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 STATUTORY INSTRUMENTS
 

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1977 No. 1955 (L. 30)

## SUPREME COURT OF JUDICATURE, ENGLAND

## PROCEDURE

**The Rules of the Supreme Court (Amendment No. 3) 1977***Made* - - - - 21st November 1977*Laid before Parliament* 7th December 1977*Coming into Operation in accordance with Rule 13*

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) 1977.

(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).

(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.** For the title of Order 53 in the Arrangement of Orders at the beginning of the Rules of the Supreme Court 1965 there shall be substituted “Applications for judicial review”.

**3.** Order 15, rule 6A shall be amended as follows:—

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

“(3) An action purporting to have been commenced against a person shall be treated, if he was dead at its commencement, as having been commenced against his estate in accordance with paragraph (1), whether or not a grant of probate or administration was made before its commencement”.

(2) In paragraph (4)(a) the words “since the commencement of the action” shall be omitted.

**4.** Order 29 shall be amended as follows:—

(1) For the title of Part II there shall be substituted—

“II. INTERIM PAYMENTS IN ACTIONS FOR PERSONAL INJURIES”.

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(a) 1925 c. 49.

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

(c) S.I. 1967/829, 1968/1244, 1970/944, 1861, 1971/1269, 1955, 1972/813, 1974/1115, 1976/1196 (1967 II, p. 2476; 1968 II, p. 3360; 1970 II, p. 2932, III, p. 6081; 1971 II, p. 3634, III, p. 5274; 1972 II, p. 2618; 1974 II, p. 4176; 1976 II, p. 3358).

(d) 1889 c. 63.

(2) At the end there shall be added the following Part:—

“III. INTERIM PAYMENTS IN ACTIONS FOR POSSESSION OF LAND

*Order for interim payment*

18.—(1) Where in an action in which there is a claim for possession of land it appears to the Court that, in the event of a final judgment or order being given or made in favour of the plaintiff, the defendant would be held liable to pay to the plaintiff a sum of money in respect of the defendant's use and occupation of the land during the pendency of the action, the Court may, on the application of the plaintiff, and without prejudice to any contentions of the parties as to the nature or character of the sum to be paid by the defendant, order the defendant to make a payment (in this rule referred to as an “interim payment”) on account of that sum.

(2) No such order for an interim payment shall be made unless it appears to the Court that, even if a final judgment or order were given or made in favour of the defendant, he would still be under an obligation to pay the plaintiff for his use and occupation of the land, whether by way of rent, mesne profits or otherwise.

(3) An order under this rule may be for the payment of—

- (a) a sum not exceeding the amount which, if a final judgment or order were given or made in favour of the defendant, would be payable by him in respect of his use and occupation of the land up to the date of the order, or
- (b) periodical payments during the pendency of the action, or
- (c) a combination of both.

(4) Subject to Order 80, rule 12, the amount of any interim payment ordered to be made shall be paid to the plaintiff unless the order provides for it to be paid into court; and when the amount is paid into court, the Court may, on the ex parte application of the plaintiff, order the whole or any part of it to be paid out to him at such time or times as the Court thinks fit.

*Application for interim payment*

19.—(1) Subject to paragraph (2), an application for an order under rule 18 may be made—

- (a) in an action begun by writ, by summons issued at any time after a defence has been served or after the time for serving a defence has expired;
- (b) in an action begun by originating summons, in the originating summons or by summons returnable on or after the first hearing of the originating summons.

(2) A plaintiff who applies for summary judgment under Order 14, rule 2, may include in his summons an application for an order under rule 18 in the event of the defendant's being given leave to defend.

(3) An application for an order under rule 18 shall be supported by an affidavit, which must—

- (i) verify the material facts on which the application is based;
- (ii) state first the amount, expressed as a sum of money or a periodic payment, which, (if a final judgment or order were made or given in favour of the plaintiff), the defendant would, in the belief of the deponent, be held liable to pay in respect of his use and occupation of the land during the pendency of the action, and, secondly, whether the liability arises by virtue of a lease or tenancy agreement or otherwise;
- (iii) state that, in the belief of the deponent, even if a final judgment or order were given or made in favour of the defendant, he would still be under an obligation to pay the plaintiff for use and occupation of the land during the pendency of the action;
- (iv) state the amount claimed and how it is calculated.

