

SCHEDULE 2

CCR ORDER 42

PROCEEDINGS BY AND AGAINST THE CROWN

Application and interpretation

Rule 1.—(1) These rules apply to any proceedings, so far as they are civil proceedings to which the Crown is a party, subject to the following rules of this Order.

(2) Except where the context otherwise requires, references in these rules to a claim for the recovery of land or other property shall be construed as including references to proceedings against the Crown for an order declaring that the claimant is entitled as against the Crown to the land or property or to the possession of it.

(3) In this Order—

“the Act of 1947” means the Crown Proceedings Act 1947⁽¹⁾;

“civil proceedings by the Crown” and “civil proceedings against the Crown” and “civil proceedings by or against the Crown” have the same respective meanings as in Part II of the Act of 1947 and do not include any of the proceedings specified in section 23 (3) of that Act;

“civil proceedings to which the Crown is a party” has the same meaning as it has for the purposes of Part IV of the Act of 1947 by virtue of section 38 (4) of that Act.

Particulars of claim in claim against the Crown

Rule 4 The particulars of claim shall, in the case of civil proceedings against the Crown, include a statement of the circumstances in which the Crown’s liability is said to have arisen and as to the government department and officers of the Crown concerned.

Subsequent procedure in claim

Rule 5.—(1) If in a claim against the Crown the defendant considers that the particulars of claim do not contain a sufficient statement as required by rule 4, he may, before the time for delivering a defence has expired, file two copies of a demand for further information as specified in the demand and thereupon the court officer shall serve one copy on the claimant.

(2) Where the defendant files a demand under paragraph (1), the time for delivering a defence shall not expire until 4 days after the defendant has given notice to the court and the claimant that the defendant is satisfied with the information supplied in compliance with the demand or 4 days after the court has, on the application of the claimant of which not less than 7 days' notice has been given to the defendant, decided that no further information as to the matters referred to in rule 4 is reasonably required.

(3) Except with the permission of the court, no default judgment shall be entered under CPR Part 12 in a claim against the Crown.

(4) An application for permission under paragraph (3) shall be made on not less than 7 days' notice to the defendant.

(5) No application against the Crown shall be made under CPR Part 24 (summary judgment).

(1) 1947 c. 44.

Subsequent procedure in fixed date claim

Rule 6.—(1) In the case of a fixed date claim against the Crown, on the filing of the claim form the court shall—

- (a) enter a plaint in the records of the court and deliver to the claimant a notice of issue omitting any reference to a return day;
- (b) serve on the defendant a copy of the particulars of claim if they are filed with the claim form and the notice of issue and of the effect of paragraphs (3) and (5).

(2) Upon the service of the notice mentioned in paragraph (1)(b) all further proceedings in the claim shall be stayed except as provided in this rule.

(3) If the defendant considers that the particulars of claim do not contain a sufficient statement as required by rule 4, he may, within 21 days after service on him of the particulars of claim, file in the court office two copies of a demand for further information as specified in the demand and thereupon the court shall serve one copy on the claimant.

(4) If within the said period the defendant does not file two copies of such a demand, then, subject to paragraph (5), the stay of proceedings provided for by paragraph (2) shall cease to have effect at the end of that period.

(5) If within the said period the defendant files a statement that no such demand will be made, the stay of proceedings provided for by paragraph (2) shall cease to have effect forthwith.

(6) If within the said period the defendant files two copies of such a demand, the stay of proceedings provided for by paragraph (2) shall cease to have effect when the defendant gives notice to the court and the claimant that the defendant is satisfied with the information supplied in compliance with the demand or when the court decides, on the application of the claimant of which not less than 7 days' notice has been given to the defendant, that no further information as to the matters referred to in rule 4, is reasonably required.

(7) When the stay of proceedings provided for by paragraph (2) ceases to have effect, the court shall fix a return day and give notice of it to the claimant and shall proceed to issue the claim form.

Service on the Crown

Rule 7.—(1) RSC Order 11 and any other provision of these rules relating to service of process out of England and Wales shall apply in relation to civil proceedings by the Crown but shall not apply in relation to civil proceedings against the Crown.

(2) Personal service of any document which is to be served on the Crown for the purpose of or in connection with civil proceedings by or against the Crown shall not be requisite.

(3) Any such document may be served on the Crown—

- (a) by leaving the document at the office of the person to be served in accordance with section 18 of the Act of 1947, or any agent whom he has nominated for the purpose, but in either case with a member of the staff of that person or agent; or
- (b) by posting it in a prepaid envelope addressed to the person to be served in accordance with the said section 18 or to any such agent as aforesaid.

