

1990 No. 1764 (L. 17)

COUNTY COURTS

PROCEDURE

The County Court (Amendment No. 3) Rules 1990

<i>Made</i> - - - -	<i>23rd August 1990</i>
<i>Coming into force</i> -	
<i>As to all provisions</i>	
<i>except rules 25 to 27</i>	<i>1st October 1990</i>
<i>rules 25 to 27</i>	<i>2nd January 1991</i>

Citation and interpretation

1.—(1) These Rules may be cited as the County Court (Amendment No. 3) Rules 1990.

(2) In these Rules, unless the context otherwise requires, an Order referred to by number means the Order so numbered in the County Court Rules 1981(a).

Automatic directions

2. For Order 3, rule 3(2)(a), there shall be substituted the following—

“(a) enter a plaint in the records of the court and in the case of a fixed date action to which Order 17, rule 11 does not apply fix the return day;”.

3. For Order 3, rule 3(3), there shall be substituted the following new paragraph—

“(3) In the case of a fixed date action to which Order 17, rule 11 does not apply, the return day shall, unless the court otherwise directs or paragraph (4) applies, be a day fixed for the pre-trial review.”.

4. In Order 8, rule 2(3), for the words “a default action”, there shall be substituted the words “a default action or in a fixed date action to which Order 17, rule 11 applies”.

5. For Order 8, rule 2(4), there shall be substituted the following new paragraph—

“(4) Where an originating process in a fixed date action to which Order 17, rule 11 does not apply is to be served out of England and Wales under paragraph (2) the court shall fix the return day having regard to the distance of the country of service.”.

6. In Order 8, rule 7(a), for the words “a default summons”, there shall be substituted the words “a default or fixed date summons to which Order 17, rule 11 applies”.

7. After Order 9, rule 4, there shall be inserted the following new rule—

“Judgment in default in fixed date action

4A. Where, in a fixed date action to which Order 17, rule 11 applies, the

(a) S.I. 1981/1687; the relevant amending instruments are S.I. 1982/436, 1140, 1984/878, 1985/566, 1269, 1986/636, 1189, 1987/493, 1989/236, 1838, 2426, 1990/516 and 1495.

defendant fails to deliver a defence within the period of 14 days mentioned in rule 2, the plaintiff may apply to the court for judgment or directions as to the conduct of the proceedings and the court may, subject to the provisions of these rules, give such judgment or directions on the application as it thinks just.”.

8. In Order 9, rule 5, for the words “Subject to Order 17, rule 11,” there shall be substituted the words “Except in a case to which Order 17, rule 11 applies,”.

9. Order 9, rule 9(1) shall be amended—

- (a) by inserting, after the words “in a fixed date action, before”, the words “the entry of judgment under rule 4A or”;
- (b) by inserting, after the words “before the return day”, the words “, whichever is the earlier”.

10. For Order 12, rule 1(2), there shall be substituted the following—

“(2) A third party notice shall not be issued without the leave of the court—

- (a) in a fixed date action,
- (b) in a default action where a day has been fixed under rule 3(9) or 5 of Order 9 for the hearing or pre-trial review of the action, or
- (c) in an action to which Order 17, rule 11 applies, after the pleadings are deemed to be closed in accordance with paragraph (11)(a) of that rule.”.

11. For Order 14, rule 1(5), there shall be substituted the following—

“(5) A copy of a list of documents made in compliance with an order or request, and any affidavit verifying such a list, shall be served on the applicant.”.

12. After Order 16, rule 4(5), there shall be inserted the following new paragraph—

“(5A) Nothing in paragraph (5) shall require the proper officer to fix a day in an action to which Order 17, rule 11 applies.”.

13. After Order 16, rule 6(1), there shall be inserted the following new paragraph—

“(1A) Nothing in paragraph (1) shall require the proper officer to fix a day in an action to which Order 17, rule 11 applies unless

- (a) before it was transferred to a county court the action had been set down for hearing in the High Court; or
- (b) a request for a day to be fixed is made pursuant to directions under Order 17, rule 11.”.

14. For Order 17, rule 11, there shall be substituted the following new rule—

“Automatic directions

11.—(1) This rule applies to any default or fixed date action except—

- (a) an action for the administration of the estate of a deceased person;
- (b) an Admiralty action;
- (c) proceedings which are referred for arbitration under Order 19;
- (d) an action arising out of a regulated consumer credit agreement within the meaning of the Consumer Credit Act 1974(a);
- (e) an action for the delivery of goods;
- (f) an action for the recovery of income tax;
- (g) interpleader proceedings or an action in which an application is made for relief by way of interpleader;
- (h) an action of a kind mentioned in section 66(3) of the Act (trial by jury);
- (i) an action for the recovery of land;
- (j) a partnership action;
- (k) an action to which Order 48A applies (patent actions);

(a) 1974 c.39.