(4) The summons and a copy of the affidavit in support must be served on the defendant against whom the order is sought not less than 4 clear days (or, if the order is sought in a summons for summary judgment under Order 14, 10 clear days) before the return day.

(5) Notwithstanding the making or refusal of an order for interim payment, a second or subsequent application may be made upon cause shown.

(6) An order for an interim payment, may, on the application of a party to the action, be varied or discharged by the Court.

*Directions on application under rule 19*

20. On hearing an application under rule 19, whether or not the Court makes an order for interim payment, the Court may give directions as to the further conduct of the action, and, so far as may be applicable, Order 25, rules, 2, 6 and 7, shall, with the omission of so much of rule 7(1) as requires the parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application were a summons for directions, and, in particular, the Court may order an early trial of the action.

*Interim payment in respect of counterclaim*

21. A defendant who makes a counterclaim for possession of land may apply for an order requiring the plaintiff to make an interim payment and this Part of this Order shall apply accordingly with the necessary modifications.”

5. The following Order shall be substituted for Order 53:—

“Order 53

APPLICATIONS FOR JUDICIAL REVIEW

*Cases appropriate for application for judicial review*

1.—(1) An application for—

(a) an order of mandamus, prohibition or certiorari, or  
(b) an injunction under section 9 of the Administration of Justice (Miscellaneous Provisions) Act 1938 restraining a person from acting in any office in which he is not entitled to act,  
shall be made by way of an application for judicial review in accordance with the provisions of this Order.

(2) An application for a declaration or an injunction (not being an injunction mentioned in paragraph (1)(b)) may be made by way of an application for judicial review, and on such an application the Court may grant the declaration or injunction claimed if it considers that, having regard to—

(a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari,  
(b) the nature of the persons and bodies against whom relief may be granted by way of such an order, and  
(c) all the circumstances of the case,  
it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

*Joinder of claims for relief*

2. On an application for judicial review any relief mentioned in rule 1(1) or (2) may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter.

*Grant of leave to apply for judicial review*

3.—(1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.

(2) An application for leave must be made *ex parte* to a Divisional Court of the Queen's Bench Division, except in vacation when it may be made to a judge in chambers, and must be supported—

(a) by a statement, setting out the name and description of the applicant, the relief sought and the grounds on which it is sought, and  
(b) by affidavit, to be filed before the application is made, verifying the facts relied on.

(3) The applicant must give notice of the application to the Crown Office not later than the day before the application is made and must at the same time lodge in that Office copies of the statement and every affidavit in support.

(4) Without prejudice to its powers under Order 20, rule 8, the Court hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit.

(5) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

(6) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or

other proceeding which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(7) If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.

(8) Where an application for leave is refused by a judge in chambers, the applicant may make a fresh application to a Divisional Court.

(9) An application to a Divisional Court under paragraph (8) must be made within 10 days after the judge's refusal to give leave or, if a Divisional Court does not sit within that period, on the first day on which it sits thereafter.

(10) Where leave to apply for judicial review is granted, then—

(a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;

(b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

#### *Delay in applying for relief*

4.—(1) Subject to the provisions of this rule, where in any case the Court considers that there has been undue delay in making an application for judicial review or, in a case to which paragraph (2) applies, the application for leave under rule 3 is made after the relevant period has expired, the Court may refuse to grant—

(a) leave for the making of the application, or

(b) any relief sought on the application,

if, in the opinion of the Court, the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.

(2) In the case of an application for an order of certiorari to remove any judgment, order, conviction or other proceeding for the purpose of quashing it, the relevant period for the purpose of paragraph (1) is three months after the date of the proceeding.

(3) Paragraph (1) is without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

#### *Mode of applying for judicial review*

5.—(1) Subject to paragraph (2), when leave has been granted to make an application for judicial review, the application shall be made by originating motion to a Divisional Court of the Queen's Bench Division, except in vacation when it may be made by originating summons to a judge in chambers.

