

## **RSC ORDER 10**

### **SERVICE OF ORIGINATING PROCESS: GENERAL PROVISIONS**

#### **SERVICE OF CLAIM FORM IN CERTAIN ACTIONS FOR POSSESSION OF LAND**

**Rule 4** | Where a claim form contains a claim for the possession of land, the court may –

- (a) if satisfied on an application without notice being served on any other party that no person appears to be in possession of the land and that service cannot be otherwise effected on any defendant, authorise service on that defendant to be effected by affixing a copy of the claim form to some conspicuous part of the land;
- (b) if satisfied on such an application that no person appears to be in possession of the land and that service could not otherwise have been effected on any defendant, order that service already effected by affixing a copy of the claim form to some conspicuous part of the land shall be treated as good service on that defendant.

## **RSC ORDER 11**

### **SERVICE OF PROCESS, ETC., OUT OF THE JURISDICTION**

#### **PRINCIPAL CASES IN WHICH SERVICE OF CLAIM FORM OUT OF JURISDICTION IS PERMISSIBLE**

- Rule 1** |
- (1) Provided that the claim form is not a claim form to which paragraph (2) of this rule applies, a claim form may be served out of the jurisdiction with the permission of the court if –
    - (a) a remedy is sought against a person domiciled within the jurisdiction;
    - (b) an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction (whether or not damages are also claimed in respect of a failure to do or the doing of that thing);
    - (c) the claim is brought against a person duly served within or out of the jurisdiction and a person out of the jurisdiction is a necessary or proper party thereto;

- (d) the claim is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain any other remedy in respect of the breach of a contract, being (in either case) a contract which –
  - (i) was made within the jurisdiction; or
  - (ii) was made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction; or
  - (iii) is by its terms, or by implication, governed by English law, or
  - (iv) contains a term to the effect that the High Court shall have jurisdiction to hear and determine any claim in respect of the contract;
- (e) the claim is brought in respect of a breach committed within the jurisdiction of a contract made within or out of the jurisdiction, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction;
- (f) the claim is founded on a tort and the damage was sustained, or resulted from an act committed, within the jurisdiction;
- (g) the whole subject-matter of the proceedings is land situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to land so situate;
- (h) the claim is brought to construe, rectify, set aside or enforce an act, deed, will, contract, obligation or liability affecting land situate within the jurisdiction;
- (i) the claim is made for a debt secured on immovable property or is made to assert, declare or determine proprietary or possessory rights, or rights of security, in or over movable property, or to obtain authority to dispose of movable property, situate within the jurisdiction;
- (j) the claim is brought to execute the trusts of a written instrument being trusts that ought to be executed according to English law and of which the person to be served with the claim form is a trustee, or for any remedy which might be obtained in any such action;
- (k) the claim is made for the administration of the estate of a person who died domiciled within the jurisdiction or for any remedy which might be obtained in any such action;
- (l) the claim is brought in a probate action;
- (m) the claim is brought to enforce any judgment or arbitral award;
- (n) the claim is brought against a defendant not domiciled in Scotland or Northern Ireland in respect of a claim by the

Commissioners of Inland Revenue for or in relation to any of the duties or taxes which have been, or are for the time being, placed under their care and management;

- (o) the claim is brought under the Nuclear Installations Act 1965<sup>(1)</sup> or in respect of contributions under the Social Security Contributions and Benefits Act 1992<sup>(2)</sup>;
  - (p) the claim is made for a sum to which the Directive of the Council of the European Communities dated 15 March 1976 No. 76/308/EEC applies, and service is to be effected in a country which is a member State of the European Economic Community;
  - (q) the claim is made under the Drug Trafficking Offences Act 1994<sup>(3)</sup>;
  - (r) the claim is made under the Financial Services Act 1986<sup>(4)</sup> or the Banking Act 1987<sup>(5)</sup>;
  - (s) the claim is made under Part VI of the Criminal Justice Act 1988<sup>(6)</sup>;
  - (t) the claim is brought for money had and received or for an account or other remedy 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;
  - (u) the claim is made under the Immigration (Carriers' Liability) Act 1987<sup>(7)</sup>.
- (2) A claim form may be served out of the jurisdiction on a defendant without the permission of the court provided that each claim against that defendant is either –
- (a) a claim which by virtue of the Civil Jurisdiction and Judgments Act 1982<sup>(8)</sup> the court has power to hear and determine, made in proceedings to which the following conditions apply –
    - (i) no proceedings between the parties concerning the same cause of action are pending in the courts of any other part of the United Kingdom or of any other Convention territory; and
    - (ii) either the defendant is domiciled in any part of the United Kingdom or in any other Convention territory, or the proceedings begun by the claim form are proceedings to which Article 16 of Schedule 1, 3C or 4 refers, or the defendant is a party to an agreement conferring jurisdiction to which Article 17 of Schedule 1, 3C or 4 to that Act applies; or

(1) 1965 c.57.

(2) 1992 c.4.

(3) 1994 c.37.

(4) 1986 c.60.

(5) 1987 c.22.

(6) 1988 c.33.

(7) 1987 c.24.

(8) 1982 c.27; Schedule 1 was substituted by S.I. 1989/1346; Schedule 3C was inserted by the Civil Jurisdiction and Judgments Act 1991 (c.12), section 1(3), Schedule 1; Schedule 4 was amended by S.I. 1993/603. Sections 41 to 46 were amended by the Civil Jurisdiction and Judgments Act 1991, section 3, Schedule 2, paragraphs 16 to 21.

- (b) a claim which by virtue of any other enactment the High Court has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction.
- (4) For the purposes of this rule, and of rule 9 of this order, domicile is to be determined in accordance with the provisions of sections 41 to 46 of the Civil Jurisdiction and Judgments Act 1982 and 'Convention territory' means the territory or territories of any Contracting State, as defined by section 1(3) of that Act, to which, as defined in section 1(1) of that Act, the Brussels or the Lugano Convention apply.

## THE PERIOD FOR FILING AN ACKNOWLEDGMENT OF SERVICE OR FILING OR SERVING AN ADMISSION WHERE THE CLAIM FORM IS SERVED UNDER RULE 1(2)

### Rule 1A

- (1) This rule sets out the period for filing an acknowledgment of service under CPR Part 10 or filing or serving an admission under CPR Part 14 where a claim form has been served out of the jurisdiction under rule 1(2).
- (2) If the claim form is to be served under rule 1(2)(a) in Scotland, Northern Ireland or in the European territory of another contracting state the period is –
  - (a) Where the defendant is served with a claim form which states that particulars of claim are to follow, 21 days after the service of the particulars of claim; and
  - (b) in any other case, 21 days after service of the claim form.
- (3) If the claim form is to be served under rule 1(2)(a) in any other territory of a Contracting State the period is –
  - (a) where the defendant is served with a claim form which states that particulars of claim are to follow, 31 days after the service of the particulars of claim; and
  - (b) in any other case, 31 days after service of the claim form.
- (4) If the claim form is to be served under –
  - (a) rule 1(2)(a) in a country not referred to in paragraphs (2) or (3); or
  - (b) rule 1(2)(b),
 the period is set out in the relevant practice direction.

## THE PERIOD FOR FILING A DEFENCE WHERE THE CLAIM FORM IS SERVED UNDER RULE 1(2)

### Rule 1B

- (1) This rule sets out the period for filing a defence under CPR Part 15 where a claim form has been served out of the jurisdiction under rule 1(2).

- (2) If the claim form is to be served under rule 1(2)(a) in Scotland, Northern Ireland or in the European territory of another contracting state the period is –
  - (a) 21 days after service of the particulars of claim; or
  - (b) if the defendant files an acknowledgment of service under CPR Part 10, 35 days after service of the particulars of claim.
- (3) If the claim form is to be served under rule 1(2)(a) in any other territory of a Contracting State the period is –
  - (a) 31 days after service of the particulars of claim; or
  - (b) if the defendant files an acknowledgment of service under CPR Part 10, 45 days after service of the particulars of claim.
- (4) If the claim form is to be served under –
  - (a) rule 1(2)(a) in a country not referred to in paragraphs (2) or (3); or
  - (b) rule 1(2)(b),
 the period is set out in the relevant practice direction.

## APPLICATION FOR, AND GRANT OF, PERMISSION TO SERVE CLAIM FORM OUT OF JURISDICTION

### Rule 4

- (1) An application for the grant of permission under rule 1(1) must be supported by written evidence stating –
  - (a) the grounds on which the application is made;
  - (b) that in the belief of the witness the claimant has a good cause of action;
  - (c) in what place or country the defendant is, or probably may be found; and
  - (d) where the application is made under rule 1(1)(c), the grounds for the belief of the witness that there is between the claimant and the person on whom a claim form has been served a real issue which the claimant may reasonably ask the court to try.
- (2) No such permission shall be granted unless it shall be made sufficiently to appear to the court that the case is a proper one for service out of the jurisdiction under this order.
- (3) Where the application is for the grant of permission under rule 1 to serve a claim form in Scotland or Northern Ireland, if it appears to the court that there may be a concurrent remedy there, the court, in deciding whether to grant permission shall have regard to the comparative cost and convenience of proceeding there or in England, and (where that is relevant) to the powers and jurisdiction of the sheriff court in Scotland or the county courts or courts of summary jurisdiction in Northern Ireland.

- (4) An order granting under rule 1 permission to serve a claim form, out of the jurisdiction must specify the periods within which the defendant may –
  - (a) file an acknowledgment of service in accordance with CPR Part 10;
  - (b) file or serve an admission in accordance with CPR Part 14; and
  - (c) file a defence in accordance with CPR Part 15.

## SERVICE OF CLAIM FORM ABROAD: GENERAL

### Rule 5

- (1) Subject to paragraphs (2) to (8) of this rule –
  - (a) a claim form must be served personally on each defendant by the claimant or his agent;
  - (b) where a defendant's solicitor indorses on the claim form a statement that he accepts service of the claim form on behalf of that defendant, the claim form shall be deemed to have been duly served on that defendant and to have been so served on the date on which the indorsement was made;
  - (c) where a claim form is not duly served on a defendant but he acknowledges service of it, the claim form shall be deemed, unless the contrary is shown, to have been duly served on him and to have been so served on the date on which he acknowledges service;
  - (d) CPR rule 6.8 (service by an alternative method) shall apply in relation to the claim form.
- (2) Nothing in this rule or in any order or direction of the court made by virtue of it shall authorise or require the doing of anything in a country in which service is to be effected which is contrary to the law of that country.
- (3) A claim form which is to be served out of the jurisdiction –
  - (a) need not be served personally on the person required to be served so long as it is served on him in accordance with the law of the country in which service is effected; and
  - (b) need not be served by the claimant or his agent if it is served by a method provided for by rule 6 or rule 7.
- (5) An official certificate stating that a claim form as regards which rule 6 has been complied with has been served on a person personally or in accordance with the law of the country in which service was effected, on a specified date, being a certificate –
  - (a) by a British consular authority in that country;
  - (b) by the government or judicial authorities of that country; or

- (c) by any other authority designated in respect of that country under the Hague Convention,  
shall be evidence of the facts so stated.
- (6) An official certificate by the Secretary of State stating that a claim form has been duly served on a specified date in accordance with a request made under rule 7 shall be evidence of that fact.
- (7) A document purporting to be such a certificate as is mentioned in paragraph (5) or (6) shall, until the contrary is proved, be deemed to be such a certificate.
- (8) In this rule and rule 6 'the Hague Convention' means the Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters signed at the Hague on 15 November, 1965.

## SERVICE OF CLAIM FORM ABROAD THROUGH FOREIGN GOVERNMENTS, JUDICIAL AUTHORITIES AND BRITISH CONSULS

### Rule 6

- (1) Save where a claim form is to be served pursuant to paragraph (2A) this rule does not apply to service in –
  - (a) Scotland, Northern Ireland, the Isle of Man or the Channel Islands;
  - (b) any independent Commonwealth country;
  - (c) any associated state;
  - (d) any colony;
  - (e) the Republic of Ireland.
- (2) Where in accordance with these rules a claim form is to be served on a defendant in any country with respect to which there subsists a Civil Procedure Convention (other than the Hague Convention) providing for service in that country of process of the High Court, the claim form may be served –
  - (a) through the judicial authorities of that country; or
  - (b) through a British consular authority in that country (subject to any provision of the convention as to the nationality of persons who may be so served).
- (2A) Where in accordance with these rules a claim form is to be served on a defendant in any country which is a party to the Hague Convention, the claim form may be served –
  - (a) through the authority designated under the Convention in respect of that country; or
  - (b) if the law of that country permits –
    - (i) through the judicial authorities of that country, or
    - (ii) through a British consular authority in that country.

- (3) Where in accordance with these rules a claim form is to be served on a defendant in any country with respect to which there does not subsist a Civil Procedure Convention providing for service in that country of process of the High Court, the claim form may be served –
  - (a) through the government of that country, where that government is willing to effect service; or
  - (b) through a British consular authority in that country, except where service through such an authority is contrary to the law of that country.
- (4) A person who wishes to serve a claim form by a method specified in paragraph (2), (2A) or (3) must file in the Central Office of the Supreme Court a request for service of the claim form by that method, together with a copy of the claim form and an additional copy thereof for each person to be served.
- (5) Every copy of a claim form filed under paragraph (4) must be accompanied by a translation of the claim form in the official language of the country in which service is to be effected or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where service is to be effected: provided that this paragraph shall not apply in relation to a copy of a claim form which is to be served in a country the official language of which is, or the official languages of which include, English, or is to be served in any country by a British consular authority on a British subject, unless the service is to be effected under paragraph (2) and the Civil Procedure Convention with respect to that country expressly requires the copy to be accompanied by a translation.
- (6) Every translation lodged under paragraph (5) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualifications for making the translation.
- (7) Documents duly filed under paragraph (4) shall be sent by the Senior Master to the Parliamentary Under-Secretary of State to the Foreign Office with a request that he arrange the claim form to be served by the method indicated in the request lodged under paragraph (4) or, where alternative methods are so indicated, by such one of those methods as is most convenient.

## SERVICE OF CLAIM FORM IN CERTAIN ACTIONS UNDER CERTAIN ACTS

### Rule 7

- (1) Subject to paragraph (4) where a person to whom permission has been granted under rule 1 to serve a claim form on a State, as defined in section 14 of the State Immunity Act 1978<sup>(9)</sup>, wishes to have the claim form served on that State, he must file in the Central Office –

(9) 1978 c.33.

- (a) a request for service to be arranged by the Secretary of State; and
  - (b) a copy of the claim form; and
  - (c) except where the official language of the State is, or the official languages of the State include, English, a translation of the claim form in the official language or one of the official languages of that State.
- (2) Rule 6(6) shall apply in relation to a translation filed under paragraph (1) of this rule as it applies in relation to a translation filed under paragraph (5) of that rule.
  - (3) Documents duly filed under this rule shall be sent by the Senior Master to the Secretary of State with a request that the Secretary of State arrange for the claim form to be served.
  - (4) Where section 12(6) of the State Immunity Act 1978 applies and the State has agreed to a method of service other than that provided by the preceding paragraphs, the claim form may be served either by the method agreed or in accordance with the preceding paragraphs of this rule.

## UNDERTAKING TO PAY EXPENSES OF SERVICE BY SECRETARY OF STATE

- Rule 8** | Every request lodged under rule 6(4) or rule 7 must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Secretary of State in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the Finance Officer of the office of the Secretary of State and to produce a receipt for the payment to the proper officer of the High Court.

## APPLICATIONS FOR AN INTERIM REMEDY UNDER SECTION 25(1) OF THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982

- Rule 8A** |
- (1) A claim form for an interim remedy under section 25(1) of the Civil Jurisdiction and Judgments Act 1982<sup>(10)</sup> (as extended by Order in Council made under section 25(3)) may be served out of the jurisdiction with the permission of the court.
  - (2) An application for the grant of permission under paragraph (1) must be supported by written evidence stating –
    - (a) the grounds on which the application is made;
    - (b) that in the belief of the witness the claimant has a good claim to an interim remedy;
    - (c) in what place or country the defendant is, or probably may be, found.

(10) 1982 c.27. Section 25 was amended by the Civil Jurisdiction and Judgments Act 1991 (c.12), section 3, Schedule 2, paragraph 12.

- (3) The following provisions of this order shall apply, with the necessary modifications, where service is to be effected under this rule as they apply where service is effected under rule 1 –

Rule 1A (period for acknowledging service or filing or serving admission)

Rule 1B (period for filing defence);

Rule 4 (2), (3) and (4) (grant of permission);

Rule 5 (service of claim form abroad: general);

Rule 6 (service of claim form abroad through foreign governments, etc.); and

Rule 8 (undertaking to pay expenses of service).

## SERVICE OF PETITION AND ORDER ETC.

- Rule 9 |
- (1) Rule 1 of this order shall apply to the service out of the jurisdiction of a petition or an application notice issued before proceedings have started as it applies to service of a claim form.
- (4) Any application notice issued or order made in any proceedings may be served out of the jurisdiction with the permission of the court but permission shall not be required for such service in any proceedings in which the claim form may by these rules or under any Act be served out of the jurisdiction without permission.
- (5) Rule 4 (1), (2) and (3) shall, so far as applicable, apply in relation to an application for the grant of permission under this rule as they apply in relation to an application for the grant of permission under rule 1.
- (7) Rules 5, 6 and 8 shall apply in relation to any document for the service of which out of the jurisdiction permission has been granted under this rule as they apply in relation to a claim form.

## SERVICE OF PART 20 CLAIM FORM

- Rule 9A |
- (1) This rule applies to any Part 20 claim, except
- a counterclaim; and
  - a claim for a contribution or indemnity made in accordance with CPR rule 20.6
- (2) Permission may be granted to serve a Part 20 claim form on any necessary or proper party to the proceedings brought against the defendants in accordance with rule 1(1) (c).

## ORDER TO APPLY TO COUNTY COURT

**Rule 10** | This order applies to proceedings in any county court in addition to proceedings in the High Court.

### RSC ORDER 15

### CAUSES OF ACTION, COUNTERCLAIMS AND PARTIES

## PROCEEDINGS AGAINST ESTATES

- Rule 6A** |
- (1) Where any person against whom a claim would have lain has died but the cause of action survives, the claim may, if no grant of probate or administration has been made, be brought against the estate of the deceased.
  - (2) Without prejudice to the generality of paragraph (1), a claim brought against 'the personal representatives of A.B. deceased' shall be treated, for the purposes of that paragraph, as having been brought against his estate.
  - (3) A claim purporting to have been commenced against a person shall be treated, if he was dead at its commencement, as having been commenced against his estate in accordance with paragraph (1), whether or not a grant of probate or administration was made before its commencement.
  - (4) In any such claim as is referred to in paragraph (1) or (3) –
    - (a) the claimant shall, during the period of validity for service of the claim form, apply to the court for an order appointing a person to represent the deceased's estate for the purpose of the proceedings or, if a grant of probate or administration has been made for an order that the personal representative of the deceased be made a party to the proceedings, and in either case for an order that the proceedings be carried on against the person appointed or, as the case may be, against the personal representative, as if he had been substituted for the estate;
    - (b) the court may, at any stage of the proceedings and on such terms as it thinks just and either of its own motion or on application, make any such order as is mentioned in paragraph (a) and allow such amendments (if any) to be made and make such other order as the court thinks necessary in order to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon.
  - (5) Before making an order under paragraph (4) the court may require notice to be given to any insurer of the deceased who has an interest in the proceedings and to such (if any) of the persons having an interest in the estate as it thinks fit.
  - (5A) Where an order is made under paragraph (4) appointing the Official Solicitor to represent the deceased's estate, the appointment shall be

limited to his accepting service of the claim form by which the proceedings were begun unless, either on making such an order or on a subsequent application, the court, with the consent of the Official Solicitor, directs that the appointment shall extend to taking further steps in the proceedings.

- (6) Where an order is made under paragraph (4), rules 7(4) and 8(3) and (4) shall apply as if the order had been made under rule 7 on the application of the claimant.
- (7) Where no grant of probate or administration has been made, any judgment or order given or made in the proceedings shall bind the estate to the same extent as it would have been bound if a grant had been made and a personal representative of the deceased had been a party to the proceedings.

## CHANGE OF PARTIES BY REASON OF DEATH, ETC.

### Rule 7

- (1) Where a party to a claim dies or becomes bankrupt but the cause of action survives, the claim shall not abate by reason of the death or bankruptcy.

## FAILURE TO PROCEED AFTER DEATH OF PARTY

### Rule 9

- (1) If after the death of a claimant or defendant in any claim the cause of action survives, but no order under rule 7 is made substituting as claimant any person in whom the cause of claim vests or, as the case may be, the personal representatives of the deceased defendant, the defendant or, as the case may be, those representatives may apply to the court for an order that unless the claim is proceeded with within such time as may be specified in the order the claim shall be struck out as against the claimant or defendant, as the case may be, who has died; but where it is the claimant who has died, the court shall not make an order under this rule unless satisfied that due notice of the application has been given to the personal representatives (if any) of the deceased claimant and to any other interested persons who, in the opinion of the court, should be notified.

## RELATOR ACTIONS

### Rule 11

Before the name of any person is used in any claim as a relator, that person must give a written authorisation so to use his name to his solicitor and the authorisation must be filed in the Central Office of the Supreme Court or Chancery Chambers, or, if the claim form is to issue out of a district registry, in that registry.

## REPRESENTATIVE PROCEEDINGS

### Rule 12

- (1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 13, the

proceedings may be begun, and, unless the court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.

- (2) At any stage of proceedings under this rule the court may, on the application of the claimant, and on such terms, if any, as it thinks fit, appoint any one or more of the defendants or other persons as representing whom the defendants are sued to represent all, or all except one or more, of those persons in the proceedings; and where, in exercise of the power conferred by this paragraph, the court appoints a person not named as a defendant, it shall make an order adding that person as a defendant.
- (3) A judgment or order given in proceedings under this rule shall be binding on all the persons as representing whom the claimants sue or, as the case may be, the defendants are sued, but shall not be enforced against any person not a party to the proceedings except with the permission of the court.
- (4) An application for the grant of permission under paragraph (3) must be made in accordance with CPR Part 23 (general rules about applications for court orders) and the application notice must be served personally on the person against whom it is sought to enforce the judgment or order.
- (5) Notwithstanding that a judgment or order to which any such application relates is binding on the person against whom the application is made, that person may dispute liability to have the judgment or order enforced against him on the ground that by reason of facts and matters particular to his case he is entitled to be exempted from such liability.
- (6) The court hearing an application for the grant of permission under paragraph (3) may order the question whether the judgment or order is enforceable against the person against whom the application is made to be tried and determined in any manner in which any issue or question in claim may be tried and determined.

## DERIVATIVE CLAIMS

### Rule 12A

- (1) This rule applies to every claim by one or more shareholders of a company where the cause of action is vested in the company and relief is accordingly sought on its behalf (referred to in this rule as a 'derivative claim').
- (2) Where a defendant in a derivative claim has responded to the particulars of claim, the claimant must apply to the court for permission to continue the claim.
- (3) The application must be supported by a witness statement or affidavit verifying the facts on which the claim and the entitlement to sue on behalf of the company are based.

