
EXPLANATORY NOTE

These rules substitute for the County Court Rules 1936, as amended, a new code of county court procedure, omitting and shortening obsolete or little used provisions and generally simplifying and modernising the practice of the court. Where appropriate, the procedure is assimilated to that of the High Court, either by incorporating the relevant provisions of the Rules of the Supreme Court or by relying on their application through section 103 of the County Courts Act 1959. The new provisions are arranged in more logical order and several changes of a general character have been made. Except in relation to judicial acts, the term “registrar” is replaced by “proper officer”, which in accordance with the system prevailing in practice, will usually be the chief clerk (Order 1, rule 3). The powers of the registrar are extended, notably by omitting the requirement in some cases for them to be exercised only with the leave of the judge, although where the judge and the registrar have concurrent jurisdiction, the judge will be able to make arrangements for the proper distribution of business between himself and the registrar (Order 50, rule 3). Wherever possible, time limits are standardised; “clear” days and other special modes of calculating time are eliminated by the introduction of a general provision (Order 1, rule 9) for periods of time to be exclusive of the days by reference to which they are fixed. Instead of specifying the forms to be used in county court proceedings, the rules leave them to be prescribed, so far as necessary, by a separate statutory instrument.

The following are the more important of the specific changes made by the rules:—

- (1) The obligation previously imposed on a plaintiff resident outside England and Wales to give security for the defendant's costs before commencing proceedings is replaced by a provision (in Order 13, rule 8) enabling the defendant in such circumstances to apply for security.
- (2) The default action is extended to unliquidated as well as liquidated claims. If the claim is for some relief other than the payment of money, the proceedings are to be brought by “fixed date” (replacing the “ordinary”) action, while in all other cases they are to be brought by default action. The former exceptions for claims against persons under disability or to recover mortgage money or interest accruing after the commencement of the proceedings are abolished (Order 3, rule 2).
- (3) Order 5 has been rewritten to deal with the causes of action as well as parties but the provisions relating to persons under disability have been transferred to a new Order 10. There is no longer any restriction on the joinder of claims with an action for recovery of land (Order 5, rule 1) and the provisions relating to representative actions have been re-cast (Order 5, rule 5). The methods of suing a person carrying on business in a firm name are set out (Order 5, rule 10) and the procedure to be followed where there is a change in a party's title before judgment now applies to a change at any stage of the proceedings (Order 5, rule 11).
- (4) It will no longer be a condition precedent to the making of an order for further particulars of a claim or defence or for discovery that the applicant should have made a prior request for what he requires but the court may refuse an order in the absence of such a request (Order 6, rule 7; Order 9, rule 11; Order 14, rule 1).
- (5) The provisions about the service of documents have been shortened and simplified. Personal service may be effected by an agent of a party without his having to be in the party's permanent and exclusive employ (Order 7, rule 2). The court may entertain an application for extension of the time for service of a summons or the execution of a warrant even after the current period has expired and a successive summons may be issued at any time during the validity of the summons for service (Order 7, rules 19 and 20; Order 26, rule 6). The rules as to service out of England and Wales are transferred to a separate Order (Order 8).

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(6) The provisions relating to the delivery of an admission, defence or counterclaim in ordinary (now fixed date) and default actions are combined in a new Order 9. The procedure for the entry of judgment on acceptance of an admission and offer of payment is confined to default actions (and hire-purchase actions by virtue of Order 49, rule 6); but it will be open to the plaintiff in a fixed date action (other than a possession action) to apply for such judgment as he may be entitled to upon any admission delivered by the defendant (Order 9, rules 3 and 4). In a default action judgment may be entered not only where the defendant fails to deliver an admission, defence or counterclaim within the time prescribed but also where he delivers a bare admission unaccompanied by a request for time for payment (Order 9, rule 6). If the claim is for unliquidated damages, any default judgment will be interlocutory judgment for damages to be assessed. No judgment may be entered for money secured by a mortgage without the leave of the court (Order 9, rule 7). Interest payable by virtue of a statute or contract after the commencement of the proceedings may be included in the judgment (Order 9, rule 8).

(7) Order 10 collects together most of the rules relating to persons under disability. No formal appointment of a person as guardian ad litem will be required where he delivers on behalf of the person under disability an admission or defence accompanied by specified documents (Order 10, rule 5). Where a defendant under disability has no guardian ad litem, the registrar is no longer required to send the plaintiff a warning notice but the plaintiff must, after the time for delivery of a defence has expired and before taking any further step in the proceedings, apply to the court for the appointment of a guardian (Order 10, rule 6).

(8) Payment of the costs stated on the summons with the full amount of the plaintiff's claim or an amount accepted by the plaintiff in satisfaction of his claim will absolve the defendant from liability for further costs only if the claim is for a debt or liquidated demand (Order 11, rules 2(2) and 3(4)). A payment in satisfaction may be made at any time before judgment, even after the hearing of the action has begun (Order 11, rules 1(1) and 3(2)).

(9) The provisions relating to third parties are simplified, notably by enabling a third party notice in certain circumstances to be issued without leave and providing for the proceedings as between the plaintiff and the defendant and as between the defendant and the third party to be dealt with at the same time (Order 12, rules 1, 2 and 3).

(10) The rules with regard to interlocutory applications are re-stated. In particular, an application must be made on two days' notice unless permitted to be made ex parte and an appeal will lie to the judge from any order made by the registrar (Order 13, rule 1). The provisions relating to the consolidation of actions and matters and the appointment of assessors, which previously formed the subject of separate Orders, are shortened and included in Order 13 as rules 9 and 11.

(11) The provisions about discovery are replaced by a new code based largely on the corresponding provisions of R.S.C. Order 24 (Order 14, rules 1–10 and 12).