(2) Where leave has been granted by a Divisional Court and the Court so directs, the application may be made by motion to a judge sitting in

open court or, if so directed and without prejudice to Order 32, rule 13, by originating summons to a judge in chambers.

(3) The notice of motion or summons must be served on all persons directly affected and where it relates to any proceedings in or before a court and the object of the application is either to compel the court or an officer of the court to do any act in relation to the proceedings or to quash them or any order made therein, the notice or summons must also be served on the clerk or registrar of the court and, where any objection to the conduct of the judge is to be made, on the judge.

(4) Unless the Court granting leave has otherwise directed, there must be at least 10 days between the service of the notice of motion or summons and the day named therein for the hearing.

(5) A motion must be entered for hearing within 14 days after the grant of leave.

(6) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the notice of motion or summons must be filed before the motion or summons is entered for hearing and, if any person who ought to be served under this rule has not been served, the affidavit must state that fact and the reason for it; and the affidavit shall be before the Court on the hearing of the motion or summons.

(7) If on the hearing of the motion or summons the Court is of opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice or summons may be served on that person.

#### *Statements and affidavits*

6.—(1) Copies of the statement in support of an application for leave under rule 3 must be served with the notice of motion or summons and, subject to paragraph (2), no grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.

(2) The Court may on the hearing of the motion or summons allow the applicant to amend his statement, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.

(3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention and of any proposed amendment to every other party.

(4) Each party to the application must supply to every other party on demand and on payment of the proper charges copies of every affidavit which he proposes to use at the hearing, including, in the case of the applicant, the affidavit in support of the application for leave under rule 3.

#### *Claim for damages*

7.—(1) On an application for judicial review the Court may, subject to paragraph (2), award damages to the applicant if—

- (a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the application relates, and
- (b) the Court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.

(2) Order 18, rule 12, shall apply to a statement relating to a claim for damages as it applies to a pleading.

*Application for discovery, interrogatories, cross-examination, etc.*

8.—(1) Unless the Court otherwise directs, any interlocutory application in proceedings on an application for judicial review may be made to any judge or a master of the Queen's Bench Division, notwithstanding that the application for judicial review has been made by motion and is to be heard by a Divisional Court.

In this paragraph "interlocutory application" includes an application for an order under Order 24 or 26 or Order 38, rule 2(3), or for an order dismissing the proceedings by consent of the parties.

(2) In relation to an order made by a master pursuant to paragraph (1), Order 58, rule 1, shall, where the application for judicial review is to be heard by a Divisional Court, have effect as if a reference to that Court were substituted for the reference to a judge in chambers.

(3) This rule is without prejudice to any statutory provision or rule of law restricting the making of an order against the Crown.

*Hearing of application for judicial review*

9.—(1) On the hearing of any motion or summons under rule 5, any person who desires to be heard in opposition to the motion or summons, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with notice of the motion or the summons.

(2) Where the relief sought is or includes an order of certiorari to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion or summons he has lodged in the Crown Office a copy thereof verified by affidavit or accounts for his failure to do so to the satisfaction of the Court hearing the motion or summons.

(3) Where an order of certiorari is made in any such case as is referred to in paragraph (2), the order shall, subject to paragraph (4), direct that the proceedings shall be quashed forthwith on their removal into the Queen's Bench Division.

(4) Where the relief sought is an order of certiorari and the Court is satisfied that there are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing it, remit the matter to the court, tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Court.

(5) Where the relief sought is a declaration, an injunction or damages and the Court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in an action begun by writ by the applicant at the time of making his application, the Court may, instead of refusing the application, order the proceedings to continue as if they had been begun by writ; and Order 28, rule 8, shall apply as if, in the case of an application made by motion, it had been made by summons.

*Saving for person acting in obedience to mandamus*

10. No action or proceeding shall be begun or prosecuted against any person in respect of anything done in obedience to an order of mandamus.

*Proceedings for disqualification of member of local authority*

11.—(1) Proceedings under section 92 of the Local Government Act 1972 must be begun by originating motion to a Divisional Court of the Queen's Bench Division, except in vacation when they may be begun by originating summons to a judge in chambers and, unless otherwise directed, there must be at least 10 days between the service of the notice of motion or summons and the day named therein for the hearing.