- (4) Unless the court otherwise orders, the application must be issued within 21 days after the relevant date, and must be served, together with the witness statement or affidavit in support and any exhibits to the witness statement or affidavit, not less than 10 clear days before the return day on all defendants who have responded to the particulars of claim; any defendant so served may show cause against the application by witness statement or affidavit or otherwise.
- (5) In paragraph (4), 'the relevant date' means the later of –
  - (a) the date of service of the particulars of claim; and
  - (b) the date when the defendant responded to the particulars of claim (provided that, where there is more than one defendant, that date shall be the earliest date when any of them respond).
- (6) Nothing in this rule shall prevent the claimant from applying for interim relief pending the determination of an application for permission to continue the claim.
- (7) In a derivative claim, CPR rule 15.4 (period for filing a defence) shall not have effect unless the Court grants permission to continue the claim and, in that case, shall have effect as if it required the defendant to serve a defence within 14 days after the order giving permission to continue, or within such other period as the court may specify.
- (8) On the hearing of the application under paragraph (2), the court may –
  - (a) grant permission to continue the claim, for such period and upon such terms as the court may think fit;
  - (b) subject to paragraph (11), dismiss the claim;
  - (c) adjourn the application and give such directions as to joinder of parties, the filing of further evidence, disclosure, cross examination of witnesses and otherwise as it may consider expedient.
- (9) If the claimant does not apply for permission to continue the claim as required by paragraph (2) within the time laid down in paragraph (4), any defendant who has responded to the particulars of claim may apply for an order to dismiss the proceedings or any claim made in them by way of derivative claim.
- (10) On the hearing of such an application for dismissal, the court may –
  - (a) subject to paragraph (11), dismiss the claim;
  - (b) if the claimant so requests, grant the claimant (on such terms as to costs or otherwise as the court may think fit) an extension of time to apply for permission to continue the claim; or
  - (c) make such other order as may in the circumstances be appropriate.
- (11) Where only part of the relief claimed is sought on behalf of the company, the court may dismiss the claim for that part of the relief

under paragraphs (8) and (10), without prejudice to the claimant's right to continue the claim as to the remainder of the relief and CPR rule 15.4 (period for filing a defence) shall apply as modified by paragraph (7).

- (12) If there is a material change in circumstances after the Court has given permission to the claimant to continue the claim in pursuance of an application under paragraph (2), any defendant who has responded to the particulars of claim may make an application supported by witness statement or affidavit requiring the claimant to show cause why the court should not dismiss the proceedings or any claim made in them by way of derivative claim. On such application the court shall have the same powers as it would have had upon an application under paragraph (2).
- (13) The claimant may include in an application under paragraph (2) an application for an indemnity out of the assets of the company in respect of costs incurred or to be incurred in the claim and the Court may grant such indemnity upon such terms as may in the circumstances be appropriate.
- (14) So far as possible, any application under paragraph (13) and any application by the claimant under CPR Part 24 shall be made so as to be heard at the same time as the application under paragraph (2).

## REPRESENTATION OF INTERESTED PERSONS WHO CANNOT BE ASCERTAINED, ETC.

### Rule 13

- (1) In any proceedings concerning –
  - (a) the estate of a deceased person; or
  - (b) property subject to a trust; or
  - (c) the construction of a written instrument, including a statute,
 the court, if satisfied that it is expedient so to do, and that one or more of the conditions specified in paragraph (2) are satisfied, may appoint one or more persons to represent any person (including an unborn person) or class who is or may be interested (whether presently or for any future, contingent or unascertained interest) in or affected by the proceedings.
- (2) The conditions for the exercise of the power conferred by paragraph (1) are as follows –
  - (a) that the person, the class or some member of the class, cannot be ascertained or cannot readily be ascertained;
  - (b) that the person, class or some member of the class, though ascertained, cannot be found;
  - (c) that, though the person or the class and the members thereof can be ascertained and found, it appears to the court expedient (regard being had to all the circumstances, including the amount

at stake and the degree of difficulty of the point to be determined) to exercise the power for the purposes of saving expense.

- (3) Where, in any proceedings to which paragraph (1) applies, the court exercises the power conferred by that paragraph, a judgment or order of the court given or made when the person or persons appointed in exercise of that power are before the court shall be binding on the person or class represented by the person or persons so appointed.
- (4) Where, in any such proceedings, a compromise is proposed and some of the persons who are interested in, or who may be affected by, the compromise are not parties to the proceedings (including unborn or unascertained persons) but –
  - (a) there is some other person in the same interest before the court who assents to the compromise or on whose behalf the court sanctions the compromise, or
  - (b) the absent persons are represented by a person appointed under paragraph (1) who so assents,

the court, if satisfied that the compromise will be for the benefit of the absent persons and that it is expedient to exercise this power, may approve the compromise and order that it shall be binding on the absent persons, and they shall be bound accordingly except where the order has been obtained by fraud or non-disclosure of material facts.

## NOTICE OF CLAIM TO NON-PARTIES

### Rule 13A

- (1) At any stage in a claim to which this rule applies, the court may, on the application of any party or of its own motion, direct that notice of the claim be served on any person who is not a party thereto but who will or may be affected by any judgment given therein.
- (2) An application under this rule may be made without notice being served on any other party and shall be supported by a witness statement or affidavit stating the grounds of the application.
- (3) Every notice of a claim under this rule shall be in Form No. 52 in the relevant practice direction and shall be issued out of the appropriate office, and the copy to be served shall be a sealed copy accompanied by a copy of the claim form and of all other statements of case served in the claim and by a form of acknowledgment of service with such modifications as may be appropriate.
- (4) A person may, within 14 days of service on him of a notice under this rule, acknowledge service of the claim form and shall thereupon become a party to the claim, but in default of such acknowledgment and subject to paragraph (5) he shall be bound by any judgment given in the claim as if he was a party thereto.
- (5) If at any time after service of such notice on any person the claim form is amended so as substantially to alter the relief claimed, the

court may direct that the judgment shall not bind such person unless a further notice together with a copy of the amended claim form is issued and served upon him under this rule.

- (6) This rule applies to any claim relating to –
  - (a) the estate of a deceased person; or
  - (b) property subject to a trust.
- (7) CPR rule 7.2(2) shall apply in relation to a notice of a claim under this rule as if the notice were a claim form and the person by whom the notice is issued were the claimant.

## REPRESENTATION OF BENEFICIARIES BY TRUSTEES, ETC.

### Rule 14

- (1) Any proceedings, including proceedings to enforce a security by foreclosure or otherwise, may be brought by or against trustees, executors or administrators in their capacity as such without joining any of the persons having a beneficial interest in the trust or estate, as the case may be; and any judgment or order given or made in those proceedings shall be binding on those persons unless the court in the same or other proceedings otherwise orders on the ground that the trustees, executors or administrators, as the case may be, could not or did not in fact represent the interests of those persons in the first-mentioned proceedings.
- (2) Paragraph (1) is without prejudice to the power of the court to order any person having such an interest as aforesaid to be made a party to the proceedings or to make an order under rule 13.

## REPRESENTATION OF DECEASED PERSON INTERESTED IN PROCEEDINGS

### Rule 15

- (1) Where in any proceedings it appears to the court that a deceased person was interested in the matter in question in the proceedings and that he has no personal representative, the court may, on the application of any party to the proceedings, proceed in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent that estate for the purposes of the proceedings; and any such order, and any judgment or order subsequently given or made in the proceedings, shall bind the estate of the deceased person to the same extent as it would have been bound had a personal representative of that person been a party to the proceedings.
- (2) Before making an order under this rule, the court may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate as it thinks fit.

## DECLARATORY JUDGMENT

- Rule 16** | No claim or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether or not any consequential relief is or could be claimed.

## CONDUCT OF PROCEEDINGS

- Rule 17** | The court may give the conduct of any claim, inquiry or other proceeding to such person as it thinks fit.

### **RSC ORDER 17 INTERPLEADER**

## ENTITLEMENT TO RELIEF BY WAY OF INTERPLEADER

- Rule 1** | (1) Where –
- (a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be, sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto; or
  - (b) claim is made to any money, goods or chattels taken or intended to be taken by a sheriff in execution under any process, or to the proceeds or value of any such goods or chattels, by a person other than the person against whom the process is issued,
- the person under liability as mentioned in sub-paragraph (a) or (subject to rule 2) the sheriff, may apply to the court for relief by way of interpleader.
- (2) References in this Order to a sheriff shall be construed as including references to any other officer charged with the execution of process by or under the authority of the High Court.

## CLAIM TO GOODS, ETC., TAKEN IN EXECUTION

- Rule 2** | (1) Any person making a claim to or in respect of any money, goods or chattels taken or intended to be taken in execution under process of the court, or to the proceeds or value of any such goods or chattels, must give notice of his claim to the sheriff charged with the execution of the process and must include in his notice a statement of his address, and that address shall be his address for service.
- (2) On receipt of a claim made under this rule the sheriff must forthwith give notice thereof to the execution creditor and the execution creditor must, within seven days after receiving the notice, give notice to the sheriff informing him whether he admits or disputes the claim. An execution creditor who gives notice in accordance with this paragraph admitting a claim shall only be liable to the sheriff for any fees and expenses incurred by the sheriff before receipt of that notice.

- (3) Where –
  - (a) the sheriff receives a notice from an execution creditor under paragraph (2) disputing a claim, or the execution creditor fails, within the period mentioned in that paragraph, to give the required notice; and
  - (b) the claim made under this rule is not withdrawn,
 the sheriff may apply to the court for relief under this order.
- (4) A sheriff who receives a notice from an execution creditor under paragraph (2) admitting a claim made under this rule shall withdraw from possession of the money, goods or chattels claimed and may apply to the court for relief under this order of the following kind, that is to say, an order restraining the bringing of a claim against him for or in respect of his having taken possession of that money or those goods or chattels.

## CLAIM IN RESPECT OF GOODS PROTECTED FROM SEIZURE

### Rule 2A

- (1) Where a judgment debtor whose goods have been seized, or are intended to be seized, by a sheriff under a writ of execution claims that such goods are not liable to execution by virtue of section 138(3A) of the Act<sup>(11)</sup>, he must within 5 days of the seizure give notice in writing to the sheriff identifying all those goods in respect of which he makes such a claim and the grounds of such claim in respect of each item.
- (2) Upon receipt of a notice of claim under paragraph (1), the sheriff must forthwith give notice thereof to the execution creditor and to any person who has made a claim to, or in respect of, the goods under rule 2(1) and the execution creditor and any person who has made claim must, within 7 days of receipt of such notice, inform the sheriff in writing whether he admits or disputes the judgment debtor's claim in respect of each item.
- (3) The sheriff shall withdraw from possession of any goods in respect of which the judgment debtor's claim is admitted or if the execution creditor or any person claiming under rule 2(1) fails to notify him in accordance with paragraph (2) and the sheriff shall so inform the parties in writing.
- (4) Where the sheriff receives notice from –
  - (a) the execution creditor; or
  - (b) any such person to whom notice was given under paragraph (2),
 that the claim or any part thereof is disputed, he must forthwith seek the directions of the court and may include therein an application for an order restraining the bringing of any claim against him for, or in

(11) Section 138 was amended by the Administration of Justice Act 1985 (c.61), sections 55 and 67(2); and by the Courts and Legal Services Act 1990 (c.41), section 125(2), Schedule 17, paragraph 17.

respect of, his having seized any of those goods or his having failed so to do.

- (5) The sheriff's application for directions under paragraph (4) shall be made by an application in accordance with CPR Part 23 and, on the hearing of the application, the court may –
  - (a) determine the judgment debtor's claim summarily; or
  - (b) give such directions for the determination of any issue raised by such claim as may be just.
- (6) A Master and a district judge of a district registry shall have power to make an order of the kind referred to in paragraph (4) and the reference to Master shall be construed in accordance with rule 4.

## MODE OF APPLICATION

### Rule 3

- (1) An application for relief under this order must be made by claim form unless made in an existing claim, in which case it must be made by accordance with CPR Part 23.
- (2) Where the applicant is a sheriff who has withdrawn from possession of money, goods or chattels taken in execution and who is applying for relief under rule 2(4) the claim form must be served on any person who made a claim under that rule to or in respect of that money or those goods or chattels, and that person may attend the hearing of the application.
- (4) Subject to paragraph (5) a claim form or application notice under this rule must be supported by evidence that the applicant –
  - (a) claims no interest in the subject-matter in dispute other than for charges or costs;
  - (b) does not collude with any of the claimants to that subject-matter; and
  - (c) is willing to pay or transfer that subject-matter into court or to dispose of it as the court may direct.
- (5) Where the applicant is a sheriff, he shall not provide such evidence as is referred to in paragraph (4) unless directed by the court to do so.
- (6) Any person who makes a claim under rule 2 and who is served with a claim form under this rule shall within 14 days serve on the execution creditor and the sheriff a witness statement or affidavit specifying any money and describing any goods and chattels claimed and setting out the grounds upon which such claim is based.
- (7) Where the applicant is a sheriff a claim form under this rule must give notice of the requirement in paragraph (6).

## TO WHOM SHERIFF MAY APPLY FOR RELIEF

**Rule 4** | An application to the court for relief under this order may, if the applicant is a sheriff, be made –

- (a) where the claim in question is proceeding in the Royal Courts of Justice, to a Master or, if the execution to which the application relates has been or is to be levied in the district of a District Registry, either to a Master or to the district judge of that Registry;
- (b) where the claim in question is proceeding in a District Registry, to the district judge of that Registry or, if such execution has been or is to be levied in the district of some other District Registry or outside the district of any District Registry, either to the said district judge or to the district judge of that other registry or to a Master as the case may be.

Where the claim in question is proceeding in the Admiralty Court or the Family Division, references in this rule to a Master shall be construed as references to the Admiralty Registrar or to a Registrar of that Division.

## POWERS OF COURT HEARING CLAIM

- Rule 5** |
- (1) Where on the hearing of a claim under this order all the persons by whom adverse claims to the subject-matter in dispute (hereafter in this Order referred to as ‘the interpleader claimants’) appear, the court may order –
    - (a) that any interpleader claimant be made a defendant in any claim pending with respect to the subject-matter in dispute in substitution for or in addition to the applicant for relief under this order; or
    - (b) that an issue between the interpleader claimants be stated and tried and may direct which of the interpleader claimants is to be claimant and which defendant.
  - (2) Where –
    - (a) the applicant under this order is a sheriff; or
    - (b) all the interpleader claimants consent or any of them so requests; or
    - (c) the question at issue between the interpleader claimants is a question of law and the facts are not in dispute,
 

the court may summarily determine the question at issue between the interpleader claimants and make an order accordingly on such terms as may be just.
  - (3) Where an interpleader claimant, having been duly served with a claim form under this order, does not appear at the hearing or, having appeared, fails or refuses to comply with an order made in the

proceedings, the court may make an order declaring the interpleader claimant, and all persons claiming under him, for ever barred from prosecuting his claim against the applicant for such relief and all persons claiming under him, but such an order shall not affect the rights of the interpleader claimants as between themselves.

## POWER TO ORDER SALE OF GOODS TAKEN IN EXECUTION

- Rule 6** | Where an application for relief under this order is made by a sheriff who has taken possession of any goods or chattels in execution under any process, and an interpleader claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the court may order those goods or chattels or any part thereof to be sold and may direct that the proceeds of sale be applied in such manner and on such terms as may be just and as may be specified in the order.

## POWER TO STAY PROCEEDINGS

- Rule 7** | Where a defendant to a claim applies for relief under this Order in the claim, the court may by order stay all further proceedings in the claim.

## OTHER POWERS

- Rule 8** |
- (1) Subject to the foregoing rules of this Order, the court may in or for the purposes of any interpleader proceedings make such order as to costs or any other matter as it thinks just.
  - (2) Where the interpleader claimant fails to appear at the hearing, the Court may direct that the sheriff's and execution creditor's costs shall be assessed by a master or, where the hearing was heard in a district registry, by a district judge of that registry and the following CPR rules shall apply –
    - (a) 44.4 (basis of assessment);
    - (b) 44.5 (factors to be taken into account in deciding the amount of costs);
    - (c) 48.4 (limitations on court's power to award costs in favour of trustee or personal representative); and
    - (d) 48.6 (litigants in person).
  - (3) Where the claim in question is proceeding in the Admiralty Court or the Family Division, references in this rule to a Master shall be construed as references to the Admiralty Registrar or to a Registrar of that Division.

## ONE ORDER IN SEVERAL PROCEEDINGS

- Rule 9** | Where the Court considers it necessary or expedient to make an order in any interpleader proceedings in several proceedings pending in several

Divisions, or before different judges of the same Division, the court may make such an order; and the order shall be entitled in all those causes or matters and shall be binding on all the parties to them.

## DISCLOSURE

- Rule 10 | CPR Parts 31 and 18 shall, with the necessary modifications, apply in relation to an interpleader issue as they apply in relation to any other proceedings.

## TRIAL OF INTERPLEADER ISSUE

- Rule 11 |
- (1) CPR Part 39 shall, with the necessary modifications, apply to the trial of an interpleader issue as it applies to the trial of a claim.
  - (2) The court by whom an interpleader issue is tried may give such judgment or make such order as finally to dispose of all questions arising in the interpleader proceedings.

## RSC ORDER 23 SECURITY FOR COSTS

## ORDER TO APPLY TO HIGH COURT AND COUNTY COURT

- Rule A1 | This order applies to proceedings both in the High Court and the county court.

## SECURITY FOR COSTS OF PROCEEDINGS, ETC.

- Rule 1 |
- (1) Where, on the application of a defendant, it appears to the court –
    - (a) that the claimant is ordinarily resident out of the jurisdiction; or
    - (b) that the claimant (not being a claimant who is suing in a representative capacity) is a nominal claimant who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so; or
    - (c) subject to paragraph (2) that the claimant's address is not stated in the claim form or other originating process or is incorrectly stated therein; or
    - (d) that the claimant has changed his address during the course of the proceedings with a view to evading the consequences of the litigation,
 then if, having regard to all the circumstances of the case, the court thinks it just to do so, it may order the claimant to give such security for the defendant's costs of the proceedings as it thinks just.

- (2) The court shall not require a claimant to give security by reason only of paragraph (1)(c) if he satisfies the court that the failure to state his address or the mis-statement thereof was made innocently and without intention to deceive.
- (3) The references in the foregoing paragraphs to a claimant and a defendant shall be construed as references to the person (howsoever described on the record) who is in the position of claimant or defendant, as the case may be, in the proceeding in question, including a proceeding on a counterclaim.

## MANNER OF GIVING SECURITY

- Rule 2** | Where an order is made requiring any party to give security for costs, the security shall be given in such manner, at such time, and on such terms (if any) as the court may direct.

## SAVING FOR ENACTMENTS

- Rule 3** | This order is without prejudice to the provisions of any enactment which empowers the court to require security to be given for the costs of any proceedings.

## RSC ORDER 30 RECEIVERS

## ORDER TO APPLY TO HIGH COURT AND COUNTY COURT

- Rule A1** | This order applies to proceedings both in the High Court and the county court.

## APPLICATION FOR RECEIVER AND INJUNCTION

- Rule 1** |
- (1) An application for the appointment of a receiver made in existing proceedings must be made in accordance with CPR Part 23 and the practice direction supplementing that Part.
  - (2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for such order.
  - (3) The relevant practice direction will apply to an application for the immediate grant of such an injunction.

## GIVING OF SECURITY BY RECEIVER

- Rule 2** |
- (1) A judgment or order directing the appointment of a receiver may include such directions as the court thinks fit as to the giving of security by the person appointed.

- (2) Where by virtue of any judgment or order appointing a person named therein to be receiver a person is required to give security in accordance with this rule he must give security approved by the court duly to account for what he receives as receiver and to deal with it as the court directs.
- (3) Unless the court otherwise directs, the security shall be by guarantee.
- (4) The guarantee must be filed in the office or registry of the court in which the claim is proceeding and it shall be kept as of record until duly vacated.

## REMUNERATION OF RECEIVER

### Rule 3

- (1) A person appointed receiver shall be allowed such proper remuneration, if any, as may be authorised by the court.
- (2) The court may direct that such remuneration shall be -
  - (a) fixed by reference to such scales or rates of professional charges as it thinks fit; or
  - (b) assessed by a costs judge or a district judge.
- (3) Where remuneration is assessed by a costs judge or district judge following a direction under paragraph 2(b), CPR rules 44.4(1) and (2) and 44.5(1) will apply as though the remuneration were costs directed to be assessed on the standard basis.
- (4) An appeal shall lie from the assessment in accordance with section 8 of CPR Part 47 (CPR rules 47.21 to 47.27)

## SERVICE OF ORDER AND NOTICE

### Rule 4

A copy of the judgment or order appointing a receiver shall be served by the party having conduct of the proceedings on the receiver and all other parties to the proceedings in which the receiver has been appointed.

## RECEIVER'S ACCOUNTS

### Rule 5

- (1) A receiver shall submit such accounts to such parties at such intervals or on such dates as the court may direct.
- (2) Any party to whom a receiver is required to submit accounts may, on giving reasonable notice to the receiver, inspect, either personally or by an agent, the books and other papers relating to such accounts.
- (3) Any party who is dissatisfied with the accounts of the receiver may give notice specifying the item or items to which objection is taken and requiring the receiver within not less than 14 days to file his accounts with the court and a copy of such notice shall be filed in the office or registry of the court dealing with the proceedings.

- (4) Following an examination by or on behalf of the court of an item or items in an account to which objection is taken the result of such examination must be certified by a Master, the Admiralty Registrar, a district judge of the Family Division or a district judge, as the case may be, and an order may thereupon be made as to the incidence of any costs or expenses incurred.

## PAYMENT INTO COURT BY RECEIVER

- Rule 6** | The court may fix the amounts and frequency of payments into court to be made by a receiver.

## DEFAULT BY RECEIVER

- Rule 7** |
- (1) Where a receiver fails to attend for the examination of any account of his, or fails to submit any account, provide access to any books or papers or do any other thing which he is required to submit, provide or do, he and any or all of the parties to the cause or matter in which he was appointed may be required to attend the court to show cause for the failure, and the court may give such directions as it thinks proper including, if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.
  - (2) Without prejudice to paragraph (1) where a receiver fails to attend for the examination of any account of his or fails to submit any account or fails to pay into court on the date fixed by the court any sum required to be so paid, the court may disallow any remuneration claimed by the receiver and may, where he has failed to pay any such sum into court, charge him with interest at the rate currently payable in respect of judgment debts in the High Court on that sum while in his possession as receiver.

## DIRECTIONS TO RECEIVERS

- Rule 8** | A receiver may at any time request the court to give him directions and such request shall state in writing the matters with regard to which directions are required.

### **RSC ORDER 31**

### **SALES, ETC. OF LAND BY ORDER OF COURT: CONVEYANCING COUNSEL OF THE COURT**

## ORDER TO APPLY TO HIGH COURT AND COUNTY COURT

- Rule A1** | This order applies to proceedings both in the High Court and the county court.

## I. SALES, ETC. OF LAND BY ORDER OF COURT

### POWER TO ORDER SALE OF LAND

**Rule 1** | Where in any proceedings relating to any land it appears necessary or expedient for the purposes of the proceedings that the land or any part thereof should be sold, the court may order that land or part to be sold, and any party bound by the order and in possession of that land or part, or in receipt of the rents and profits thereof, may be compelled to deliver up such possession or receipt to the purchaser or to such other person as the court may direct.

In this order 'land' includes any interest in, or right over, land.

### MANNER OF CARRYING OUT SALE

- Rule 2** |
- (1) Where an order is made directing any land to be sold, the court may permit the party or person having the conduct of the sale to sell the land in such manner as he thinks fit, or may direct that the land be sold in such manner as the court may either by the order or subsequently direct for the best price that can be obtained, and all proper parties shall join in the sale and conveyance as the court shall direct.
  - (2) The court may give such directions as it thinks fit for the purpose of effecting the sale, including, without prejudice to the generality of the foregoing words, directions –
    - (a) appointing the party or person who is to have the conduct of the sale;
    - (b) fixing the manner of sale, whether by contract conditional on the approval of the court, private treaty, public auction, tender or some other manner;
    - (c) fixing a reserve or minimum price;
    - (d) requiring payment of the purchase money into court or to trustees or other persons;
    - (e) for settling the particulars and conditions of sale;
    - (f) for obtaining evidence of the value of the property;
    - (g) fixing the security (if any) to be given by the auctioneer, if the sale is to be by public auction, and the remuneration to be allowed him;
    - (h) requiring an abstract of the title to be referred to conveyancing counsel of the court or some other conveyancing counsel for his opinion thereon and to settle the particulars and conditions of sale.

