

1972 No. 1898 (L.27)

**SUPREME COURT OF JUDICATURE, ENGLAND**

**PROCEDURE**

**The Rules of the Supreme Court (Amendment No. 3) 1972**

*Made* - - - 27th November 1972

*Laid before Parliament* 8th December 1972

*Coming into Operation* 1st January 1973

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

**1.**—(1) These Rules may be cited as the Rules of the Supreme Court (Amendment No. 3) 1972 and shall come into operation on 1st January 1973.

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

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

**2.** The Arrangement of Orders at the beginning of the Rules of the Supreme Court 1965 shall be amended as follows:—

(1) For the title of Order 71 there shall be substituted the title “Reciprocal Enforcement of Judgments and Enforcement of European Community Judgments”.

(2) After Order 113 there shall be inserted the following entry:—  
“114. References to the European Court”.

**3.** The following paragraph shall be added to Order 18, rule 8:—

“(3) A claim for exemplary damages must be specifically pleaded together

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(a) 1925 c. 49.

(b) S.I. 1965/1776 (1965 III, p. 4995).

(c) The relevant amending instruments are S.I. 1966/1514, 1968/1244, 1970/944, 1861, 1971/1269 (1966 III, p. 4196; 1968 II, p. 3360; 1970 II, p. 2932; III, p. 6081; 1971 II, p. 3634).

(d) 1889 c. 63.

with the facts on which the party pleading relies.”

4. In Order 22, rule 3(1), for the words “14 days” wherever they occur there shall be substituted the words “21 days”.

5. The following paragraph shall be added to Order 34, rule 8:—

“(3) In performance of the duty imposed by paragraph (2), a plaintiff who gives notice of acceptance of a payment into court in accordance with Order 22, rule 3(1), shall at the same time lodge a copy of the notice with the officer mentioned in that paragraph.”

6. Order 44 shall be amended as follows:—

(1) For sub-paragraph (b) of rule 18(1) there shall be substituted the following sub-paragraph:—

“(b) on any other debt, from the date of the judgment at the rate payable on judgment debts at that date”.

(2) In paragraph (2) of rule 18 for the words “at the rate of £4 per cent. per annum from the date of the judgment” there shall be substituted the words “in accordance with paragraph (1)(b)”.

(3) At the end of rule 18 there shall be added the following paragraph:—

“(3) For the purposes of this rule “debt” includes funeral, testamentary or administration expenses and, in relation to expenses incurred after the judgment, for the reference in paragraph (1)(b) to the date of the judgment there shall be substituted a reference to the date when the expenses became payable.”

(4) In rule 19 for the words “£4 per cent.” there shall be substituted the words “£5 per cent.”.

7. Order 62 shall be amended as follows:—

(1) In rule 12(7), for the words from “the following causes” to the end there shall be substituted the words “any cause or matter assigned to the Family Division and of any application or appeal to the Court of Appeal in connection with any such cause or matter or with any matrimonial cause or matter in a county court”.

(2) In rule 21(1) for the words from “at the appropriate office” to the end there shall be substituted the words “the requisite document and leaving a copy thereof at the appropriate office”.

(3) Rule 21(3) shall be amended as follows:—

(a) At the beginning there shall be inserted the words “Subject to paragraph (4)”.

(b) The words “other than proceedings in the Family Division” shall be omitted.

(c) For the words “7 days” wherever they appear there shall be substituted the words “3 months”.

(4) In rule 21 after paragraph (3) there shall be inserted the following paragraph:—

“(4) In relation to the taxation of costs pursuant to an order under the Solicitors Act 1957(a) paragraph (3) shall have effect as if for the period of 3 months first mentioned in that paragraph there were substituted a reference to 7 days.”

