
STATUTORY INSTRUMENTS

1994 No. 1288

The County Court (Amendment No. 2) Rules 1994

Business list actions

3. After Order 48(B)(1), there shall be inserted the following new Order—

“ORDER 48C

THE CENTRAL LONDON COUNTY COURT BUSINESS LIST

Application and interpretation

1.—(1) This Order applies to business actions which are included in the Central London County Court Business List and, in their application to business actions, these rules shall have effect subject to the provisions of this Order.

- (2) In this Order, unless the context otherwise requires—

“action” includes actions and matters;

“business action” has the meaning given by rule 3;

“business list action” means an action included in the Central London County Court Business List;

“close of pleadings” shall be deemed to be 14 days after the service of points of defence or, where a counterclaim is served with the points of defence, 28 days after the service of points of defence;

“request for time for payment” has the meaning given by Order 9, rule 2(2);

“the business list” means the Central London County Court Business List; and

“the judge” means a judge having control of a business list action.

Venue for business action

2.—(1) There shall be a list in the Central London County Court which shall be called “The Central London County Court Business List”.

(2) An action may be commenced in the Central London County Court for inclusion in the business list if it is a business action and has some connection with the South Eastern Circuit, for example, because—

- (a) the balance of convenience points to having the action tried in the Central London County Court; or
- (b) the cause of action arose, or one of the parties resides or carries on business, at a place in the South Eastern Circuit.

(3) The provisions of Order 4 (Venue for bringing proceedings) shall not apply to a business action.

Meaning of business action

3.—(1) Whether or not an action is a business action shall be determined in accordance with the provisions of this rule.

(2) The subject matter of a business action must relate to a commercial or business transaction and such an action may include (but shall not be limited to) an action which relates to—

- (a) a contract for the import and export of goods or the sale of goods other than a contract to which an individual consumer is a party;
- (b) the carriage of goods;
- (c) mercantile agency;
- (d) insurance;
- (e) banking, negotiable instruments, guarantees or other financial transactions;
- (f) a contract relating to ships, shipping and aircraft;
- (g) a dispute involving the construction of a commercial contract or relating to the customs and practices of particular trades, businesses or commercial organisations;
- (h) proceedings to enforce an award under section 26 of the Arbitration Act 1950(2).

(3) No business action shall be brought concerning—

- (a) an action to which Order 48A applies (proceedings in respect of which patents county courts have jurisdiction), or
- (b) an action to which Order 19, rule 3 applies (automatic reference to arbitration of small claims).

Inclusion of action in the business list

4.—(1) Subject to paragraph (2), a plaintiff may include an action in the business list by using the form of summons appropriate to a business list action or by marking in the top left hand corner of the originating process by which the action is to be begun the words “Business List”.

(2) Where the value of an action (within the meaning of Order 1, rule 3) does not exceed £15,000, the action may be included in the business list only with the leave of the judge.

(3) Where the defendant to an action begun in accordance with paragraph (1) applies for the proceedings to be referred to arbitration under Order 19, the judge shall determine the application and, if the action is so referred, he shall transfer the action out of the business list.

(4) Where an action is included in the business list, the provisions of Order 9, rules 2(8) and 3(4) and (6) (automatic transfer to defendant’s home court) shall not apply.

Documents in business list actions

5. Where an action has been included in the business list, every summons, notice, pleading, affidavit or other document relating to the action must be marked in the top left hand corner with the words “Business List”.

Commencement of action

6.—(1) The provisions of Order 3, rules 1, 2 and 3 (except paragraphs (5) to (8)) shall not apply to a business action.

(2) The summons in a business action shall be prepared by the plaintiff in the appropriate form and shall state the plaintiff's address for service.

(3) The plaintiff shall supply the proper officer with—

- (a) two copies of the completed summons;
- (b) two copies of the points of claim; and
- (c) where the summons is to be served out of England and Wales, a certificate that the conditions of Order 3, rule 3(6) are satisfied.