## CERTIFYING RESULT OF SALE

- Rule 3 | (1) If either the court has directed payment of the purchase money into court or the court so directs, the result of a sale by order of the court must be certified –
- (a) in the case of a sale by public auction, by the auctioneer who conducted the sale; and
  - (b) in any other case, by the solicitor of the party or person having the conduct of the sale,
- and the court may require the certificate to be verified by the witness statement or affidavit of the auctioneer or solicitor, as the case may be.
- (2) The solicitor of the party or person having the conduct of the sale must file the certificate and any witness statement or affidavit in the office of the court dealing with the proceedings.

## MORTGAGE, EXCHANGE OR PARTITION UNDER ORDER OF THE COURT

- Rule 4 | Rules 2 and 3 shall, so far as applicable and with the necessary modifications, apply in relation to the mortgage, exchange or partition of any land under an order of the court as they apply in relation to the sale of any land under such an order.

## II. CONVEYANCING COUNSEL OF THE COURT

### REFERENCE OF MATTERS TO CONVEYANCING COUNSEL OF COURT

- Rule 5 | The court may refer to the conveyancing counsel of the court –
- (a) any matter relating to the investigation of the title to any property with a view to an investment of money in the purchase or on mortgage thereof, or with a view to the sale thereof;
  - (b) any matter relating to the settlement of a draft of a conveyance, mortgage, settlement or other instrument; and
  - (c) any other matter it thinks fit,
- and may act upon his opinion in the matter referred.

### OBJECTION TO CONVEYANCING COUNSEL'S OPINION

- Rule 6 | Any party may object to the opinion given by any conveyancing counsel on a reference under rule 5, and if he does so the point in dispute shall be determined by the judge.

### OBTAINING COUNSEL'S OPINION ON REFERENCE

- Rule 8 | The order referring any matter to conveyancing counsel of the court shall be recorded in the books of the court and a copy of such order shall be

sent by the court to counsel and shall constitute sufficient authority for him to proceed with the reference.

## **RSC ORDER 44**

### **PROCEEDINGS UNDER JUDGMENTS AND ORDERS: CHANCERY DIVISION**

#### **APPLICATION TO ORDERS**

**Rule 1** | In this order references to a judgment include references to an order.

#### **SERVICE OF NOTICE OF JUDGMENT ON PERSON NOT A PARTY**

- Rule 2** |
- (1) Where in a claim for –
    - (a) the administration of the estate of a deceased person; or
    - (b) the execution of a trust; or
    - (c) the sale of any property,
 the court gives a judgment or makes a direction which affects persons not parties to the claim, the court may when giving the judgment or at any stage of the proceedings under the judgment direct notice of the judgment to be served on any such person and any person so served shall, subject to paragraph (4), be bound by the judgment as if he had originally been a party to the claim.
  - (2) If it appears that it is not practicable to serve notice of a judgment on a person directed to be served the court may dispense with service and may also order that such person be bound by the judgment.
  - (3) Every notice of a judgment for service under this rule must be indorsed with a memorandum in Form No. 52A in the relevant practice direction and accompanied by a form of acknowledgment of service with such modifications as may be appropriate and the copy of the notice to be served shall be a sealed copy.
  - (4) A person served with notice of a judgment may, within one month after service of the notice on him, and after acknowledging service apply to the court to discharge, vary or add to the judgment.
  - (5) A person served with notice of a judgment may, after acknowledging service of the notice, attend the proceedings under the judgment.
  - (6) CPR Part 10 except for CPR rule 10.2 shall apply in relation to the acknowledgment of service of a notice of judgment as if the judgment were a claim form, the person by whom the notice is served were the claimant and the person on whom it is served were a defendant.

#### **DIRECTIONS BY THE COURT**

- Rule 3** |
- (1) Where a judgment given in a proceedings in the Chancery Division contains directions which make it necessary to proceed in private

under the judgment the court may, when giving the judgment or at any time during proceedings under the judgment, give further directions for the conduct of those proceedings, including, in particular, directions with respect to –

- (a) the manner in which any account or inquiry is to be prosecuted;
- (b) the evidence to be adduced in support thereof;
- (c) the preparation and service on the parties to be bound thereby of the draft of any deed or other instrument which is directed by the judgment to be settled by the court and the service of any objections to the draft;
- (d) the parties required to attend all or any part of the proceedings;
- (e) the representation by the same solicitors of parties who constitute a class and by different solicitors of parties who ought to be separately represented; and
- (f) the time within which each proceeding is to be taken, and may fix a day or days for the further attendance of the parties.

(2) The court may revoke or vary any directions given under this rule.

## APPLICATION OF RULES 5 TO 8

Rule 4 | Rules 5 to 8 apply –

- (a) where in proceedings for the administration under the direction of the court of the estate of a deceased person the judgment directs any account of debts or other liabilities of the deceased's estate to be taken or any inquiry for next of kin or other ascertained claimants to be made; and
- (b) where in proceedings for the execution under the direction of the court of a trust the judgment directs any such inquiry to be made,

and those rules shall, with the necessary modifications, apply where in any other proceedings the judgment directs an account of debts or other liabilities to be taken or any inquiry to be made.

## ADVERTISEMENTS FOR CREDITORS AND OTHER CLAIMANTS

Rule 5 | The court may, when giving a judgment or at any stage of proceedings under a judgment, give directions for the issue of advertisements for creditors or other claimants and may fix the time within which creditors and claimants may respond.

## EXAMINATION OF CLAIMS

Rule 6 | (1) Where an account of debts or other liabilities of the estate of a deceased person has been directed, such party as the court may direct must –

- (a) examine the claims of persons claiming to be creditors of the estate;
  - (b) determine, so far as he is able, to which of such claims the estate is liable; and
  - (c) at least seven clear days before the time appointed for adjudicating on claims, make a witness statement or affidavit stating his findings and his reasons for them and listing all the other debts of the deceased which are or may still be due.
- (2) Where an inquiry for next of kin or other unascertained claimants has been directed, such party as the court may direct must –
- (a) examine the claims;
  - (b) determine, so far as he is able, which of them are valid; and
  - (c) at least seven clear days before the time appointed for adjudicating on claims, make a witness statement or affidavit stating his findings and his reasons for them.
- (3) If the personal representatives or trustees concerned are not the parties directed by the court to examine claims, they must join with the party directed to examine them in making the witness statement or affidavit required by this rule.

## ADJUDICATION ON CLAIMS

Rule 7 | For the purpose of adjudicating on claims the court may –

- (a) direct any claim to be investigated in such manner as it thinks fit;
- (b) require any claimant to attend and prove his claim or to furnish further particulars or evidence of it; or
- (c) allow any claim after or without proof thereof.

## NOTICE OF ADJUDICATION

Rule 8 | The court shall give directions that there be served on every creditor whose claim or any part thereof has been allowed or disallowed, and who did not attend when the claim was disposed of, a notice informing him of that fact.

## INTEREST ON DEBTS

- Rule 9 | (1) Where an account of the debts of a deceased person is directed by any judgment, then, unless the deceased's estate is insolvent or the court otherwise orders, interest shall be allowed –
- (a) on any such debt as carries interest, at the rate it carries; and
  - (b) on any other debt, from the date of the judgment at the rate payable on judgment debts at that date.

- (2) A creditor who has established his debt in proceedings under the judgment and whose debt does not carry interest shall be entitled to interest on his debt in accordance with paragraph (1)(b) out of any assets which may remain after satisfying the costs of the proceedings, the debts which have been established and the interest on such of those debts as by law carry interest.
- (3) For the purpose of this rule 'debt' includes funeral, testamentary or administration expenses and, in relation to expenses incurred after the judgment, for the reference in paragraph (1)(b) to the date of the judgment there shall be substituted a reference to the date when the expenses became payable.

## INTEREST ON LEGACIES

### Rule 10

Where an account of legacies is directed by any judgment, then, subject to any directions contained in the will or codicil in question and to any order made by the court, interest shall be allowed on each legacy at the rate of 6 per cent. per annum beginning at the expiration of one year after the testator's death.

## MASTER'S ORDER

### Rule 11

- (1) The result of proceedings before a Master under a judgment shall be stated in the form of an order.
- (2) Subject to any direction of the Master under paragraph (3) or otherwise an order under this rule shall have effect as a final order disposing of the proceedings in which it is made.
- (3) An order under this rule shall contain such directions as the Master thinks fit as to the further consideration of the proceedings in which it is made.
- (4) Every order made under this rule shall have immediate binding effect on the parties to the proceedings in which it is made and copies of the order shall be served on such of the parties as the Master may direct.

## APPEAL AGAINST MASTER'S ORDER

### Rule 12

Subject to Order 58, rule 2, rule 1 of that order shall apply to an order made pursuant to rule 11 above, save that –

- (a) except where paragraph (e) below applies, the notice referred to in Order 58, rule 1(2) shall state the grounds of the appeal, and must be issued within 14 days after the order is made;
- (c) no fresh evidence (other than evidence as to matters which have occurred after the date of the Master's order) shall be admitted except on special grounds;

- (d) the judge hearing the appeal shall have the same power to draw inferences of fact as has the Court of Appeal under Order 59, rule 10(3);
- (e) if the order is to be acted on by the Accountant-General or is an order passing a receiver's account, notice of appeal must be issued not later than two clear days after the making of the order and, where the order is to be acted on by the Accountant-General, a copy of it must be served on the Accountant-General as soon as practicable after it is made.

## **RSC ORDER 45**

### **ENFORCEMENT OF JUDGMENTS AND ORDERS: GENERAL**

#### **ENFORCEMENT OF JUDGMENT, ETC., FOR PAYMENT OF MONEY**

##### **Rule 1**

- (1) Subject to the provisions of these rules, a judgment or order for the payment of money, not being a judgment or order for the payment of money into court, may be enforced by one or more of the following means, that is to say –
  - (a) writ of fieri facias;
  - (b) garnishee proceedings;
  - (c) a charging order;
  - (d) the appointment of a receiver;
  - (e) in a case in which rule 5 applies, an order of committal;
  - (f) in such a case, writ of sequestration.
- (2) Subject to the provisions of these rules, a judgment or order for the payment of money into court may be enforced by one or more of the following means, that is to say –
  - (a) the appointment of a receiver;
  - (b) in a case in which rule 5 applies, an order of committal;
  - (c) in such a case, writ of sequestration.
- (3) Paragraphs (1) and (2) are without prejudice to any other remedy available to enforce such a judgment or order as is therein mentioned or to the power of a court under the Debtors Acts 1869 and 1878<sup>(12)</sup>, to commit to prison a person who makes default in paying money adjudged or ordered to be paid by him, or to the right of a person prosecuting a judgment or order for the payment of money to a person to apply under section 105(1) of the County Courts Act 1984, to have the judgment or order enforced in a county court, or to the enactments relating to bankruptcy or the winding up of companies.
- (4) In this order references to any writ shall be construed as including references to any further writ in aid of the first mentioned writ.

(12) 1869 c.62; 1878 c.54.

(13) 1954 c.56.

## NOTICE OF SEIZURE

- Rule 2 | When first executing a writ of fieri facias, the Sheriff or his officer shall deliver to the debtor or leave at each place where execution is levied a notice in Form No. 55 in the relevant Practice Direction informing the debtor of the execution.

## ENFORCEMENT OF JUDGMENT FOR POSSESSION OF LAND

- Rule 3 |
- (1) Subject to the provisions of these rules, a judgment or order for the giving of possession of land may be enforced by one or more of the following means, that is to say –
    - (a) writ of possession;
    - (b) in a case in which rule 5 applies, an order of committal;
    - (c) in such a case, writ of sequestration.
  - (2) A writ of possession to enforce a judgment or order for the giving of possession of any land shall not be issued without the permission of the court except where the judgment or order was given or made in mortgage proceedings to which Order 88 applies.
  - (3) Such permission shall not be granted unless it is shown –
    - (a) that every person in actual possession of the whole or any part of the land has received such notice of the proceedings as appears to the court sufficient to enable him to apply to the court for any relief to which he may be entitled; and
    - (b) if the operation of the judgment or order is suspended by subsection (2) of section 16 of the Landlord and Tenant Act, 1954<sup>(13)</sup>, that the applicant has not received notice in writing from the tenant that he desires that the provisions of paragraphs (a) and (b) of that subsection shall have effect.
  - (4) A writ of possession may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

## ENFORCEMENT OF JUDGMENT FOR DELIVERY OF GOODS

- Rule 4 |
- (1) Subject to the provisions of these rules, a judgment or order for the delivery of any goods which does not give a person against whom the judgment is given or order made the alternative of paying the assessed value of the goods may be enforced by one or more of the following means, that is to say –
    - (a) writ of delivery to recover the goods without alternative provision for recovery of the assessed value thereof (hereafter in this rule referred to as a 'writ of specific delivery');
    - (b) in a case in which rule 5 applies, an order of committal;
    - (c) in such a case, writ of sequestration.

- (2) Subject to the provisions of these rules, a judgment or order for the delivery of any goods or payment of their assessed value may be enforced by one or more of the following means, that is to say –
- (a) writ of delivery to recover the goods or their assessed value;
  - (b) by order of the court, writ of specific delivery;
  - (c) in a case in which rule 5 applies, writ of sequestration.

An application for an order under sub-paragraph (b) shall be made in accordance with CPR Part 23, which must be served on the defendant against whom the judgment or order sought to be enforced was given or made.

- (3) A writ of specific delivery, and a writ of delivery to recover any goods or their assessed value, may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.
- (4) A judgment or order for the payment of the assessed value of any goods may be enforced by the same means as any other judgment or order for the payment of money.

## ENFORCEMENT OF JUDGMENT TO DO OR ABSTAIN FROM DOING ANY ACT

### Rule 5

- (1) Where –

- (a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or, as the case may be, within that time as extended or abridged under a court order or CPR rule 2.11; or
- (b) a person disobeys a judgment or order requiring him to abstain from doing an act,

then, subject to the provisions of these rules, the judgment or order may be enforced by one or more of the following means, that is to say –

- (i) with the permission of the court, a writ of sequestration against the property of that person;
  - (ii) where that person is a body corporate, with the permission of the court, a writ of sequestration against the property of any director or other officer of the body;
  - (iii) subject to the provisions of the Debtors Act 1869 and 1878<sup>(14)</sup>, an order of committal against that person or, where that person is a body corporate, against any such officer.
- (2) Where a judgment or order requires a person to do an act within a time therein specified and an order is subsequently made under rule 6 requiring the act to be done within some other time, references in paragraph (1) of this rule to a judgment or order shall be construed as references to the order made under rule 6.

(14) 1869 c.62; 1878 c.54.

- (3) Where under any judgment or order requiring the delivery of any goods the person liable to execution has the alternative of paying the assessed value of the goods, the judgment or order shall not be enforceable by order of committal under paragraph (1), but the court may, on the application of the person entitled to enforce the judgment or order, make an order requiring the first mentioned person to deliver the goods to the applicant within a time specified in the order, and that order may be so enforced.

## JUDGMENT, ETC. REQUIRING ACT TO BE DONE: ORDER FIXING TIME FOR DOING IT

### Rule 6

- (1) Notwithstanding that a judgment or order requiring a person to do an act specifies a time within which the act is to be done, the court shall have power to make an order requiring the act to be done within another time, being such time after service of that order, or such other time, as may be specified therein.
- (2) Where a judgment or order requiring a person to do an act does not specify a time within which the act is to be done, the court shall have power subsequently to make an order requiring the act to be done within such time after service of that order, or such other time, as may be specified therein.
- (3) An application for an order under this rule must be made in accordance with CPR Part 23 and the application notice must, be served on the person required to do the act in question.

## SERVICE OF COPY OF JUDGMENT, ETC., PREREQUISITE TO ENFORCEMENT UNDER RULE 5

### Rule 7

- (1) In this rule references to an order shall be construed as including references to a judgment.
- (2) Subject to paragraphs (6) and (7) of this rule, an order shall not be enforced under rule 5 unless –
  - (a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question; and
  - (b) in the case of an order requiring a person to do an act, the copy has been so served before the expiration of the time within which he was required to do the act.
- (3) Subject as aforesaid, an order requiring a body corporate to do or abstain from doing an act shall not be enforced as mentioned in rule 5(1)(b)(ii) or (iii) unless –
  - (a) a copy of the order has also been served personally on the officer against whose property permission is sought to issue a writ of sequestration or against whom an order of committal is sought; and

- (b) in the case of an order requiring the body corporate to do an act, the copy has been so served before the expiration of the time within which the body was required to do the act.
- (4) There must be prominently displayed on the front of the copy of an order served under this rule a warning to the person on whom the copy is served that disobedience to the order would be a contempt of court punishable by imprisonment, or (in the case of an order requiring a body corporate to do or abstain from doing an act) punishable by sequestration of the assets of the body corporate and by imprisonment of any individual responsible.
- (5) With the copy of an order required to be served under this rule, being an order requiring a person to do an act, there must also be served a copy of any order or agreement under CPR rule 2.11 extending or abridging the time for doing the act and, where the first-mentioned order was made under rule 5(3) or 6 of this order, a copy of the previous order requiring the act to be done.
- (6) An order requiring a person to abstain from doing an act may be enforced under rule 5 notwithstanding that service of a copy of the order has not been effected in accordance with this rule if the court is satisfied that pending such service, the person against whom or against whose property is sought to enforce the order has had notice thereof either –
  - (a) by being present when the order was made; or
  - (b) by being notified of the terms of the order, whether by telephone, telegram or otherwise.
- (7) The court may dispense with service of a copy of an order under this rule if it thinks it just to do so.

## COURT MAY ORDER ACT TO BE DONE AT EXPENSE OF DISOBEDIENT PARTY

### Rule 8

If an order of mandamus, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to its powers under section 39 of the Act and its powers to punish the disobedient party for contempt, the court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person appointed by the court, at the cost of the disobedient party, and upon the act being done the expenses incurred may be ascertained in such manner as the court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs.

## EXECUTION BY OR AGAINST PERSON NOT BEING A PARTY

### Rule 9

- (1) Any person, not being a party to proceedings, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to the order by the same process as if he were a party.

- (2) Any person, not being a party to proceedings, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to the judgment or order as if he were a party.

## CONDITIONAL JUDGMENT: WAIVER

- Rule 10 | A party entitled under any judgment or order to any relief subject to the fulfilment of any condition who fails to fulfil that condition is deemed to have abandoned the benefit of the judgment or order, and, unless the court otherwise directs, any other person interested may take any proceedings which either are warranted by the judgment or order or might have been taken if the judgment or order had not been given or made.

## MATTERS OCCURRING AFTER JUDGMENT: STAY OF EXECUTION, ETC.

- Rule 11 | Without prejudice to Order 47, rule 1, a party against whom a judgment has been given or an order made may apply to the court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the court may by order grant such relief, and on such terms, as it thinks just.

## FORMS OF WRITS

- Rule 12 |
- (1) A writ of fieri facias must be in such of the Forms Nos. 53 to 63 in the relevant practice direction as is appropriate in the particular case.
  - (2) A writ of delivery must be in Form No. 64 or 65 in the relevant practice direction, whichever is appropriate.
  - (3) A writ of possession must be in Form No. 66 or 66A in the relevant practice direction, whichever is appropriate.
  - (4) A writ of sequestration must be in Form No. 67 in the relevant practice direction.

## ENFORCEMENT OF JUDGMENTS AND ORDERS FOR RECOVERY OF MONEY, ETC.

- Rule 13 |
- (1) Rule 1 (1) of this order, with the omission of sub-paragraphs (e) and (f) thereof, and Orders 46 to 51 shall apply in relation to a judgment or order for the recovery of money as they apply in relation to a judgment or order for the payment of money.
  - (2) Rule 3 of this order, with the omission of paragraphs (1)(b) and (c) thereof, and Order 47, rule 3(2) shall apply in relation to a judgment or order for the recovery of possession of land as they apply in relation to a judgment or order for the giving or delivery of possession of land.

- (3) Rule 4 of this order, with the omission of paragraph 1(b) and (c) and (2)(c) thereof, and Order 47, rule 3(2) shall apply in relation to a judgment or order that a person do have a return of any goods and to a judgment or order that a person do have a return of any goods or do recover the assessed value thereof as they apply in relation to a judgment or order for the delivery of any goods and a judgment or order for the delivery of any goods or payment of the assessed value thereof respectively.

## ENFORCEMENT OF DECISIONS OF VALUE ADDED TAX TRIBUNALS

### Rule 14

- (1) An application under section 29 of the Finance Act 1985<sup>(15)</sup> for registration of a decision of a Value Added Tax Tribunal on an appeal under section 83 of the Value Added Tax Act 1994<sup>(16)</sup> shall be made by a request in writing to the head clerk of the Crown Office –
- (a) exhibiting the decision or a duly authenticated copy thereof;
  - (b) stating, so far as is known to the witness, the name and occupation and the usual or last known address or place of business of the person against whom it is sought to enforce the decision; and
  - (c) stating, to the best of the information and belief of the witness, the amount which as a result of the decision is, or is recoverable as, tax from such person at the date of the application and the amount then remaining unpaid of any costs awarded to the Commissioners of Customs and Excise by the decision.
- (2) Notice of the registration of a decision must be served on the person against whom it is sought to enforce the decision by delivering it to him personally or by sending it to him at his usual or last known address or place of business or in such manner as the court may direct.
- (3) There shall be kept in the Central Office under the direction of the Senior Master a register of the decisions registered under section 29 of the Finance Act 1985, and there shall be included in the register particulars of any execution issued on a decision so registered.

## RSC ORDER 46

## WRITS OF EXECUTION: GENERAL

## DEFINITION

### Rule 1

In this order, unless the context otherwise requires, ‘writ of execution’ includes a writ of fieri facias, a writ of possession, a writ of delivery, a writ of sequestration and any further writ in aid of any of the aforementioned writs.

(15) 1985 c.54.

(16) 1994 c.23.

## WHEN PERMISSION TO ISSUE ANY WRIT OF EXECUTION IS NECESSARY

### Rule 2

- (1) A writ of execution to enforce a judgment or order may not issue without the permission of the court in the following cases, that is to say –
  - (a) where 6 years or more have elapsed since the date of the judgment or order;
  - (b) where any change has taken place, whether by death or otherwise, in the parties entitled or liable to execution under the judgment or order;
  - (c) where the judgment or order is against the assets of a deceased person coming to the hands of his executors or administrators after the date of the judgment or order, and it is sought to issue execution against such assets;
  - (d) where under the judgment or order any person is entitled to a remedy subject to the fulfilment of any condition which it is alleged has been fulfilled;
  - (e) where any goods sought to be seized under a writ of execution are in the hands of a receiver appointed by the court or a sequestrator.
- (2) Paragraph (1) is without prejudice to section 2 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951<sup>(17)</sup>, or any other enactment or rule by virtue of which a person is required to obtain the permission of the court for the issue of a writ of execution or to proceed to execution on or otherwise to the enforcement of a judgment or order.
- (3) Where the court grants permission, whether under this rule or otherwise, for the issue of a writ of execution and the writ is not issued within one year after the date of the order granting such permission, the order shall cease to have effect, without prejudice, however, to the making of a fresh order.

## PERMISSION REQUIRED FOR ISSUE OF WRIT IN AID OF OTHER WRIT

### Rule 3

- A writ of execution in aid of any other writ of execution shall not issue without the permission of the court.

## APPLICATION FOR PERMISSION TO ISSUE WRIT

### Rule 4

- (1) An application for permission to issue a writ of execution may be made in accordance with CPR Part 23 but the application notice need not be served on the respondent unless the court directs.
- (2) Such an application must be supported by a witness statement or affidavit –

(17) 1951 c.65.

