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STATUTORY INSTRUMENTS

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**1979 No. 1716 (L.23)**

**SUPREME COURT OF JUDICATURE,  
ENGLAND AND WALES**

**PROCEDURE**

**The Rules of the Supreme Court (Writ and Appearance) 1979**

<i>Made</i>	- - - -	<i>19th December 1979</i>
<i>Laid before Parliament</i>		<i>20th December 1979</i>
<i>Coming into Operation</i>		<i>3rd June 1980</i>

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 to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature, hereby exercise those powers and all other powers enabling us in that behalf as follows:—

*Citation and commencement*

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Writ and Appearance) 1979, and shall come into operation on 3rd June 1980, but nothing in these Rules shall apply in relation to any cause or matter begun before that date.

(2) In these Rules an Order referred to by number means the Order so numbered in the Rules of the Supreme Court 1965(1).

2. Order 1, rule 4, shall be amended as follows:—

(1) In paragraph (1) after the definition of “the Northern area” there shall be inserted the following definition:—

““notice of intention to defend” means an acknowledgment of service containing a statement to the effect that the person by whom or on whose behalf it is signed intends to contest the proceedings to which the acknowledgment relates;”.

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

“(3) In these rules, unless the context otherwise requires, any reference to acknowledging service of a document or giving notice of intention to defend any proceedings is a reference

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(1) The relevant amending instruments are S.I. 1966/1055, 1967/829, 1968/1244, 1970/944, 1861, 1971/354, 1269, 1955, 1972/1898, 1975/911, 1976/337, 1196, 1977/532, 960, 1955, 1978/579, 1979/402, 522.

to lodging in the appropriate court office an acknowledgment of service of that document or, as the case may be, a notice of intention to defend those proceedings.”

3. Order 4, rule 6, shall be amended as follows:—

- (1) In paragraph (2), sub-paragraph (a) and the letter “(b)” shall be omitted.
- (2) For paragraph (3) there shall be substituted the following paragraphs:—

“(3) Where—

- (a) a sole defendant or one of the defendants to an action begun by writ which is proceeding in a district registry does not reside or carry on business in the district of the registry or, being a body corporate, does not have a registered office or carry on business in that district, and
- (b) the writ is not indorsed with a statement that a cause of action in respect of which relief is claimed arose wholly or in part in a place in that district,

that defendant may, on acknowledging service of the writ, include in his acknowledgment a statement to the effect that he applies for an order transferring the action to some other district registry or to the Royal Courts of Justice, and in that case, unless the plaintiff within 8 days after the defendant's acknowledging service gives notice to the registrar of the district registry that he objects to the making of such an order, the registrar shall make an order accordingly.

If the plaintiff gives notice of objection within the time aforesaid, the registrar shall fix a time and place for the hearing of the defendant's application and give notice thereof to every party to the proceedings.

(3A) In relation to a writ in the Chancery Division which is issued out of the district registry of Leeds, Liverpool, Manchester, Newcastle-upon-Tyne or Preston, paragraph (3) shall have effect as if for the references to the district of that registry there were substituted references to the Northern area.”.

(3) At the beginning of paragraph (4) there shall be inserted the words “Without prejudice to paragraph (3)”.

4. Order 6, shall be amended as follows:—

- (1) In rule 1 the words “2, 3, 4 or 5” and “whichever is appropriate” shall be omitted.
- (2) In rule 5(1)(b)—
  - (a) the figure “(i)” at the beginning, and the word “and” at the end, of sub-paragraph (i) shall be deleted, and
  - (b) sub-paragraph (ii) shall be omitted.

(3) In rule 7(5) at the end after the word “solicitor” there shall be added the words “and produces to an officer of that office a form of acknowledgment of service in Form No. 14 in Appendix A for service with the writ on each defendant.”

5. For paragraph (1) of Order 7, rule 2, there shall be substituted the following paragraph:—

“(1) Every originating summons (other than an ex parte summons) shall be in Form No. 8 or, if so authorised or required, in Form No. 10 in Appendix A, and every ex parte originating summons shall be in Form No. 11 in Appendix A.”

6. Order 10, rule 1, shall be amended as follows:—

- (1) The following paragraphs shall be substituted for paragraph (5):—

“(5) Subject to Order 12, rule 7, where a writ is not duly served on a defendant but he acknowledges service of it, the writ shall be deemed, unless the contrary is shown, to have

been duly served on him and to have been so served on the date on which he acknowledges service.

(6) Every copy of a writ for service on a defendant shall be sealed with the seal of the office of the Supreme Court out of which the writ was issued and shall be accompanied by a form of acknowledgment of service in Form No. 14 in Appendix A.”

(2) The existing paragraph (6) shall stand as paragraph (7).

7. For Order 10, rule 5, there shall be substituted the following rule:—

**“Service of originating summons, notice of motion or petition**

5.—(1) The foregoing rules of this Order shall apply, with any necessary modifications, in relation to an originating summons (other than ex parte originating summons or an originating summons under Order 113) as they apply in relation to a writ, except that an acknowledgment of service of an originating summons shall be in Form No. 15 in Appendix A.

(2) Rule 1(1), (2), (3) and (4) shall apply, with any necessary modifications, in relation to a notice of an originating motion and a petition as they apply in relation to a writ.”

8. In Order 11, rule 3 (2), for the words “or 7” to the end there shall be substituted the words “in Appendix A and must be accompanied by a form of acknowledgment of service in Form No. 14 in Appendix A”.

9. For Order 12, rule 1, there shall be substituted the following rule:—

**“Mode of acknowledging service**

1.—(1) Subject to paragraph (2) and to Order 80, rule 2, a defendant to an action begun by writ may (whether or not he is sued as a trustee or personal representative or in any other representative capacity) acknowledge service of the writ and defend the action by a solicitor or in person.

(2) The defendant to such an action who is a body corporate may acknowledge service of the writ and give notice of intention to defend the action either by a solicitor or by a person duly authorised to act on the defendant's behalf but, except as aforesaid or as expressly provided by any enactment, such a defendant may not take any step in the action otherwise than by a solicitor.

