing officer that any thing has been done, or that any omission has been made, unreasonably or improperly by or on behalf of any party in the taxation proceedings or in the proceedings which gave rise to the taxation proceedings, he may exercise the powers conferred on the Court by rule 10(1).

(5) 1981 c. 54; section 51 was substituted by the Courts and Legal Services Act 1990 (c. 41), section 4.

(2) Where, whether or not on a reference by the Court under rule 11(3), it appears to the taxing officer that costs have been wasted in the taxation proceedings or in the proceedings which gave rise to the taxation proceedings, he may, subject to paragraph (3) of this rule, exercise the powers conferred on the Court by section 51(6) of the Act.

(3) In relation to the exercise by a taxing officer of the powers of the Court under the said section 51(6), paragraphs (4) to (6) and (8) of rule 11 shall apply as if for references to the Court there were substituted references to the taxing officer.

(4) Where a party entitled to costs—

- (a) fails without good reason to commence or conduct proceedings for the taxation of those costs in accordance with this Order or any direction, or
- (b) delays lodging a bill of costs for taxation,

the taxing officer may—

- (i) disallow all or part of the costs of taxation that he would otherwise have awarded that party; and
- (ii) after taking into account all the circumstances (including any prejudice suffered by any other party as a result of such failure or delay, as the case may be, and any additional interest payable under section 17 of the Judgments Act 1838 because of the failure or delay), allow the party so entitled less than the amount he would otherwise have allowed on taxation of the bill or wholly disallow the costs.

(5) An appeal shall lie to a judge in chambers from the exercise by a taxing officer of the powers conferred by this rule; and Order 58, rule 1 (as modified, in the case of an appeal from a district judge, by Order 58, rule 3(2)) shall apply to such an appeal as it applies to an appeal from a master.

(6) In exercising his powers under this rule the taxing officer shall have all the powers available to the Court in the exercise of its discretion under rules 10 and 11.

(7) In this rule “taxing officer” means a taxing master or a district judge.”

Appeals to the Court of Appeal

14. After Order 59, rule 3, there shall be inserted the following new rule—

“Value of appeal where appeal is from decision of county court

3A.—(1) This rule applies where the determination sought to be appealed from is a determination of a county court in proceedings to which article 2(3) or (4) of the Appeals Order applies and the value of the appeal is not limited by article 2(6) of that Order.

(2) Every notice of appeal in a case to which this rule applies shall be accompanied by a statement showing, as the case may be, whether the value of the appeal—

- (a) exceeds the sum for the time being specified in article 2(1) of the Appeals Order in relation to proceedings of that kind; or
- (b) is not quantifiable.

(3) In this rule—

‘the Appeals Order’ means the County Court Appeals Order 1991(6);

‘value of the appeal’ has the same meaning as in article 2 of the Appeals Order.”

15. For Order 59, rule 3(4), there shall be substituted the following—
 - “(4) Every notice of appeal must specify the list of appeals to which the appellant proposes that the appeal should be assigned.”.
16. Order 59, rule 5(1) shall be amended by substituting, for the word “lodge”, the words “set down his appeal by lodging”.
17. For Order 59, rule 5(2), there shall be substituted the following—
 - “(2) Upon the said documents being so lodged the registrar shall cause the appeal to be entered in the records of the Court and assigned to the appropriate list of appeals.”.
18. Order 59, rule 5(3) shall be amended by substituting, for the word “proper”, the word “appropriate”.
19. For Order 59, rule 5(4), there shall be substituted the following—
 - “(4) Within 4 days of receipt of notification from the office of the registrar that the appeal has been entered in the records of the Court, the appellant must give notice to that effect to all parties on whom the notice of appeal was served, specifying the Court of Appeal reference allocated to that appeal.”.
20. After Order 59, rule 19(5), there shall be inserted the following new paragraph—
 - “(5A) Where the Court of Appeal determines that a statement provided pursuant to rule 3A is grossly inaccurate, the Court may, without prejudice to its powers under section 51(6) of the Act, strike out the appeal.”.