(4) On receipt of the documents mentioned in paragraph (3), the proper officer shall—

- (a) enter the action in the records of the court and allocate a case number;
- (b) seal both copies of the summons;
- (c) return the summons and one copy of the points of claim to the plaintiff; and
- (d) deliver to the plaintiff a notice of issue.

(5) One or more concurrent summonses may, at the request of the plaintiff, be issued at the time when the original summons was issued or at any time thereafter before the original summons ceases to be valid.

Service

7.—(1) Subject to paragraph (2), the summons in a business list action must be served personally on each defendant by the plaintiff.

(2) A summons for service on a defendant within England and Wales may be served—

- (a) by sending the summons 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 the summons, enclosed in a sealed envelope addressed to the defendant, through the letter box.

(3) Every summons for service on a defendant shall be sealed and shall be accompanied by—

- (a) a copy of the points of claim; and
- (b) a form of acknowledgment of service in the appropriate form on which the plaintiff has entered the title and number of the action.

(4) Where a summons is served by post under paragraph (2)—

- (a) Order 7, rule 10(3) and 10(4) and 13 and Order 37, rule 3 shall apply as if the summons had been served by an officer of the court;
- (b) Order 7, rules 6(1)(b) and 10(2) shall not apply; and
- (c) it shall be treated, for the purposes of these rules, as if it had been served by an officer of the court.

(5) This rule shall have effect subject to Order 7, rule 14 and to the provisions of any enactment which provides for the manner in which documents may be served on bodies corporate.

Acknowledgment of service

8.—(1) A defendant who wishes to defend a business list action must file an acknowledgment of service—

- (a) stating that he intends to defend the proceedings to which the acknowledgment relates; and
 - (b) acknowledging service of the summons.
- (2) On receipt of an acknowledgment of service the proper officer shall—
- (a) endorse on the acknowledgment the date he received it;
 - (b) record whether the defendant intends—
 - (i) to defend the proceedings; or
 - (ii) to make a request for time for payment; and
 - (c) send a copy of the acknowledgment to the plaintiff.
- (a) (3) In the case of a summons served within England and Wales the time limited for acknowledging service of the summons shall be 14 days after service of the summons or, where that time has been extended under these rules, that time as so extended.
- (b) An order granting leave to serve a summons out of England and Wales shall limit a time within which the defendant to be served must acknowledge service.
- (4) RSC Order 12, rules 6, 7, 8 and 8A shall apply to a business list action.

Failure to give notice of intention to defend

9.—(1) Where the plaintiff's claim consists of or includes a liquidated demand, then, if the defendant fails to give notice of intention to defend within the time limited for acknowledging service, the plaintiff may on filing a request have judgment entered for the amount claimed and costs.

(2) The provisions of Order 9, rule 6(1A) shall not apply but, unless the defendant has acknowledged service of the summons, the plaintiff must prove due service of the summons either by—

- (a) filing an affidavit of service; or
- (b) producing to the proper officer the defendant's solicitor's indorsement of acceptance of service.

(3) Where the plaintiff's claim is for unliquidated damages, Order 9, rule 6(2) shall apply.

(4) Paragraphs (5) to (7) shall apply where the defendant makes a request for time for payment and the provisions of Order 9, rule 3 shall not apply.

(5) Where the defendant has filed an acknowledgment of service stating that, although he does not intend to defend the proceedings, he intends to make a request for time for payment, then no judgment shall be entered for a period of 14 days after filing the acknowledgment of service.

(6) If within the period mentioned in paragraph (5), the defendant makes a request for time for payment, the application shall, unless the plaintiff accepts the defendant's proposal as to time of payment or the judge otherwise directs, be heard by the judge.

(7) An application for time for payment shall be supported by an affidavit of means.