(2) Without prejudice to Order 7, rule 3, and Order 8, rule 3, the notice of motion or summons must set out the name and description of the applicant, the relief sought and the grounds on which it is sought, and must be supported by affidavit verifying the facts relied on.

(3) Copies of every supporting affidavit must be lodged in the Crown Office before the motion is entered for hearing or the summons is issued and must be supplied to any other party on demand and on payment of the proper charges.

(4) The provisions of rules 5, 6 and 9(1) as to the persons on whom the notice or summons is to be served and as to the proceedings at the hearing shall apply, with the necessary modifications, to proceedings under the said section 92 as they apply to an application for judicial review.

*Consolidation of applications*

12. Where there is more than one application pending under section 9 of the Administration of Justice (Miscellaneous Provisions) Act 1938, or section 92 of the Local Government Act 1972, against several persons in respect of the same office, and on the same grounds, the Court may order the applications to be consolidated.

*Order made by judge in chambers may be set aside, etc.*

13.—(1) Subject to section 31(3) of the Act (which provides for appeals to the Court of Appeal in matters of practice and procedure), no appeal shall lie from an order of a judge in chambers granting or refusing an application for leave under rule 3 or an application for judicial review.

(2) An application may be made to a Divisional Court of the Queen's Bench Division to set aside or discharge any such order and to substitute such order as ought to have been made:



Provided that, in the case of an order made with the consent of the parties or as to costs only which by law are left to the discretion of the judge, no such application shall be made without the leave of the judge making the order.

(3) An application to a Divisional Court under this rule must be made by motion within 10 days after the date on which a copy of the judge's order was filed in the Crown Office or, if a Divisional Court does not sit within that period, on the first day on which it sits thereafter.

*Meaning of "Court"*

14. In relation to the hearing by a judge of an application for leave under rule 3 or of an application for judicial review, any reference in this Order to "the Court" shall, unless the context otherwise requires, be construed as a reference to the judge."

6. For Order 55, rule 2, there shall be substituted the following rule:—

*"Court to hear appeal"*

2. Except where it is otherwise provided by these rules or by or under any enactment, an appeal to which this Order applies shall be assigned to the Queen's Bench Division and shall be heard and determined—

- (a) where the decision of the High Court on the appeal is final, by a Divisional Court, and
- (b) in any other case, by a single judge."

7. In Order 56, rule 7(1), for the words "shall be exercised" to the end there shall be substituted the words "shall be exercised by a single judge of the Queen's Bench Division, except where it is otherwise provided by these rules or by or under any enactment."

8. Order 71 shall be amended as follows:—

(1) In rule 3, paragraph (2) shall be omitted and paragraphs (3) and (4) shall be re-numbered as paragraphs (2) and (3) respectively.

(2) Rule 13, shall be amended as follows:—

- (a) In paragraph (1), for the words "to a master on affidavit", there shall be substituted the words "on affidavit to a master or, in the case of a judgment given in a cause or matter proceeding in the Family Division, to a registrar of that Division."
- (b) In paragraph (3)(b), for the words "or originating summons" there shall be substituted the words "originating summons or other process".
- (c) In paragraphs (4) and (5), after the words "a master", wherever they appear, there shall be inserted the words "or, where appropriate, a registrar".
- (d) In paragraph (5)—
  - (i) for the words "or originating summons", there shall be substituted the words "originating summons or other process";

(ii) after the word “summons” in sub-paragraph (a), there shall be inserted the words “or other process”.

(3) In rule 18(2), the word “and” shall be omitted at the end of sub-paragraph (b) and inserted at the end of sub-paragraph (a), and sub-paragraph (c) shall be omitted.

9. Order 73 shall be amended as follows:—

(1) In rule 3(1), after the words “Arbitration Act 1950”, there shall be inserted the words “and the jurisdiction of the High Court under the Arbitration Act 1975(a)”.

(2) In rule 9(2) the words “and (2)” shall be omitted.

10. In Order 88, rule 6(3)(b), for the word “repayments” there shall be substituted the words “periodic payments required to be made”.