- (l) a contentious probate action;
- (m) a rent action;
- (n) an action to which Order 5, rule 5 applies (representative proceedings);
- (o) an action to which Order 9, rule 3(9) applies (admission of part of plaintiff's claim);
- (p) an action on a third party notice or similar proceedings under Order 12;
- (q) an action to which Order 47, rule 3 applies (actions in tort between husband and wife).

(2) In an action to which this rule applies,–

- (a) the foregoing provisions of this Order shall not apply and directions shall take effect automatically in accordance with the following paragraphs of this rule;
- (b) where the court gives directions with regard to any matter arising in the course of proceedings, directions taking effect automatically under this rule shall have effect subject to any directions given by the court.

(3) When the pleadings are deemed to be closed, the following directions shall take effect–

- (a) there shall be discovery of documents within 28 days, and inspection within 7 days thereafter, in accordance with paragraph (5);
- (b) except with the leave of the court or where all parties agree–
 - (i) no expert evidence may be adduced at the trial unless the substance of that evidence has been disclosed to the other parties in the form of a written report within 10 weeks; and
 - (ii) subject to paragraph (7), the number of expert witnesses of any kind shall be limited to two;
- (c) photographs and sketch plans and, in an action for personal injuries, the contents of any police accident report book shall be receivable in evidence at the trial and shall be agreed if possible;
- (d) unless a day has already been fixed, the plaintiff shall within 6 months request the proper officer to fix a day for the hearing and rule 12 shall apply where such request is made.

(4) Nothing in paragraph (3) shall–

- (a) prevent the court from giving, of its own motion or on the application of any party, such further or different directions or orders as may in the circumstances be appropriate (including an order fixing a date for the hearing or dismissing the proceedings or striking out any claim made therein); or
- (b) prevent the making of an order for the transfer of the proceedings to the High Court or another county court;

and rule 3 shall apply where an application is made under this paragraph as it applies to applications made on a pre-trial review.

(5) Subject to paragraph (6), the parties must make discovery by serving lists of documents and–

- (a) subject to sub-paragraph (c), each party must make and serve on every other party a list of documents which are or have been in his possession, custody or power relating to any matter in question between them in the action;
- (b) the court may, on application,–
 - (i) order that discovery under this paragraph shall be limited to such documents or classes of documents only, or as to such only of the matters in question, as may be specified in the order, or
 - (ii) if satisfied that discovery by all or any of the parties is not necessary, order that there shall be no discovery of documents by any or all of the parties;

and the court shall make such an order if and so far as it is of opinion that

discovery is not necessary either for disposing fairly of the action or for saving costs;

- (c) where liability is admitted or in an action for personal injuries arising out of a road accident, discovery shall be limited to disclosure of any documents relating to the amount of damages;
- (d) the provisions of Order 14 of these rules relating to inspection of documents shall apply where discovery is made under this paragraph as it applies where discovery is made under that Order.

(6) Discovery under paragraph (5) shall not apply in proceedings to which the Crown is a party.

(7) In an action for personal injuries—

- (a) the number of expert witnesses shall be limited in any case to two medical experts and one expert of any other kind;
- (b) nothing in paragraph (3) shall require a party to produce a further medical report if he proposes to rely at the trial only on the report provided pursuant to Order 6, rule 1(5) or (6) but, where a further report is disclosed, that report shall be accompanied by an amended statement of the special damages claimed, if appropriate.

(8) Where the plaintiff makes a request pursuant to paragraph (3)(d) for the proper officer to fix a day for the hearing, he shall file a note which shall if possible be agreed by the parties giving—

- (a) an estimate of the length of the trial, and
- (b) the number of witnesses to be called.

(9) If no request is made pursuant to paragraph (3)(d) within 15 months of the day on which pleadings are deemed to be closed (or within 9 months after the expiry of any period fixed by the court for making such a request), the action shall be automatically struck out.

(10) Where the proper officer fixes a day for the hearing, he shall give not less than 21 days' notice thereof to every party.

(11) For the purposes of this rule,—

- (a) pleadings shall be deemed to be closed 14 days after the delivery of a defence in accordance with Order 9, rule 2 or, where a counterclaim is served with the defence, 28 days after the delivery of the defence;
- (b) 'a road accident' means an accident on land due to a collision or apprehended collision involving a vehicle;
- (c) 'a statement of the special damages claimed' has the same meaning as in Order 6, rule 1(7).

(12) Unless the context otherwise requires, references in these rules to the return day in relation to a fixed date action to which this rule applies shall be construed as references to the date on which directions take effect under this rule.”.

