
STATUTORY INSTRUMENTS

1998 No. 1898 (L.2)

SUPREME COURT OF ENGLAND AND WALES

The Rules of the Supreme Court (Amendment) 1998

<i>Made</i>	- - - -	<i>30th July 1998</i>
<i>Laid before Parliament</i>		<i>4th August 1998</i>
<i>Coming into force</i>		
	<i>except for rules 1 and 11</i>	<i>28th September 1998</i>
	<i>Rules 1 and 11</i>	<i>1st September 1998</i>

We, the Supreme Court Rule Committee, having power under section 85 of the Supreme Court Act 1981⁽¹⁾ to make rules of court under section 84 of that Act for the purpose of regulating and prescribing the practice and procedure to be followed in the Supreme Court, hereby exercise those powers as follows—

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Amendment) 1998 and shall come into force on 28th September 1998, except for rules 1 and 11 which shall come into force on 1st September 1998.

(2) In these Rules, an Order referred to by number means the Order so numbered in the Rules of the Supreme Court 1965⁽²⁾ and a reference to Appendix A is a reference to Appendix A to those Rules.

The Criminal Procedure and Investigations Act 1996⁽³⁾

2. The Arrangement of Orders at the beginning of the Rules of the Supreme Court 1965 shall be amended by adding at the end “116. The Criminal Procedure and Investigations Act 1996”.

3. After Order 115, there shall be inserted the following new Order:—

(1) 1981 c. 54; section 85 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 36(1).
(2) S.I.1965/1776; the relevant amending instruments are noted in footnotes to provisions in the body of the instrument.
(3) 1996 c. 25.

“ORDER 116

THE CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996

Application

1. This Order shall apply in relation to acquittals in respect of offences alleged to be committed on or after 15th April 1997.

Interpretation

2. In this Order, unless the context otherwise requires—

“the Act” means the Criminal Procedure and Investigations Act 1996;

“acquitted person” means a person whose acquittal of an offence is the subject of a certification under section 54(2) of the Act, and “acquittal” means the acquittal of that person of that offence;

“deponent” means a deponent to an affidavit filed under rule 5, 7, 8 or 9;

“magistrates' court” has the same meaning as in section 148 of the Magistrates' Courts Act 1980(4);

“prosecutor” means the individual or body which acted as prosecutor in the proceedings which led to the acquittal.

“record of court proceedings” means—

(a) (where the proceedings took place in the Crown Court) a transcript of the evidence, or

(b) a note of the evidence made by the justices' clerk,

in the proceedings which led to the conviction for the administration of justice offence referred to in section 54(1)(b) of the Act or, as the case may be, the proceedings which led to the acquittal.

“single judge” means a judge of the Queen’s Bench Division.

Assignment of proceedings

3. The jurisdiction of the High Court under section 54(3) of the Act shall be exercised by a single judge and, subject to rule 10(13), that jurisdiction shall be exercised in chambers.

Time limit for making application

4. An application under section 54(3) of the Act shall be made not later than 28 days after—

(a) the expiry of the period allowed for appealing (whether by case stated or otherwise), or making an application for leave to appeal, against the conviction referred to in section 54(1)(b) of the Act; or

(b) where notice of appeal or application for leave to appeal against the conviction is given, the determination of the appeal or application for leave to appeal and, for this purpose, “determination” includes abandonment (within the meaning of rule 10 of the Criminal Appeal Rules 1968(5) or, as the case may be, rule 11 of the Crown Court Rules 1982(6)).

(4) 1980 c. 43.

(5) S.I. 1968/1262.

Application

5.—(1) An application under section 54(3) of the Act shall be made by originating motion which shall be issued out of the Crown Office by the prosecutor.

(2) The application shall be accompanied by—

- (a) an affidavit which deals with the conditions in section 55(1), (2), and (4) of the Act and which exhibits any relevant documents (which may include a copy of any record of court proceedings);
- (b) a copy of the certification under section 54(2) of the Act.

Notice to the acquitted person

6.—(1) The prosecutor shall, within 4 days of the issue of the application, serve written notice on the acquitted person that the application has been issued.

(2) The notice given under paragraph (1) shall—

- (a) specify the date on which the application was issued;
- (b) be accompanied by a copy of the application and of the documents which accompanied it;
- (c) inform the acquitted person that—
 - (i) the result of the application may be the making of an order by the High Court quashing the acquittal, and
 - (ii) if he wishes to respond to the application, he must, within 28 days of the date of service on him of the notice, file in the Crown Office any affidavit on which he intends to rely.

Affidavit of service on an acquitted person

7. The prosecutor shall, as soon as practicable after service of the notice under rule 6, lodge with the Crown Office an affidavit of service which exhibits a copy of the notice.