11. Order 91 shall be amended as follows:—

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

“*Assignment to Chancery Division, etc.*

1. The following proceedings, namely—

(a) any case stated for the opinion of the High Court under section 13 of the Stamp Act 1891(b), section 56 of the Taxes Management Act 1970(c) or paragraph 10 of Schedule 4 to the Finance Act 1975(d);

(b) any appeal to the High Court under section 53 or 100 of the Taxes Management Act 1970 or paragraph 7(3), 32(3) or 35(2) of Schedule 4 to the Finance Act 1975 or any application for leave to appeal under the said paragraph 7(3); and

(c) proceedings to which the provisions of section 56 of the Taxes Management Act 1970 apply under any enactment or regulation,

shall be assigned to the Chancery Division and heard and determined by a single judge.”

(2) In rule 2(2)(b), after the words “out of time”, there shall be inserted the words “and, if they have, the date on which it was given.”

(3) In rule 2(4), for the words “mentioned in paragraph 2(b)” there shall be substituted the words “on which the appellant gave to the Board notice of appeal under paragraph 7(1) of the said Schedule or, if the Board or the Special Commissioners have given consent to the appeal being brought out of time, within 30 days of the date on which such consent was given.”

12. In Order 94, rule 9A shall be revoked and rule 12 shall be amended as follows:—

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

(a) 1975 c. 3.

(b) 1891 c. 39.

(c) 1970 c. 9.

(d) 1975 c. 7.

*“Proceedings under section 246 or 247 of the Town and Country Planning Act 1971(a)”*

(2) For the references to sections 180(1) and 181 of the Town and Country Planning Act 1962, wherever they appear, there shall be substituted references to sections 246(1) and 247 respectively of the Town and Country Planning Act 1971.

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

“(2A) Any appeal under section 246(1) or 247 and any case stated under section 246(2) of the said Act shall be heard and determined by a Divisional Court.”

(4) In paragraph (3), the words “or under section 180(2) of the said Act” and, in sub-paragraph (c), the words “or under” and “or (2)” shall be omitted.

**13.**—(1) These Rules, except rule 3, shall come into operation on 11th January 1978.

(2) Rule 3 shall come into operation on the day appointed for the coming into force of section 27 of the Administration of Justice Act 1977(b).

Dated 21st November 1977.

*Elwyn-Jones, C.  
Widgery, C.J.  
Denning, M.R.  
George Baker, P.  
R. E. Megarry, V-C.  
Eustace Roskill, L.J.  
Ralph Cusack, J.  
Hilary Talbot, J.  
J. Maurice Price.  
John Toulmin.  
H. Montgomery-Campbell.  
Harold Hewitt.*

## EXPLANATORY NOTE

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

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

- (a) give effect to the main recommendations in the Law Commission's Report on Remedies in Administrative Law (Cmnd. 6407) by introducing a new form of procedure, to be known as an "application for judicial review", whereby a person seeking to challenge an administrative act or omission may obtain from the High Court one of the prerogative orders or a declaration, injunction and damages, as may be appropriate (Rule 5);
- (b) provide (following the amendment of section 63(1) of the Supreme Court of Judicature (Consolidation) Act 1925 by section 9 of the Administration of Justice Act 1977) for every appeal to the High Court from an inferior tribunal, and every case stated by such a tribunal, to be heard by a single judge of the Queen's Bench Division instead of a Divisional Court, except where the decision of the High Court is final or it is otherwise expressly provided (Rules 6, 7 and 12);
- (c) enable the High Court to order a party to make interim payments in an action for recovery of land (Rule 4);
- (d) provide for proceedings purporting to have been commenced against a person who has died to be treated (following the amendment of section 2 of the Proceedings against Estates Act 1970 by section 27 of the Administration of Justice Act 1977) as having been commenced against his estate even if a grant of probate or administration was made before their commencement (Rule 3);
- (e) enable an application for a stay of proceedings under section 1(1) of the Arbitration Act 1975 to be made to a judge in chambers, a master, or the Admiralty Registrar (Rule 10(1));
- (f) make minor changes in the rules relating to the reciprocal enforcement of judgments (Rules 8 and 9(2)), the evidence in mortgage actions (Rule 10) and Revenue proceedings (Rule 11).

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