(3) Service of a writ may be acknowledged by properly completing an acknowledgment of service, as defined by rule 3, and handing it in at, or sending it by post to, the appropriate office, that is to say, if the writ was issued out of the Central Office, that office, or if the writ was issued out of a district registry, that registry.

(4) If two or more defendants to an action acknowledge service by the same solicitor and at the same time, only one acknowledgment of service need be completed and delivered for those defendants.

(5) The date on which service is acknowledged is the date on which the acknowledgment of service is received at the appropriate office.”

10. Order 12, rule 2, shall be revoked, and for Order 12, rule 3, there shall be substituted the following rule:—

**“Acknowledgment of service**

3.—(1) An acknowledgment of service must be in Form No. 14 or 15 in Appendix A, whichever is appropriate, and, except as provided in rule 1 (2), must be signed by the

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solicitor acting for the defendant specified in the acknowledgment or, if the defendant is acting in person, by that defendant.

(2) An acknowledgment of service must specify—

- (a) in the case of a defendant acknowledging service in person, the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent, and
- (b) in the case of a defendant acknowledging service by a solicitor, a business address of his solicitor's within the jurisdiction;

and where the defendant acknowledges service in person, the address within the jurisdiction specified under sub-paragraph (a) shall be his address for service, but otherwise his solicitor's business address shall be his address for service.

In relation to a body corporate the references in sub-paragraph (a) to the defendant's place of residence shall be construed as references to the defendant's registered or principal office.

(3) Where the defendant acknowledges service by a solicitor who is acting as agent for another solicitor having a place of business within the jurisdiction, the acknowledgment of service must state that the first-named solicitor so acts and must also state the name and address of that other solicitor.

(4) If an acknowledgment of service does not specify the defendant's address for service or the Court is satisfied that any address specified in the acknowledgment of service is not genuine, the Court may on application by the plaintiff set aside the acknowledgment or order the defendant to give an address or, as the case may be, a genuine address for service and may in any case direct that the acknowledgment shall nevertheless have effect for the purposes of Order 10, rule 1(5), and Order 65, rule 9.”

11. For Order 12, rule 4, there shall be substituted the following rule:—

**“Procedure on receipt of acknowledgment of service**

4. On receiving an acknowledgment of service an officer of the appropriate office must—

- (a) affix to the acknowledgment an official stamp showing the date on which he received it;
- (b) enter the acknowledgment in the cause book with a note showing, if it be the case, that the defendant has indicated in the acknowledgment an intention to contest the proceedings or to apply for a stay of execution in respect of any judgment obtained against him in the proceedings;
- (c) make two copies of the acknowledgment, each having affixed to it an official stamp showing the date on which he received the acknowledgment, and send one copy by post to the plaintiff or, as the case may be, his solicitor at the plaintiff's address for service and the other by post to the defendant or, as the case may be, his solicitor at the defendant's address for service.”

12. For Order 12, rule 6, there shall be substituted the following rule:—

**“Late acknowledgment of service**

6.—(1) Except with the leave of the Court, a defendant may not give notice of intention to defend in an action after judgment has been obtained therein.

(2) Except as provided by paragraph (1), nothing in these rules or any writ or order thereunder shall be construed as precluding a defendant from acknowledging service in an action after the time limited for so doing, but if a defendant acknowledges service after that time, he shall not, unless the Court otherwise orders, be entitled to serve a defence or do any other act later than if he had acknowledged service within that time.”

13. For Order 12, rules 7 and 8, there shall be substituted the following rules:—

**“Acknowledgment not to constitute waiver**

7. The acknowledgment by a defendant of service of a writ or notice of a writ shall not be treated as a waiver by him of any irregularity in the writ or notice or service thereof or in any order giving leave to serve the writ or notice out of the jurisdiction or extending the validity of the writ for the purpose of service.

**Dispute as to jurisdiction**

8.—(1) A defendant who wishes to dispute the jurisdiction of the court in the proceedings by reason of any such irregularity as is mentioned in rule 7 or on any other ground shall give notice of intention to defend the proceedings and shall, within 14 days thereafter, apply to the Court for—

- (a) an order setting aside the writ or service of the writ or notice of the writ on him, or
- (b) an order declaring that the writ or notice has not been duly served on him, or
- (c) the discharge of any order giving leave to serve the writ or notice on him out of the jurisdiction, or
- (d) the discharge of any order extending the validity of the writ for the purpose of service, or
- (e) the protection or release of any property of the defendant seized or threatened with seizure in the proceedings, or
- (f) the discharge of any order made to prevent any dealing with any property of the defendant, or
- (g) a declaration that in the circumstances of the case the court has no jurisdiction over the defendant in respect of the subject matter of the claim or the relief or remedy sought in the action, or
- (h) such other relief as may be appropriate.

(2) Order 3, rule 5, shall apply in relation to the period of 14 days mentioned in paragraph (1) with the modification that the said period may be extended by the Court only on an application made before the expiration of the period.

(3) An application under paragraph (1) must be made—

- (a) in an Admiralty action in rem, by motion;
- (b) in any other action in the Queen's Bench Division, by summons;
- (c) in any other action, by summons or motion,

and the notice of motion or summons must state the grounds of the application.

(4) An application under paragraph (1) must be supported by an affidavit verifying the facts on which the application is based and a copy of the affidavit must be served with the notice of motion or summons by which the application is made.

(5) Upon hearing an application under paragraph (1), the Court, if it does not dispose of the matter in dispute, may give such directions for its disposal as may be appropriate, including directions for the trial thereof as a preliminary issue.

(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 acknowledgment of service and in that case paragraph (7) shall apply as if the defendant had not made any such application.

(7) Except where the defendant makes an application in accordance with paragraph (1), the acknowledgment by a defendant of service of a writ or notice of a writ shall, unless the acknowledgment is withdrawn by leave of the Court under Order 21, rule 1, be treated as a submission by the defendant to the jurisdiction of the Court in the proceedings.”