Response of acquitted person

8.—(1) If the acquitted person wishes to respond to the application, he shall, within 28 days of service on him of notice under rule 6, file in the Crown Office an affidavit which—

- (a) deals with the conditions in section 55(1), (2), and (4) of the Act; and
- (b) exhibits any relevant documents (which may include a copy of any record of court proceedings).

(2) The acquitted person shall, within 4 days of the filing of the documents mentioned in paragraph (1), serve copies of them on the prosecutor.

Evidence

9.—(1) An affidavit filed under rule 5, 7, 8 or this rule may contain statements of information or belief with the sources and grounds thereof.

(2) The prosecutor may, not later than 10 days after expiry of the period allowed under rule 8(1), apply ex parte for an order granting leave to file further affidavit evidence.

(3) If the single judge grants leave, the order shall specify a period within which further affidavit evidence or records are to be filed, and the Crown Office shall serve a copy of the order on the prosecutor and on the acquitted person.

(4) The prosecutor shall, within 4 days of filing further evidence in the Crown Office, serve a copy of that evidence on the acquitted person.

Determination of the application

10.—(1) Subject to paragraph (3), the single judge shall determine whether or not to make an order under section 54(3) of the Act on the basis of the written material provided under rules 5, 7, 8 and 9 in the absence of the prosecutor, the acquitted person, or of any deponent.

(2) The determination shall not be made, and any hearing under paragraph (3) shall not take place, before the expiry of—

- (a) 10 days after the expiry of the period allowed under rule 8(1), or
- (b) 10 days after the expiry of the period allowed by any order made under rule 9(3).

(3) The single judge may, of his own motion or on the application of the prosecutor or acquitted person, order a hearing of the application if he thinks fit.

(4) An application under paragraph (3) shall state whether a hearing is desired in order for a deponent for the other party to attend and be cross-examined, and, if so, the reasons for wishing the deponent to attend.

(5) An application under paragraph (3) shall be made no later than 7 days after the expiry of the period allowed—

- (a) under rule 8(1) or
- (b) by any order made under rule 9(3).

(6) Where a hearing is ordered, the single judge may, of his own motion or on the application of the prosecutor or acquitted person, order a deponent to attend in order to be cross-examined.

(7) The prosecutor or the acquitted person, as the case may be, shall within 4 days after lodging the application under paragraph (3), serve a copy of it on the other party, and file in the Crown Office an affidavit of service.

(8) A party served under paragraph (7) shall, within 5 days of service, file any representations he wishes to make as to whether or not a hearing should be ordered.

(9) Subject to paragraph (10) below—

- (a) the single judge shall not determine an application for a hearing under paragraph (3) unless—
 - (i) an affidavit of service has been filed as required by paragraph (7), and
 - (ii) the period for filing representations allowed under paragraph (8) has elapsed; or
 - (iii) representations have been filed under paragraph (8).
- (b) The requirements imposed by sub-paragraph (a)(i) and (iii) are satisfied even though the affidavit of service or, as the case may be, the representations are filed outside the time limits allowed.

(10) Where after an application for a hearing has been made—

- (a) no affidavit of service has been filed and

(b) no representations under paragraph (8) have been received after the expiry of 7 days from the lodging of the application,

the single judge may reject the application.

(11) Where after a hearing is ordered, either the prosecutor or the acquitted person desires a deponent for the other party to attend the hearing in order to be cross-examined, he must apply ex parte, for an order under paragraph (5) giving his reasons.

(12) The Crown Office shall serve notice on the prosecutor and the acquitted person of any order made under the foregoing paragraphs of this rule and, where a hearing is ordered, the notice shall—

(a) set out the date, time and place of the hearing, and

(b) give details of any deponent ordered to attend for cross-examination.

(13) A hearing ordered under paragraph (3) above shall be in open court unless the single judge otherwise directs.

(14) The Crown Office shall serve notice of any order made under section 54(3) of the Act quashing the acquittal or of a decision not to make such an order on the prosecutor, the acquitted person and—

(a) where the court before which the acquittal or conviction occurred was a magistrates' court, on the justices' clerk;

(b) where the court before which the acquittal or conviction occurred was the Crown Court, on the appropriate officer of the Crown Court sitting at the place where the acquittal or conviction occurred.”.

Applications for leave to amend patent specification

4. Order 104, rule 3(1)(c)(7) shall be amended by inserting, after the words “United Kingdom,” the words “and that a Statement of Reasons is available from that address;”.

5. For Order 104, rule 3(1)(d) there shall be substituted the following—

“(d) stating that any person (including a party to the proceedings) who intends to oppose the amendment must within 28 days after the appearance of the advertisement give written notice of his intention to the applicant, such notice to be accompanied by a Statement of Opposition;”.

