

## 1976 No. 1196 (L. 21)

## SUPREME COURT OF JUDICATURE, ENGLAND

## PROCEDURE

## The Rules of the Supreme Court (Amendment No. 2) 1976

*Made* - - - - - 23rd July 1976

*Laid before Parliament* 29th July 1976

*Coming into Operation in accordance with Rule 14*

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. 2) 1976.

(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. In the Arrangement of Orders preceding Order 1—

(a) for the title of Order 83 there shall be substituted “Reopening of agreements under the Consumer Credit Act 1974(e)”; and

(b) the entry relating to Order 84 shall be omitted.

3. Order 1, rule 4(1), shall be amended as follows:—

(1) The definition of “the Lancashire area” shall be omitted and there shall be inserted before “official solicitor” the following definition:—

“the Northern area” means that part of England comprising the districts of the following district registries, that is to say, Birkenhead, Liverpool, St. Helens, Wigan, Warrington, Manchester, Stockport, Sheffield, Doncaster and Kingston-upon-Hull, together with the district of each registry to the north of the said districts;”.

(a) 1925 c. 49.

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

(c) The relevant amending instruments are S.I. 1967/1809, 1968/1244, 1971/1269, 1955, 1972/813 (1967 III, p. 4832; 1968 II, p. 3360; 1971 II, p. 3634; III, 5274; 1972 II, p. 2618).

(d) 1889 c. 63.

(e) 1974 c. 39.

(2) The definition of “moneylender’s action” shall be omitted.

4. In Order 6, rule 4, the words in brackets shall be omitted and at the end there shall be added the following paragraph:—

“In relation to a writ in the Chancery Division which is to be issued out of the Leeds, Liverpool, Manchester, Newcastle upon Tyne or Preston district registry this rule shall have effect as if for the reference to the district of that registry there were substituted a reference to the Northern area.”

5. The following sub-paragraph shall be added at the end of Order 11, rule 1(1):—

“(o) if the action begun by writ is brought against a defendant not domiciled or ordinarily resident in Scotland or Northern Ireland in respect of a claim by the Commissioners of Inland Revenue for estate duty or capital transfer tax.”

6. The following paragraph shall be substituted for paragraph (6) of Order 12, rule 2:—

“(6) 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, paragraphs (2), (3) and (5) shall have effect as if for the references to the district of that registry there were substituted references to the Northern area.”

7. In Order 22, rule 11, for the figure “£500” there shall be substituted the figure “£1,500”.

8. Order 62 shall be amended as follows:—

(1) In rule 12(4), the word “and” shall be omitted at the end of sub-paragraph (a) and inserted at the end of sub-paragraph (b) and after that sub-paragraph there shall be added the following sub-paragraph:—

“(c) the costs of any application or appeal to a Divisional Court of the Family Division if that Court or a judge of the Family Division so directs”.

(2) Part VIII of Appendix 2 shall be amended as follows:—

- (a) in item 61 the words “at Bank of England” shall be omitted;
- (b) items 63 and 70 shall be omitted;
- (c) in item 66 the words “or re-dating of certificate” and “or re-dated” shall be omitted;
- (d) in item 67 for the word “transcript” there shall be substituted the word “copy”;
- (e) in item 71 for the words “rule 66 of the Supreme Court Funds Rules 1927” there shall be substituted the words “rule 15 of the Supreme Court Funds Rules 1975(a)”.

(3) In Part X of Appendix 2, sub-paragraph (2) of paragraph 5 shall be omitted and sub-paragraphs (3) and (4) shall be renumbered accordingly.

9. For paragraph (2) of Order 80, rule 13, there shall be substituted the following paragraph:—

“(2) Where the money is ordered to be transferred to a county court, the proper officer of the High Court shall send a sealed copy of the order and the payment schedule to the Accountant General, who shall proceed in accordance with rule 50 of the Supreme Court Funds Rules 1975.”