- (a) identifying the judgment or order to which the application relates and, if the judgment or order is for the payment of money, stating the amount originally due thereunder and the amount due thereunder at the date the application notice is filed;
  - (b) stating, where the case falls within rule 2(1)(a), the reasons for the delay in enforcing the judgment or order;
  - (c) stating, where the case falls within rule 2(1)(b), the change which has taken place in the parties entitled or liable to execution since the date of the judgment or order;
  - (d) stating, where the case falls within rule 2(1)(c) or (d), that a demand to satisfy the judgment or order was made on the person liable to satisfy it and that he has refused or failed to do so;
  - (e) giving such other information as is necessary to satisfy the court that the applicant is entitled to proceed to execution on the judgment or order in question and that the person against whom it is sought to issue execution is liable to execution on it.
- (3) The court hearing such application may grant permission in accordance with the application or may order that any issue or question, a decision on which is necessary to determine the rights of the parties, be tried in any manner in which any question of fact or law arising in proceedings may be tried and, in either case, may impose such terms as to costs or otherwise as it thinks just.

## APPLICATION FOR PERMISSION TO ISSUE WRIT OF SEQUESTRATION

### Rule 5

- (1) Notwithstanding anything in rules 2 and 4, an application for permission to issue a writ of sequestration must be made in accordance with CPR Part 23 and be heard by a Judge.
- (2) Subject to paragraph (3), the application notice, stating the grounds of the application and accompanied by a copy of the witness statement or affidavit in support of the application, must be served personally on the person against whose property it is sought to issue the writ.
- (3) The court may dispense with service of the application notice under this rule if it thinks it just to do so.
- (4) The judge hearing an application for permission to issue a writ of sequestration may sit in private in any case in which, if the application were for an order of committal, he would be entitled to do so by virtue of Order 52, rule 6 but, except in such a case, the application shall be heard in public.

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(18) 1978 c.33.

## ISSUE OF WRIT OF EXECUTION

### Rule 6

- (1) Issue of a writ of execution takes place on its being sealed by a court officer of the appropriate office.
- (2) Before such a writ is issued, a praecipe for its issue must be filed.
- (3) The praecipe must be signed by or on behalf of the solicitor of the person entitled to execution or, if that person is acting in person, by him.
- (4) No such writ shall be sealed unless at the time of the tender thereof for sealing –
  - (a) the person tendering it produces –
    - (i) the judgment or order on which the writ is to issue, or an office copy thereof;
    - (ii) where the writ may not issue without the permission of the court, the order granting such permission or evidence of the granting of it;
    - (iii) where judgment on failure to acknowledge service has been entered against a State, as defined in section 14 of the State Immunity Act 1978<sup>(18)</sup>, evidence that the State has been served in accordance with CPR rule 40.10 and that the judgment has taken effect; and
  - (b) the court officer authorised to seal it is satisfied that the period, if any, specified in the judgment or order for the payment of any money or the doing of any other act thereunder has expired.
- (5) Every writ of execution shall bear the date of the day on which it is issued.
- (6) In this rule ‘the appropriate office’ means –
  - (a) where the proceedings in which execution is to issue are in a District Registry, that Registry;
  - (b) where the proceedings are in the Principal Registry of the Family Division, that Registry;
  - (c) where the proceedings are Admiralty proceedings or commercial proceedings which are not in a District Registry, the Admiralty and Commercial Registry;
  - (ca) where the proceedings are in the Chancery Division, Chancery Chambers;
  - (d) in any other case, the Central Office of the Supreme Court.

## DURATION AND RENEWAL OF WRIT OF EXECUTION

### Rule 8

- (1) For the purpose of execution, a writ of execution is valid in the first instance for 12 months beginning with the date of its issue.

- (2) Where a writ has not been wholly executed the court may by order extend the validity of the writ from time to time for a period of 12 months at any one time beginning with the day on which the order is made, if an application for extension is made to the court before the day next following that on which the writ would otherwise expire or such later day, if any, as the court may allow.
- (3) Before a writ the validity of which had been extended under paragraph (2) is executed either the writ must be sealed with the seal of the office out of which it was issued showing the date on which the order extending its validity was made or the applicant for the order must serve a notice (in Form No. 71 in the relevant practice direction) sealed as aforesaid, on the sheriff to whom the writ is directed informing him of the making of the order and the date thereof.
- (4) The priority of a writ, the validity of which has been extended under this rule, shall be determined by reference to the date on which it was originally delivered to the sheriff.
- (5) The production of a writ of execution, or of such a notice as is mentioned in paragraph (3) purporting in either case to be sealed as mentioned in that paragraph, shall be evidence that the validity of that writ, or, as the case may be, of the writ referred to in that notice, has been extended under paragraph (2).
- (6) If, during the validity of a writ of execution, an interpleader summons is issued in relation to an execution under that writ, the validity of the writ shall be extended until the expiry of 12 months from the conclusion of the interpleader proceedings.

## RETURN TO WRIT OF EXECUTION

### Rule 9

- (1) Any party at whose instance or against whom a writ of execution was issued may serve a notice on the sheriff to whom the writ was directed requiring him, within such time as may be specified in the notice, to indorse on the writ a statement of the manner in which he has executed it and to send to that party a copy of the statement.
- (2) If a sheriff on whom such a notice is served fails to comply with it the party by whom it was served may apply to the court for an order directing the sheriff to comply with the notice.

## RSC ORDER 47

## WRITS OF FIERI FACIAS

## POWER TO STAY EXECUTION BY WRIT OF FIERI FACIAS

### Rule 1

- (1) Where a judgment is given or an order made for the payment by any person of money, and the court is satisfied, on an application made at the time of the judgment or order, or at any time thereafter, by the judgment debtor or other party liable to execution –

- (a) that there are special circumstances which render it inexpedient to enforce the judgment or order; or
  - (b) that the applicant is unable from any cause to pay the money,
- then, notwithstanding anything in rule 2 or 3, the court may by order stay the execution of the judgment or order by writ of fieri facias either absolutely or for such period and subject to such conditions as the court thinks fit.
- (2) An application under this rule, if not made at the time the judgment is given or order made, must be made in accordance with CPR Part 23 and may be so made notwithstanding that the party liable to execution did not acknowledge service of the claim form or serve a defence or take any previous part in the proceedings.
  - (3) The grounds on which an application under this rule is made must be set out in the application notice and be supported by a witness statement or affidavit made by or on behalf of the applicant substantiating the said grounds and, in particular, where such application is made on the grounds of the applicant's inability to pay, disclosing his income, the nature and value of any property of his and the amount of any other liabilities of his.
  - (4) The application notice and a copy of the supporting witness statement or affidavit must, not less than 4 clear days before the hearing, be served on the party entitled to enforce the judgment or order.
  - (5) An order staying execution under this rule may be varied or revoked by a subsequent order.

## TWO OR MORE WRITS OF FIERI FACIAS

### Rule 2

- (1) A party entitled to enforce a judgment or order by writ of fieri facias may issue two or more such writs, directed to the sheriffs of different counties, at either the same time or different times, to enforce that judgment or order, but no more shall be levied under all those writs together than is authorised to be levied under one of them.
- (2) Where a party issues two or more writs of fieri facias directed to the sheriffs of different counties to enforce the same judgment or order he must inform each sheriff of the issue of the other writ or writs.

## SEPARATE WRITS TO ENFORCE PAYMENT OF COSTS, ETC.

### Rule 3

- (1) Where only the payment of money, together with costs to be assessed in accordance with CPR Part 47 (detailed costs assessment), is adjudged or ordered, then, if when the money becomes payable under the judgment or order the costs have not been assessed, the party entitled to enforce that judgment or order may issue a writ of fieri facias to enforce payment of the sum (other than for costs) adjudged or ordered and, not less than 8 days after the issue of that

writ, he may issue a second writ to enforce payment of the assessed costs.

- (2) A party entitled to enforce a judgment or order for the delivery of possession of any property (other than money) may, if he so elects, issue a separate writ of fieri facias to enforce payment of any damages or costs awarded to him by that judgment or order.

## NO EXPENSES OF EXECUTION IN CERTAIN CASES

- Rule 4 | Where a judgment or order is for less than £600 and does not entitle the claimant to costs against the person against whom the writ of fieri facias to enforce the judgment or order is issued, the writ may not authorise the sheriff to whom it is directed to levy any fees, poundage or other costs of execution.

## WRIT OF FIERI FACIAS DE BONIS ECCLESIASTICIS, ETC.

- Rule 5 |
- (1) Where it appears upon the return of any writ of fieri facias that the person against whom the writ was issued has no goods or chattels in the county of the sheriffs to whom the writ was directed but that he is the incumbent of a benefice named in the return, then, after the writ and return have been filed, the party by whom the writ of fieri facias was issued may issue a writ of fieri facias de bonis ecclesiasticis or a writ of sequestrari de bonis ecclesiasticis directed to the bishop of the diocese within which that benefice is.
  - (2) Any such writ must be delivered to the bishop to be executed by him.
  - (3) Only such fees for the execution of any such writ shall be taken by or allowed to the bishop or any diocesan officer as are for the time being authorised by or under any enactment, including any measure of the General Synod.

## ORDER FOR SALE OTHERWISE THAN BY AUCTION

- Rule 6 |
- (1) An order of the court under section 145 of the Bankruptcy Act 1883<sup>(19)</sup>, that a sale under an execution may be made otherwise than by public auction may be made on the application of the person at whose instance the writ of execution under which the sale is to be made was issued or the person against whom that writ was issued (in this rule referred to as 'the judgment debtor') or the sheriff to whom it was issued.
  - (2) Such an application must be made in accordance with CPR Part 23 and the application notice must contain a short statement of the grounds of the application.
  - (3) Where the applicant for an order under this rule is not the sheriff, the sheriff must, on the demand of the applicant, send to the applicant a

(19) 1883 c.52.

list containing the name and address of every person at whose instance any other writ of execution against the goods of the judgment debtor was issued and delivered to the sheriff (in this rule referred to as ‘the sheriff’s list’); and where the sheriff is the applicant, he must prepare such a list.

- (4) Not less than 4 clear days before the hearing the applicant must serve the application notice on each of the other persons by whom the application might have been made and on every person named in the sheriff’s list.
- (5) Service of the application notice on a person named in the sheriff’s list is notice to him for the purpose of section 12 of the Bankruptcy Act 1890<sup>(20)</sup> (which provides that the court shall not consider an application for permission to sell privately goods taken in execution until notice directed by rules of court has been given to any other execution creditor).
- (6) The applicant must produce the sheriff’s list to the court on the hearing of the application.
- (7) Every person on whom the application notice was served may attend and be heard on the hearing of the application.

## **RSC ORDER 48**

### **EXAMINATION OF JUDGMENT DEBTOR, ETC.**

#### **ORDER FOR EXAMINATION OF JUDGMENT DEBTOR**

##### **Rule 1**

- (1) Where a person has obtained a judgment or order for the payment by some other person (hereinafter referred to as ‘the judgment debtor’) of money, the court may, on an application made without notice being served on any other party by the person entitled to enforce the judgment or order, order the judgment debtor or, if the judgment debtor is a body corporate, an officer thereof, to attend before such Master, Registrar, district judge or nominated officer as the court may appoint and be orally examined on the questions –
  - (a) whether any and, if so, what debts are owing to the judgment debtor; and
  - (b) whether the judgment debtor has any and, if so, what other property or means of satisfying the judgment or order;

and the court may also order the judgment debtor or officer to produce any books or documents in the possession of the judgment debtor relevant to the questions aforesaid at the time and place appointed for the examination.

In this paragraph ‘district judge’ includes the district judge of a district registry or county court, and where the court appoints such a district judge without specifying him personally, the examination may,

(20) 1890 c.71.

if he thinks fit, be conducted on his behalf by a nominated officer of that registry or county court.

- (2) An order under this rule must be served personally on the judgment debtor and on any officer of a body corporate ordered to attend for examination.
- (3) Any difficulty arising in the course of an examination under this rule before a nominated officer, including any dispute with respect to the obligation of the person being examined to answer any question put to him, may be referred to the Senior Master or Practice Master (or, in the case of an examination at the Principal Registry of the Family Division, a district registry or a county court, a district judge of that registry, district registry or county court respectively) and he may determine it or give such directions for determining it as he thinks fit.
- (4) In this rule ‘nominated officer’ in relation to an examination which is to take place at the Central Office of the Supreme Court, the Principal Registry of the Family Division, a district registry or a county court means such of the officers of that office, registry or county court as may be nominated for the purposes of this rule by the Senior Master, the Senior District Judge of the Family Division or the district judge of that district registry or county court respectively.

## EXAMINATION OF PARTY LIABLE TO SATISFY OTHER JUDGMENT

- Rule 2** | Where any difficulty arises in or in connection with the enforcement of any judgment or order, other than such a judgment or order as is mentioned in rule 1, the court may make an order under that rule for the attendance of the party liable to satisfy the judgment or order and for his examination on such questions as may be specified in the order, and that rule shall apply accordingly with the necessary modifications.

## EXAMINER TO MAKE RECORD OF DEBTOR'S STATEMENT

- Rule 3** | The officer conducting the examination shall take down, or cause to be taken down, in writing the statement made by the judgment debtor or other person at the examination, read it to him and ask him to sign it; and if he refuses the officer shall sign the statement.

## RSC ORDER 49 GARNISHEE PROCEEDINGS

## ATTACHMENT OF DEBT DUE TO JUDGMENT DEBTOR

- Rule 1** | (1) Where a person (in this order referred to as ‘the judgment creditor’) has obtained a judgment or order for the payment by some other person (in this order referred to as ‘the judgment debtor’) of a sum of money amounting in value to at least £50, not being a judgment or order for the payment of money into court, and any other person

within the jurisdiction (in this order referred to as ‘the garnishee’) is indebted to the judgment debtor, the court may, subject to the provisions of this order and of any enactment, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.

- (2) An order under this rule shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter, and in the meantime attaching such debt as is mentioned in paragraph (1) or so much thereof as may be specified in the order, to answer the judgment or order mentioned in that paragraph and the costs of the garnishee proceedings.
- (3) Among the conditions mentioned in section 40 of the Supreme Court Act 1981<sup>(21)</sup> (which enables any sum standing to the credit of a person in certain types of account to be attached notwithstanding that certain conditions applicable to the account in question have not been satisfied) there shall be included any condition that a receipt for money deposited in the account must be produced before any money is withdrawn.
- (4) An order under this rule shall not require a payment which would reduce below £1 the amount standing in the name of the judgment debtor in an account with a building society or a credit union.

## APPLICATION FOR ORDER

### Rule 2

- (1) An application for an order under rule 1 must be made in accordance with CPR Part 23 but the application notice need not be served on the judgment debtor.
- (2) An application must be supported by a witness statement or affidavit –
  - (a) stating the name and last known address of the judgment debtor;
  - (b) identifying the judgment or order to be enforced and stating the amount of such judgment or order and the amount remaining unpaid under it at the time of the application;
  - (c) stating that to the best of the information or belief of the witness the garnishee (naming him) is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the witness’s information or the grounds for his belief; and
  - (d) stating, where the garnishee is a deposit-taking institution having more than one place of business, the name and address of the branch at which the judgment debtor’s account is believed to be held and the number of that account or, if it be the case, that all or part of this information is not known to the witness.

(21) 1981 c.54; section 40 was amended by the Banking Act 1987 (c.22), section 108(1), Schedule 6.

## SERVICE AND EFFECT OF ORDER TO SHOW CAUSE

- Rule 3 |
- (1) Unless the court otherwise directs, an order under rule 1 to show cause must be served –
    - (a) on the garnishee personally, at least 15 days before the time appointed thereby for the further consideration of the matter; and
    - (b) on the judgment debtor, at least 7 days after the order has been served on the garnishee and at least 7 days before the time appointed by the order for the further consideration of the matter.
  - (2) Such an order shall bind in the hands of the garnishee as from the service of the order on him any debt specified in the order or so much thereof as may be so specified.

## NO APPEARANCE OR DISPUTE OF LIABILITY BY GARNISHEE

- Rule 4 |
- (1) Where on the further consideration of the matter the garnishee does not attend or does not dispute the debt due or claimed to be due from him to the judgment debtor, the court may make an order absolute under rule 1 against the garnishee.
  - (2) An order absolute under rule 1 against the garnishee may be enforced in the same manner as any other order for the payment of money.

## DISPUTE OF LIABILITY BY GARNISHEE

- Rule 5 |
- Where on the further consideration of the matter the garnishee disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the court may summarily determine the question at issue or order that any question necessary for determining the liability of the garnishee be tried in any manner in which any question or issue in proceedings may be tried, without, if it orders trial before a Master, the need for any consent by the parties.

## CLAIMS OF THIRD PERSONS

- Rule 6 |
- (1) If in garnishee proceedings it is brought to the notice of the court that some other person than the judgment debtor is or claims to be entitled to the debt sought to be attached or has or claims to have a charge or lien upon it, the court may order that person to attend before the court and state the nature of his claim with particulars thereof.
  - (2) After hearing any person who attends before the court in compliance with an order under paragraph (1) the court may summarily determine the questions at issue between the claimants or make such other order as it thinks just, including an order that any question or issue necessary for determining the validity of the claim of such other

person as is mentioned in paragraph (1) be tried in such manner as is mentioned in rule 5.

## DISCHARGE OF GARNISHEE

### Rule 8

Any payment made by a garnishee in compliance with an order absolute under this order, and any execution levied against him in pursuance of such an order, shall be a valid discharge of his liability to the judgment debtor to the extent of the amount paid or levied notwithstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which they arose reversed.

## MONEY IN COURT

### Rule 9

- (1) Where money is standing to the credit of the judgment debtor in court, the judgment creditor shall not be entitled to take garnishee proceedings in respect of that money but may apply to the court in accordance with CPR Part 23 for an order that the money or so much thereof as is sufficient to satisfy the judgment or order sought to be enforced and the costs of the application be paid to the judgment creditor.
- (2) On filing an application notice under this rule the applicant must produce the application notice at the office of the Accountant General and leave a copy at that office, and the money to which the application relates shall not be paid out of court until after the determination of the application.

If the application is dismissed, the applicant must give notice of that fact to the Accountant General.

- (3) Unless the court otherwise directs, the application notice must be served on the judgment debtor at least 7 days before the hearing.
- (4) Subject to Order 75, rule 24, the court hearing an application under this rule may make such order with respect to the money in court as it thinks just.

## COSTS

### Rule 10

The costs of any application for an order under rule 1 or 9, and of any proceedings arising therefrom or incidental thereto, shall, unless the Court otherwise directs, be retained by the judgment creditor out of the money recovered by him under the order and in priority to the judgment debt.

## RSC ORDER 50

### CHARGING ORDERS, STOP ORDERS, ETC.

#### ORDER IMPOSING A CHARGE ON A BENEFICIAL INTEREST

- Rule 1 |
- (1) The power to make a charging order under section 1 of the Charging Orders Act 1979<sup>(22)</sup> (referred to in this order as ‘the Act’) shall be exercisable by the court.
  - (2) An application by a judgment creditor for a charging order in respect of a judgment debtor’s beneficial interest must be in accordance with CPR Part 23, but the application notice need not be served on the judgment debtor, and any order made on such an application shall in the first instance be an order, made in Form No. 75 in the relevant Practice Direction, to show cause, specifying the time and place for further consideration of the matter and imposing the charge in any event until that time.
  - (3) The application shall be supported by a witness statement or affidavit –
    - (a) identifying the judgment or order to be enforced and stating the amount unpaid at the date of the application;
    - (b) stating the name of the judgment debtor and of any creditor of his whom the applicant can identify;
    - (c) giving full particulars of the subject-matter of the intended charge, including, in the case of securities other than securities in court, the full title of the securities, their amount and the name in which they stand and, in the case of funds in court, the number of the account; and
    - (d) verifying that the interest to be charged is owned beneficially by the judgment debtor.
  - (4) Unless the court otherwise directs, a witness statement or affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.
  - (5) An application may be made for a single charging order in respect of more than one judgment or order against the debtor.

#### SERVICE OF NOTICE OF ORDER TO SHOW CAUSE

- Rule 2 |
- (1) On the making of an order to show cause, notice of the order shall, unless the court otherwise directs, be served as follows –
    - (a) a copy of the order, together with a copy of the witness statement or affidavit in support, shall be served on the judgment debtor;
    - (b) where the order relates to securities other than securities in court, copies of the order shall also be served –

(22) 1979 c.53; section 1 was amended by the Administration of Justice Act 1982 (c.53) sections 34(3), 37, Schedule 3, Part II, paragraphs 2, 3, 6; and by the County Courts Act 1984 (c.28), section 148(1), Schedule 2, Part V.

- (i) in the case of government stock for which the Bank of England keeps the Register, on the Bank of England;
  - (ii) in the case of government stock to which (i) does not apply, on the keeper of the register;
  - (iii) in the case of stock of any body incorporated within England and Wales, on that body, or, where the register is kept by the Bank of England, on the Bank of England;
  - (iv) in the case of stock of any body incorporated outside England and Wales or of any state or territory outside the United Kingdom, being stock registered in a register kept in England and Wales, on the keeper of the register;
  - (v) in the case of units of any unit trust in respect of which a register of the unit holders is kept in England and Wales, on the keeper of the register;
  - (c) where the order relates to a fund in court, a copy of the order shall be served on the Accountant-General at the Court Funds Office; and
  - (d) where the order relates to an interest under a trust, copies of the order shall be served on such of the trustees as the court may direct.
- (2) Without prejudice to the provisions of paragraph (1), the court may, on making the order to show cause, direct the service of copies of the order, and of the witness statement or affidavit in support, on any other creditor of the judgment debtor or on any other interested person as may be appropriate in the circumstances.
  - (3) Documents to be served under this rule must be served at least seven days before the time appointed for the further consideration of the matter.

## ORDER MADE ON FURTHER CONSIDERATIONS

### Rule 3

- (1) On the further consideration of the matter the court shall either make the order absolute, with or without modifications, or discharge it.
- (2) Where the order is made absolute, it shall be made in Form No. 76 in the relevant practice direction, and where it is discharged, the provisions of rule 7, regarding the service of copies of the order of discharge, shall apply.

## ORDER IMPOSING A CHARGE ON AN INTEREST HELD BY A TRUSTEE

### Rule 4

- (1) Save as provided by this rule, the provisions of rules 1, 2 and 3 shall apply to an order charging an interest held by a trustee as they apply to an order charging the judgment debtor's beneficial interest.
- (2) Instead of verifying the judgment debtor's beneficial ownership of the interest to be charged, the witness statement or affidavit required by

rule 1(3) shall state the ground on which the application is based and shall verify the material facts.

- (3) On making the order to show cause, the court shall give directions for copies of the order, and of the witness statement or affidavit in support, to be served on such of the trustees and beneficiaries, if any, as may be appropriate.
- (4) Rules 5, 6 and 7 shall apply to an order charging an interest held by a trustee as they apply to an order charging the judgment debtor's beneficial interest, except that, where the order is made under sub-section (ii) or (iii) of section 2(1)(b) of the Act references in those rules to 'the judgment debtor' shall be references to the trustee.
- (5) Forms No. 75 and 76 in the relevant practice direction shall be modified so as to indicate that the interest to be charged is held by the debtor as trustee or, as the case may be, that it is held by a trustee (to be named in the order) on trust for the debtor beneficially.

## EFFECT OF ORDER IN RELATION TO SECURITIES OUT OF COURT

### Rule 5

- (1) No disposition by the judgment debtor of his interest in any securities to which an order to show cause relates made after the making of that order shall, so long as that order remains in force, be valid as against the judgment creditor.
- (2) Until such order is discharged or made absolute, the Bank of England (or other person or body served in accordance with rule 2(1)(b)), shall not permit any transfer of any of the securities specified in the order, or pay any dividend, interest or redemption payment in relation thereto, except with the authority of the court, and, if it does so, shall be liable to pay the judgment creditor the value of the securities transferred or, as the case may be, the amount of the payment made or, if that value or amount is more than sufficient to satisfy the judgment or order to which such order relates, so much thereof as is sufficient to satisfy it.
- (3) If the court makes the order absolute, a copy of the order, including a stop notice as provided in Form No. 76 in the relevant Practice Direction, shall be served on the Bank of England, or on such other person or body specified in rule 2(1)(b) as may be appropriate and, save as provided in rule 7(5), rules 11 to 14 shall apply to such a notice as they apply to a stop notice made and served under rule 11.
- (4) This rule does not apply to orders in respect of securities in court.