6. After Order 104, rule 3(1) there shall be inserted the following new paragraphs—

“(1A) A copy of the Statement of Reasons, together with a copy of the patent as proposed to be amended, must be served by the applicant—

(a) at the same time as giving notice to the comptroller, on the comptroller and the parties to the proceedings, and

(b) forthwith on any person who requests a copy.

(1B) The Statement of Reasons required by paragraph (1A) shall contain full particulars of—

(a) the amendments sought and the reasons therefor, and

(b) the reasons why the applicant contends that in the exercise of the Court’s discretion the amendment should be allowed,

and, in particular, the Statement shall contain—

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- (i) a statement as to whether the amendment is by way of deletion of claims or re-writing of claims;
- (ii) insofar as the amendment involves re-writing claims, details as to why the proposed amendment is in accordance with statutory requirements;
- (iii) insofar as the amendment is sought to distinguish (more clearly) over prior art, an indication of the prior art together with full details (to the best of the applicant's knowledge) of the date on which the applicant or any representative of his worldwide (or any predecessor in title or representative of his) first became aware of that prior art, identifying any predecessor in title or representative referred to and, where the application to amend is brought more than 6 months after the date referred to, explaining the reasons for the delay;
- (iv) insofar as the amendment is sought to cure a possible insufficiency, full details (to the best of the applicant's knowledge) of the date on which the applicant or any representative of his worldwide (or any predecessor in title or representative of his) first became aware of that possible insufficiency, identifying any predecessor in title or representative referred to and, where the application to amend is brought more than 6 months after the date referred to, explaining the reasons for the delay.

(1C) The Statement of Opposition required by paragraph (1)(d) shall contain full particulars of all grounds of opposition to the allowability of the amendments and, in particular, shall state—

- (a) whether or not the allowability of the amendments (or some of them) is opposed on statutory grounds and, if so, full reasons shall be given;
- (b) whether or not the allowability of the amendments (or some of them) is opposed on discretionary grounds and, if so, full reasons shall be given.

(1D) A copy of the Statement of Opposition shall be served on—

- (a) the applicant,
- (b) the comptroller,
- (c) the parties to the proceedings, and
- (d) any other person who has given notice of his intention to oppose the amendment.”.

7. After Order 104, rule 3(2) there shall be inserted the following new paragraph—

“(2A) Not less than 2 days before the day fixed for the hearing of the motion,

- (a) the applicant,
- (b) the comptroller,
- (c) the parties to the proceedings and
- (d) any person who has given notice of his intention to oppose the amendment,

shall serve on each other and file a statement of the directions which that person seeks for the further conduct of the proceedings.

(2B) Any person who fails to serve a statement under paragraph (2A) shall take no further part in the proceedings without the leave of the Court and, unless the Court otherwise directs, shall not be liable for the costs thereof.”.

8. For Order 104, rule 3(3)(a) and (b), there shall be substituted the following—

- (a) determining whether the motion shall be heard forthwith or with the other proceedings relating to the patent in question or separately and, if separately, fixing the date of hearing thereof;
 - (b) as to whether any evidence or discovery is necessary, in particular, whether an affidavit from the applicant verifying the facts set out in the Statement of Reasons should be sworn;”.
9. After Order 104, rule 3(3)(c), there shall be inserted the following new paragraph—
- (d) insofar as discovery is necessary, as to the extent of discovery and the manner and time within which discovery is to be given and, in particular, whether discovery is to take the form of exhibits to affidavits or by way of list verified by affidavit or otherwise.”.
10. The following shall be inserted as Order 104, rule 19(17)(8)—
- (17) This rule (except paragraph (16)) shall apply to an appeal under section 251(4) of the Copyright, Designs and Patents Act 1988(9) from a decision of the comptroller in proceedings before him under section 246 of that Act (decisions on matters relating to design right).”.

Protection from Harassment Act 1997

11. After rule 15 of Order 94, there shall be inserted the following—

“Proceedings under the Protection from Harassment Act 1997

16.—(1) In this rule, “the Act” means the Protection from Harassment Act 1997(10).

(2) This rule shall apply to injunctions granted on or after the date of the commencement of this rule and injunctions granted before that date shall be treated as if this rule had not come into force.

(3) Proceedings in the High Court under section 3 of the Act shall be assigned to the Queen’s Bench Division.

(4) An application for the issue of a warrant for the arrest of the defendant under section 3(3) of the Act shall—

- (a) state that it is an application for the issue of a warrant for the arrest of the defendant;
- (b) set out the grounds for making the application and be supported by an affidavit or evidence on oath;
- (c) state whether the plaintiff has informed the police of the defendant’s conduct as described in sub-paragraph (b); and
- (d) state whether, to the plaintiff’s knowledge, criminal proceedings are being pursued.