14. For Order 12, rule 9, there shall be substituted the following rules:—

**“Acknowledgment of service of originating summons**

9.—(1) Each defendant named in and served with an originating summons (other than an ex parte originating summons or an originating summons under Order 113) must acknowledge service of the summons as if it were a writ.

(2) Where an originating summons is issued out of principal registry of the Family Division, the appropriate office for acknowledging service is that registry.

(3) The foregoing rules of this Order shall apply in relation to an originating summons (other than an ex parte originating summons or an origination summons under Order 113) as they apply to a writ except that after the word “extended”, wherever it occurs in rule 5(a), there shall be inserted the words “or abridged” and for the reference in rule 5(b) to Order 11, rules 1 (3) and 4 (4), there shall be substituted a reference to Order 11, rule 9(6).

**Acknowledgment of service to be treated as entry of appearance**

10. For the purpose of any enactment referring expressly or impliedly to the entry of appearance as a procedure provided by rules of court for responding to a writ or other process issuing out of the High Court, or of any rule of law, the acknowledgment of service of the writ or other process in accordance with these rules shall be treated as the entry of an appearance to it, and related expressions shall be construed accordingly.”

15. In Order 13, rules 1 (1), 2, 3 (1), 4 (1), 5 and 6 (1), for the words “the time limited for appearing” there shall be substituted the words “the prescribed time”.

16. In Order 13, rule 6 (1), for the words “and upon filing an affidavit proving due service of the writ on that defendant” there shall be substituted the words “and, if that defendant has not acknowledged service, upon filing an affidavit proving due service of the writ on him”.

17. The following rule shall be inserted in Order 13 after rule 6:—

**“Prescribed time**

6A. In the foregoing rules of this Order “the prescribed time” in relation to a writ issued against a defendant means the time limited for the defendant to acknowledge service of the writ or, if within that time the defendant has returned to the appropriate office an acknowledgment of service containing a statement to the effect that he does not intend to contest the proceedings, the date on which the acknowledgment was received at the appropriate office.”

18. Order 13, rule 7 (1), shall be amended as follows:—

(1) The following sub-paragraph shall be inserted before sub-paragraph (a):—

“(a) the defendant has acknowledged service on him of the writ or notice of the writ; or”.

(2) The existing sub-paragraphs (a) and (b) shall stand as sub-paragraphs (b) and (c) respectively.

19. For Order 13, rule 8, there shall be substituted the following rule:—

**“Stay of execution on default judgment**

8. Where judgment for a debt or liquidated demand is entered under this Order against a defendant who has returned to the appropriate office an acknowledgment of service containing a statement to the effect that, although he does not intend to contest the proceedings, he intends to apply for a stay of execution of the judgment by writ of fieri facias, execution of the judgment by such a writ shall be stayed for a period of 14 days from the acknowledgment of service and, if within that time the defendant issues and serves on the plaintiff a summons for such a stay supported by an affidavit in accordance with Order 47, rule 1, the stay imposed by this rule shall continue until the summons is heard or otherwise disposed of, unless the Court after giving the parties an opportunity of being heard otherwise directs.”

20. Order 15, rule 3, shall be amended as follows:—

(1) In paragraph (2) after the words “serve on him a copy of the counterclaim” there shall be inserted the words “and, in the case of a person who is not already a party to the action, a form of acknowledgment of service in Form No. 14 in Appendix A with such modifications as the circumstances may require”.

(2) In paragraph (6), sub-paragraphs (a), (b) and (c) shall be omitted.

21. In Order 15, rule 7 (4), at the end after the word “begun” there shall be added the words “and a form of acknowledgment of service in Form No. 14 or 15 in Appendix A, whichever is appropriate”.

22. Order 15, rule 10, shall be amended as follows:—

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

“The affidavit shall specify the applicant's address for service and Order 12, rule 3 (2), (3) and (4), shall apply as if the affidavit were an acknowledgment of service.”

(2) In paragraph (3) for the words from “a copy of the order” to the end there shall be substituted the words “on the plaintiff a copy of the order giving the added defendant's address for service specified in accordance with paragraph (2).”

23. For Order 20, rule 2, there shall be substituted the following rule:—

**“Amendment of acknowledgment of service**

2.—(1) Subject to paragraph (2), a party may not amend his acknowledgment of service without the leave of the court.

(2) A party whose acknowledgment of service contains a statement to the effect that—

(a) he does, or

(b) he does not

intend to contest the proceedings to which the acknowledgment relates may, without the leave of the court, amend the acknowledgment by substituting for that statement a statement to the opposite effect, provided that in a case falling under sub-paragraph (b) the amendment is made before judgment has been obtained in the proceedings.

(3) Where an acknowledgment of service is authorised to be amended under this rule, a fresh acknowledgment, amended as so authorised, must be handed in at or sent by post to the appropriate office within the meaning of Order 12, rule 1(3), and Order 12, rule 4, shall apply accordingly.”

**24.** For Order 21, rule 1, there shall be substituted the following rule:—

**“Withdrawal of acknowledgment of service**

**1.** A party who has acknowledged service in an action may withdraw the acknowledgment at any time with the leave of the Court.”

**25.** In Order 22, rule 1, the words “after he has entered an appearance in the action” shall be omitted.

**26.** Order 28, rule 2, shall be amended as follows:—

(1) In paragraph (1) for the words from “to which” to “an appearance” there shall be substituted the words “which is in Form No. 8 in Appendix A, any defendant served with the summons has acknowledged, or has within the time limited for acknowledging failed to acknowledge, service of the summons”.

(2) In paragraph (2) for the words “to which appearance is not required” there shall be substituted the words “which is in Form No. 10 in Appendix A” and at the end after the words “as the case may be” there shall be added the words “and, in the case of a summons which is required to be served, the time limited for acknowledging service shall, where appropriate, be abridged so as to expire on the next day but one before the day so fixed”.

(3) In paragraph (3) for the words “entered an appearance” there shall be substituted the words “acknowledged service of the originating summons”.