## EFFECT OF ORDER IN RELATION TO FUNDS IN COURT

### Rule 6

- (1) Where an order to show cause has been made in relation to funds in court (including securities in court) and a copy thereof has been served on the Accountant General in accordance with rule 2, no

disposition by the judgment debtor of any interest to which the order relates, made after the making of that order, shall, so long as the order remains in force, be valid as against the judgment creditor.

- (2) If the court makes the order absolute, a copy of the order shall be served on the Accountant General at the Court Funds Office.

## DISCHARGE, ETC., OF CHARGING ORDER

### Rule 7

- (1) Subject to paragraph (2), on the application of the judgment debtor or any other person interested in the subject matter of the charge, the court may, at any time, whether before or after the order is made absolute, discharge or vary the order on such terms (if any) as to costs or otherwise as it thinks just.
- (2) Where an application is made for the discharge of a charging order in respect of the judgment debtor's land on the ground that the judgment debt has been satisfied, the applicant shall state in his application, and the court shall specify in its order, the title number of the land in the case of registered land, and the entry number of any relevant land charge in the case of unregistered land.
- (3) The application notice seeking the discharge or variation of the order shall be served on such interested parties as the court may direct.
- (4) Where an order is made for the discharge or variation of a charging order in respect of funds in court, a copy thereof shall be served on the Accountant General at the Court Funds Office.
- (5) Where an order is made for the discharge or variation of a charging order in respect of securities other than securities in court, a copy thereof shall be served on the Bank of England or on such other person or body specified in rule 2(1)(b) as may be appropriate, and the service thereof shall discharge, or, as the case may be, vary, any stop notice in respect of such securities which may be in force pursuant to the original order.

## JURISDICTION OF MASTER, ETC. TO GRANT INJUNCTION

### Rule 9

A Master and the Admiralty Registrar and a district judge of the Family Division shall have power to grant an injunction if, and only so far as, it is ancillary or incidental to an order under rule 1, 3 or 4 and an application for an injunction under this rule may be joined with the application for the order under rule 1, 3 or 4 to which it relates.

## ENFORCEMENT OF CHARGING ORDER BY SALE

### Rule 9A

- (1) Proceedings for the enforcement of a charging order by sale of the property charged must be begun by a claim form issued out of Chancery Chambers or out of one of the Chancery District Registries.
- (2) The provisions of Order 88 shall apply to all such proceedings.

## FUNDS IN COURT: STOP ORDER

- Rule 10
- (1) The court, on the application of any person –
    - (a) who has a mortgage or charge on the interest of any person in funds in court; or
    - (b) to whom that interest has been assigned; or
    - (c) who is a judgment creditor of the person entitled to that interest, may make an order prohibiting the transfer, sale, delivery out, payment or other dealing with such funds, or any part thereof, or the income thereon, without notice to the applicant.
  - (2) An application for an order under this rule must, if there are existing proceedings, be made in accordance with CPR Part 23 by filing an application notice relating to the funds in Court, or, if there are no such proceedings, by a claim.
  - (3) The application notice or claim form must be served on every person whose interest may be affected by the order applied for and on the Accountant-General but shall not be served on any other person.
  - (4) Without prejudice to the court's powers and discretion as to costs, the court may order the applicant for an order under this rule to pay the costs of any party to the proceedings relating to the funds in question, or of any person interested in those funds, occasioned by the application.

## SECURITIES NOT IN COURT: STOP NOTICE

- Rule 11
- (1) Any person claiming to be beneficially entitled to an interest in any securities of the kinds set out in section 2(2)(b) of the Act, other than securities in court, who wishes to be notified of any proposed transfer or payment of those securities may avail himself of the provisions of this rule.
  - (2) A person claiming to be so entitled must file in Chancery Chambers or in a District Registry –
    - (a) a witness statement or affidavit identifying the securities in question and describing his interest therein by reference to the document under which it arises; and
    - (b) a notice in Form No. 80 in the relevant practice direction (a stop notice) signed by the witness who made the witness statement or affidavit, and annexed to it, addressed to the Bank of England or, as the case may be, the body, state, territory or unit trust concerned,

and must serve an office copy of the witness statement or affidavit, and a copy of the notice sealed with the seal of Chancery Chambers or the District Registry, on the Bank or other person or body, as provided in rule 2(1)(b).

- (3) There must be indorsed on the witness statement or affidavit filed under this rule a note stating the address to which any such notice as is referred to in rule 12 is to be sent and, subject to paragraph (4), that address shall for the purpose of that rule be the address for service of the person on whose behalf the witness statement or affidavit is filed.
- (4) A person on whose behalf a witness statement or affidavit under this rule is filed may change his address for service for the purpose of rule 12 by serving on the Bank of England, or other person or body, a notice to that effect, and, as from the date of service of such a notice the address stated therein shall for the purpose of that rule be the address for service of that person.

## EFFECT OF STOP NOTICE

- Rule 12** | Where a stop notice has been served in accordance with rule 11, then, so long as the stop notice is in force, the Bank of England or other person or body on which it is served shall not register a transfer of the securities or take any other step restrained by the stop notice until 14 days after sending notice thereof, by ordinary first class post, to the person on whose behalf the stop notice was filed, but shall not by reason only of that notice refuse to register a transfer, or to take any other step, after the expiry of that period.

## AMENDMENT OF STOP NOTICE

- Rule 13** | If any securities are incorrectly described in a stop notice which has been filed and of which a sealed copy has been served in accordance with rule 11, an amended stop notice may be filed and served in accordance with the same procedure and shall take effect as a stop notice on the day on which the sealed copy of the amended notice is served.

## WITHDRAWAL ETC. OF STOP NOTICE

- Rule 14** |
- (1) The person on whose behalf a stop notice was filed may withdraw it by serving a request for its withdrawal on the Bank of England or other person or body on whom the notice was served.
  - (2) Such request must be signed by the person on whose behalf the notice was filed and his signature must be witnessed by a practising solicitor.
  - (3) The court, on the application of any person claiming to be beneficially entitled to an interest in the securities to which a stop notice relates, may by order discharge the notice.
  - (4) An application for an order under paragraph (3) must be made in the Chancery Division by a claim form, and the claim form must be served on the person on whose behalf a stop notice was filed.

## ORDER PROHIBITING TRANSFER, ETC. OF SECURITIES

- Rule 15 |
- (1) The court, on the application of any person claiming to be beneficially entitled to an interest in any securities of the kinds set out in section 2(2)(b) of the Act may by order prohibit the Bank of England or other person or body concerned from registering any transfer of the securities or taking any other step to which section 5(5) of the Act applies. The order shall specify the securities to which the prohibition relates, the name in which they stand and the steps which may not be taken, and shall state whether the prohibition applies to the securities only or to the dividends or interest as well.
  - (2) An application for an order under this rule must be made by claim form or if made in existing proceedings, in accordance with CPR Part 23 in the Chancery Division.
  - (3) The court, on the application of any person claiming to be entitled to an interest in any securities to which an order under this rule relates, may vary or discharge the order on such terms (if any) as to costs or otherwise as it thinks fit.

### RSC ORDER 51

### RECEIVERS: EQUITABLE EXECUTION

## APPOINTMENT OF RECEIVER BY WAY OF EQUITABLE EXECUTION

- Rule 1 |
- Where an application is made for the appointment of a receiver by way of equitable execution, the court in determining whether it is just or convenient that the appointment should be made shall have regard to the amount claimed by the judgment creditor, to the amount likely to be obtained by the receiver and to the probable costs of his appointment and may direct an inquiry on any of these matters or any other matter before making the appointment.

## MASTERS ETC. MAY APPOINT RECEIVER

- Rule 2 |
- A Master and the Admiralty Registrar and a district judge of the Family Division shall have power to make an order for the appointment of a receiver by way of equitable execution and to grant an injunction if, and only so far as, the injunction is ancillary or incidental to such an order.

## APPLICATION OF RULES AS TO APPOINTMENT OF RECEIVER, ETC.

- Rule 3 |
- An application for the appointment of a receiver by way of equitable execution may be made in accordance with Order 30, rule 1, and rules 2 to 6 of that order shall apply in relation to a receiver appointed by way of equitable execution as they apply in relation to a receiver appointed for any other purpose.

## RSC ORDER 52

### COMMITTAL

#### COMMITTAL FOR CONTEMPT OF COURT

##### Rule 1

- (1) The power of the High Court or Court of Appeal to punish for contempt of court may be exercised by an order of committal.
- (2) Where contempt of court –
  - (a) is committed in connection with –
    - (i) any proceedings before a Divisional Court of the Queen's Bench Division; or
    - (ii) criminal proceedings, except where the contempt is committed in the face of the court or consists of disobedience to an order of the court or a breach of an undertaking to the court; or
    - (iii) proceedings in an inferior court; or
  - (b) is committed otherwise than in connection with any proceedings, then, subject to paragraph (4), an order of committal may be made only by a Divisional Court of the Queen's Bench Division.

This paragraph shall not apply in relation to contempt of the Court of Appeal.

- (3) Where contempt of court is committed in connection with any proceedings in the High Court, then, subject to paragraph (2), an order of committal may be made by a single judge of the Queen's Bench Division except where the proceedings were assigned or subsequently transferred to some other Division, in which case the order may be made only by a single judge of that other Division.

The reference in this paragraph to a single judge of the Queen's Bench Division shall, in relation to proceedings in any court the judge or judges of which are, when exercising the jurisdiction of that court, deemed by virtue of any enactment to constitute a court of the High Court, be construed as a reference to a judge of that court.

- (4) Where by virtue of any enactment the High Court has power to punish or take steps for the punishment of any person charged with having done anything in relation to a court, tribunal or person which would, if it had been done in relation to the High Court, have been a contempt of that court, an order of committal may be made by a single judge of the Queen's Bench Division.

#### APPLICATION TO DIVISIONAL COURT

##### Rule 2

- (1) No application to a Divisional Court for an order of committal against any person may be made unless permission to make such an application has been granted in accordance with this rule.

- (2) An application for such permission must be made without notice to a Divisional Court, except in vacation when it may be made to a judge in chambers and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.
- (3) The applicant must give notice of the application for permission not later than the preceding day to the Crown Office and must at the same time lodge in that office copies of the statement and affidavit.
- (4) Where an application for permission under this rule is refused by a judge in chambers, the applicant may make a fresh application for such permission to a Divisional Court.
- (5) An application made to a Divisional Court by virtue of paragraph (4) must be made within 8 days after the judge's refusal to give permission or, if a Divisional Court does not sit within that period, on the first day on which it sits thereafter.

## APPLICATION FOR ORDER AFTER LEAVE TO APPLY GRANTED

### Rule 3

- (1) When permission has been granted under rule 2 to apply for an order of committal, the application for the order must be made to a Divisional Court and, unless the court or judge granting permission has otherwise directed, there must be at least 14 clear days between the service of the claim form and the day named therein for the hearing.
- (2) Unless within 14 days after such permission was granted, the claim form is issued the permission shall lapse.
- (3) Subject to paragraph 4, the claim form, accompanied by a copy of the statement and affidavit in support of the application for permission, must be served personally on the person sought to be committed.
- (4) Without prejudice to the powers of the court or judge under Part 6 of the CPR, the court or judge may dispense with service under this rule if it or he thinks it just to do so.

## APPLICATION TO COURT OTHER THAN DIVISIONAL COURT

### Rule 4

- (1) Where an application for an order of committal may be made to a court other than a Divisional Court, the application must be made by claim form or application notice and be supported by an affidavit.
- (2) Subject to paragraph (3) the claim form or application notice, stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, must be served personally on the person sought to be committed.

- (3) Without prejudice to its powers under Part 6 of the CPR, the court may dispense with service under this rule if it thinks it just to do so.
- (4) This rule does not apply to committal applications which under rules 1(2) and 3(1) should be made to a Divisional Court but which, in vacation, have been properly made to a single judge in accordance with RSC Order 64, rule 4.

## SAVING FOR POWER TO COMMIT WITHOUT APPLICATION FOR PURPOSE

- Rule 5 | Nothing in the foregoing provisions of this order shall be taken as affecting the power of the High Court or Court of Appeal to make an order of committal of its own initiative against a person guilty of contempt of court.

## PROVISIONS AS TO HEARING

- Rule 6 |
- (1) Subject to paragraph (2), the court hearing an application for an order of committal may sit in private in the following cases, that is to say –
    - (a) where the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant;
    - (b) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder within the meaning of the Mental Health Act 1983<sup>(23)</sup>;
    - (c) where the application arises out of proceedings in which a secret process, discovery or invention was in issue;
    - (d) where it appears to the court that in the interests of the administration of justice or for reasons of national security the application should be heard in private;
 but, except as aforesaid, the application shall be heard in public.
  - (2) If the court hearing an application in private by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, it shall in public state –
    - (a) the name of that person;
    - (b) in general terms the nature of the contempt of court in respect of which the order of committal is being made; and
    - (c) the length of the period for which he is being committed.
  - (3) Except with the permission of the court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the statement under rule 2 or, as the case may be, in the claim form or application notice under rule 4.

(23) 1983 c.20.

- (4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf, he shall be entitled to do so.

## POWER TO SUSPEND EXECUTION OF COMMITTAL ORDER

- Rule 7** |
- (1) The court by whom an order of committal is made may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as it may specify.
  - (2) Where execution of an order of committal is suspended by an order under paragraph (1), the applicant for the order of committal must, unless the court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.

## DISCHARGE OF PERSON COMMITTED

- Rule 8** |
- (1) The court may, on the application of any person committed to prison for any contempt of court, discharge him.
  - (2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver any thing to some other person or to deposit it in court or elsewhere, and a writ of sequestration has also been issued to enforce that judgment or order, then, if the thing is in the custody or power of the person committed, the commissioners appointed by the writ of sequestration may take possession of it as if it were the property of that person and, without prejudice to the generality of paragraph (1), the court may discharge the person committed and may give such directions for dealing with the thing taken by the commissioners as it thinks fit.

(RSC Order 46, rule 5 contains rules relating to writs of sequestration)

## SAVING FOR OTHER POWERS

- Rule 9** |
- Nothing in the foregoing provisions of this order shall be taken as affecting the power of the court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any enactment in like manner as if he had been guilty of contempt of the High Court, to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

## RSC ORDER 53

## APPLICATIONS FOR JUDICIAL REVIEW

## CASES APPROPRIATE FOR APPLICATION FOR JUDICIAL REVIEW

- Rule 1** |
- (1) An application for –

- (a) an order of mandamus, prohibition or certiorari; or
- (b) an injunction under section 30 of the Act restraining a person from acting in any office in which he is not entitled to act,

shall be made by way of an application for judicial review in accordance with the provisions of this order.

- (2) An application for a declaration or an injunction (not being an injunction mentioned in paragraph (1)(b)) may be made by way of an application for judicial review, and on such an application the court may grant the declaration or injunction claimed if it considers that, having regard to –
  - (a) the nature of the matters in respect of which a remedy may be granted by way of an order of mandamus, prohibition or certiorari;
  - (b) the nature of the persons and bodies against whom a remedy may be granted by way of such an order; and
  - (c) all the circumstances of the case,
 it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

## JOINDER OF CLAIMS FOR RELIEF

- Rule 2 | On an application for judicial review any remedy mentioned in rule 1(1) or (2) may be claimed as an alternative or in addition to any other remedy so mentioned if it arises out of or relates to or is connected with the same matter.

## GRANT OF LEAVE TO APPLY FOR JUDICIAL REVIEW

- Rule 3 |
- (1) No application for judicial review shall be made unless the permission of the court has been obtained in accordance with this rule.
  - (2) An application for permission must be made to a judge by filing in the Crown Office –
    - (a) an application notice in Form No. 86A containing a statement of –
      - (i) the name and description of the applicant;
      - (ii) the relief sought and the grounds upon which it is sought;
      - (iii) the name and address of the applicant's solicitors (if any); and
      - (iv) the applicant's address for service; and
    - (b) written evidence verifying the facts relied on.
  - (2A) The documents referred to in paragraphs 2(a) and (b) need not be served on any other person.

- (3) The judge may determine the application without a hearing, unless a hearing is requested in the notice of application, in any case, the Crown Office shall serve a copy of the judge's order on the applicant.
- (4) Where the application for permission is refused by the judge, or is granted on terms, the applicant may renew it by applying –
  - (a) in any criminal cause or matter, to a Divisional Court of the Queen's Bench Division;
  - (b) in any other case, to a single judge or, if the court so directs, to a Divisional Court of the Queen's Bench Division:

Provided that no application for permission may be renewed in any non-criminal cause or matter in which the judge has refused permission under paragraph (3) after a hearing.

- (5) In order to renew his application for permission the applicant must, within 10 days of being served with notice of the judge's refusal, lodge in the Crown Office notice of his intention in Form No. 86B.
- (6) The court hearing an application for permission may allow the applicant's statement to be amended, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit.
- (7) The court shall not grant permission unless it considers that the applicant has a sufficient interest in the matter to which the application relates.
- (8) Where permission is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceeding which is subject to appeal and a time is limited for the bringing of the appeal, the court may adjourn the application for permission until the appeal is determined or the time for appealing has expired.
- (9) If the court grants permission, it may impose such terms as to costs and as to giving security as it thinks fit.
- (10) Where permission to apply for judicial review is granted, then –
  - (a) if the relief sought is an order of prohibition or certiorari and the court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the court otherwise orders;
  - (b) if any other relief is sought, the court may at any time grant in the proceedings interim remedies in accordance with CPR Part 25.

## DELAY IN APPLYING FOR RELIEF

### Rule 4

- (1) An application for permission to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the court considers that there is good reason for extending the period within which the application shall be made.
- (2) Where an order of certiorari is sought in respect of any judgment, order, conviction or other proceeding, the date when grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceeding.
- (3) Paragraph (1) is without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

## MODE OF APPLYING FOR JUDICIAL REVIEW

### Rule 5

- (1) In any criminal cause or matter, where permission has been granted to make an application for judicial review, the application shall be made to a Divisional Court of the Queen's Bench Division.
- (2) In any other such cause or matter, the application shall be made to a judge unless the court directs that it shall be made to a Divisional Court of the Queen's Bench Division.
- (2A) An application for judicial review shall be made by claim form.
- (3) The claim form must be served on all persons directly affected and where it relates to any proceedings in or before a court and the object of the application is either to compel the court or an officer of the court to do any act in relation to the proceedings or to quash them or any order made therein, the claim form must also be served on the Clerk or Registrar of the court and, where any objection to the conduct of the judge is to be made, on the judge.
- (4) Unless the court granting permission has otherwise directed, there must be at least 10 days between the service of the claim form and the hearing.
- (5) The application must be entered for hearing within 14 days after the grant of permission.
- (6) Written evidence giving the names and addresses of, and the places and dates of service on, all persons who have been served with the claim form must be filed before the application is entered for hearing and, if any person who ought to be served under this rule has not been served, the written evidence must state that fact and the reason for it; and shall be before the court on the hearing of the application

- (7) If on the hearing of the application the court is of opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the court may adjourn the hearing on such terms (if any) as it may direct in order that the claim form may be served on that person.

## STATEMENTS AND EVIDENCE

### Rule 6

- (1) Copies of the statement in support of an application for permission under rule 3 must be served with the claim form and, subject to paragraph (2), no grounds shall be relied upon or any remedy sought at the hearing except the grounds and remedies set out in the statement.
- (2) The court may on hearing of the application for judicial review allow the applicant to amend his statement, whether by specifying different or additional grounds or otherwise, on such terms, if any, as it thinks fit and may allow further written evidence to be relied on by him
- (3) Where the applicant intends to ask to be allowed to amend his statement or to rely on further written evidence he shall give notice of his intention and of any proposed amendment to every other party.
- (4) Any respondent who intends to use written evidence at the hearing shall file it in the Crown Office and give notice thereof to the applicant as soon as practicable and in any event, unless the Court otherwise directs, within 56 days after service upon him of the documents required to be served by paragraph (1).
- (5) Each party to the application must supply to every other party on demand and on payment of the proper charges copies of any written evidence which he proposes to rely on at the hearing, including, in the case of the applicant, the written evidence in support of the application for permission under rule 3.

## CLAIM FOR DAMAGES

### Rule 7

- (1) On an application for judicial review the court may, subject to paragraph (2) award damages to the applicant if –
  - (a) he has included in the statement in support of his application for permission under rule 3 a claim for damages arising from any matter to which the application relates; and
  - (b) the court is satisfied that, if the claim had been made in proceedings for damages begun by the applicant at the time of making his application for judicial review, he could have been awarded damages.
- (2) CPR Part 16 shall apply to a statement relating to a claim for damages as it applies to a statement of case.

## APPLICATION FOR DISCLOSURE, FURTHER INFORMATION, CROSS-EXAMINATION, ETC.

### Rule 8

- (1) Unless the court otherwise directs, any interlocutory application in proceedings on an application for judicial review may be made to any judge or a Master of the Queen's Bench Division, notwithstanding that the application for judicial review has been made to and is to be heard by a Divisional Court.

In this paragraph 'interlocutory application' includes an application for an order under CPR Part 31 or CPR Part 18 or for an order for permission to cross-examine any person who has given written evidence or for an order dismissing the proceedings by consent of the parties.

- (2) In relation to an order made by a Master pursuant to paragraph (1) Order 58, rule 1, shall, where the application for judicial review is to be heard by a Divisional Court, have effect as if a reference to that court were substituted for the reference to a judge in Chambers.
- (3) This rule is without prejudice to any statutory provision or rule of law restricting the making of an order against the Crown.

## HEARING OF APPLICATION FOR JUDICIAL REVIEW

### Rule 9

- (1) On the hearing of any application for judicial review under rule 5, any person who desires to be heard in opposition to the application, and appears to the court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with the claim form.
- (2) Where the remedy sought is or includes an order of certiorari to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the application he has filed in the Crown Office a copy thereof verified by witness statement or affidavit or accounts for his failure to do so to the satisfaction of the court hearing the application.
- (3) Where an order of certiorari is made in any such case as is referred to in paragraph (2) the order shall, subject to paragraph (4) direct that the proceedings shall be quashed forthwith on their removal into the Queen's Bench Division.
- (4) Where an order of certiorari is sought and the court is satisfied that there are grounds for quashing the decision to which the application relates, the court may, in addition to quashing it, remit the matter to the court, tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the court.

- (5) Where the remedy sought is a declaration, an injunction or damages and the court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in a claim begun by the applicant at the time of making his application for judicial review, the court may, instead of refusing the application, order the judicial review proceedings to continue as proceedings brought under CPR Part 7 and if it does so may give any directions it considers appropriate.

## SAVING FOR PERSON ACTING IN OBEDIENCE TO MANDAMUS

- Rule 10** | No action or proceeding shall be begun or prosecuted against any person in respect of anything done in obedience to an order of mandamus.

## PROCEEDINGS FOR DISQUALIFICATION OF MEMBER OF LOCAL AUTHORITY

- Rule 11** |
- (1) Proceedings under section 92 of the Local Government Act 1972<sup>(24)</sup> must be begun by the issue of a claim form and brought before a Divisional Court of the Queen's Bench Division.
  - (1A) Unless otherwise directed, there must be at least 10 days between the service of the claim form and the hearing.
  - (2) The claim form must set out the name and description of the applicant, the remedy sought and the grounds on which it is sought, and must be supported by written evidence verifying the facts relied on.
  - (3) Copies of any written evidence must be filed in the Crown Office before the proceedings are entered for hearing and must be supplied to any other party on demand and on payment of the proper charges.
  - (4) The provisions of rules 5, 6 and 9(1) as to the persons on whom the claim form is to be served and as to the hearing shall apply, with the necessary modifications, to proceedings under the said section 92 as they apply to an application for judicial review.

## CONSOLIDATION OF APPLICATIONS

- Rule 12** | Where there is more than one application pending under section 30 of the Act, or section 92 of the Local Government Act 1972, against several persons in respect of the same office, and on the same grounds, the court may order the applications to be consolidated.