- (5) Paragraphs (4) and (5) of rule 21 shall stand as paragraphs (5) and (6) respectively, and paragraph (5) as so re-numbered shall be amended as follows:—
- (a) For the words from “The party by whom” to “that is to say—” there shall be substituted the words “A party who begins proceedings for taxation must at the same time lodge in the appropriate office:—
- (a) a statement containing the following particulars, that is to say—”.
- (b) At the end, after the words “of his principal”, there shall be added the words “and—
- (b) unless the taxing officer otherwise directs, the bill of costs together with all necessary papers and vouchers”.
- (6) Rule 22 shall be amended as follows:—
- (a) In paragraph (1) for the words “paragraphs (3) and (4)” there shall be substituted the words “paragraphs (2) and (3)”, and the words “except where the proceedings arise out of proceedings in the Family Division” shall be omitted.
- (b) Paragraph (2) shall be omitted and paragraphs (3) and (4) shall be re-numbered accordingly.
- (7) Rule 23(1) shall be amended as follows:—
- (a) For the words “proceedings for taxation have been duly begun” there shall be substituted the words “a party has begun proceedings for taxation”.
- (b) The words “paragraph (4) of this rule and” shall be omitted.
- (c) For the words “any party” and “the bill of costs” there shall be substituted the words “any other party” and “his bill of costs” respectively.
- (8) In rule 23(2) the words “Subject to paragraph (4)” shall be omitted and for the words “after receiving a notice under rule 22(1)” there shall be substituted the words “after beginning the proceedings or, as the case may be, receiving notice under paragraph (1)”.
- (9) Paragraphs (3) and (4) of rule 23 shall be omitted.
- (10) Rule 24 shall be amended as follows:—
- (a) In paragraph (1) the words “(other than proceedings in the Family Division)” shall be omitted.
- (b) In paragraph (2) sub-paragraph (a) and the letter “(b)” shall be omitted.
- (11) For paragraph 1 of Appendix 1 there shall be substituted the following paragraph:—
- “1. Where a party is entitled to require any costs to be taxed by virtue of a judgment or order given or made in proceedings in the Supreme Court or by virtue of a direction of the Court given under these Rules, the requisite document for the purposes of rule 21 is the judgment, order or direction, as the case may be.”
- 8. Order 71 shall be amended as follows:—**
- (1) For the title there shall be substituted the title “**RECIPROCAL ENFORCEMENT OF JUDGMENTS AND ENFORCEMENT OF EUROPEAN COMMUNITY JUDGMENTS**”.

- (2) Immediately before rule 1 there shall be inserted the heading "I. RECIPROCAL ENFORCEMENT".
- (3) In rule 1, for the words "in this Order" in both places where they occur there shall be substituted the words "in this Part of this Order".
- (4) At the end there shall be added the following Part:—

## "II. EUROPEAN COMMUNITY JUDGMENTS

### *Interpretation*

15. In this Part of this Order, "the Order in Council" means the European Communities (Enforcement of Community Judgments) Order 1972(a), and expressions used in the Order in Council shall, unless the context otherwise requires, have the same meanings as in that Order.

### *Functions under Order in Council exercisable by judge or master*

16. The functions assigned to the High Court by the Order in Council may be exercised by a judge in chambers and a master of the Queen's Bench Division.

### *Application for registration of Community judgment, etc.*

17. An application for the registration in the High Court of a Community judgment or Euratom inspection order may be made ex parte.

### *Evidence in support of application*

18.—(1) An application for registration must be supported by an affidavit exhibiting—

(a) the Community judgment and the order for its enforcement or, as the case may be, the Euratom inspection order or, in either case, a duly authenticated copy thereof, and

(b) where the Community judgment or Euratom inspection order is not in the English language, a translation into English certified by a notary public or authenticated by affidavit.

(2) Where the application is for registration of a Community judgment under which a sum of money is payable, the affidavit shall also state—

(a) the name and occupation and the usual or last known place of abode or business of the judgment debtor, so far as known to the deponent;

(b) to the best of the deponent's information and belief that at the date of the application the European Court has not suspended enforcement of the judgment and that the judgment is unsatisfied or, as the case may be, the amount in respect of which it remains unsatisfied; and

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(a) S.I. 1972/1590 (1972 III, p. 4643).

- (c) where the sum payable under the judgment is not expressed in the currency of the United Kingdom, the amount which that sum represents in the currency of the United Kingdom, calculated at the rate of exchange prevailing at the date when the judgment was originally given.

*Register of judgments and orders*

19.—(1) There shall be kept in the Central Office under the direction of the Senior Master a register of the Community judgments and Euratom inspection orders registered under the Order in Council.

(2) There shall be included in the register particulars of any execution issued on a judgment so registered.

*Notice of registration*

20.—(1) Upon registering a Community judgment or Euratom inspection order, the proper officer of the Court shall forthwith send notice of the registration to every person against whom the judgment was given or the order was made.

(2) The notice of registration shall have annexed to it a copy of the registered Community judgment and the order for its enforcement or, as the case may be, a copy of the Euratom inspection order, and shall state the name and address of the person on whose application the judgment or order was registered or of his solicitor or agent on whom process may be served.