**27.** Order 28, rule 3, shall be amended as follows:—

(1) In paragraph (1) for the words “to which an appearance is required to be entered” there shall be substituted the words “which is in Form No. 8 in Appendix A” and for the words “entered an appearance” there shall be substituted the words “acknowledged service of the summons”.

(2) In paragraph (2) for the words “to which appearance is not required” there shall be substituted the words “which is in Form No. 10 in Appendix A”, and at the end after the words “every defendant” there shall be added the words “or, if any defendant has already been served with the summons, must serve on that defendant notice of the day fixed for the hearing”.

(3) In paragraph (3) for the words “who has entered an appearance” to the end there shall be substituted the words “who, in the case of a summons in Form No. 8 in Appendix A, has acknowledged service of the summons or, in the case of a summons in Form No. 10 in Appendix A, has been served with the summons”.

**28.** In Order 28, rule 5 (2), for the words from “(except a defendant” to “with the summons)” there shall be substituted the words “(except, unless the Court otherwise directs, a defendant who, in the case of a summons in Form No. 8 in Appendix A, has failed to acknowledge service of the summons or, in the case of a summons in Form No. 10 in Appendix A, has not been served with the summons)”.

**29.** Order 44, rule 3, shall be amended as follows:—

(1) In paragraph (2) for the words from “Before notice” to “Appendix A” there shall be substituted the following words:—

“Every notice of a judgment for service under this paragraph must be indorsed with a memorandum in Form No. 52 in Appendix A and accompanied by a form of acknowledgment of service in Form No. 15 in Appendix A with such modifications as may be appropriate.”



(2) In paragraph (3) for the words “the stamped copy of the memorandum of appearance” there shall be substituted the words “his stamped copy of the acknowledgment of service” and for the words “no appearance has been entered by him” there shall be substituted the words “he has failed to acknowledge service.”

(3) In paragraph (5) for the words “entering an appearance” there shall be substituted the words “acknowledging service.”

(4) In paragraph (6) for the words “entering an appearance to the notice” there shall be substituted the words “acknowledging service of the notice”.

(5) In paragraph (7) the words from the beginning to “subject to that” and the words “issued out of the Central Office” shall be omitted and for the words “entry of appearance to” there shall be substituted the words “acknowledgment of service of”.

**30.** In Order 47, rule 1(2), for the words “enter an appearance in the action” there shall be substituted the words “acknowledge service of the writ or originating summons in the action or did not state in his acknowledgment of service that he intended to apply for a stay of execution under this rule pursuant to Order 13, rule 8”.

**31.** In Order 63, rule 14, the words from “a defendant” to “or where” shall be omitted.

**32.** Order 75, rule 3, shall be amended as follows:—

(1) In paragraph (1) the words “or 2” and “whichever is appropriate” shall be omitted.

(2) The following paragraphs shall be inserted after paragraph (1):—

“(2) The writ by which an Admiralty action in personam is begun must be in Form No. 1 in Appendix A with the following modifications:—

(a) in the heading after the word “Division” there shall be inserted the words “Admiralty Court”;

(b) where the writ is issued out of the Admiralty registry, for the references to the number of the action and to the Central Office there shall be substituted references to the folio number and to the Admiralty registry respectively.

(3) The writ by which a limitation action is begun must be in Form No. 2 in Appendix B and notice of such a writ must be in Form No. 2A in Appendix B.”

(3) The existing paragraph (2) shall stand as paragraph (4) and at the beginning of that paragraph there shall be inserted the words “Subject to the following paragraphs”.

(4) After paragraph (4) as so re-numbered there shall be added the following paragraphs:—

“(5) An acknowledgment of service in an action in rem or a limitation action shall be in Form No. 2B in Appendix B.

(6) A defendant to an action in rem in which the writ has not been served, or a defendant to a limitation action who has not been served with the writ, may, if he desires to take part in the proceedings, acknowledge the issue of the writ by handing in at, or sending to, the appropriate office an acknowledgment of issue in the same form as an acknowledgment of service but with the substitution for the references therein to service of references to issue of the writ.

(7) These rules shall apply, with the necessary modifications, in relation to an acknowledgment of issue or service in Form No. 2B in Appendix B as they apply in relation to an acknowledgment of service in Form No. 14 in Appendix A which contains a statement to the effect that the defendant intends to contest the proceedings to which the acknowledgment relates”.

**33.** In Order 75, rule 6 (1) (a), for the words “to enter an appearance” there shall be substituted the words “to acknowledge issue or service (as may be appropriate) of the writ”.

**34.** Order 75, rule 8, shall be amended as follows:—

(1) The following paragraph shall be inserted after paragraph (3):—

“(3A) Where a writ is served on any property by the marshal or his substitute, the person effecting service must indorse on the writ the following particulars, that is to say, where it was served, the property on which it was served, the day of the week and the date on which it was served, the manner in which it was served and the name and the address of the person effecting service, and the indorsement shall be evidence of the facts stated therein.”

(2) In paragraph (5) for the words “entered an appearance”, wherever they occur, there shall be substituted the words “acknowledged issue or service of the writ”.

**35.** In Order 75, rule 9, for the words “to enter an appearance” there shall be substituted the words “to acknowledge issue or service of the writ”.

**36.** In Order 75, rule 13 (2), for the words “an appearance is entered” there shall be substituted the words “issue or service of the writ is acknowledged”.

**37.** Order 75, rule 17, shall be amended as follows:—

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

“(3) A person to whom leave is granted under this rule shall thereupon become a party to the action.”

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

“(4) The Court may order that a person to whom it grants leave to intervene in an action shall, within such period or periods as may be specified in the order, serve on any other party to the action such notice of his intervention and such pleading as may be so specified.”

**38.** In Order 75, rule 18 (1), for the words “entering an appearance in” there shall be substituted the words “acknowledging issue or service of the writ.”