(24) 1972 c.70; section 92 was amended by the Criminal Justice Act 1982 (c.48), sections 38, 46; and by Local Government Act 1985 (c.51), section 84, Schedule 14, Part I, paragraph 12; by the Education Reform Act 1988 (c.40), section 237(2), Schedule 13, Part 1; and by the Norfolk and Suffolk Broads Act, section 21, Schedule 6, paragraph 10(3).

## APPEAL FROM JUDGE'S ORDER

- Rule 13** | No appeal shall lie from an order made under paragraph (3) of rule 3 on an application for leave which may be renewed under paragraph (4) of that rule.

## MEANING OF 'COURT'

- Rule 14** | In relation to the hearing by a judge of an application for leave under rule 3 or of an application for judicial review, any reference in this order to 'the Court' shall, unless the context otherwise requires, be construed as a reference to the judge.

## RSC ORDER 54

### APPLICATIONS FOR WRIT OF HABEAS CORPUS

## APPLICATION FOR WRIT OF HABEAS CORPUS AD SUBJICIENDUM

- Rule 1** |
- (1) Subject to rule 11, an application for a writ of habeas corpus ad subjiciendum shall be made to a judge in court, except that –
    - (a) it shall be made to a Divisional Court of the Queen's Bench Division if the court so directs;
    - (b) it may be made to a judge otherwise than in court at any time when no judge is sitting in court; and
    - (c) any application on behalf of a child must be made in the first instance to a judge otherwise than in court.
  - (2) An application for such writ may be made without notice being served on any other party and, subject to paragraph (3) must be supported by a witness statement or affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint.
  - (3) Where the person restrained is unable for any reason to make the witness statement or affidavit required by paragraph (2) the witness statement or affidavit may be made by some other person on his behalf and that witness statement or affidavit must state that the person restrained is unable to make the witness statement or affidavit himself and for what reason.

## POWER OF COURT TO WHOM APPLICATION MADE WITHOUT NOTICE BEING SERVED ON ANY OTHER PARTY

- Rule 2** |
- (1) The court or judge to whom an application under rule 1 is made without notice being served on any other party may make an order forthwith for the writ to issue, or may –
    - (a) where the application is made to a judge otherwise than in court, direct the issue of a claim form seeking the writ, or that an application therefor be made by claim form to a Divisional Court or to a judge in court;

- (b) where the application is made to a judge in court, adjourn the application so that notice thereof may be given, or direct that an application be made by claim form to a Divisional Court;
  - (c) where the application is made to a Divisional Court, adjourn the application so that notice thereof may be given.
- (2) The claim form must be served on the person against whom the issue of the writ is sought and on such other persons as the court or judge may direct, and, unless the court or judge otherwise directs, there must be at least 8 clear days between the service of the claim form and the date named therein for the hearing of the application.

## COPIES OF WITNESS STATEMENTS OR AFFIDAVITS TO BE SUPPLIED

- Rule 3 | Every party to an application under rule 1 must supply to every other party on demand and on payment of the proper charges copies of the witness statements or affidavits which he proposes to use at the hearing of the application.

## POWER TO ORDER RELEASE OF PERSON RESTRAINED

- Rule 4 |
- (1) Without prejudice to rule 2(1), the court or judge hearing an application for a writ of habeas corpus ad subjiciendum may in its or his discretion order that the person restrained be released, and such order shall be a sufficient warrant to any governor of a prison, constable or other person for the release of the person under restraint.
  - (2) Where such an application in criminal proceedings is heard by a judge and the judge does not order the release of the person restrained, he shall direct that the application be made by claim form to a Divisional Court of the Queen's Bench Division.

## DIRECTIONS AS TO RETURN TO WRIT

- Rule 5 | Where a writ of habeas corpus ad subjiciendum is ordered to issue, the court or judge by whom the order is made shall give directions as to the court or judge before whom, and the date on which, the writ is returnable.

## SERVICE OF WRIT AND NOTICE

- Rule 6 |
- (1) Subject to paragraphs (2) and (3), a writ of habeas corpus ad subjiciendum must be served personally on the person to whom it is directed.
  - (2) If it is not possible to serve such writ personally, or if it is directed to a governor of a prison or other public official, it must be served by leaving it with a servant or agent of the person to whom the writ is directed at the place where the person restrained is confined or restrained.

- (3) If the writ is directed to more than one person, the writ must be served in manner provided by this rule on the person first named in the writ, and copies must be served on each of the other persons in the same manner as the writ.
- (4) There must be served with the writ a notice (in Form No. 90 in the relevant practice direction) stating the court or judge before whom and the date on which the person restrained is to be brought and that in default of obedience proceedings for committal of the party disobeying will be taken.

## RETURN TO THE WRIT

- Rule 7 |
- (1) The return to a writ of habeas corpus ad subjiciendum must be indorsed on or annexed to the writ and must state all the causes of the detainer of the person restrained.
  - (2) The return may be amended, or another return substituted therefor, by permission of the court or judge before whom the writ is returnable.

## PROCEDURE AT HEARING OF WRIT

- Rule 8 |
- When a return to a writ of habeas corpus ad subjiciendum is made, the return shall first be read, and motion then made for discharging or remanding the person restrained or amending or quashing the return, and where that person is brought up in accordance with the writ, his counsel shall be heard first, then the counsel for the Crown, and then one counsel for the person restrained in reply.

## BRINGING UP PRISONER TO GIVE EVIDENCE, ETC.

- Rule 9 |
- (1) An application for a writ of habeas corpus ad testificandum or of habeas corpus ad respondendum must be made on witness statement or affidavit to a judge.
  - (2) An application for an order to bring up a prisoner, otherwise than by writ of habeas corpus, to give evidence in any proceedings, civil or criminal, before any court, tribunal or justice, must be made on witness statement or affidavit to a judge.

## FORM OF WRIT

- Rule 10 |
- A writ of habeas corpus must be in Form No. 89, 91 or 92 in the relevant practice direction, whichever is appropriate.

## APPLICATIONS RELATIVE TO THE CUSTODY, ETC., OF CHILD

- Rule 11 |
- An application by a parent or guardian of a child for a writ of habeas corpus ad subjiciendum relative to the custody, care or control of the child

must be made in the Family Division, and this order shall accordingly apply to such applications with the appropriate modifications.

## **RSC ORDER 55**

### **APPEALS TO HIGH COURT FROM COURT, TRIBUNAL OR PERSON: GENERAL**

#### **APPLICATION**

##### **Rule 1**

- (1) Subject to paragraphs (2), (3) and (4), this order shall apply to every appeal which by or under any enactment lies to the High Court from any court, tribunal or person.
- (2) This order shall not apply to an appeal by case stated or to any appeal to which the arbitration practice direction applies.
- (3) The following rules of this order shall not apply to an appeal from a county court to a single judge under section 375 of the Insolvency Act 1986<sup>(25)</sup>, but subject to the Insolvency Rules 1986<sup>(26)</sup>, as amended, Order 59 shall, with the necessary modifications, apply to such an appeal as it applies to an appeal from a county court to the Court of Appeal.
- (4) The following rules of this order shall, in relation to an appeal to which this order applies, have effect subject to any provision made in relation to that appeal by any other provision of these rules or by or under any enactment.
- (5) In this order references to a tribunal shall be construed as references to any tribunal constituted by or under any enactment other than any of the ordinary courts of law.

#### **COURT TO HEAR APPEAL**

##### **Rule 2**

Except where it is otherwise provided by these rules or by or under any enactment, an appeal to which this order applies shall be assigned to the Queen's Bench Division and shall be heard and determined –

- (a) where the decision of the High Court on the appeal is final, by a Divisional Court, and
- (b) in any other case, by a single judge.

#### **BRINGING OF APPEAL**

##### **Rule 3**

- (1) An appeal to which this order applies shall be by way of rehearing and must be brought by notice of appeal.
- (2) Every notice by which such an appeal is brought must state the grounds of the appeal and, if the appeal is against a judgment, order

(25) 1986 c.45.  
(26) S.I. 1986/1925.

or other decision of a court, must state whether the appeal is against the whole or a part of that decision and, if against a part only, must specify the part.

- (3) The bringing of such an appeal shall not operate as a stay of proceedings on the judgment, determination or other decisions against which the appeal is brought unless the court by which the appeal is to be heard or the court, tribunal or person by which or by whom the decision was given so orders.

## SERVICE OF NOTICE OF APPEAL AND ENTRY OF APPEAL

### Rule 4

- (1) The persons to be served with the notice of appeal are the following –
  - (a) if the appeal is against a judgment, order or other decision of a court, the registrar or clerk of the court and any party to the proceedings in which the decision was given who is directly affected by the appeal;
  - (b) if the appeal is against an order, determination, award or other decision of a tribunal, Minister of the Crown, government department or other person, the chairman of the tribunal, Minister, government department or person, as the case may be, and every party to the proceedings (other than the appellant) in which the decision appealed against was given.
- (2) The notice must be served, and the appeal entered, within 28 days after the date of the judgment, order, determination or other decision against which the appeal is brought.
- (3) In the case of an appeal against a judgment, order or decision of a court, the period specified in paragraph (2) shall be calculated from the date of the judgment or order or the date on which the decision was given.
- (4) In the case of an appeal against an order, determination, award or other decision of a tribunal, Minister, government department or other person, the period specified in paragraph (2) shall be calculated from the date on which notice of the decision, or, in a case where a statement of the reasons for a decision was given later than such notice, on which such a statement was given to the appellant by the person who made the decision or by a person authorised in that behalf to do so.

## DATE OF HEARING OF APPEAL

### Rule 5

Unless the court having jurisdiction to determine the appeal otherwise directs, an appeal to which this order applies shall not be heard sooner than 21 days after service of notice of the motion by which the appeal is brought.

## AMENDMENT OF GROUNDS OF APPEAL, ETC.

- Rule 6 |
- (1) The notice by which an appeal to which this order applies is brought may be amended by the appellant, without permission, by supplementary notice served not less than 7 days before the day appointed for the hearing of the appeal, on each of the persons on whom the notice to be amended was served.
  - (2) Within 2 days after service of a supplementary notice under paragraph (1) the appellant must file two copies of the notice in the office in which the appeal is entered.
  - (3) Except with the permission of the court hearing any such appeal, no grounds other than those stated in the notice by which the appeal is brought or any supplementary notice under paragraph (1) may be relied upon by the appellant at the hearing; but that court may amend the grounds so stated or make any other order, on such terms as it thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

## INTERLOCUTORY APPLICATIONS

- Rule 6A |
- (1) Unless the court otherwise directs, any interlocutory application in proceedings to which this order applies may be made to any judge or a Master of the Queen's Bench Division or, as the case may be, any judge or a district judge of the Family Division, notwithstanding that the appeal is to be heard by a Divisional Court.  
  
In this paragraph 'interlocutory application' includes an application for the extension of time for the service of the notice of appeal or the entry of the appeal or for the amendment of the notice of appeal.
  - (2) In relation to an order made by a Master or district judge pursuant to paragraph (1), Order 58, rule 1 shall, where the appeal is to be heard by a Divisional Court, have effect as if a reference to that court were substituted for the reference to a judge.
  - (3) This rule is without prejudice to any statutory provision or rule of law restricting the making of an order against the Crown.

## POWERS OF COURT HEARING APPEAL

- Rule 7 |
- (1) In addition to the power conferred by rule 6(3) the court hearing an appeal to which this order applies shall have the powers conferred by the following provisions of this rule.
  - (2) The court shall have power to receive further evidence on questions of fact, and the evidence may be given in such manner as the court may direct either by oral examination in court, by witness statement or affidavit, by deposition taken before an examiner or in some other manner.

- (3) The court shall have power to draw any inferences of fact which might have been drawn in the proceedings out of which the appeal arose.
- (4) It shall be the duty of the appellant to apply to the judge or other person presiding at the proceedings in which the decision appealed against was given for a signed copy of any note made by him of the proceedings and to furnish that copy for the use of the court; and in default of production of such a note, or if such note is incomplete, in addition to such note, the court may hear and determine the appeal on any other evidence or statement of what occurred in those proceedings as appears to the court to be sufficient.

Except where the court otherwise directs, a witness statement or affidavit or note by a person present at the proceedings shall not be used in evidence under this paragraph unless it was previously submitted to the person presiding at the proceedings for his comments.

- (5) The court may give any judgment or decision or make any order which ought to have been given or made by the court, tribunal or person and make such further or other order as the case may require or may remit the matter with the opinion of the court for rehearing and determination by it or him.
- (6) The court may, in special circumstances, order that such security shall be given for the costs of the appeal as may be just.
- (7) The court shall not be bound to allow the appeal on the ground merely of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the court substantial wrong or miscarriage has been thereby occasioned.

## RIGHT OF MINISTER, ETC., TO APPEAR AND BE HEARD

- Rule 8** | Where an appeal to which this order applies is against an order, determination or other decision of a Minister of the Crown or government department, the Minister or department, as the case may be, shall be entitled to appear and be heard in the proceedings on the appeal.

### RSC ORDER 56

#### APPEALS, ETC., TO HIGH COURT BY CASE STATED: GENERAL

## APPEALS FROM THE CROWN COURT BY CASE STATED

- Rule 1** | (1) Except where they relate to affiliation proceedings or to care proceedings under the Children and Young Persons Act 1969<sup>(27)</sup> all appeals from the Crown Court by case stated shall be heard and determined –
- (a) in any criminal proceedings, by a Divisional Court of the Queen's Bench Division;

(27) 1969 c.54.

- (b) in any other proceedings, by a single judge, or if the court so directs, by a Divisional Court of the Queen's Bench Division.
- (3) An appeal from the Crown Court by case stated shall not be entered for hearing unless and until the case and a copy of the judgment, order or decision in respect of which the case has been stated and, if that judgment, order or decision was given or made on an appeal to the Crown Court, a copy of the judgment, order or decision appealed from, have been filed in the Crown Office.
- (4) No such appeal shall be entered after the expiration of 10 days from the receipt by the appellant of the case unless the delay is accounted for to the satisfaction of the Divisional Court.

Notice of intention to apply for an extension of time for entry of the appeal must be served on the respondent at least 2 clear days before the day named in the notice for the hearing of the application.

- (5) Where any such appeal has not been entered by reason of a default in complying with the provisions of this rule, the Crown Court may proceed as if no case had been stated.

## NOTICE OF ENTRY OF APPEAL

- Rule 4** | Within 4 days after an appeal from the Crown Court by case stated is entered for hearing, the appellant must serve notice of the entry of the appeal on the respondent.

## APPEALS RELATING TO AFFILIATION PROCEEDINGS AND CARE PROCEEDINGS

- Rule 4A** | Appeals from the Crown Court by case stated which relate to affiliation proceedings or to care proceedings under the Children and Young Persons Act 1969 shall be heard and determined by a single judge, or if the court so directs, a Divisional Court of the Family Division, and the foregoing provisions of this order shall accordingly apply to such appeals with the substitution of references to the principal registry of the Family Division for references to the Crown Office and such other modifications as may be appropriate.

## APPEAL FROM MAGISTRATES' COURT BY CASE STATED

- Rule 5** |
- (1) Except as provided by paragraph (2) all appeals from a Magistrates' Court by case stated shall be heard and determined –
    - (a) in any criminal proceedings, by a Divisional Court of the Queen's Bench Division;
    - (b) in any other proceedings, by a single judge or, if the court so directs, by a Divisional Court of the Queen's Bench Division.
  - (2) An appeal by way of case stated against an order or determination of a Magistrates' Court shall be heard and determined by a single judge

or, if the court so directs, a Divisional Court of the Family Division if the order or determination appealed against was made or given in family proceedings.

### CASE STATED BY MAGISTRATES' COURT: FILING CASE, ETC.

- Rule 6 |
- (1) Where a case has been stated by a magistrates' court the appellant must –
    - (a) within 10 days after receiving the case, file it in the Crown Office or, if the appeal falls to be heard by a Divisional Court of the Family Division, the principal registry of the Family Division; and
    - (b) within 4 days after filing the case as aforesaid serve on the respondent a notice of the entry of appeal together with a copy of the case.
  - (2) Unless the court having jurisdiction to determine the appeal otherwise directs, the appeal shall not be heard sooner than 8 clear days after service of notice of the entry of the appeal.

### CASE STATED BY MINISTERS, TRIBUNAL, ETC.

- Rule 7 |
- (1) The jurisdiction of the High Court under any enactment to hear and determine a case stated by a Minister of the Crown, government department, tribunal or other person, or a question of law referred to that court by such a Minister or department or a tribunal or other person by way of case stated, shall be exercised by a single judge of the Queen's Bench Division, except where it is otherwise provided by these rules or by or under any enactment.
  - (2) The jurisdiction of the High Court under any enactment to hear and determine an application for an order directing such a Minister or department or a tribunal or other person to state a case for determination by the High Court, or to refer a question of law to that court by way of case stated, shall be exercised by the court or judge having jurisdiction to hear and determine that case or question except where by some other provision of these rules or by or under any enactment it is otherwise provided.
  - (3) This rule and rules 8 to 12 of this order shall apply to proceedings for the determination of such a case, question or application and, in relation to any such proceedings, shall have effect subject to any provision made in relation to those proceedings by any other provision of these rules or by or under any enactment.
  - (4) In this order references to a tribunal shall be construed as references to any tribunal constituted by or under any enactment other than any of the ordinary courts of law.
  - (5) In the following rules references to a Minister shall be construed as including references to a government department, and in those rules and this rule 'case' includes a special case.

## APPLICATION FOR ORDER TO STATE A CASE

- Rule 8 |
- (1) An application to the court for an order directing a Minister, tribunal or other person to state a case for determination by the court or to refer a question of law to the court by way of case stated must be made by claim form; and the persons to be served with the claim form are the Minister, secretary of the tribunal or other person, as the case may be, and every party (other than the applicant) to the proceedings to which the application relates.
  - (2) The claim form must state the grounds of the application, the question of law on which it is sought to have the case stated and any reasons given by the Minister, tribunal or other person for his or its refusal to state a case.
  - (3) The claim must be entered for hearing, and the claim form served, within 14 days after receipt by the applicant of notice of the refusal of his request to state a case.

## SIGNING AND SERVICE OF CASE

- Rule 9 |
- (1) A case stated by a tribunal must be signed by the chairman or president of the tribunal, and a case stated by any other person must be signed by him or by a person authorised in that behalf to do so.
  - (2) The case must be served on the party at whose request, or as a result of whose application to the court, the case was stated; and if a Minister, tribunal, arbitrator or other person is entitled by virtue of any enactment to state a case, or to refer a question of law by way of case stated, for determination by the High Court without request being made by any party to the proceedings before that person, the case must be served on such party to those proceedings as the Minister, tribunal, arbitrator or other person, as the case may be, thinks appropriate.
  - (3) When a case is served on any party under paragraph (2) notice must be given to every other party to the proceedings in question that the case has been served on the party named, and on the date specified, in the notice.

## PROCEEDINGS FOR DETERMINATION OF CASE

- Rule 10 |
- (1) Proceedings for the determination by the High Court of a case stated, or a question of law referred by way of case stated, by a Minister, tribunal, arbitrator or other person must be begun by claim form by the person on whom the case was served in accordance with rule 9(2) or, where the case is stated without a request being made, by the Minister, secretary of the tribunal, arbitrator or other person by whom the case is stated.
  - (2) The applicant shall serve the claim form under paragraph (1), together with a copy of the case, on –

- (a) the Minister, secretary of the tribunal, arbitrator or other person by whom the case was stated, unless that Minister, tribunal, arbitrator or other person is the applicant;
  - (b) every party (other than the applicant) to the proceedings in which the question of law to which the case relates arose; and
  - (c) any other person (other than the applicant) served with the case under rule 9(2).
- (3) The claim form must set out the applicant's contentions on the question of law to which the case stated relates.
- (4) The claim must be entered for hearing, and the claim form served, within 14 days after the case stated was served on the applicant.
- (5) If the applicant fails to enter the claim within the period specified in paragraph (4) then, after obtaining a copy of the case from the Minister, tribunal, arbitrator or other person by whom the case was stated, any other party to the proceedings in which the question of law to which the case relates arose may, within 14 days after the expiration of the period so specified, begin proceedings for the determination of the case, and paragraphs (1) to (4) shall have effect accordingly with the necessary modifications.
- The references in this paragraph to the period specified in paragraph (4) shall be construed as including references to that period as extended by any order of the court.
- (6) The documents required to be filed in accordance with Order 57, rule 2, before entry of the claim include a copy of the case stated.
- (7) Unless the court having jurisdiction to determine the case otherwise directs, the claim shall not be heard sooner than 7 days after service of the claim form.

## AMENDMENT OF CASE

### Rule 11

The court hearing a case stated by a Minister, tribunal, arbitrator or other person may amend the case or order it to be returned to that person for amendment, and may draw inferences of fact from the facts stated in the case.

## RIGHT OF MINISTER TO APPEAR AND BE HEARD

### Rule 12

In proceedings for the determination of a case stated, or of a question of law referred by way of case stated, the Minister, chairman or president of the tribunal, arbitrator or other person by whom the case was stated shall be entitled to appear and be heard.

## EXTRADITION

### Rule 12A

- (1) Rules 5 and 6 of this order shall apply to appeals by case stated under –
  - (a) section 7 of the Criminal Justice Act 1988<sup>(28)</sup>; and
  - (b) section 7A of the Fugitive Offenders Act 1967<sup>(29)</sup>,
 as they apply to appeals by case stated from a Magistrates' Court and references in those rules to appellant and respondent shall be construed as references to the requesting state and the person whose surrender is sought respectively.
- (2) An application for an order under either of the sections mentioned in paragraph (1) or under section 2A of the Backing of Warrants (Republic of Ireland) Act 1965<sup>(30)</sup> requiring a court to state a case shall be made in accordance with rule 8 of this order the references in that rule to a tribunal and the secretary of a tribunal being construed for this purpose as references to the court and the clerk of the court respectively.

## INTERLOCUTORY APPLICATIONS

### Rule 13

- (1) Unless the court otherwise directs, any interlocutory application in proceedings to which this order applies may be made to any judge or a Master of the Queen's Bench Division or, as the case may be, any judge or a district judge of the Family Division, notwithstanding that the appeal has been brought by case stated and is to be heard by a Divisional Court.

In this paragraph 'interlocutory application' includes an application for an order extending the time for entry of the appeal or for service of notice of entry of the appeal.

- (2) In relation to an order made by a Master or district judge pursuant to paragraph (1), Order 58, rule 1 shall, where the application is to be heard by a Divisional Court, have effect as if a reference to that court were substituted for the reference to a judge.
- (3) This rule is without prejudice to any statutory provision or rule of law restricting the making of an order against the Crown.

## RSC ORDER 57

## DIVISIONAL COURT PROCEEDINGS, ETC.: SUPPLEMENTARY PROVISIONS

## APPLICATION

### Rule 1

- (1) Subject to paragraph (2) this order shall apply to –
  - (a) any proceedings before a Divisional Court;

(28) 1988 c.33.

(29) 1967 c.68.

(30) 1965 c.45. Section 2A was inserted by the Criminal Justice Act 1988 (c.33), section 1(9), Schedule 1, Part II, paragraph 5 and continues to have effect notwithstanding repeal of that section by virtue of the Extradition Act 1989 (c.33), section 37(5).

- (b) any proceedings before a single judge under Order 52, rule 2, Order 53, Order 54, Order 64, rule 4 or Order 79;
  - (c) any proceedings before a single judge, being proceedings which consist of or relate to an appeal to the High Court from any court, tribunal or person including an appeal by case stated and the reference of a question of law by way of case stated.
- (2) The following rules of this order shall not apply to an appeal from a county court to a single judge under section 375 of the Insolvency Act 1986<sup>(31)</sup>.