(3) Where the notice relates to a Community judgment under which a sum of money is payable, it shall also state that the judgment debtor may apply within 28 days of the date of the notice, or thereafter with the leave of the Court, for the variation or cancellation of the registration on the ground that the judgment had been partly or wholly satisfied at the date of registration.

*Issue of execution*

21. Execution shall not issue without the leave of the Court on a Community judgment under which a sum of money is payable until the expiration of 28 days after the date of notice of registration of the judgment or, as the case may be, until any application made within that period for the variation or cancellation of the registration has been determined.

*Application to vary or cancel registration*

22. An application for the variation or cancellation of the registration of a Community judgment on the ground that the judgment had been wholly or partly satisfied at the date of registration shall be made by summons supported by affidavit.

*Application for registration of suspension order*

23. An application for the registration in the High Court of an order of the European Court that enforcement of a registered Community judgment be suspended may be made ex parte by lodging a copy of the order in the Central Office.

*Application for enforcement of Euratom inspection order*

24. An application for an order under Article 6 of the Order in Council for the purpose of ensuring that effect is given to a Euratom inspection order may, in case of urgency, be made ex parte on affidavit but, except as aforesaid, shall be made by motion or summons."

9. Order 90 shall be amended as follows:—

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

"(4) Unless the Court otherwise directs, the summons shall state the whereabouts of the minor or, as the case may be, that the plaintiff is unaware of his whereabouts.

(5) Every defendant other than the minor shall, forthwith after being served with the summons,—

(a) lodge in the registry out of which the summons issued a notice stating the address of the defendant and the whereabouts of the minor or, as the case may be, that the defendant is unaware of his whereabouts, and

(b) unless the Court otherwise directs, serve a copy of the notice on the plaintiff.

(6) Where any party other than the minor changes his address or becomes aware of any change in the whereabouts of the minor after the issue or, as the case may be, service of the summons, he shall, unless the Court otherwise directs, forthwith lodge notice of the change in the registry out of which the summons issued and serve a copy of the notice on every other party.

(7) The summons shall contain a notice to the defendant informing him of the requirements of paragraphs (5) and (6).

(8) In this rule any reference to the whereabouts of a minor is a reference to the address at which and the person with whom he is living and any other information relevant to the question where he may be found."

(2) The following rule shall be inserted after rule 3:—

*"Enforcement of order by tipstaff*

3A. The power of the High Court to secure, through an officer attending upon the Court, compliance with any direction relating to a ward of court may be exercised by an order addressed to the tipstaff."

10. The following rule shall be added to Order 93:—

*"Proceedings under section 16 of the Civil Aviation Act 1968*

18.—(1) Proceedings in the High Court for the amendment of any register of aircraft mortgages kept pursuant to an Order in Council made under section 16 of the Civil Aviation Act 1968(a) shall be assigned to the Chancery Division.

(2) Every person, other than the plaintiff, appearing in the register as mortgagee or mortgagor of the aircraft in question shall be made a defendant to the originating summons by which the proceedings are begun.

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(a) 1968 c. 61.

(3) A copy of the originating summons shall also be sent to the Civil Aviation Authority and the Authority shall be entitled to be heard in the proceedings.”

11. The following Order shall be inserted after Order 113:—

“ORDER 114

REFERENCES TO THE EUROPEAN COURT

*Interpretation*

1. In this Order—

“the Court” means the court by which an order is made and includes the Court of Appeal;

“the European Court” means the Court of Justice of the European Communities; and

“order” means an order referring a question to the European Court for a preliminary ruling under Article 177 of the Treaty establishing the European Economic Community, Article 150 of the Treaty establishing the European Atomic Energy Community or Article 41 of the Treaty establishing the European Coal and Steel Community.

*Making of order*

2.—(1) An order may be made by the Court of its own motion at any stage in a cause or matter, or on application by a party before or at the trial or hearing thereof.

(2) Where an application is made before the trial or hearing, it shall be made by motion.

(3) In the High Court no order shall be made except by a judge in person.

*Schedule to order to set out request for ruling*

3. An order shall set out in a schedule the request for the preliminary ruling of the European Court, and the Court may give directions as to the manner and form in which the schedule is to be prepared.

*Stay of proceedings pending ruling*

4. The proceedings in which an order is made shall, unless the Court otherwise orders, be stayed until the European Court has given a preliminary ruling on the question referred to it.

*Transmission of order to the European Court*

5. When an order has been made, the Senior Master shall send a copy thereof to the Registrar of the European Court; but in the case of an order made by the High Court, he shall not do so, unless the Court otherwise orders, until the time for appealing against the order has expired or, if an appeal is entered within that time, until the appeal has been determined or otherwise disposed of.