**39.** In Order 75, rule 21 (3), shall be amended as follows:—

(1) For the words “enter an appearance within the time limited for appearing” there shall be substituted the words “acknowledge service of the writ within the time limited for doing so”.

(2) For the words “rule 1 (2)”, wherever they occur, there shall be substituted the words “rule 1 (4)”.

(3) After the words “on a registrar” there shall be inserted the words “or by the marshal or his substitute”.

(4) For the words “he accepts service of the writ” there shall be substituted the words “it was served on him or indorsed as mentioned in rule 8 (3A)”.

**40.** In Order 75, rule 31 (1), for the words “entered an appearance in” there shall be substituted the words “acknowledged issue or service of the writ” and for the words “after the entry of the appearance” there shall be substituted the word “thereafter”.

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

(1) In paragraph (1) for the words from “entry of appearance” to “limited for appearing” there shall be substituted the words “acknowledgment of issue or service of the writ by one of the defendants named therein by their names or, if none of them acknowledges issue or service, within 7 days after the time limited for acknowledging service”.

(2) In paragraph (2) (b) for the words “entered an appearance” there shall be substituted the words “acknowledged service”.

(3) In paragraphs (4) and (8) for the words “entered an appearance”, wherever they occur, there shall be substituted the words “acknowledged issue or service of the writ”.

**42.** Order 75, rule 39, shall be amended as follows:—

(1) In paragraph (1) for the words “entered an appearance” there shall be substituted the words “acknowledged the issue thereof”.

(2) In paragraph (2) (b) the words “enter an appearance in the action (if they have not already done so) and” shall be omitted.

(3) In paragraph (3) the words “the entering of appearances” shall be omitted.

(4) In paragraph (4) for the words “no appearance may be entered, claim filed” there shall be substituted the words “no claim may be filed” and the words “or, on an appeal, of the judge” shall be omitted.

**43.** Order 75, rule 40, shall be amended as follows:—

(1) In paragraph (1) for sub-paragraph (b) there shall be substituted the following sub-paragraph:

—  
“(b) if so named, neither was served with the writ nor has acknowledged the issue thereof”, and for the words “after entering an appearance” there shall be substituted the words “after acknowledging issue of the writ”.

(2) In paragraph (3) for the words “who has entered an appearance” there shall be substituted the words “who has acknowledged issue or service of the writ”.

**44.** In Order 77, rule 2 (2), the word “Where” shall be omitted and for the words “the Crown enters an appearance in the Central Office or the Admiralty Registry” there shall be substituted the words “the Crown may acknowledge service of the writ either in the district registry or, at the option of the Crown, in the Central Office or, in the case of an Admiralty action, in the Admiralty Registry, and where service is acknowledged in the Central Office or the Admiralty Registry, the action shall thereafter proceed in the Royal Courts of Justice and”.

**45.** Order 77, rule 5, shall be revoked.

**46.** In Order 80, rule 2 (1), after the words “and may not” there shall be inserted the words “acknowledge service,”.

**47.** In Order 113, rule 2, for the words “no appearance need be entered to it” there shall be substituted the words “no acknowledgment of service of it shall be required”.

**48.** In each of the rules mentioned in the first column of the Schedule to these Rules the words or paragraph mentioned opposite thereto in the second column shall be omitted and the words or paragraph, if any, mentioned opposite thereto in the third column shall be substituted therefor.

**49.** Appendix A shall be amended as follows:—

(1) The following form shall be substituted for Forms No. 1, 2, 3, 4 and 5:—  
“No. 1 Writ of Summons

(2) For Forms No. 6 and 7 there shall be substituted the following form:—  
“No. 6 Notice of writ of summons to be served out of jurisdiction

(3) For Forms No. 8 and 9 there shall be substituted the following form:—  
“No. 8 Originating summons – general form

(4) For Form No. 10 there shall be substituted the following form:—

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“No. 10 Originating summons-expedited form

(5) For Forms No. 14, 16, 18, 19 and 22 there shall be substituted the following form:—  
“No. 14 Acknowledgment of Service of Writ of Summons

(6) For Form No. 15 there shall be substituted the following form:—  
“Acknowledgment of Service of Originating summons

(7) For Form No. 17 there shall be substituted the following form:—  
“No. 17 Notice to be indorsed on copy of counterclaim

(8) For Form No. 20 there shall be substituted the following form:—  
“No. 20 Third party notice claiming contribution or indemnity or other relief or remedy

(9) For Form No. 21 there shall be substituted the following form:—  
“No. 21 Third party notice where question or issue to be determined

(10) In Forms 39, 40, 41 and 42 for the words “No appearance having been entered”, wherever they occur, there shall be substituted the words “No notice or intention to defend having been given”.

(11) In Form 44 for the words “having entered appearance herein” there shall be substituted the words “having given notice of intention to defend herein”.

(12) In Form 52 the words “without entering an appearance” shall be omitted and for the words “after entering an appearance” there shall be substituted the words “after acknowledging service of this notice”.

**50.** Appendix B shall be amended as follows:—

(1) Except for the purposes of the references to Form No. 1 in Forms No. 3, 7, 13 and 14, the following form shall be substituted for Form No. 1:—  
“No. 1 Writ of summons in action in rem

(2) For Form No. 2 there shall be substituted the following form:—  
“No. 2 Writ of summons in limitation action

(3) After Form No. 2 the note headed “Writ of summons in Admiralty action in personam” shall be omitted and the following forms shall be inserted:—  
“2A Notice of writ of summons in limitation action to be served out of jurisdiction

(4) In Form No. 5 for the words “enter an appearance” there shall be substituted the words “acknowledge issue or service of the writ”.