15. Order 20, rule 27(1) shall be amended by substituting, for the words “Except with the leave of the court or where all parties agree,”, the words—

“Except—

- (a) with the leave of the court,
- (b) in accordance with the provisions of Order 17, rule 11, or
- (c) where all parties agree.”.

16. Order 42, rule 6(7) shall be amended by inserting, after the words “the proper officer shall”, the words “, except in a case to which Order 17, rule 11 applies,”.

17. Nothing in rules 2 to 16 shall apply to proceedings commenced before those rules come into force.

The community charge

18. After Order 6, rule 3(2), there shall be inserted the following new paragraph—

“(3) In relation to domestic property within the meaning of section 66 of the Local Government Finance Act 1988(a), references in paragraph (1)(b) to the net annual value for rating or to the net value for rating shall be construed as references to the value shown on the valuation list in force on 31st March 1990 or, if no such value was so shown, to its value by the year.”.

19. Rule 2 of the County Court (Amendment) Rules 1990(b) shall be revoked.

Service out of the jurisdiction

20. Order 8, rule 1 shall be amended by substituting, for the definitions of “applicant” and “respondent”, the following—

“‘applicant’ means the party applying for or obtaining leave under this Order to serve a process out of England and Wales or, where leave is not required, the party intending to serve such process;

‘respondent’ means the party on whom the applicant seeks or obtains leave to serve a process or, where leave is not required, the party on whom service is to be effected.”.

21. After Order 8, rule 2(1)(o), there shall be inserted the following new subparagraph—

“(p) the claim is brought for money had and received or for an account or other relief against the defendant as constructive trustee, and the defendant’s alleged liability arises out of acts committed, whether by him or otherwise, within the jurisdiction.”.

Recovery of social security benefits

22. For Order 11, rule 5(4), there shall be substituted the following new paragraph—

“(4) An application for an order under paragraph (2) or (3) shall be made on notice to the defendant, and on the application—

(a) in a case where a payment into court has been made as mentioned in paragraph 12(2) of Schedule 4 to the Social Security Act 1989(c), the court may treat the money in court as being reduced by a sum equivalent to any further relevant benefits (within the meaning of section 22(3) of that Act) paid to the plaintiff since the date of payment into court and direct payment out accordingly; and

(b) the court may make any order as to costs as it thinks fit including an order that the plaintiff pay any costs reasonably incurred by the defendant since the date of payment into court.”.

23. Order 11, rule 10(2) shall be amended by inserting, after the words “Provided that”, the words “, except in a case to which paragraph (3) applies,”.

24. After Order 11, rule 10(2), there shall be inserted the following new paragraph—

“(3) This paragraph applies to a case where the party making the offer has applied for, but has not yet received, a certificate of total benefit given in accordance with Schedule 4 to the Social Security Act 1989; but this paragraph shall not apply with respect to any time after 7 days after that party has received the certificate.”.

Arrangements for trial

25. After Order 17, rule 11, there shall be inserted the following new rule—

(a) 1988 c.41.

(b) S.I. 1990/516.

(c) 1989 c.24; Schedule 4, paragraph 12 is amended by the Social Security Act 1990 (c.27), Schedule 1, paragraph 2.

“Arrangements for trial

12.—(1) This rule applies, subject to any order of the court, where a day has been fixed for the hearing of an action or matter—

- (a) to which rule 11 applies; or
- (b) in which a pre-trial review has been held.

(2) At least 14 days before the day fixed for the hearing the defendant shall inform the plaintiff of the documents which he wishes to have included in the bundle to be provided under paragraph (3).

(3) At least 7 days before the day fixed for the hearing the plaintiff shall file one copy of a paginated and indexed bundle comprising the documents on which either of the parties intends to rely or which either party wishes to have before the court at the hearing together with two copies of each of the following documents—

- (a) any request for particulars and the particulars given, and any answer to interrogatories,
- (b) witness statements which have been exchanged, and experts’ reports which have been disclosed, together with an indication of whether the contents of such documents are agreed,
- (c) the requisite legal aid documents.

(4) Nothing in this rule shall—

- (a) prevent the court from giving, whether before or after the documents have been filed, such further or different directions as to the documents to be filed as may, in the circumstances, be appropriate; or
- (b) prevent the making of an order for the transfer of the proceedings to the High Court or to another county court.

(5) For the purposes of this rule—

- (a) “plaintiff” includes a defendant where an action is proceeding on a counterclaim;
- (b) “the requisite legal aid documents” means any documents which are required by regulations made under Part IV of the Legal Aid Act 1988(a) to be included in the papers for the use of the court.”.

26. After Order 21, rule 5, there shall be inserted the following new rule—

“Order of speeches

5A. The judge before whom an action is tried may give directions—

- (a) as to the party to begin,
- (b) as to the order and number of speeches at the trial, and
- (c) in an action tried without a jury, dispensing with opening speeches.”.