Special provisions regarding orders made by the Court of its own initiative against the Crown

Rule 8.—(2) No order shall be made against the Crown by the court of its own initiative—

- (a) (i) requiring the Crown to file or serve any statement of case or give any particulars which the court thinks necessary for defining the issues in the proceedings; and

- (ii) at the same or any subsequent time directing that the claim be dismissed or the defendant be debarred from defending altogether or that anything in any statement of case of which particulars have been ordered be struck out unless the order is obeyed;
- (b) ordering one or more questions or issues to be tried before the others; or
- (c) at a hearing other than the trial.

Counterclaim in proceedings by or against the Crown

Rule 9.—(1) In proceedings by the Crown for the recovery of taxes, duties or penalties the defendant shall not be entitled to avail himself of any set-off or counterclaim and accordingly the claim form to be served on the defendant and the forms for defending the claim, admitting the claim and acknowledging service, to accompany the claim form shall omit any reference to a counterclaim.

(2) In proceedings of any other nature by the Crown the defendant shall not be entitled to avail himself of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties.

(3) In any proceedings by the Crown the defendant shall not be entitled, and in any proceedings against the Crown the Crown shall not be entitled, without the permission of the court to be obtained on application of which not less than 7 days' notice has been given to the claimant, to make any counterclaim or claim in his statements of case to be entitled to any set-off if—

- (a) the Crown sues or is sued in the name of a Government department and the subject-matter of the set-off or counterclaim does not relate to that department; or
- (b) the Crown sues or is sued in the name of the Attorney-General.

Adjustment of liability under judgment for taxes

Rule 10 Where the Crown has obtained a judgment for taxes but subsequently the tax liability is reduced, whether by reason of an appeal against an assessment or otherwise, and the Crown has given notice of the reduction to the court and to the debtor, the sum remaining unsatisfied under the judgment shall be reduced accordingly, but the amount of the reduction shall not rank as a payment under the judgment.

Part 20 claim against the Crown where the Crown is not already a party

Rule 11.—(1) A Part 20 claim for service on the Crown where the Crown is not already a party shall not be issued without the permission of the court to be obtained on application in accordance with CPR Part 23

(1A) An application notice under paragraph (1) must be served on the Crown and the claimant at least 7 days before the hearing.

(2) Permission shall not be granted under paragraph (1) unless the court is satisfied that the Crown is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned.

Disclosure against the Crown

Rule 12.—(2) Where in any proceedings an order of the court directs that a list of documents made in answer to an order for disclosure against the Crown shall be verified by witness statement or affidavit, the witness statement or affidavit shall be made by such officer of the Crown as the court may direct.

Status: This is the original version (as it was originally made).

(3) The court may direct which officer of the Crown shall make the disclosure statement required by CPR rule 31.10(5).

Execution and satisfaction of orders against the Crown

Rule 13.—(1) Nothing in Orders 25 to 32 shall apply in respect of any order against the Crown.

(2) A certificate issued under section 25 (1) of the Act of 1947 shall be in the form used under Order 22, rule 8, with such variations as the circumstances of the case may require.

Attachment of debts etc.

Rule 14.—(1) No order for the attachment of a debt under Order 30 or for the appointment of a receiver under RSC Order 30 shall be made or have effect in respect of any money due or accruing due, or alleged to be due or accruing due, from the Crown.

(2) Where such an order could have been obtained in a county court if the money had been due or accruing due from a subject, an application may be made to that county court in accordance with CPR Part 23 for an order under section 27 of the Act of 1947(2) restraining the person to whom the money is payable by the Crown from receiving the money and directing payment to the applicant or to the receiver.

(3) The application shall be supported by a witness statement or affidavit setting out the facts giving rise to it and in particular identifying the particular debt from the Crown in respect of which it is made.

(4) Notice of the application together with a copy of the witness statement or affidavit shall be served on the Crown and, unless the court otherwise directs, on the person to be restrained or his solicitor at least 7 days before the day fixed for the hearing.

(5) Order 30, rules 7 to 9, shall apply, with the necessary modifications, in relation to an application under the said section 27 as they apply in relation to an application for an order under Order 30, rule 1, except that the court shall not have power to issue execution against the Crown.

(2) 1947 c. 44; section 27(1) was amended by the Supreme Court Act 1981 (c. 54), section 139(1) and schedule 7.