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Dated 19th December 1979

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## SCHEDULE

## MINOR AND CONSEQUENTIAL AMENDMENTS

Rule 48

## PART 1

## Entry of Appearance

<i>Order and Rule</i>	<i>Words to be omitted</i>	<i>Words, if any, to be substituted</i>
Order 6, rule 2(1)(b)	“appearing”	“acknowledging service”
Order 6, rule 5(4)	“entered an appearance to the writ”	“acknowledged service of the writ”
Order 10, rule 2(2), Order 11, rules 1(3), 4(4) and 9(6)	“enter an appearance” wherever occurring	“acknowledge service”
Order 12 (title)	“ENTRY OF APPEARANCE TO”	“ACKNOWLEDGMENT OF SERVICE OF”
Order 12, rule 5	“appearing” wherever occurring	“acknowledging service”
Order 13 (title)	“DEFAULT OF APPEARANCE TO WRIT”	“FAILURE TO GIVE NOTICE OF INTENTION TO DEFEND”
Order 13, rules 1 to 6 (inclusive)	“enter an appearance” wherever occurring	“give notice of intention to defend”
Order 13, rule 6	“had entered an appearance”	“had given notice of intention to defend”
Order 13, rule 7(2)	“enter an appearance”	“give notice of intention to defend”
	“is in default of appearance”	“failed to give such notice”
Order 14, rule 1(1)	“entered an appearance in the action”	“given notice of intention to defend the action”
Order 15, rule 3(4)	“entry of appearance to a counterclaim”	“acknowledging service of a counterclaim”
Order 15, rule 8(3)	“entry of appearance”	“acknowledgment of service”
	“time limited for appearing”	“time limited for acknowledging service”
Order 15, rule 8(4)	“entry of appearance” wherever occurring.	“acknowledgment of service”
Order 15, rule 10A(2)	“entering an appearance”	“giving notice of intention to defend the action”
Order 16, rule 1(1)	“entered an appearance”	“given notice of intention to defend”

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<i>Order and Rule</i>	<i>Words to be omitted</i>	<i>Words, if any, to be substituted</i>
Order 16, rule 3(2)	“served in the action”	“served in the action and a form of acknowledgment of service in Form No. 14 in Appendix A”
Order 16, rule 3(3)	“entering an appearance to”	“acknowledging service of”
Order 16, rule 4(1)	“enters an appearance”	“gives notice of intention to defend”
Order 16, rule 4(2)	“entering an appearance”	“giving notice of intention to defend”
Order 16, rule 5(1)	“enter an appearance”	“give notice of intention to defend”
Order 16, rule 8(1)	“entered an appearance”	“given notice of intention to defend”
Order 16, rule 8(3)	“no appearance to”	“no acknowledgment of service of”
	“entered an appearance in the action” where first occurring	“acknowledged service of the writ or originating summons in the action”
	“entered an appearance in the action” in the second place where they occur	“given notice of intention to defend the action”
Order 16, rule 9(3)	“entered an appearance to the notice”	“given notice of intention to defend the claim, question or issue”
	“limited for appearing to”	“limited for acknowledging service of”
	“entered an appearance”	“acknowledged service”
Order 18, rule 1	“enters an appearance”	“gives notice of intention to defend”
Order 18, rule 2(1)	“enters an appearance in, and intends to defend”	“gives notice of intention to defend”
	“limited for appearing”	“limited for acknowledging service of the writ”
Order 18, rule 21(1)	“entered an appearance”	“given notice of intention to defend”
Order 28, rule 6	“in default of appearance” in the heading	“who has failed to acknowledge service”
	“failed to enter an appearance”	“failed to acknowledge service of the summons”
	“that the party is in default of appearance”	“that the party has so failed”

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<i>Order and Rule</i>	<i>Words to be omitted</i>	<i>Words, if any, to be substituted</i>
Order 28, rule 7(1)	“entered an appearance to the summons”	“acknowledged service of the summons”
Order 29, rule 2(6)	“enters an appearance”	“acknowledges service of the writ or originating summons by which the cause or matter was begun”
Order 29, rule 10	“to appear”	“to acknowledge service”
Order 37, rule 3	“in default of appearance”	“on failure to give notice of intention to defend”
Order 38, rule 21(5)	“entry of appearance”	“acknowledgment of service”
Order 43, rule 1(1)	“after the defendant has entered an appearance or after the time limited for appearing”	“after the defendant has acknowledged service of the writ or after the time limited for acknowledging service”
Order 62, rule 3(11)	“if he enters an appearance”	“if he acknowledges service of the notice”
Order 62, rule 21(5)(a)(ii)	“appears in person”	“acknowledges service in person”
	“who does not so appear”	“who does not so acknowledge service”
Order 62, rules 22(2) 23(2) and 24(3)	“entered an appearance” wherever occurring	“acknowledged service”
Order 62, Appendix 3	“in default of appearance” in paragraph 1(b) of Part I	“on failure to give notice of intention to defend”
	“where” to “default of appearance” in item (5) of the Additional Costs in the Scale of Costs following paragraph 2 of Part I	“where notice of intention to defend is given after the time limited therefor and the plaintiff makes an affidavit of service for the purpose of a judgment on failure to give notice of intention to defend”
	“in default of appearance” wherever occurring in paragraphs 1(1)(a) and 2 of Part II	“on failure to give notice of intention to defend”
Order 65, rule 9	“as to entry of appearance”	“as to acknowledgment of service”
Order 67, rules 1(3), 2(2), 5(3) (a) and 6(1)(a)	“as to entry of appearance” wherever occurring	“as to acknowledgment of service”
Order 71, rule 13	“or appearance by” in paragraph (3)(b)	—



