
STATUTORY INSTRUMENTS

1979 No. 402 (L.5)

SUPREME COURT OF JUDICATURE, ENGLAND
PROCEDURE

The Rules of the Supreme Court (Amendment No. 2) 1979

<i>Made</i>	- - - -	<i>30th March 1979</i>
<i>Laid before Parliament</i>		<i>3rd April 1979</i>
<i>Coming into Operation</i>		<i>24th April 1979</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 (Amendment No. 2) 1979, and shall come into operation on 24th April 1979.

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

Service of originating process by post

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

(1) In paragraph (1) the words from “Subject to” to “these rules” shall be omitted.

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

“(2) A writ for service on a defendant within the jurisdiction may, instead of being served personally on him, be served—

(a) by sending a copy of the writ by ordinary first-class post to the defendant at his usual or last known address, or

(b) if there is a letter box for that address, by inserting through the letter box a copy of the writ enclosed in a sealed envelope addressed to the defendant.

(1) The relevant amending instruments are S.I. 1970/671, 1971/354, 1269, 1955, 1974/1360, 1977/960, 1978/359, 1979/35.

In sub-paragraph (a) 'first-class post' means first-class post which has been prepaid or in respect of which prepayment is not required.

- (3) Where a writ is served in accordance with paragraph (2)—
- (a) the date of service shall, unless the contrary is shown, be deemed to be the seventh day (ignoring Order 3, rule 2(5)) after the date on which the copy was sent to or, as the case may be, inserted through the letter box for the address in question;
 - (b) any affidavit proving due service of the writ must contain a statement to the effect that—
 - (i) in the opinion of the deponent (or, if the deponent is the plaintiff's solicitor or an employee of that solicitor, in the opinion of the plaintiff) the copy of the writ, if sent to, or, as the case may be, inserted through the letter box for, the address in question, will have come to the knowledge of the defendant within 7 days thereafter; and
 - (ii) in the case of service by post, the copy of the writ has not been returned to the plaintiff through the post undelivered to the addressee.”

(3) The existing paragraphs (2) and (3) shall stand as paragraphs (4) and (5) respectively and the existing paragraph (4) shall be omitted.

(4) After paragraph (5) as so re-numbered there shall be added the following paragraph:—

“(6) This rule shall have effect subject to the provisions of any Act and these rules and in particular to any enactment which provides for the manner in which documents may be served on bodies corporate.”

3. Order 10, rule 5, shall be amended by omitting the words “(except rule 1(4))” and substituting for the words “rule 1(1) and (2)” the words “rule 1(1), (2), (3) and (4)”.

4. Order 11, rule 5, shall be amended as follows:—

(1) In paragraph (1) for the words “rule 1” there shall be substituted the words “rule 1(1), (4) and (5)”.

(2) Paragraph (4) shall be omitted.

5. The following paragraphs shall be added to Order 13, rule 7, after paragraph (2):—

“(3) Where, after judgment has been entered under this Order against a defendant purporting to have been served by post under Order 10, rule 1(2)(a), the copy of the writ sent to the defendant is returned to the plaintiff through the post undelivered to the addressee, the plaintiff shall, before taking any step or further step in the action or the enforcement of the judgment, either—

- (a) make a request for the judgment to be set aside on the ground that the writ has not been duly served, or
- (b) apply to the Court for directions.

(4) A request under paragraph (3)(a) shall be made by producing to an officer of the office in which the judgment was entered, and leaving with him for filing, an affidavit stating the relevant facts, and thereupon the judgment shall be set aside and the entry of the judgment and of any proceedings for its enforcement made in the book kept in the office for that purpose shall be marked accordingly.

(5) An application under paragraph (3)(b) shall be made ex parte by affidavit stating the facts on which the application is founded and any order or direction sought, and on the application the Court may—

- (a) set aside the judgment; or

- (b) direct that, notwithstanding the return of the copy of the writ, it shall be treated as having been duly served, or
- (c) make such other order and give such other direction as the circumstances may require.”

6. At the beginning of Order 13, rule 9, before the words “The Court” there shall be inserted the words “Without prejudice to rule 7(3) and (4).”

7. In Order 15, rule 3(5), and Order 16, rule 3(4), the words “(except rule 1(4))”, wherever they appear, shall be omitted.

8. In Part I of Appendix 3 to Order 62, for the words “not less than £350 but less than £1,000” and “not less than £1,000 but less than £1,200” and the figures opposite thereto respectively, there shall be substituted the following words and figures:—

	“(a) £	(b) £	(c) £
“not less than £350 but less than £1,000—			
(i) where the writ was served by post	9.25	12.25	15.25
(ii) where the writ was served on the defendant personally	10.00	13.00	16.00
not less than £1,000 but less than £1,200—			
(i) where the writ was served by post	13.40	18.40	24.40
(ii) where the writ was served on the defendant personally	15.00	20.00	26.00”

9. Order 65 shall be amended as follows:—

(1) In rule 2 the words “and, if so requested” to the end shall be omitted.

(2) In rule 3—

- (a) in the title the word “personal” shall be omitted;
- (b) the existing rule shall stand as paragraph (1) of rule 3 and at the end there shall be added the following paragraph:—

“(2) Where a writ is served on a body corporate in accordance with Order 10, rule 1(2), that rule shall have effect as if for the reference to the usual or last known address of the defendant there were substituted a reference to the registered or principal office of the body corporate and as if for the reference to the knowledge of the defendant there were substituted a reference to the knowledge of a person mentioned in paragraph (1).”