*Appeals from orders made by High Court*

6. An order made by the High Court shall be deemed to be a final decision, and accordingly an appeal against it shall lie to the Court of Appeal without leave; but the period within which a notice of appeal must be served under Order 59, rule 4(1), shall be 14 days.”

12. The following form shall be inserted after Form No. 108:—

“No. 109

Order for reference to the European Court

(O. 114)

*[Heading as in cause or matter]*

It is ordered that the question[s] set out in the Schedule hereto concerning the interpretation [*or validity*] of [*specific Treaty provision or Community instrument or act concerned*] be referred to the Court of Justice of the European Communities for a preliminary ruling in accordance with Article 177 of the Treaty establishing the European Economic Community [*or Article 150 of the Treaty establishing the European Atomic Energy Community or Article 41 of the Treaty establishing the European Coal and Steel Community, as the case may be*].

And it is ordered that all further proceedings in the above-named cause [*or matter*] be stayed until the said Court of Justice has given its ruling on the said question[s] or until further order.

#### SCHEDULE

##### REQUEST FOR PRELIMINARY RULING OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

*[Here set out a brief statement of the case giving rise to the request for the ruling of the European Court, giving particulars of the parties and the proceedings, indicating the nature of the issues between the parties, and specifying the Treaty provisions or other acts, instruments or rules of Community law concerned].*

The preliminary ruling of the Court of Justice of the European Communities is accordingly requested on the following questions:—

1, 2 etc. [*here set out the questions on which the ruling is sought*].

Dated the                      day of                                              19                      .”

Dated 27th November 1972.

*Hailsham of St. Marylebone, C.  
Widgery, C. J.  
Denning, M. R.  
George Baker, P.  
John Pennycuik, V-C.  
S. B. R. Cooke, J.  
James Fox-Andrews.  
P. J. Millett.  
H. Montgomery-Campbell.*



## EXPLANATORY NOTE

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

In the first place, these Rules amend the Rules of the Supreme Court in consequence of the accession of the United Kingdom to the European Communities. Rule 8 adds to Order 71 a new Part II which prescribes the procedure for giving effect to Community judgments enforceable in the United Kingdom. Provision is made for the registration of such judgments, for notification to persons against whom they are given, and for applications to vary or cancel registration by reason of the judgment being satisfied and to register a European Court order suspending execution of a registered judgment. Rule 11 adds a new Order 114 which regulates the procedure relating to preliminary rulings under articles of the Treaties enabling, and in some cases requiring, courts to refer questions of the interpretation and validity of community law to the European Court for a preliminary ruling. A reference may be made by the High Court or Court of Appeal of its own motion or on application by a party. The order for a reference will be in new Form No. 109, which will set out the questions on which a preliminary ruling is sought and normally stay the proceedings pending that ruling (Rule 12). A copy of the order will be transmitted to the European Court but in the case of a High Court order this will not be done, unless otherwise ordered, until the time for appealing against it has expired or an appeal has been determined. An order for a reference is to be treated as a final decision but notice of appeal must be served within 14 days.

A number of other amendments are also made. Claims for exemplary damages and the facts relied upon are to be specifically pleaded (Rule 3). The time for accepting money paid into court in satisfaction of a claim is extended to 21 days (Rule 4) and, if the action has been set down for trial, a copy of the notice of acceptance must be lodged with the listing officer (Rule 5). In administration actions the rate of interest to be allowed on the deceased's debts (including funeral, testamentary or administration expenses) is to be the same as that on judgment debts, while the rate of interest on legacies is to be 5% per annum (Rule 6).

The time for beginning proceedings for the taxation of costs is extended to 3 months from the relevant judgment or order, although for taxations under the Solicitors Act 1957 it will remain 7 days. Unless otherwise directed, the bill of costs and supporting papers must be lodged when the proceedings are begun and a copy of the bill must be sent to every other party within 4 days. Minor procedural differences in taxations between the Supreme Court Taxing Office and the Family Division are eliminated (Rule 7(2) to (11)). A principal clerk of the Family Division will be able to tax the costs of any proceedings in that Division and of any related appeal within the limit of the authority conferred on him by the President of the Division (Rule 7(1)).

Every party to wardship proceedings is required to inform the court of his address, the whereabouts of the ward and any changes in these particulars. Directions of the court relating to wards may be enforced by the tipstaff (Rule 9). Provision is made for proceedings to amend the register of aircraft mortgages, which are to be assigned to the Chancery Division (Rule 10).

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