Confiscation and forfeiture

21. For the title of Order 115 there shall be substituted—

“CONFISCATION AND FORFEITURE IN CONNECTION WITH CRIMINAL PROCEEDINGS”;

and a corresponding amendment shall be made in the Arrangement of Orders at the beginning of the Rules of the Supreme Court 1965.
22. At the end of the title to Part I of Order 115 there shall be added—

“AND CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT 1990(7)
23. In Order 115, rules 15 and 31 shall each stand as paragraph (1) of those rules, respectively, and after each of them there shall be added the following new paragraph—
 - “(2) Unless the Court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.”.
24. In Order 115, rules 16(1) and 32(1), for “the Senior Master” there shall be substituted “the Master of the Crown Office”.
25. In Order 115, rules 17(3), 19(1), 33(3) and 35(1) shall be omitted.
26. After Order 115, rule 21, there shall be inserted the following new rule—

“Criminal Justice (International Co-operation) Act 1990: external forfeiture orders

21A. The provisions of this Part of this Order shall, with such modifications as are necessary and subject to the provisions of any Order in Council made under section 9 of the Criminal Justice (International Co-operation) Act 1990, apply to proceedings for the

registration and enforcement of external forfeiture orders as they apply to such proceedings in relation to external confiscation orders.

For the purposes of this rule, an external forfeiture order is an order made by a court in a country or territory outside the United Kingdom which is enforceable in the United Kingdom by virtue of any such Order in Council.”.

Miscellaneous amendments

- 27.** For Order 4, rule 5(4) there shall be substituted the following–

“(4) Without prejudice to paragraph (3) where a cause or matter (whether begun by writ, originating summons or otherwise) is proceeding in a district registry or in the Royal Courts of Justice, the Court may, on the application of a party to the cause or matter or of its own motion, make an order transferring the cause or matter, or any summons or other application therein, from that registry to some other district registry or to the Royal Courts of Justice or, as the case may be, from the Royal Courts of Justice to a district registry, and the Court may make an order accordingly on such terms, if any, as may be just.

This paragraph shall not apply to a probate cause or matter.”.

- 28.** For Order 12, rule 8(6) there shall be substituted the following–

“(6) A defendant who makes an application under paragraph (1) shall not be treated as having submitted to the jurisdiction of the Court by reason of his having given notice of intention to defend the action; and if the Court makes no order on the application or dismisses it, the notice shall cease to have effect, but the defendant may, subject to rule 6(1), lodge a further acknowledgement of service within 14 days or such other period as the Court may direct and in that case paragraph (7) shall apply as if the defendant had not made any such application.”.

- 29.** After Order 18, rule 2(2) there shall be inserted the following new paragraph–

“(3) Where an application is made by a defendant under Order 12, rule 8(1), paragraph (1) of this rule shall not have effect in relation to the defendant unless the application is dismissed or no order is made on the application and, in that case, paragraph (1) shall have effect as if it required him to serve his defence within 14 days after the final determination of the application or within such other period as may be specified by the Court.”.

- 30.** For Order 65, rule 5(2B)(d), there shall be substituted the following–

“(d) as soon as practicable after service by FAX the solicitor acting for the party serving the document dispatches a copy of it to the solicitor acting for the other party by any of the other methods prescribed for service by paragraph (1), and if he fails to do so the document shall be deemed never to have been served by FAX.”.

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Dated 17th August 1991

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Rules)

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

- (a) revoke provisions which are now contained in the Family Proceedings Rules 1991 (S.I.1991/1247) (rules 2 to 8) ; those Rules and the statutory provision under which they are made (section 40 of the Matrimonial and Family Proceedings Act 1984) will come into force on 14th October 1991;
- (b) supplement the new section 51 of the Supreme Court Act 1981, substituted by section 4 of the Courts and Legal Services Act 1990 (c. 41) (costs), and to provide for costs orders to be deemed to be made and entered in certain circumstances for the purposes of section 17 of the Judgments Act 1838 (rules 9 to 13);
- (c) amend the provisions relating to appeals to the Court of Appeal in consequence of fresh provision to be made requiring leave to appeal from county courts (rules 14 and 20) and of changes in the administrative arrangements as to setting down and entry of appeals (rules 15 to 19);
- (d) give effect to section 9 of the Criminal Justice (International Co-operation) Act 1990 and Orders in Council under it relating to forfeiture orders made by courts outside the United Kingdom, and make other miscellaneous amendments to the rules relating to confiscation and forfeiture in connection with criminal proceedings (rules 21 to 26);
- (e) make some miscellaneous amendments recommended by the Supreme Court Procedure Committee (rules 27 to 29);
- (f) amend the rules as to dispatch of a copy of a document where service has been effected by facsimile transmission (rule 30).