## ENTRY OF CLAIMS

### Rule 2

- (1) Every claim in proceedings to which this order applies must be entered for hearing in the appropriate office; and entry shall be made when a copy of the claim form, and any other documents required to be lodged before entry, have been filed in that office.
- (2) The party entering the claim for hearing must file in the appropriate office copies of the proceedings for the use of the judges.
- (3) Except where it relates to proceedings in the Admiralty Court every claim entered for hearing by a Divisional Court of the Queen's Bench Division shall be entered in the Divisional Court list.
- (4) In this rule 'the appropriate office' means –
  - (a) in relation to proceedings in the Queen's Bench Division (including the Admiralty Court) the Crown Office or the Admiralty and Commercial Registry, as the circumstances of the case require;
  - (b) in relation to proceedings in the Chancery Division, Chancery Chambers;
  - (c) in relation to proceedings in the Family Division, the principal registry of the Family Division.

## ISSUE, ETC., OF CLAIM FORM

### Rule 3

A claim form by which any proceedings to which this order applies are begun must be issued –

- (a) in the case of proceedings in the Family Division, out of the principal registry of the Family Division; and
- (b) in the case of any other proceedings, out of the Crown Office, Chancery Chambers or the Admiralty and Commercial Registry, as the circumstances of the case require.

(31) 1986 c.45.

## FILING OF WITNESS STATEMENTS OR AFFIDAVITS AND DRAWING UP OF ORDERS

- Rule 4 |
- (1) Every witness statement or affidavit used in proceedings to which this order applies must be filed in the Crown Office, Chancery Chambers or the Admiralty and Commercial Registry, as the circumstances of the case require.
  - (2) Every order made in proceedings to which this order applies in the Queen's Bench Division shall be drawn up in the Crown Office or the Admiralty and Commercial Registry, as the circumstances of the case require, and a copy of any order made by a judge sitting in private in any such proceedings must be filed in that office.

## ISSUE OF WRITS

- Rule 5 |
- Every writ issued in proceedings to which this Order applies must be prepared by the party seeking to issue it and –
- (a) shall be issued out of the Crown Office, Chancery Chambers or the principal registry of the Family Division, as the circumstances of the case require; and
  - (b) must, together with the return to it and a copy of any order made on it, be filed in the Crown Office, Chancery Chambers or the principal registry of the Family Division, as the circumstances of the case require.

## CUSTODY OF RECORDS

- Rule 6 |
- The master of the Crown Office or the Admiralty and Commercial Registry, as the circumstances of the case require shall have the custody of the records of or relating to proceedings in the Queen's Bench Division to which this Order applies.

### **RSC ORDER 58**

### **APPEALS FROM MASTERS, REGISTRARS, REFEREES AND JUDGES**

## APPEALS FROM CERTAIN DECISIONS OF MASTERS, ETC. TO JUDGE SITTING IN PRIVATE

- Rule 1 |
- (1) Except as provided by rule 2, an appeal shall lie to a judge from any judgment, order or decision of a Master, the Admiralty Registrar or a district judge of the Family Division.
  - (2) The appeal shall be brought by serving on every other party to the proceedings in which the judgment, order or decision was given or made a notice of appeal.
  - (3) Unless the court otherwise orders, the notice must be issued within 5 days after the judgment, order or decision appealed against was given or made and must be served within five days after issue and an appeal

to which this rule applies shall not be heard sooner than two clear days after such service.

- (3A) When it issues the notice of appeal, the court will fix a date for the hearing.
- (4) Except so far as the court may otherwise direct, an appeal under this rule shall not operate as a stay of the proceedings in which the appeal is brought.

## APPEALS FROM CERTAIN DECISIONS OF MASTERS, ETC., TO COURT OF APPEAL

### Rule 2

- (1) An appeal shall lie to the Court of Appeal from any judgment, order or decision of a Master given or made at trial –

- (a) on the hearing or determination of any cause, matter, question or issue tried before him; or
- (b) on an assessment of damages or of the value of goods, or an assessment of interest,

and where a judgment, order or decision of a kind referred to in paragraph (b) includes or involves a determination of any other matter, an appeal shall lie to the Court of Appeal in relation to such other matter.

(An appeal from the decision of a Master made other than at trial shall be made to the judge in accordance with rule 1.)

## APPEALS FROM DISTRICT JUDGES

### Rule 3

- (1) An appeal shall lie from any judgment, order or decision of a district judge in any proceedings in any Division in the same circumstances and, except as provided by paragraph (2) subject to the same conditions as if the judgment, order or decision were given or made by a Master or Registrar in those proceedings in that Division, and the provisions of these rules with respect to appeals shall apply accordingly.
- (2) In relation to an appeal from a judgment, order or decision of a district judge, rule 1 shall have effect subject to the modification that for the first reference therein to 5 days and the reference therein to 2 clear days there shall be substituted references to 7 days and 3 clear days respectively.

## APPEALS FROM JUDGE OF THE TECHNOLOGY AND CONSTRUCTION COURT

### Rule 4

Subject to section 18 of the Act (which shall apply in relation to a decision of a judge of the Technology and Construction Court as if he were a judge of the High Court), an appeal shall lie to the Court of Appeal from a decision of a judge of the Technology and Construction Court as if he were a judge of the High Court.

## RSC ORDER 59

### APPEALS TO THE COURT OF APPEAL

#### APPLICATION OF ORDER TO APPEALS

- Rule 1** | This order applies, subject to the provisions of these Rules with respect to particular appeals, to every appeal to the Court of Appeal (including so far as it is applicable thereto, any appeal to that court from a judge of the Technology and Construction Court, master or other officer of the Supreme Court or from any tribunal from which an appeal lies to that court under or by virtue of any enactment) not being an appeal for which other provision is made by these Rules, and references to 'the court below' apply to any court, tribunal or person from which such an appeal lies.

#### CLASSES OF CASE WHERE PERMISSION TO APPEAL IS REQUIRED

- Rule 1B** |
- (1) Permission is required for every appeal except an appeal against –
    - (a) the making of a committal order;
    - (b) a refusal to grant habeas corpus; or
    - (c) an order made under section 25 of the Children Act 1989<sup>(32)</sup> (secure accommodation orders).
  - (2) A respondent who wishes to serve a respondent's notice to which rule 6(1)(a) applies must first obtain permission to cross-appeal unless the case is one to which sub-paragraphs (a), (b) or (c) of paragraph (1) applies.
  - (3) Permission to appeal or cross-appeal to the Court of Appeal may be given by the court below or by the Court of Appeal.

#### APPLICATION OF ORDER TO APPLICATIONS FOR NEW TRIAL

- Rule 2** | This order (except so much of rule 3(1) as provides that an appeal shall be by way of rehearing and except rule 11(1)) applies to an application to the Court of Appeal for a new trial or to set aside a verdict, finding or judgment after trial with or without a jury, as it applies to an appeal to that court, and references in this order to an appeal and to an appellant shall be construed accordingly.

#### INTERPRETATION

- Rule 2A** | In this order 'a single judge' means a single judge of the Court of Appeal and 'the registrar' means the registrar of civil appeals.

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(32) 1989 c.41.

## GENERAL PROVISIONS AS TO APPEALS

### WHO MAY EXERCISE THE POWERS OF THE COURT OF APPEAL

- Rule 2B | Subject to section 58(1) of the Act the functions of the Court of Appeal may be performed by –
- (a) that court;
  - (b) a single judge; or
  - (c) the registrar

### VARIATION OF TIME

- Rule 2C | Any date set by the court or this order for doing any act may not be varied by the parties.

(CPR Rule 2.11 allows the parties to vary a date by written agreement except where these Rules provide otherwise or the court orders otherwise.)

### NOTICE OF APPEAL

- Rule 3 |
- (1) An appeal to the Court of Appeal shall be by way of rehearing and must be brought by notice of appeal.
  - (2) Notice of appeal may be given either in respect of the whole or in respect of any specified part of the judgment or order of the court below; and every such notice must specify the grounds of the appeal and the precise form of the order which the appellant proposes to ask the Court of Appeal to make.
  - (3) Except with the permission of the Court of Appeal, a single judge or the registrar, the appellant shall not be entitled on the hearing of an appeal to rely on any grounds of appeal, or to apply for any relief, not specified in the notice of appeal.
  - (4) Every notice of appeal must specify the list of appeals to which the appellant proposes that the appeal should be assigned.
  - (5) A notice of appeal must be served on all parties to the proceedings in the court below who are directly affected by the appeal; and, subject to rule 8, it shall not be necessary to serve the notice on parties not so affected.
  - (6) No notice of appeal shall be given by a respondent in a case to which rule 6(1) relates.

### TIME FOR APPEALING

- Rule 4 |
- (1) Except as otherwise provided by this order, every notice of appeal must be served under rule 3(5) not later than 4 weeks after the date on which the judgment or order of the court below was sealed or otherwise perfected.

- (2) In the case of an appeal from a decision in respect of which a certificate has been granted under section 12 of the Administration of Justice Act 1969<sup>(33)</sup> the period referred to in paragraph (1) shall be calculated from the end of the time during which, in accordance with section 13(5) of that Act, no appeal lies to the Court of Appeal.
- (3) Where permission to appeal is granted by the Court of Appeal or the court below upon an application made within the time limited for serving notice of appeal under paragraph (1), a notice of appeal may, instead of being served within that time, be served within 7 days after the date when permission is granted.

## SETTING DOWN APPEAL

### Rule 5

- (1) Within 7 days after the later of (i) the date on which service of the notice of appeal was effected, or (ii) the date on which the judgment or order of the court below was sealed or otherwise perfected, the appellant must set down his appeal by filing with the court –
  - (a) a copy of the said judgment or order; and
  - (b) two copies of the notice of appeal, one of which shall be indorsed with the amount of the fee paid, and the other indorsed with a certificate of the date of service of the notice.
- (2) Upon the said documents being so filed, the court shall enter the appeal in the records of the court and assign it to the appropriate list of appeals.
- (3) The appropriate list of appeals for the purpose of paragraph (2) shall be decided by the registrar, without prejudice, however, to any decision of the Court of Appeal on the question whether the judgment or order appealed against is interlocutory or final.
- (4) Within 4 days of receipt of notification from the office of the registrar that the appeal has been entered in the records of the court, the appellant must give notice to that effect to all parties on whom the notice of appeal was served, specifying the Court of Appeal reference allocated to that appeal.

## RESPONDENT'S NOTICE

### Rule 6

- (1) A respondent who, having been served with a notice of appeal, desires –
  - (a) to contend on the appeal that the decision of the court below should be varied, either in any event or in the event of the appeal being allowed in whole or in part; or
  - (b) to contend that the decision of the court below should be affirmed on grounds other than those relied upon by that court; must give notice to that effect, specifying the grounds of his

(33) 1969 c.58; section 12 was amended by the Supreme Court Act 1981 (c.54), section 152(4), Schedule 7 and by the Courts Act 1971 (c.23), section 56(4), Schedule II, Part IV.

contention and, in a case to which paragraph (a) relates, the precise form of the order which he proposes to ask the court to make.

- (2) Except with the permission of the Court of Appeal or a single judge or the registrar, a respondent shall not be entitled on the hearing of the appeal to apply for any remedy not specified in a notice under paragraph (1) or to rely, in support of any contention, upon any ground which has not been specified in such a notice or relied upon by the court below.
- (3) Any notice given by a respondent under this rule (in this order referred to as a 'respondent's notice') must be served on the appellant, and on all parties to the proceedings in the court below who are directly affected by the contentions of the respondent, and must be served within 21 days after the service of the notice of appeal on the respondent.
- (4) A party by whom a respondent's notice is given must, within 4 days after the later of (i) the date on which the service of the respondent's notice was effected or (ii) the date on which he was notified under rule 5(4) that the appeal had been entered in the records of the court, file with the court two copies of the respondent's notice, one of which shall be indorsed with the amount of the fee paid, and the other indorsed with a certificate of the date of service of such respondent's notice.

## AMENDMENT OF NOTICE OF APPEAL AND RESPONDENT'S NOTICE

### Rule 7

- (1) A notice of appeal or respondent's notice may be amended –
  - (a) with the permission of the Court of Appeal, a single judge or the registrar, at any time;
  - (b) without such permission, by supplementary notice served, before the date on which the appeal first appears in the Document List referred to in rule 9(1) on each of the parties on whom the notice to be amended was served.
- (2) A party by whom a supplementary notice is served under this rule must, within 2 days after service of the notice, file two copies of the notice at the court.

## DIRECTIONS OF THE COURT AS TO SERVICE

### Rule 8

- (1) The Court of Appeal or a single judge or the registrar may in any case direct that a notice of appeal or respondent's notice be served on any party to the proceedings in the court below on whom it has not been served, or on any person not party to those proceedings.
- (2) Where a direction is given under paragraph (1) the hearing of the appeal may be postponed or adjourned for such period and on such

terms as may be just and such judgment may be given and such order made on the appeal as might have been given or made if the persons served in pursuance of the direction had originally been parties.

## DOCUMENTS TO BE FILED BY APPELLANT

- Rule 9 | Not more than 14 days after an appeal or application first appears in a list to be called 'the Document List' the appellant must file documents with the court in accordance with the relevant practice direction.

## GENERAL POWERS OF THE COURT

- Rule 10 |
- (1) In relation to an appeal the Court of Appeal shall have all the powers and duties of the court below.
  - (2) The Court of Appeal shall have power to receive further evidence on questions of fact, either by oral examination in court, by witness statement or affidavit, or by deposition taken before an examiner, but, in the case of an appeal from a judgment after trial or hearing of any proceedings on the merits, no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) shall be admitted except on special grounds.
  - (3) The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been given or made, and to make such further or other order as the case may require.
  - (4) The powers of the Court of Appeal under the foregoing provisions of this rule may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular part of the decision of the court below or by any particular party to the proceedings in that court, or that any ground for allowing the appeal or for affirming or varying the decision of that court is not specified in such a notice; and the Court of Appeal may make any order, on such terms as the court thinks just, to ensure the determination on the merits of the real question in controversy between the parties.
  - (5) The Court of Appeal may, in special circumstances, order that such security shall be given for the costs of an appeal as may be just.
  - (6) The powers of the Court of Appeal in respect of an appeal shall not be restricted by reason of any interlocutory order from which there has been no appeal.
  - (7) Documents impounded by order of the Court of Appeal shall not be delivered out of the custody of that court except in compliance with an order of that court:

Provided that where a Law Officer or the Director of Public Prosecutions makes a written request in that behalf, documents so impounded shall be delivered into his custody.

- (8) Documents impounded by order of the Court of Appeal, while in the custody of that court, shall not be inspected except by a person authorised to do so by an order of that court.
- (9) In any proceedings incidental to any cause or matter pending before the Court of Appeal, the powers conferred by this rule on the court shall be exercisable in relation to –
  - (a) the grant, variation, discharge or enforcement of an injunction, or an undertaking given in lieu of an injunction; and
  - (b) the grant or lifting of a stay of execution or proceedings, only by the court or a single judge

## POWERS OF THE COURT AS TO NEW TRIALS

### Rule 11

- (1) On the hearing of any appeal the Court of Appeal may, if it thinks fit, make any such order as could be made in pursuance of an application for a new trial or to set aside a verdict, finding or judgment of the court below.
- (2) The Court of Appeal shall not be bound to order a new trial on the ground of misdirection, or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the judge at the trial was not asked to leave to them, unless in the opinion of the Court of Appeal some substantial wrong or miscarriage has been thereby occasioned.
- (3) A new trial may be ordered on any question without interfering with the finding or decision on any other question; and if it appears to the Court of Appeal that any such wrong or miscarriage as is mentioned in paragraph (2) affects part only of the matter in controversy, or one or some only of the parties, the court may order a new trial as to that part only, or as to that party or those parties only, and give final judgment as to the remainder.
- (4) In any case where the Court of Appeal has power to order a new trial on the ground that damages awarded by a jury are excessive or inadequate, the court may, instead of ordering a new trial, substitute for the sum awarded by the jury such sum as appears to the court to be proper; but except as aforesaid the Court of Appeal shall not have power to reduce or increase the damages awarded by a jury.

## EVIDENCE ON APPEAL

### Rule 12

Where any question of fact is involved in an appeal, the evidence taken in the court below bearing on the question shall, subject to any direction of the Court of Appeal, or a single judge or the registrar, be brought before that Court as follows –

- (a) in the case of evidence taken by affidavit or witness statement, by the production of a true copy of such affidavit or witness statement;

- (b) in the case of evidence given orally, by a copy of so much of the transcript of the official shorthand note as is relevant or by a copy of the judge's note, where he has intimated that in the event of an appeal his note will be sufficient, or by such other means as the Court of Appeal, or a single judge or the registrar, may direct.

## NON-DISCLOSURE OF PAYMENT INTO COURT

### Rule 12A

- (1) Where –
  - (a) any question on an appeal in a claim for a debt, damages or salvage relates to liability for the debt, damages or salvage or to the amount thereof; and
  - (b) money was paid into court under CPR Part 36 or CPR rule 37.3 in the proceedings in the court below before judgment,

neither the fact of the payment nor the amount thereof shall be stated in the notice of appeal or the respondent's notice or in any supplementary notice or be communicated to the Court of Appeal until all such questions have been decided.

This rule shall not apply in the case of an appeal as to costs only or an appeal in a claim to which a defence of tender before claim was made.

- (2) To comply with this rule the appellant must cause to be omitted from the copies of the documents filed by him under rule 9 every part thereof which states that money was paid into court in the proceedings in that court before judgment.

## STAY OF EXECUTION, ETC.

### Rule 13

- (1) Except so far as the court below or the Court of Appeal or a single judge may otherwise direct –
  - (a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the court below;
  - (b) no intermediate act or proceeding shall be invalidated by an appeal.
- (2) On an appeal from the High Court, interest for such time as execution has been delayed by the appeal shall be allowed unless the Court of Appeal otherwise orders.

## APPLICATIONS TO COURT OF APPEAL

### Rule 14

- (1) Unless otherwise directed, every application to the Court of Appeal, a single judge or the registrar must be made by application notice in accordance with CPR Part 23.

- (2) An application to the Court of Appeal for permission to appeal shall –
- (a) include, where necessary, any application to extend the time for appealing; and
  - (b) be made in writing without notice being served on any other party setting out the reasons why permission should be granted and, if the time for appealing has expired, the reasons why the application was not made within that time unless the court otherwise directs,

and the court may grant or refuse the application or direct that the application be renewed at a hearing either with or without notice being served on any other party.

- (2A) If an application under paragraph (2) is refused otherwise than after a hearing, the applicant shall be entitled, within 7 days after he has been given notice of the refusal, to renew his application; and such renewed application shall be heard without notice being served on any other party unless the court otherwise directs.
- (2B) If an application under paragraph (2) is granted otherwise than after a hearing with notice, notice of the order shall be served on the party or parties affected by the appeal and any such party shall be entitled, within 7 days after service of the notice, to apply with notice to have the grant of permission reconsidered unless the court otherwise directs.
- (3) Where an application without notice being served on any other party has been refused by the court below, an application for a similar purpose may be made to the Court of Appeal without notice being served on any other party within 7 days after the date of the refusal.
- (4) Wherever under these rules an application may be made either to the court below or to the Court of Appeal, it shall not be made in the first instance to the Court of Appeal, except where there are special circumstances which make it impossible or impracticable to apply to the court below or unless the court otherwise directs.
- (5) Where an application is made to the Court of Appeal with regard to arbitration proceedings before a judge-arbitrator or judge-umpire, which would, in the case of an ordinary arbitrator or umpire, be made to the High Court, the provisions of the Arbitration Practice Direction relating to such applications shall apply as appropriate.
- (6) Where an application is made to the Court of Appeal under section 1(5) of the Arbitration Act 1979<sup>(34)</sup> (including any application for permission) notice thereof must be served on the judge-arbitrator or judge-umpire and on any other party to the reference.
- (9) The registrar may refer to a single judge any matter which he thinks should properly be decided by a single judge, and, following such

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(34) 1979 c.42.

reference, the judge may either dispose of the matter or refer it back to the registrar with such direction as the single judge thinks fit.

- (10) A single judge may refer to the Court of Appeal any matter which he thinks should properly be decided by that court, and, following such reference, that court may either dispose of the matter or refer it back to a single judge or the registrar, with such directions as that court thinks fit.
- (11) An appeal shall lie to a single judge from any determination made by the registrar and shall be brought by way of fresh application made within 10 days of the determination appealed against.
- (12) An appeal shall lie to the Court of Appeal from any determination by a single judge, not being the determination of an application for permission to appeal, and shall be brought by way of fresh application made within 10 days of the determination appealed against.

Provided that an appeal shall not lie to the Court of Appeal without the permission of that court in respect of a determination of the registrar which has been reviewed by a single judge.

## EXTENSION OF TIME

- Rule 15 |
- (1) The period for serving notice of appeal under rule 4 or for making application without notice being served on any other party under rule 14(3) may be extended or abridged by the court below on application made before the expiration of that period.

## SPECIAL PROVISIONS AS TO PARTICULAR APPEALS

### APPEAL AGAINST DECREE NISI

- Rule 16 |
- (1) The following provisions of this rule shall apply to any appeal to the Court of Appeal in a matrimonial cause against a decree nisi of divorce or nullity of marriage.
  - (2) The period of 4 weeks specified in rule 4 shall be calculated from the date on which the decree was pronounced and rule 15 shall not apply in relation to that period.
  - (2A) The notice of appeal shall be served on the appropriate district judge as well as on the party or parties required to be served under rule 3.
  - (3) The appellant must, within the period mentioned in paragraph (2) and after service of the notice of appeal, file with the court a copy of that decree and two copies of the notice of appeal (one of which shall be indorsed with the amount of the fee paid and the other indorsed with a certificate of the date of service of the notice); and the appeal shall not be competent unless this paragraph has been complied with.
  - (4) For the purposes of rule 5 the leaving of the said copies shall be sufficient for the setting down of the appeal and rule 5(1) shall not apply.

- (5) A party who intends to apply without notice being served on any other party to the Court of Appeal to extend the period referred to in paragraphs (2) and (3) must give notice of his intention to the appropriate district judge before the application is made; and where any order is made by the Court of Appeal extending the said period, it shall be the duty of the registrar of civil appeals forthwith to give notice of the making of the order and of the terms thereof to the appropriate district judge.
- (6) In this rule 'the appropriate district judge' means –
  - (a) in relation to a cause pending in a county court, the district judge of that court;
  - (b) in relation to a cause proceeding in the principal registry of the Family Division, the senior district judge of that Division; and
  - (c) in relation to a cause proceeding in a district registry, the district judge of that registry.

## APPEAL AGAINST ORDER FOR REVOCATION OF PATENT

### Rule 17

- (1) The following provisions of this rule shall apply to any appeal to the Court of Appeal from an order for the revocation of a patent.
- (2) The notice of appeal must be served on the Comptroller-General of Patents, Designs and Trade Marks (in this rule referred to as 'the Comptroller') as well as on the party or parties required to be served under rule 3.
- (3) If, at any time before the appeal comes on for hearing, the respondent decides not to appear on the appeal or not to oppose it, he must forthwith serve notice of his decision on the Comptroller and the appellant, and any such notice served on the Comptroller must be accompanied by a copy of the petition or of the statements of case in the claim and the written evidence filed therein.
- (4) The Comptroller must, within 14 days after receiving notice of the respondent's decision, serve on the appellant a notice stating whether or not he intends to appear on the appeal.
- (5) The Comptroller may appear and be heard in opposition to the appeal –
  - (a) in any case where he has given notice under paragraph (4) of his intention to appear; and
  - (b) in any other case (including, in particular, a case where the respondent withdraws his opposition to the appeal during the hearing) if the Court of Appeal so directs or allows.
- (6) The Court of Appeal may make such orders for the postponement or adjournment of the hearing of the appeal as may appear to the court necessary for the purpose of giving effect to the foregoing provisions of this rule.

## APPEAL FROM PATENTS COURT ON APPEAL FROM COMPTROLLER

- Rule 18 | In the case of an appeal to the Court of Appeal from a decision of the Patents Court on an appeal from a decision of the Comptroller-General of Patents, Designs and Trade Marks the notice of appeal must be served on the Comptroller-General as well as on the party or parties required to be served under rule 3.