(3) In rule 4—

- (a) for the words “on any person” there shall be substituted the words “or is a document to which Order 10, rule 1, applies”;
- (b) for the words “personally on that person” there shall be substituted the words “in the manner prescribed”.

(4) In rule 5(1), after the word “personally” there shall be inserted the words “or a document to which Order 10, rule 1, applies”.

(5) At the beginning of rule 8 there shall be inserted the words “Except as provided in Order 10, rule 1(3)(b) and Order 81, rule 3(2)(b)”.

(6) In rule 9 after the word “personally” there shall be inserted “or in accordance with Order 10, rule 1(2)”.

10. Order 71 shall be amended as follows:—

(1) In rule 7(1), for the words “and, subject” to the end there shall be substituted the words “by delivering it to him personally or by sending it to him at his usual or last known place of abode or business or in such other manner as the Court may direct”.

(2) Rule 8 shall be omitted.

11. In Order 75, rule 8(2), for the words “rule 1(2) or (3)” there shall be substituted the words “rule 1(4) or (5)”.

12. In Order 80, rule 16(1), after the word “personally” there shall be inserted the words “or in accordance with Order 10, rule 1(2)”.

13. Order 81, rule 3, shall be amended as follows:—

(1) In paragraph (1)—

(a) after sub-paragraph (b) there shall be inserted the following words:—

“or

(c) by sending a copy of the writ by ordinary first-class post (as defined in Order 10, rule 1(2)) to the firm at the principal place of business of the partnership within the jurisdiction”;

(b) before the words “where service of the writ” there shall be inserted the words “subject to paragraph (2)”.

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

“(2) Where a writ is served on a firm in accordance with sub-paragraph (1)(c)—

(a) the date of service shall, unless the contrary is shown, be deemed to be the seventh day (ignoring Order 3, rule 2(5)) after the date on which the copy was sent to the firm; and

(b) any affidavit proving due service of the writ must contain a statement to the effect that—

(i) in the opinion of the deponent (or, if the deponent is the plaintiff’s solicitor or an employee of that solicitor, in the opinion of the plaintiff) the copy of the writ, if sent to the firm at the address in question, will have come to the knowledge of one of the persons mentioned in paragraph (1)(a) or (b) within 7 days thereafter, and

(ii) the copy of the writ has not been returned to the plaintiff through the post undelivered to the addressee.”

(3) The existing paragraphs (2) and (3) shall stand as paragraphs (3) and (4) respectively and in paragraph (3) as so re-numbered for the words “paragraph (1)” there shall be substituted the words “paragraph (1)(a) or (b)”.

14. In Order 90, rule 16(3), for the words “need not be served personally” there shall be substituted the words “may be served in accordance with Order 65, rule 5”.

Joinder of parties

15. Order 15, rule 4(3), shall be revoked except in relation to actions to which, by virtue of section 7 thereof, the Civil Liability (Contribution) Act 1978 does not apply.

Enforcement of judgment for contribution or indemnity

16. Order 16, rule 7, shall be amended as follows:—

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

“(2) Where judgment is given for the payment of any contribution or indemnity to a person who is under a liability to make a payment in respect of the same debt or damage, execution shall not issue on the judgment without the leave of the Court until that liability has been discharged.

(3) For the purpose of paragraph (2) ‘liability’ includes liability under a judgment in the same or other proceedings and liability under an agreement to which section 1(4) of the Civil Liability (Contribution) Act 1978 applies.”

(2) The existing paragraph (2) shall be omitted.

Taxation of costs

17. Appendix 2 to Order 62, as amended by the Rules of the Supreme Court (Amendment) 1979, shall be further amended as follows:—

(1) The words appearing immediately below the heading SCALE OF COSTS, namely “*(In this Appendix decimal equivalents are shown in italics and brackets)*” shall be omitted.

(2) In item 3(d) of Part I of the Scale of Costs the words “or instructions to counsel to settle any document” shall be omitted.

(3) After item 3(d) and before the words “for first 5 A4 pages” there shall be inserted the following sub-paragraph:—

“(e) any instructions to counsel to settle any document, except where an allowance for the preparation of the document is recoverable under items 1, 2 or 3.”

(4) For the concluding sentences of the Note to items 1, 2 and 3 there shall be substituted the following words:—

“Items 3(d) and (e) each include the copy for counsel.”

Proceedings under the Landlord and Tenant Act 1954(2)

18. In Order 97, rule 6(3), for the words “one month” there shall be substituted the words “two months”.

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Dated 30th March, 1979

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EXPLANATORY NOTE

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

- (a) to allow service by post in many situations in which personal service is required under the existing rules (rules 2 to 14);
- (b) to change the rules in respect of joinder of parties and the enforcement of a judgment for contribution or indemnity, following the coming into force of the Civil Liability (Contribution) Act 1978 (rules 15 and 16);
- (c) to make minor changes in Appendix 2 to Order 62, regarding the taxation of costs (rule 17); and
- (d) to allow two months for the service of an application for a new tenancy under Part II of the Landlord and Tenant Act 1954 instead of one month, as at present (rule 18).