Summary judgment and disposal of case on point of law

10. RSC Orders 14 and 14A shall apply to a business list action and Order 9, rule 14 of these rules shall not apply.

Pleadings in business list actions

11.—(1) The pleadings in a business list action shall be in the form of points of claim or, as the case may be, points of defence, counterclaim, defence to counterclaim or reply.

(2) Points of claim shall be served on the defendant when the summons is served on him.

(3) Points of defence shall be served within 14 days after the time limited for acknowledging service.

(4) In all other respects the pleadings in a business list action shall comply with RSC Order 18.

(5) RSC Order 19 (Default of Pleadings) and RSC Order 20 (Amendment) shall apply to a business list action.

Discovery in business list actions

12.—(1) Unless the judge otherwise directs, there shall be discovery of documents within 14 days of close of pleadings and inspection within 7 days thereafter.

(2) The provisions of RSC Order 24 (discovery and inspection of documents) shall apply to business list actions.

Application for directions

13.—(1) The provisions of Order 3, rule 3(3) and Order 9, rule 5 (which require the proper officer to fix a day for the pre-trial review or for the hearing of an action) shall not apply to business list actions and RSC Order 25 shall apply, with the necessary modifications, to an application under this rule as it applies to a summons for directions.

(2) Within one month after close of pleadings, the plaintiff must make an application, referred to in this rule as an application for directions.

(3) The application for directions shall set out all orders and directions the applicant will ask for at the preliminary consideration of the action.

(4) Notwithstanding paragraph (2) of this rule, any party may make an application for directions at any time after the defendant has served points of defence, or, if there are two or more defendants, at least one of them has served points of defence.

(5) At the hearing of the application for directions, the judge shall consider the course of the proceedings and give all such directions as appear to be necessary or desirable for securing the just, expeditious and economical disposal of the action including (but not limited to)—

- (a) whether the evidence of witnesses as to fact shall be given orally or in writing or any combination of the two;
- (b) the exchange of witness statements and of experts' reports;
- (c) the calling of, and meetings between, experts;
- (d) the provision of skeleton or outline addresses, chronologies, lists of parties or witnesses or other summaries;
- (e) the provision of plans, photographs, visual aids or computer facilities;
- (f) the transfer of the action to the High Court or out of the business list;

- (g) the date for the hearing of the matter; and
- (h) the preparation of trial bundles.

Transfer to and from a business list

14.—(1) At any stage of the proceedings, the judge may, on application or of his own motion, order—

- (a) an action to be removed from the business list if he considers that it does not come within the terms of rule 3 or that it should be heard and determined other than in that list;
- (b) an action to be transferred to another court if he considers that it could be more conveniently or fairly heard and determined in that court.

(2) Where an action is removed from the business list, directions taking effect under Order 17, rule 11 shall have effect subject to any directions given prior to the removal of the action from the business list.

(3) Where the judge or district judge of any court is satisfied that any action in that court could be more conveniently or fairly heard and determined as a business list action, he may (subject to Order 16, rule 3 (saving for statutory provisions)), order the action to be transferred to the business list.

(4) Subject to the provisions of this rule, the provisions of Order 16 (transfer of proceedings) shall apply with the necessary modifications to transfers to and from the business list.

(5) Nothing in rule 2(2) shall prevent the transfer of an action from the Commercial Court of the Queen's Bench Division to the business list.

(6) Subject to any order made under Order 25, rule 2 (transfer of proceedings for enforcement) an action shall be removed from the business list after final judgment has been entered on all matters in issue.

Jurisdiction of judge and district judge

15.—(1) Subject to paragraph (2), unless the judge otherwise directs, interlocutory applications and trials relating to business list actions shall be heard by the judge.

(2) When an interlocutory matter needs to be dealt with urgently and the judge is not available, the matter may be dealt with by another judge.

(3) Where an action is transferred out of the business list, the judge may order it to be determined by a district judge where—

- (a) the value of the action does not exceed £5,000; or
- (b) judgment has been entered for damages to be assessed.”.