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<i>Order and Rule</i>	<i>Words to be omitted</i>	<i>Words, if any, to be substituted</i>
	“appeared thereto” in paragraph (5)(a)	“acknowledged service thereof”
Order 72, rule 6(2)	“entering an appearance in”	“giving notice of intention to defend”
Order 76, rule 5(1)	“entered an appearance”	“acknowledged service of the writ”
Order 76, rule 5(2)	the words from “after the entry” to “appearance therein”	“after the acknowledgment of service by a defendant to the action or, if no defendant acknowledges service”
Order 76, rule 6	“Default of appearance” in the heading  the words in paragraph (2) from “to enter an appearance” to the end	“Failure to acknowledge service”  “to acknowledge service of the writ, the plaintiff may, after the time for acknowledging service has expired and upon filling an affidavit proving due service of the writ, or notice of the writ, on that defendant proceed with the action as if that defendant had acknowledged service”
Order 76, rule 6(3)	“enter an appearance”	“acknowledge service of the writ”
	“for appearing”	“for acknowledging service”
Order 76, rule 7	“enters an appearance in”	“acknowledges service of the writ”
	“entry of appearance”	“acknowledgment of service”
Order 76, rule 11(2)	“entered an appearance”	“acknowledged service of the writ”
Order 77, rule 3(2) and (3)	“time limited for appearing” wherever occurring	“time limited for acknowledging service of the writ”
Order 77, rule 9(1)	“appearance”	“notice of intention to defend”
Order 78, rule 2(c)	“enter an appearance in the action”	“acknowledge service of the notice”
Order 78, rule 3	“Entry of appearance” in the heading	“Acknowledgment of service”
	“enter an appearance”	“acknowledge service thereof”
	“rules 1, 2 and 4”	“rules 1 and 4”
Order 78, rule 4	“in default of appearance” in the heading	“on failure to give notice of intention to defend”

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<i>Order and Rule</i>	<i>Words to be omitted</i>	<i>Words, if any, to be substituted</i>
	“enter an appearance”	“give notice of intention to defend”
Order 78, rule 5(1)	“enters an appearance in”	“gives notice of intention to defend”
	“the appearance is entered”	“such notice is given”
Order 80, rule 3(6)(b)	“an appearance shall not be entered in a cause or matter”	“service shall not be acknowledged in a cause or matter”
Order 80, rule 3(7)	“the appearance is to be entered”	“service is to be acknowledged”
Order 80, rule 6	“does not appear” in the heading	“does not acknowledge service”
Order 80, rule 6(1)	“to which an appearance is required to be entered”	—
	“no appearance is entered” wherever occurring	“no acknowledgment of service is given”
	“appearing”	“acknowledging service”
Order 80, rule 6(2)	“no appearance is entered”	“no acknowledgment of service is given”
	“appearing”	“acknowledging service”
Order 80, rule 6(3)	“or by originating summons to which no appearance need be entered”	—
	“petition, motion or summons”	“petition or motion”
Order 80, rule 6(4)	“no appearance is entered”	“no acknowledgment of service is given”
Order 80, rule 6(5)(d)	“appearing”	“acknowledging service”
Order 81, rule 4	“Entry of appearance” in the heading	“Acknowledgment of service”
Order 81, rule 4(1)	“appearance may not be entered”	“service may not be acknowledged”
Order 81, rule 4(2)	“enter an appearance in the action and state in his memorandum of appearance”	“acknowledge service of the writ and state in his acknowledgment”
	“An appearance entered”	“An acknowledgment of service given”
	“an appearance for”	“an acknowledgment by”
Order 81, rule 4(3)	“an appearance has been entered for”	“an acknowledgment of service has been given by”
Order 81, rule 4(4)	“entered an appearance”	“acknowledged service”

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<i>Order and Rule</i>	<i>Words to be omitted</i>	<i>Words, if any, to be substituted</i>
Order 81, rule 4(5)	“enter an appearance in the action”	“acknowledge service of the writ”
Order 81, rule 5	“entered an appearance” wherever occurring in paragraphs 2(a) and (3)(a) “failed to enter an appearance” in paragraph (2)(b)	“acknowledged service of the writ” “failed to acknowledge service of it”
Order 83, rule 2(2)	“has not entered an appearance” “memorandum of appearance”	“has not acknowledged service of the writ or originating summons” “an acknowledgment of service”
Order 83, rule 3	“in default of appearance” wherever occurring in paragraphs (1) and (3) “time limited for appearing” in paragraph (3)	“on failure to give notice of intention to defend” “time limited for acknowledging service of the writ or originating summons in the action”
Order 83, rule 4	“entered an appearance”	“acknowledged service of the writ or originating summons”
Order 86, rule 1(2)	“entered an appearance”	“acknowledged service of the writ”
Order 88, rule 4(1)(b)	“the copy” to “rule 4” “enter an appearance, a certificate of his non-appearance”	“his stamped copy of the acknowledgment of service” “acknowledge service, a certificate that he has failed to do so”
Order 88, rule 5	“non-appearance by a defendant” in the heading	“failure by a defendant to acknowledge service”
Order 88, rule 5(1)	“to enter an appearance” “entered an appearance”	“to acknowledge service of the originating summons” “acknowledged service of the originating summons”
Order 88, rule 7(1)	“in default of appearance”	“on failure to give notice of intention to defend”
Order 89, rule 2	“in default of appearance” wherever occurring “or of defence” in paragraph (3)	“on failure to give notice of intention to defend” “or in default of defence”

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<i>Order and Rule</i>	<i>Words to be omitted</i>	<i>Words, if any, to be substituted</i>
	“time limited for appearing” in paragraph (5)	“time limited for acknowledging service of the writ”
Order 96, rule 5(3)	“without entering an appearance”	—

## PART 2

### Originating Summonses

<i>Order and rule</i>	<i>Words to be omitted</i>	<i>Words, if any, to be substituted</i>
Order 11, rule 9(6)	“to which an appearance is required to be entered”	—
Order 17, rule 3	paragraph (3)	“(3) An originating summons under this rule shall be in Form No. 10 in Appendix A.”
Order 32, rule 9	paragraph (3)	“(3) An originating summons by which an application for leave under the said section 1 or the said section 141 is made shall be in Form No. 10 in Appendix A.”
Order 50, rule 14(4)	“No appearance need be entered to the summons”	“The summons shall be in Form No. 10 in Appendix A.”
Order 50, rule 15(2)	“No appearance” to “this rule”	“An originating summons under this rule shall be in Form No. 10 in Appendix A.”
Order 57, rule 3	“no appearance need be entered to such summons”	“such summons shall be in Form No. 10 in Appendix A”
Order 71, rule 2	paragraph (3)	“(3) An originating summons under this rule shall be in Form No. 10 in Appendix A.”
Order 73, rule 3(3)	“for which no appearance need be entered”	“which shall be in Form No. 10 in Appendix A.”
Order 73, rules 9(3) and 10(2)	“to which no appearance need be entered” wherever occurring	“which shall be in Form No. 10 in Appendix A”.
Order 75, rule 36(2)	“to which appearance is required to be entered”	—
Order 77, rule 17	paragraph (3)	“(3) A summons under this rule shall be in Form No. 10 in Appendix A”