27. Nothing in rules 25 or 26 shall apply where a day has been fixed for the hearing of an action or matter before those rules come into force.

Small claims procedure

28. For Order 19, rule 2(3), there shall be substituted the following—

“(3) Any proceedings in which the sum claimed or amount involved does not exceed £500 (leaving out of account the sum claimed or amount involved in any counterclaim) shall stand referred for arbitration by the registrar upon the receipt by the court of a defence to the claim, but the registrar may, on the application of any party, refer the proceedings for arbitration by the judge or by an outside arbitrator.”.

29. In Order 19, rule 2(4), for the words “on the application of any party”, there shall be substituted the words “whether on the application of any party or of his own motion”.

(a) 1988 c.34.

30. For Order 19, rule 2(4)(d), there shall be substituted the following—

“(d) that it would be unreasonable for the claim to proceed to arbitration having regard to its subject matter, the size of any counterclaim, the circumstances of the parties or the interests of any other person likely to be affected by the award.”.

31. After Order 19, rule 2(4), there shall be inserted the following new paragraph—

“(4A) Where the registrar is minded to rescind the reference to arbitration of his own motion—

(a) the proper officer shall notify the parties in writing specifying on which of the grounds mentioned in paragraph (4)(a) to (d) the registrar is minded to rescind the reference;

(b) within 14 days after service of the proper officer’s notice on him, a party may give written notice stating his reasons for objecting to the rescission of the reference;

(c) if in any notice under sub-paragraph (b) a party so requests, the proper officer shall fix a day for a hearing at which the registrar shall decide whether the reference should be rescinded;

and, in the absence of any request under sub-paragraph (c), the registrar may rescind the reference in the absence of the parties.”.

32. After Order 19, rule 2(5), there shall be inserted the following new paragraph—

“(6) For the purposes of paragraph (3), “a defence to the claim” includes a document admitting liability for the claim but disputing or not admitting the amount claimed.”.

33. For Order 19, rule 6, there shall be substituted the following—

“6.—(1) No solicitors’ charges (nor costs allowed to a litigant in person in lieu thereof) shall be allowed as between party and party in respect of any proceedings referred to arbitration under rule 2(3), except—

(a) the costs which were stated on the summons or which would have been stated on the summons if the claim had been for a liquidated sum;

(b) the costs of enforcing the award, and

(c) such further costs as the arbitrator may direct where there has been unreasonable conduct on the part of the opposite party in relation to the proceedings or the claim therein.

(2) Where a reference to arbitration is rescinded, paragraph (1) shall not apply to costs incurred after the date of the rescission.

(3) Nothing in paragraph (1) shall be taken as precluding the award of witnesses’ allowances.”.

34. Nothing in rules 28, 30, 32 or 33 shall apply to proceedings commenced before those rules come into force.

We, the undersigned members of the Rule Committee appointed by the Lord Chancellor under section 75 of the County Courts Act 1984(a), having by virtue of the powers vested in us in that behalf made the foregoing Rules, do hereby certify the same under our hands and submit them to the Lord Chancellor accordingly.

C. S. Stuart-White,
R. H. Hutchinson,
A. N. Fricker,
R. Greenslade,
Patrick Eccles,

Gillian Stuart-Brown,
Eifion Roberts,
R. E. Hammerton,
K. H. P. Wilkinson,
R. C. Newport.

(a) 1984 c.28.

I allow these Rules, which shall come into force on 1st October 1990, except for rules 25 to 27 which shall come into force on 2nd January 1991.

Mackay of Clashfern, C.

Dated 23rd August 1990

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the County Court Rules 1981 so as—

- (a) to extend automatic directions for trial to all default and fixed date actions (apart from specified classes of proceedings including small claims and actions for the recovery of land) and to make some adjustments to the automatic directions themselves (including a provision whereby an action is struck out automatically if no request is made for a hearing within a specified time limit) (*rules 2 to 17*);
- (b) to improve the drafting of the provision modifying references to rateable values of domestic property as a result of the introduction of the community charge (*rules 18 and 19*);
- (c) to provide for originating process in claims against constructive trustees to be served out of England and Wales and to make a minor adjustment consequential on an earlier rule change to the interpretation provisions for service abroad (*rules 20 and 21*);
- (d) to give effect to section 22 of, and Schedule 4 to, the Social Security Act 1989 (recovery of social security benefits from tortfeasors) (*rules 22 to 24*);
- (e) to make new arrangements for trials by requiring the provision of a bundle of relevant documents for the use of the court and by enabling judges to give directions as to speeches (*rules 25 to 27*);
- (f) to amend the small claims arbitration procedure to allow registrars to rescind references to arbitration of their own motion and to clarify the position as to defences and counterclaims and the recovery of costs (*rules 28 to 34*).

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