(12) The powers of amendment are assimilated to those of the High Court, particularly in cases where a relevant limitation period has expired (Order 15, rules 1 and 3).

(13) The power to transfer proceedings from one county court to another is extended to cases in which a disposal, pre-trial review, interlocutory application, enforcement process or payment into court could more conveniently be taken or made in the other court (Order 16, rule 1).

(14) Changes are made in the provisions relating to pre-trial review so as to extend the use of the procedure and render it more effective (Order 17).

(15) Notice of discontinuance can only be given before judgment or final order in the proceedings and the notice given to the proper officer must contain a certificate that notice has also been given to the defendant (Order 18, rule 1).

(16) The terms of reference applicable where proceedings are referred to the registrar for arbitration provide for the registrar on preliminary consideration of the dispute to have the same powers as on a pre-trial review (Order 19, rule 5(2)).

(17) The Order relating to evidence contains a number of new provisions enabling, for example, evidence to be given by affidavit in any proceedings in chambers, facts to be proved by the production of documents if the court so orders and witness summonses to be served by post subject to certain safeguards (Order 20, rules 5, 8 and 12).

(18) If the plaintiff does not appear on the day fixed for the hearing of an action or matter, the court may, instead of striking out the proceedings, proceed with the hearing in his absence if the defendant is present (Order 21, rule 1).

(19) The provisions about the enforcement of judgments and orders are divided into separate Orders dealing first with enforcement generally and then with the individual methods of enforcement (Orders 25 to 32).

(20) The requirements as to the service of an order for oral examination are simplified; the provision for fortnightly instead of monthly returns of non-execution to be sent where a warrant is for more than £50 is dropped; the requirements as to the enforcement of a judgment against a firm are generalised and brought closer to the corresponding High Court provisions, and an application for the enforcement in the county court of the award of a tribunal may be made ex parte by affidavit instead of by originating application (Order 25, rules 3, 7, 9 and 12).

(21) The minimum sum for which a part warrant may be issued is raised from £10 to £15 and the effect of suspending such a warrant is clarified (Order 26, rules 1 and 11).

(22) The cases in which leave to issue execution is required are restated in a comprehensive provision based on the corresponding High Court rule (Order 26, rule 5).

(23) The registrar as well as a party is enabled to apply for an order for goods seized in execution to be sold otherwise than by public auction (Order 26, rule 15).

(24) In view of their limited scope, the provisions relating to judgment summonses are shortened and simplified, clearer terminology is used and the costs allowable are redefined (Order 28).

(25) The rules as to committal for breach of an order or undertaking have been brought closer to the corresponding High Court provisions, for example by making it clear that an order to do an act must be served within the time limited for complying with it (Order 29).

(26) Garnishee proceedings will normally be taken in the court in which the judgment was obtained and not the court in which the garnishee could have been sued, and instead of issuing a summons the registrar will make an order nisi in the first instance (Order 30, rule 1). Where the garnishee is a bank and alleges that it does not hold any money to the credit of the judgment debtor, the bank will be able to file a notice to that effect, whereupon, unless the facts are disputed, the proceedings will be stayed (Order 30, rule 5).

(27) The provisions about the appointment of a receiver and the issue of interpleader proceedings are simplified, partly by applying the corresponding High Court provisions (Orders 32 and 33).

(28) In place of the former power to order a new trial, Order 37, rule 1, enables the judge to order a rehearing of proceedings tried without a jury where no error of the court at the hearing is alleged. This power may be exercised by the registrar where the proceedings were originally tried by the registrar.

(29) The rules relating to the costs of county court proceedings are stated more simply and concisely (Order 38). The time for lodging a bill of costs for taxation is extended from 14 days to 3 months after the making of the order for costs and the registrar is given the option of either fixing an appointment or carrying out a provisional taxation (Order 38, rule 20). The time limits for bringing in objections and thereafter applying for a review of taxation are also extended but any objections will be considered without a hearing (Order 38, rule 24).

(30) The procedure in Admiralty actions is simplified and modernised, for example by abolishing the entry of appearance, reducing the need to file preliminary acts, omitting many of the requirements as to bail and clarifying the provisions as to the enforcement of a judgment in rem (Order 40).

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(31) The provisions as to proceedings by and against the Crown are collected in a new Order 42. The prohibition against bringing a default action against the Crown is removed although it will not be possible to enter a default judgment without the leave of the court or to apply for summary judgment under Order 9, rule 14 (Order 42, rule 5). The procedure for attaching money due from the Crown and appointing a receiver of such money is simplified (Order 42, rule 14).

(32) In proceedings under the Landlord and Tenant Act 1954 the parties will no longer be required automatically to serve notice of the proceedings on mesne and superior landlords, but particulars of persons likely to be affected by the proceedings must be given in the pleadings so that the court can decide, for example on a pre-trial review, whether to order such persons to be given notice of or made parties to the proceedings (Order 43, rules 6, 7 and 14).

(33) Order 47 groups together a number of miscellaneous and formerly scattered provisions about consent to marriage and other family affairs.

(34) The provisions about proceedings under other special statutes which do not justify separate Orders are collected, with some redrafting, in a new Order 49.

(35) The requirements relating to change of solicitor are simplified and, in particular, no time limit is laid down for giving the court notice of a change (Order 50, rule 5).

(36) The provisions about supplying documents from the court records are clarified and a duplicate plaint note may be issued without proof of the loss or destruction of the original unless it is specially required (Order 50, rule 10).

(37) The Appendices are reduced to three (A, B and C), dealing respectively with the Higher Scales of Costs, the Tables of Fixed Costs and the Assessment of Costs.