10. For Order 83 there shall be substituted the following Order:—

“ORDER 83

REOPENING OF AGREEMENTS UNDER THE CONSUMER CREDIT ACT 1974

*Interpretation*

1. In this Order a section referred to by number means the section so numbered in the Consumer Credit Act 1974.

*Notice to reopen agreement*

2.—(1) Where in any such proceedings in the High Court as are mentioned in section 139(1)(b) the debtor or a surety desires to have a credit agreement reopened, he shall serve a notice to that effect on every other party to the proceedings and file a copy of the notice.

(2) If at the time of serving a notice under paragraph (1) the debtor or surety has not entered an appearance in the proceedings, the notice must specify an address for service as if it were a memorandum of appearance.

*No default judgment without leave*

3.—(1) After a notice under rule 2 has been served in an action begun by writ, judgment in default of appearance or in default of defence shall not be entered except with the leave of the Court.

(2) An application for the grant of leave under paragraph (1) must be made by summons supported by affidavit, and, notwithstanding anything in Order 65, rule 9, the summons and a copy of the affidavit must be served on every other party to the proceedings.

(3) If the application is for leave to enter judgment in default of appearance, the summons shall not be issued until after the time limited for appearing.

*Court's powers on hearing of application*

4. On the hearing of an application under rule 3(2) or of any proceedings in which a notice under rule 2 has been filed, the Court may, whether or not the debtor or surety has entered an appearance or appears at the hearing, exercise the powers of the Court under sections 137 to 140 and where, on an application under rule 3(2), the Court refuses leave to enter judgment on a claim or any part of a claim, it may make or give any such order or direction as it might have made or given if the application had been made an application under Order 14, rule 1, for judgment on the claim.”

11. Order 84 shall be revoked.

12. Order 91 shall be amended as follows:—

(1) In rule 1(1) for the words from “the following proceedings” to the end of sub-paragraph (b) there shall be substituted the words “any case stated for the opinion of the High Court under paragraph 10 of Schedule 4 to the Finance Act 1975(a) and any appeal or application for leave to appeal under paragraph 7(3) of that Schedule”.

(2) In rule 1(2)(a) for the words “the proceedings” there shall be substituted the words “any case stated or appeal”.

(3) For rules 2 to 5 there shall be substituted the following rule:—

*“Appeal under paragraph 7 of Schedule 4 to the Finance Act 1975*

2.—(1) Order 55 shall not apply in relation to an appeal to the High Court under paragraph 7(3) of Schedule 4 to the Finance Act 1975.

(2) Such an appeal must be brought by originating summons which must—

(a) state the date on which the Commissioners of Inland Revenue (in this rule referred to as the “Board”) gave notice to the appellant under paragraph 6 of the said Schedule of the determination which is the subject of the appeal;

(b) state the date on which the appellant gave to the Board notice of appeal under paragraph 7(1) of the said Schedule and, if the notice was not given within the time limited, whether the Board or the Special Commissioners have given consent to the appeal being brought out of time, and

(c) either state that the appellant and the Board have agreed that the appeal may be to the High Court or contain an application for leave to appeal to the High Court.

(3) At the time of issuing the originating summons the appellant shall lodge in the judge’s chambers—

(a) two copies of the notice referred to in paragraph (2)(a);

(b) two copies of the notice of appeal referred to in paragraph (2)(b);  
and

(c) where the originating summons contains an application for leave to appeal, an affidavit setting out the grounds on which it is alleged that the matters to be decided on the appeal are likely to be substantially confined to questions of law.

(4) The originating summons must be issued and served on the Board within 30 days of the date mentioned in paragraph (2)(b).

(5) No appearance need be entered to the originating summons, but it must specify a date of hearing being not less than 40 days from the issue of the summons.