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<i>Order and rule</i>	<i>Words to be omitted</i>	<i>Words, if any, to be substituted</i>
Order 79, rule 10(2)	“No appearance need be entered to” to “no effect”	“An originating summons by which an application is made under section 2(2) of the said Act for a direction that a witness summons shall be of no effect shall be in Form No. 10 in Appendix A”.
Order 79, rule 11(2)	“No appearance” to “is made”	“An originating summons by which such an application is made shall be in Form No. 10 in Appendix A.”
Order 80, rule 11	paragraph (4)	“(4) An originating summons under this rule shall be in Form No. 10 in Appendix A.”
Order 82, rule 8	paragraph (2)	“(2) An originating summons by which such an application is made shall be in Form No. 10 in Appendix A.”
Order 90, rule 17(1)	“No appearance need be entered to any such summons.”	“Any such summons shall be in Form No. 10 in Appendix A.”
Order 91, rule 2(5)	“No appearance need be entered to the originating summons.”	“The originating summons shall be in Form No. 10 in Appendix A.”
Order 94, rule 5	paragraph (5)	“(5) An originating summons by which any application relating to parliamentary or local government elections is made shall be in Form No. 10 in Appendix A.”
Order 95, rule 2	paragraph (4)	“(4) An originating summons under paragraph (1)(b) shall be in Form No. 10 in Appendix A.”
Order 95, rule 3	The whole rule except the heading	“3. An originating summons by which an application to the Court under the proviso to section 7 of the Bills of Sale Act (1878) Amendment Act 1882 must be made shall be in Form No. 10 in Appendix A.”
Order 97, rule 3	paragraph (2)	“(2) Any such summons shall be in Form No. 10 in Appendix A.”

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<i>Order and rule</i>	<i>Words to be omitted</i>	<i>Words, if any, to be substituted</i>
Order 99, rule 3	paragraph (2)	“(2) The summons shall be in Form No. 10 in Appendix A.”
Order 102, rule 2(2)	“No appearance need be entered to an originating summons under this rule”	“An originating summons under this rule shall be in Form No. 10 in Appendix A.”
Order 102, rule 3	paragraph (2)	“(2) An originating summons under this rule shall be in Form No. 10 in Appendix A.”
Order 106, rule 5	The whole rule including the heading	“ <i>Form of originating summons</i> 5. An originating summons by which any application under the Act, or any application for an order under rule 3, is made shall be in Form No. 10 in Appendix A.”
Order 107, rule 3	paragraph (2)	“(2) An originating summons by which an application under the said section 85 is made shall be in Form No. 10 in Appendix A.”

### EXPLANATORY NOTE

These Rules amend the Rules of the Supreme Court mainly by prescribing new forms of writ of summons (rules 4(1), 32, 49(1), 50(1) and (2)) and replacing the entry of appearance by acknowledgement of service (rules 9 *etc.*). There will be a combined form of writ in place of the various forms now used in the Central Office and district registries and revised forms of writ in Admiralty actions in rem and limitation actions. The new forms will call upon the defendant to acknowledge service of the writ on an accompanying form and generally to say in the form whether or not he intends to contest the proceedings. An acknowledgment indicating an intention to contest the proceedings is called a “notice of intention to defend” (rule 2(1)). If the defendant fails to return the acknowledgment within the time prescribed or if he returns it without stating an intention to contest the proceedings, the plaintiff will be able to enter judgment immediately (rules 15 to 17). A number of related changes are also made:—

- (a) The defendant must be served with a sealed instead of a plain copy of the writ (rule 6).
- (b) The form of acknowledgment will have to be returned to the court office out of which the writ was issued (rule 9). Except in the case of the Crown (rule 44), the defendant in a district registry action will no longer have the right, where he is outside the district of the registry and the cause of action did not arise there, to remove the proceedings to London by acknowledging service in the Central Office. He may, however, ask in his acknowledgment of service for the proceedings to be transferred to London or to some other district registry

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and the proceedings will be transferred accordingly unless the plaintiff objects within a limited time (rule 3(2)).

- (c) If a defendant states in his acknowledgment of service that he does not intend to contest the proceedings but he does intend to apply for a stay of execution of any judgment obtained against him for a debt or liquidated demand, execution of the judgment by writ of *fi. fa.* will be automatically stayed for 14 days to enable him to make his formal application (rule 19).
- (d) The defendant will be required to acknowledge service in every action commenced by originating summons except proceedings under Order 113 (rules 14 and 47), but in cases in which no appearance has hitherto been required the originating summons will be in a special (“expedited”) form making provision for a date of hearing to be inserted (rules 5, 49(3) and (4)).
- (e) Special provision is made to enable a defendant to challenge the jurisdiction of the Court. If he gives notice of intention to defend and applies within 14 days to have the proceedings set aside or for such other relief as he desires, he will not be treated as having submitted to the jurisdiction of the Court even if the application fails (rule 13).
- (f) A body corporate will be able to acknowledge service (and give notice of intention to defend) by a person duly authorised on its behalf instead of a solicitor (rule 9)).
- (g) In Admiralty actions in rem and limitation actions a defendant will be able to acknowledge the issue, instead of service, of the writ where the writ has not been served on him but he wishes to take part in the proceedings (rules 32(4) and 50(3)).
- (h) Service of a writ in rem by the Admiralty marshal or his substitute may be proved by an indorsement made by him on the writ (rule 34).
- (i) Other rules and forms mentioning the entry of appearance are adapted to the new procedure for acknowledging service.