(5) The Court before whom a person is brought following his arrest may—

- (a) determine whether the facts, and the circumstances which led to the arrest, amounted to disobedience of the injunction, or
- (b) adjourn the proceedings and, where such an order is made, the arrested person shall be released and—

(8) Order 104, rule 19 was amended by S.I. 1981/1111, 1986/1187 and 1995/3316.

(9) 1988 c. 48.

(10) 1997 c. 40.

- (i) may be dealt with within 14 days of the day on which he was arrested; and
- (ii) be given not less than 2 days' notice of the adjourned hearing.”.

Miscellaneous amendments

12. Order 17, rule 8 shall stand as paragraph (1) and, after it, there shall be inserted the following new paragraphs—

“(2) Where in interpleader proceedings the claimant fails to appear at the hearing of the summons, the Court may direct that the sheriff’s and execution creditor’s costs shall be assessed by a master or, where the summons was heard in a district registry, by a district judge of that registry and Order 62, rule 13 shall apply.

(3) The reference in paragraph (2) to a master shall be construed in accordance with rule 4.”.

13. Order 48, rule 1(4)(**11**) shall be amended by omitting the words “of a grade not lower than that of higher executive officer”.

14. Order 63, rule 4(**12**) shall be amended by inserting, after paragraph (1), the following new paragraph—

“(1A) Paragraph (1)(a) shall not apply to the originating process by which an arbitration application (as defined by Order 73, rule 2) is begun.”.

15. Order 73, rule 31(2)(**13**) shall be amended by substituting, for the words “may be made”, the words “shall be made”.

16. Order 79, rules 10 and 11 shall be revoked.

17. Order 91, rule 6(2)(**14**) shall be amended by omitting the words “by a single judge of the Queen’s Bench Division or, where both parties consent,”.

18. Order 97, rule 15(**15**) shall be revoked.

19. For Form No. 23 in Appendix A, there shall be substituted the form in Schedule 1 to these Rules.

20. Rule 9 of the Rules of the Supreme Court (Amendment) 1996(**16**) shall be revoked.

*Irvine of Lairg, C.
Bingham of Cornhill, C. J.
Woolf, M. R.
Stephen Brown, P.
Richard Scott, V-C.
Coleman, J.
Bell, J.
Alan Boyle*

Dated 30th July 1998

(11) Order 48, rule 1 was amended by S.I. 1967/829 and 1973/1384.
(12) Order 63, rule 4 was amended by S.I. 1969/1105 and 1982/1111.
(13) A new Order 73 was substituted by S.I. 1996/3219.
(14) Order 91, rule 6 was added by S.I. 1986/2289 and amended by S.I. 1995/2206.
(15) Order 97, rule 15 was added by S.I. 1988/298.
(16) S.I. 1996/3219.

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SCHEDULE 1

Rule 19

No. 23 NOTICE OF PAYMENT INTO COURT(Order 22, rules 1 and 2)

[Heading as in action]

Take Notice that

The defendant.....has paid £..... into court.

This sum is in satisfaction of (the cause of action) (some of) (all of) (the causes of action) in respect of which the plaintiff claims (namely)

and (does)(does not) take into account (the cause of action) (some of) (all of) (the causes of action) in respect of which the defendant counterclaims (namely)

For cases where the Social Security (Recovery of Benefits) Act 1997 applies

The gross amount of the compensation payment is £.....

The defendant has reduced this sum by £..... in accordance with section 8 of and Schedule 2 to the Social Security (Recovery of Benefits) Act 1997, which was calculated as follows:

Name of benefit	Amount
-----------------	--------

Dated the day of 19

EXPLANATORY NOTE

(This note is not part of the Rules)

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

- (a) to make provision for the quashing of acquittals tainted by intimidation under section 54(3) of the Criminal Procedure and Investigations Act 1996 (*rules 2 and 3*);
- (b) to amend the procedure where application is made for leave to amend a patent specification (*rules 4 to 9*);
- (c) to extend Order 104 rule 19 to apply to appeals under section 251(4) of the Copyright, Designs and Patents Act 1988 (decisions on matters relating to design right) (*rule 10*);
- (d) to provide a procedure for a plaintiff who wishes to apply for a warrant for the arrest of a defendant under section 3(3) of the Protection from Harassment Act 1997 (*rule 11*);
- (e) to enable a master to assess costs in interpleader proceedings where the claimant fails to appear at the hearing (*rule 12*);
- (f) to remove the requirement for the officer of the court before whom a judgment debtor is examined to be of a certain grade in the Court Service (*rule 13*);
- (g) to prevent arbitration applications being available for inspection (*rule 14*);
- (h) to make minor amendments to Orders 73 and 91 (*rules 15 and 17*);

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- (i) to revoke provisions which are obsolete (*rules 16, 18 and 20*); and
- (j) to amend prescribed Form No. 23 (Notice of Payment into Court) (*rule 19*).