(6) Where the originating summons contains an application for leave to appeal to the High Court, a copy of the affidavit lodged pursuant to paragraph (3)(c) shall be served on the Board with the originating summons and the Board may, within 30 days after service, lodge in the judge’s chambers an affidavit in answer and a copy of any such affidavit shall be served by the Board on the appellant.

(7) Except with the leave of the Court, the appellant shall not be entitled on the hearing of an appeal to rely on any grounds of appeal not specified in the notice referred to in paragraph (2)(b)."

- (4) In rule 6(1) after "1970" there shall be inserted the words "or paragraph 10 of Schedule 4 to the Finance Act 1975".
- (5) In rule 8(1) after "1970" there shall be inserted the words "or paragraph 32(3) or 35(2) of Schedule 4 to the Finance Act 1975".
- (6) In rule 8(3)(a) after "1970" there shall be inserted the words "or paragraph 32(3) of Schedule 4 to the Finance Act 1975".
- (7) Rules 6, 7 and 8 shall be renumbered as rules 3, 4 and 5 respectively.

**13.**—(1) 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, Forms 2, 7 and 15 shall have effect as if for the references to the district of that registry there were substituted references to the Northern area.

(2) Rule 25 of the Rules of the Supreme Court (Amendment No. 5) 1971(a) shall be revoked.

**14.**—(1) Subject to the following paragraphs of this rule, rules 2, 3(2), 10 and 11 of these Rules shall come into force on the day appointed for the coming into operation of sections 137 to 140 of the Consumer Credit Act 1974 and the remaining provisions of these Rules shall come into operation on 1st September 1976.

(2) Nothing in rules 2(a), 3(2) and 10 shall apply in relation to any agreement entered into before the coming into operation of sections 137 and 140 of the said Act which is not a personal credit agreement within the meaning of section 8(1) of that Act.

(3) Nothing in rules 3(1), 4, 6 and 13 shall have effect in relation to an action begun before the coming into operation of these Rules.

(4) Nothing in rule 12 shall apply in relation to a death occurring before 13th March 1975.

Dated 23rd July 1976.

*Elwyn-Jones, C.*  
*Widgery, C. J.*  
*Denning, M. R.*  
*George Baker, P.*  
*R. E. Megarry, V-C.*  
*Eustace Roskill, L. J.*  
*Ralph Cusack, J.*  
*E. W. Eveleigh, J.*  
*John Blofeld.*  
*Christopher H. McCall.*  
*H. Montgomery-Campbell.*  
*R. K. Denby.*

## EXPLANATORY NOTE

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

These Rules amend the Rules of the Supreme Court in consequence of—

- (1) the coming into force of the provisions of the Consumer Credit Act 1974 enabling the Court to reopen a credit agreement on the grounds that it is extortionate (rules 2, 3(2), 10, 11 and 14(2));
- (2) the abolition of estate duty and the introduction of capital transfer tax by the Finance Act 1975 (rules 12 and 14(4)).

Other amendments are also made so as to—

- (a) give the district registries of Leeds, Liverpool, Manchester, Newcastle upon Tyne and Preston territorial jurisdiction in Chancery proceedings over the whole of the North of England (rules 3(1), 4, 6, 13 and 14(3));
- (b) permit service out of the jurisdiction, with the leave of the Court, in proceedings for the recovery of estate duty and capital transfer tax (rule 5);
- (c) take account of the Administration of Estates (Small Payments) (Increase of Limit) Order 1975 (S.I. 1975/1137) (rule 7);
- (d) enable the costs of appeals to a Divisional Court of the Family Division to be taxed by a district registrar if the Court or a Judge of the Family Division so directs (rule 8(1));
- (e) take account of changes made by the Supreme Court Funds Rules 1975 (rules 8(2) and 9);
- (f) provide for the costs of attending a hearing in Chancery chambers to be taxed by a taxing officer instead of fixed by the Chancery master (rule 8(3)).

SI 1976/1196  
ISBN 0-11-061196-9



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