## APPEAL FROM COUNTY COURT

- Rule 19 |
- (1) The following provisions of this rule shall apply to any appeal to the Court of Appeal from a county court other than an appeal against a decree nisi of divorce or nullity of marriage.
  - (2) The appellant must, within the time specified in rule 4, serve the notice of appeal on the district judge of the county court as well as on the party or parties required to be served under rule 3.
  - (3) In relation to the appeal rule 4 (1) and rule 5 (1) shall have effect as if for the words 'the date on which the judgment or order of the court below was sealed or otherwise perfected' there were substituted the words 'the date on which the court below gave its decision.'
  - (5) Rule 13(1)(a) shall not apply, but the appeal shall not operate as a stay of execution or of proceedings in the county court unless the judge of that court or the Court of Appeal so orders or unless, within 10 days after the date of the judgment or order appealed against, the appellant deposits a sum fixed by the judge not exceeding the amount of the money or the value of the property affected by the judgment or order, or gives such security for the said sum as the judge may direct.
  - (6) In the case of an appeal to the Court of Appeal from the decision of a county court on the hearing of an appeal from a registration officer under section 56 of the Representation of the People Act 1983<sup>(35)</sup>, notice of the decision of the Court of Appeal shall be given by the registrar of civil appeals to the registration officer, specifying every alteration to be made in pursuance of the decision in the register or list concerned, and a copy of every such notice shall be sent to the district judge of the county court.
  - (7) In relation to any proceedings in the principal registry of the Family Division which by virtue of any statutory provision are treated as pending in a county court, paragraphs (1) to (5) shall have effect with the necessary modifications as if the principal registry were a county court.

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(35) 1983 c.2; section 56 was amended by the Representation of the People Act 1985 (c.50), sections 11, 24, 28(1), Schedule 2, Part I, paragraph 1; Schedule 4, paragraph 16 and Schedule 5.

## APPEALS IN CASES OF CONTEMPT OF COURT

### Rule 20

- (1) In the case of an appeal to the Court of Appeal under section 13 of the Administration of Justice Act 1960<sup>(36)</sup>, the notice of appeal must be served on the court from whose order or decision the appeal is brought as well as on the party or parties required to be served under rule 3.

This paragraph shall not apply in relation to an appeal to which rule 19 applies.

- (2) Where, in the case of an appeal under the said section 13 to the Court of Appeal or to the House of Lords from the Court of Appeal, the appellant is in custody, the Court of Appeal may order his release on his giving security (whether by recognisance, with or without sureties, or otherwise and for such reasonable sum as that court may fix) for his appearance within 10 days after the judgment of the Court of Appeal or, as the case may be, of the House of Lords on the appeal shall have been given, before the court from whose order or decision the appeal is brought unless the order or decision is reversed by that judgment.
- (3) An application for the release of a person under paragraph (2) pending an appeal to the Court of Appeal or House of Lords under the said section 13 must be made in accordance with CPR Part 23, and the application notice must, at least 24 hours before the day named therein for the hearing, be served on the court from whose order or decision the appeal is brought and on all parties to the proceedings in that court who are directly affected by the appeal.
- (4) Order 79, rule 9 (6), (6A), (6B) and (8) shall apply in relation to the grant of bail under this rule by the Court of Appeal in a case of criminal contempt of court as they apply in relation to the grant of bail in criminal proceedings by the High Court, but with the substitution for references to a judge of references to the Court of Appeal and for references to the defendant of references to the appellant.
- (5) When granting bail under this rule in a case of civil contempt of court, the Court of Appeal may order that the recognisance or other security to be given by the appellant or the recognisance of any surety shall be given before any person authorised by virtue of section 119(1) of the Magistrates' Courts Act 1980<sup>(37)</sup> to take a recognisance where a magistrates' court having power to take it has, instead of taking it, fixed the amount in which the principal and his sureties, if any, are to be bound. An order by the Court of Appeal granting bail as aforesaid must be in Form 98 in the relevant practice direction with the necessary adaptations.

(36) 1960 c.65; section 13 was amended by the Courts Act 1971 (c.23), section 56, Schedule 8, Part II, paragraph 40(1) and (2); Schedule 11, Part II; by the County Courts Act 1984 (c.28), section 148(1), Schedule 2, Part V, paragraph 25; by the Magistrates' Courts Act 1980 (c.43), section 154, Schedule 7, paragraph 37; by the Criminal Appeal Act 1968 (c.19), Part 1; and by the Supreme Court Act 1981 (c.54), section 152(4), Schedule 7.

(37) 1980 c.43.

- (6) Where in pursuance of an order of the Court of Appeal under paragraph (5) of this rule a recognisance is entered into or other security given before any person, it shall be the duty of that person to cause the recognisance of the appellant or any surety or, as the case may be, a statement of the other security given, to be transmitted forthwith to the clerk of the court which committed the appellant; and a copy of such recognisance or statement shall at the same time be sent to the governor or keeper of the prison or other place of detention in which the appellant is detained, unless the recognisance or security was given before such governor or keeper.
- (8) The powers conferred on the Court of Appeal by paragraphs (2), (4), (5) and (6) of this rule may be exercised by a single judge.

## APPEALS FROM SOCIAL SECURITY COMMISSIONERS

### Rule 21

- (1) This rule shall apply to any appeal to the Court of Appeal under section 14 of the Social Security Act 1980 (appeal from the decision of a Commissioner on a question of law, with the permission of the Commissioner or of the Court of Appeal).
- (2) The notice of appeal must be served within 6 weeks from the date on which notice of the Commissioner's grant or refusal of permission was given in writing to the appellant and must be served on the Secretary of State and any person appointed by him to proceed with a claim as well as on the party or parties required to be served under rule 3.
- (3) The provisions of rule 4(3) apply to this rule, with the substitution for the reference in rule 4(3) to paragraph (1) of a reference to paragraph (2).

## APPEALS FROM VALUE ADDED TAX TRIBUNALS

### Rule 22

- (1) An application to the Court of Appeal for permission to appeal from a value added tax tribunal direct to that court under section 26 of the Finance Act 1985<sup>(38)</sup> shall be made within 28 days from the date on which the tribunal certifies that its decision involves a point of law relating wholly or mainly to the construction of an enactment or of a statutory instrument, or of any of the Community Treaties or any Community Instrument, which has been fully argued before it and fully considered by it.
- (2) Such an application shall be made by the parties jointly by filing a copy of the decision, endorsed with the certificate of the tribunal and a statement of the grounds of the application, with the court, and shall be determined by a single judge of the Court of Appeal, who may do so without a hearing.
- (3) In the case of all applications, the court shall notify the parties of the determination of the single judge, and –

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(38) 1985 c.54.

- (a) where permission to appeal to the Court of Appeal is granted, the appellant shall within 14 days after such notification serve the notice of appeal on the chairman of the tribunal as well as on the party or parties required to be served by rule 3;
- (b) where permission to appeal to the Court of Appeal is refused, the period specified in Order 55, rule 4 (2) for appealing to the High Court shall be calculated from the date of notification of the refusal.

## DISMISSAL OF PATIENT'S APPEAL BY CONSENT

**Rule 23** | Where the receiver or other person authorised under Part VII of the Mental Health Act 1983<sup>(39)</sup> to conduct legal proceedings in the name of the patient or on his behalf has also been authorised by the Court of Protection under its seal to consent to the dismissal of an appeal to the Court of Appeal by that patient, the appeal may be dismissed by consent without a hearing.

## APPEALS FROM IMMIGRATION APPEALS TRIBUNAL

- Rule 24** |
- (1) This rule shall apply to any appeal to the Court of Appeal under section 9 of the Asylum and Immigration Appeals Act 1993<sup>(40)</sup> (appeal on a question of law from a final determination of an Immigration Appeals Tribunal, with the permission of the Immigration Appeals Tribunal or the Court of Appeal).
  - (2) Rule 4(1) shall have effect as if for the words 'the date on which the judgment or order of the court below was sealed or otherwise perfected' there were substituted the words 'the date of the tribunal's written decision to grant or refuse permission to appeal'.
  - (3) The notice of appeal must be served on the other party or parties to the proceedings before the tribunal, and on the chairman.
  - (5) Rule 13 shall not apply.

## APPEALS FROM SPECIAL COMMISSIONERS

- Rule 25** |
- (1) An application to the Court of Appeal for permission to appeal from the Special Commissioners direct to that court under section 56A of the Taxes Management Act 1970<sup>(41)</sup> shall be made within 28 days from the date on which the Special Commissioners certify that their decision involves a point of law relating wholly or mainly to the construction of an enactment which was fully argued before them and fully considered by them.
  - (2) Such an application shall be made by the parties jointly filing a copy of the decision, endorsed with the certificate of the Special

(39) 1983 c.20.

(40) 1993 c.23.

(41) 1970 c.9

Commissioners, and a statement of the grounds of the application with the court. The application shall be determined by a single judge of the Court of Appeal, who may make his determination without a hearing.

- (3) The court shall notify the parties of the determination of the single judge, and –
  - (a) where permission to appeal to the Court of Appeal is granted, the applicant shall within 14 days after such notification serve the notice of appeal on the Clerk to the Special Commissioners as well as on all parties directly affected by the proceedings before the Special Commissioners;
  - (b) where permission to appeal to the Court of Appeal is refused, the period specified in Order 55, rule 4(2) for appealing to the High Court shall be calculated from the date of notification of the refusal.

## **RSC ORDER 60**

### **APPEALS TO COURT OF APPEAL FROM THE RESTRICTIVE PRACTICES COURT**

#### **APPEAL TO BE BROUGHT BY NOTICE OF APPEAL**

- Rule 1** | An appeal to the Court of Appeal from the Restrictive Practices Court under the Restrictive Practices Court Act 1976<sup>(42)</sup> must be brought by notice of appeal, and the notice of appeal must state any question of law and, in the case of proceedings under Part III of the Fair Trading Act 1973<sup>(43)</sup>, any question of fact on which the appeal is brought together in each case with the appellant's contentions thereon.

#### **SERVICE OF NOTICE OF APPEAL**

- Rule 2** |
- (1) Within 28 days after the appellant receives a copy of the judgment constituting the case stated by the Restrictive Practices Court or within 28 days of the date on which permission to appeal to the Court of Appeal was granted, he must serve the notice of appeal and a copy of the judgment on every other party to the proceedings before that court and must serve the notice of appeal on that court.
  - (2) Where the appellant applies to the said court for the court's judgment to be amplified or amended –
    - (a) he shall be deemed for the purpose of paragraph (1) to have received a copy of the judgment on the date on which he receives a copy of the order made on his application; and
    - (b) the judgment constituting the case stated shall be the judgment with such amplifications or amendments, if any, as may be specified in that order.

(42) 1976 c.33.

(43) 1973 c.41

## ENTRY, ETC. OF APPEAL

- Rule 3 |
- (1) Within 7 days after service of the notice of appeal, the appellant must file the judgment constituting the case and two copies of the notice with the Court of Appeal and Order 59, rule 5 shall apply subject to any necessary modifications.
  - (2) The office of the Court of Appeal shall notify the Restrictive Practices Court of the decision of the Court of Appeal on the appeal and of any directions given by the Court of Appeal thereon.

## POWERS OF COURT OF APPEAL

- Rule 4 |
- The Court of Appeal shall have power to draw inferences of fact from the facts set forth in the judgment of the Restrictive Practices Court constituting the case.

### RSC ORDER 61

### APPEALS FROM TRIBUNALS TO COURT OF APPEAL BY CASE STATED

## STATEMENT OF CASE BY LANDS TRIBUNAL

- Rule 1 |
- (1) The time within which a person aggrieved by a decision of the Lands Tribunal as being erroneous in point of law may under section 3(4) of the Lands Tribunal Act 1949<sup>(44)</sup>, or any other enactment require the tribunal to state a case for the decision of the Court of Appeal shall be 4 weeks from the date of the decision, and the application for the statement of the case must be made to the registrar of the tribunal in writing.
  - (2) A case stated by the tribunal must state the facts on which the decision was based and the decision of the tribunal and must be signed by the member or members of the tribunal by whom it was given.
  - (3) The case must be stated as soon as may be after the application therefor is made and must be sent by post to the applicant.
  - (4) Where the decision of the Lands Tribunal in respect of which a case is stated states all the relevant facts found by the Tribunal and indicates the questions of law on which the decision of the Court of Appeal is sought, a copy of the decision signed by the person who presided at the hearing shall be annexed to the case, and the facts so found and the questions of law to be decided shall be sufficiently stated in the case by referring to the statement thereof in the decision.

## STATEMENT OF CASE BY OTHER TRIBUNALS

- Rule 2 |
- (1) Where any tribunal is empowered or may be required to state a case on a question of law for determination by the Court of Appeal, any

(44) 1949 c.42; section 3 was amended by the Land Compensation Act 1961 (c.33), section 40(3), Schedule 5; and by the Local Government, Planning and Land Act 1980 (c.65), section 193, Schedule 33, paragraph 3.

party to the proceedings who is aggrieved by the tribunal's refusal to state a case may apply to the Court of Appeal or a single judge of that court for an order requiring the tribunal to state a case.

- (2) An application under this rule must be made in accordance with CPR Part 23 and the application notice, stating in general terms the grounds of the application, together with the question of law on which it is desired that a case shall be stated and any reasons given by the tribunal for its refusal, must within 28 days after the refusal, be served on the clerk or registrar of the tribunal and on every other party to the proceedings before the tribunal.
- (3) Within 7 days after service of the application notice, the applicant must file two copies of the application notice with the Court of Appeal.
- (4) Where a tribunal is ordered under this rule to state a case, the tribunal must, within such period as may be specified in the order, state a case, stating the facts on which the decision of the tribunal was based and the decision, sign it and cause it to be sent by post to the applicant.
- (5) Rule 1(4) shall apply in relation to a case stated by a tribunal other than the Lands Tribunal as it applies in relation to a case stated by that tribunal.
- (6) In this rule, references to a tribunal other than the Lands Tribunal include references to a judge of the Commercial Court acting as an arbitrator or umpire under section 4 of the Administration of Justice Act 1970<sup>(45)</sup>.

## PROCEEDINGS ON CASE STATED

### Rule 3

- (A1) An application for permission to appeal to the Court of Appeal from any tribunal to which this order applies may be combined with an application to the tribunal to state a case.
- (A2) An application for permission to appeal may not be made to the Court of Appeal until the tribunal has stated a case.
- (1) The party at whose instance a case has been stated by any tribunal to which this order applies must, within 21 days after the date on which permission to appeal to the Court of Appeal was granted –
  - (a) serve on every other party to the proceedings before the tribunal a copy of the case, together with a notice of appeal setting out his contentions on the question of law; and
  - (b) serve a copy of the notice on the clerk or registrar of the tribunal.
- (2) Within 7 days after service of the notice of appeal, the said party must file the case, and two copies of the notice with the Court of Appeal

(45) 1970 c.31.

and Order 59, rule 5 shall apply subject to any necessary modifications.

- (3) Where any enactment under which the case is stated provides that a Minister or government department shall have a right to be heard in the proceedings on the case, a copy of the case and of the notice of appeal served under paragraph (1) must be served on that Minister or department.
- (4) On the hearing of the case, the Court of Appeal may amend the case or order it to be sent back to the tribunal for amendment.
- (5) Order 59 shall, so far as applicable, apply, in relation to a case stated by a tribunal to which this order applies.
- (6) The office of the Court of Appeal shall notify the clerk or registrar of the tribunal of the decision of the Court of Appeal on the case and of any directions given by that court thereon.

## **RSC ORDER 62**

### **COSTS**

#### **APPENDIX 3**

#### **FIXED COSTS**

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The scale of costs set out in this Appendix shall apply in the cases to which the Appendix refers.

## **PART II**

### **COSTS ON JUDGMENT WITHOUT TRIAL FOR POSSESSION OF LAND**

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- 1 (1) Where the claim is for the possession of land, and the claimant obtains judgment –
  - (a) under CPR Part 12 (default judgment); or
  - (c) under CPR Part 24 (summary judgment)
 for possession of the land and costs, then, subject to sub-paragraph (2), there shall be allowed the costs prescribed by paragraph 2 of this Part of this Appendix.
- (2) Where the claimant is also entitled under the judgment to damages to be assessed, or where the plaintiff claims any remedy of the nature specified in Order 88, rule 1 (mortgage claims), this Part of this Appendix shall not apply.
- 2 The costs to be allowed under this Part of this Appendix shall be £143.75, together with any court fee, and additional costs where appropriate set out the Table below.

## ADDITIONAL COSTS

### B. Additional costs

AMOUNT TO BE ALLOWED	£
(1) Where there is more than one defendant, in respect of each additional defendant served	£13.75
(2) Where service by an alternative method is ordered and effected, in respect of each defendant served	£53.25
(3) Where service out of the jurisdiction is ordered and effected, in the case of service –	
(a) in Scotland, Northern Ireland, the Isle of Man or the Channel Islands	£68.25
(b) in any other place out of the jurisdiction	£77.00
(4) In the case of default judgment under CPR Part 12 or summary judgment under CPR Part 24 the claimant makes an affidavit of service for the purpose of a judgment where the defendant failed to respond to the claim form (the allowance to include the search fee)	£20.50
(5) In the case of summary judgment under CPR Part 24 where an affidavit of service of the Part 23 application is required	£20.50
(6) In the case of summary judgment under CPR Part 24 for each adjournment of the application	£20.50

## PART III

### MISCELLANEOUS

This Part shows the amount to be allowed in respect of enforcement costs.

2 Where a certificate in respect of money provisions contained in a judgment is registered in the High Court in the Register of United Kingdom judgments under Schedule 6 to the Civil Jurisdiction and Judgments Act 1982<sup>(46)</sup>, there shall be allowed –

Costs of registration £39.00

2A Where costs are allowed under the following paragraphs of this Part, the appropriate court fees shall be allowed in addition.

3 Where, upon the application of any person who has obtained a judgment or order against a debtor for the recovery or payment of money, a garnishee order is made under Order 49, rule 1, against a garnishee attaching debts due or accruing due from the debtor, the following costs shall be allowed –

<sup>(46)</sup> 1982 c.27.

(a) to the garnishee to be deducted by him from any debt due by him as aforesaid before payment to the applicant	£23.00
(b) to the applicant, to be retained, unless the court otherwise orders, out of the money recovered by him under the garnishee order and in priority to the amount of the debt owing to him under the judgment or order –	
(i) Basic costs	
If the amount recovered by the applicant from the garnishee is –	
less than £150	one half of the amount recovered
not less than £150	£98.50
(ii) Additional costs	
Where the garnishee fails to attend the hearing of the application and an affidavit of service is required	£18.00
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4 Where a charging order is granted and made absolute there shall be allowed –	
Basic costs	£110.00
Additional costs where an affidavit of service is required together with such reasonable disbursements in respect of search fees and the registration of the order as the court may allow.	£18.00
<hr/>	
5 Where leave is given under Order 45, rule 3, to enforce a judgment or order for the giving of possession of land by writ of possession, if the costs are allowed on the judgment or order there shall be allowed the following costs, which shall be added to the judgment or order –	
Basic costs	£42.50
Where notice of the proceedings has been given to more than one person, in respect of each additional person	£2.75
<hr/>	
6 Where a writ of execution within the meaning of Order 46, rule 1, is issued against any party, there shall be allowed –	
Costs of issuing execution	£51.75
<hr/>	

**RSC ORDER 64****SITTINGS, VACATIONS AND OFFICE HOURS****DIVISIONAL COURT BUSINESS DURING VACATION**

- Rule 4** | Proceedings which require to be immediately or promptly heard and which by virtue of the following provisions must be brought in a Divisional Court may, in vacation, be brought before a single judge:
- (a) Order 52, rules 1(2) and 3(1);
  - (b) Order 53, rules 3(4)(a) and 5(1);
  - (c) Order 55, rule 2(a);
  - (d) Order 56, rule 1(1)(a).

## RSC ORDER 69

### SERVICE OF FOREIGN PROCESS

#### DEFINITIONS

##### Rule 1 | In this Order –

‘a convention country’ means a foreign country in relation to which there subsists a civil procedure convention providing for service in that country of process of the High Court, and includes a country which is a party to the Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters signed at the Hague on 15 November 1965;

‘officer of the county court’ means any clerk or bailiff in the service of a county court;

‘process’ includes a citation;

‘process server’ means the process server appointed under rule 4 or his authorised agent.

#### APPLICATIONS

Rule 2 | This order applies to the service on a person in England or Wales of any process in connection with civil or commercial proceedings in a foreign court or tribunal where the Senior Master receives a written request for service –

- (a) from Her Majesty’s Principal Secretary of State for Foreign and Commonwealth Affairs, with a recommendation by him that service should be effected; or
- (b) where the foreign court or tribunal is in a convention country, from a consular or other authority of that country.

#### SERVICE OF PROCESS

- Rule 3 |
- (1) The request shall be accompanied by a translation thereof in English, two copies of the process and, unless the foreign court or tribunal certifies that the person to be served understands the language of the process, two copies of a translation thereof.
  - (2) Subject to paragraphs (3) and (5) and to any enactment providing for the manner of service of documents on corporate bodies, the process shall be served by the process server’s leaving a copy of the process and a copy of the translation or certificate, as the case may be, with the person to be served.
  - (3) The provisions of CPR rule 6.2(1)(c) and CPR rule 6.7 regarding service by leaving at a place specified in CPR rule 6.5, shall apply to the service of foreign process as they apply to the service of claim form, except that service may be proved by a witness statement or

affidavit or by a certificate or report in such form as the Senior Master may direct.

- (4) The process server shall send to the Senior Master a copy of the process and a witness statement or affidavit, certificate or report proving due service of process or stating the reason why service could not be effected, as the case may be, and shall, if the court so directs, specify the costs incurred in effecting or attempting to effect service.
- (5) CPR rule 6.8 (service by an alternative method) shall apply to the service of foreign process as it applies to the service of claim forms, except that the Senior Master may make an order for alternative service of foreign process on the basis of the process server's witness statement or affidavit, certificate or report, without an application being made to him in that behalf.
- (6) The Senior Master shall send a certificate, together with a copy of the process, to the consular or other authority or the Secretary of State, as the case may be, stating –
  - (i) when and how service was effected or the reason why service could not be effected, as the case may be;
  - (ii) where appropriate, the amount certified by the costs judge to be the costs of effecting or attempting to effect service.
- (7) The certificate under paragraph (6) shall be sealed with the seal of the Supreme Court for use out of the jurisdiction.

## APPOINTMENT OF PROCESS SERVER

- Rule 4 | The Lord Chancellor may appoint a process server for the purposes of this order.

### RSC ORDER 70

### OBTAINING EVIDENCE FOR FOREIGN COURTS, ETC.

## INTERPRETATION AND EXERCISE OF JURISDICTION

- Rule 1 |
- (1) In this Order 'the Act of 1975' means the Evidence (Proceedings in Other Jurisdictions) Act 1975<sup>(47)</sup> and expressions used in this order which are used in that Act shall have the same meaning as in that Act.
  - (2) The power of the High Court to make an order under section 2 of the Act of 1975 may be exercised by a Master of the Queen's Bench Division.

## APPLICATION FOR ORDER

- Rule 2 |
- (1) Subject to paragraph (3) and rule 3 an application for an order under the Act of 1975 must be made without notice being served on any other party and must be supported by witness statement or affidavit.

(47) 1975 c.34.

- (2) There shall be exhibited to the witness statement or affidavit the request in pursuance of which the application is made, and if the request is not in the English language, a translation thereof in that language.
- (3) Where on an application under section 1 of the Act of 1975 as applied by section 92 of the Patents Act 1977<sup>(48)</sup> an order is made for the examination of witnesses the court may allow an officer of the European Patent Office to attend the examination and examine the witnesses or request the court or the examiner before whom the examination takes place to put specified questions to them.

## APPLICATION BY TREASURY SOLICITOR IN CERTAIN CASES

### Rule 3 | Where a request –

- (a) is received by the Secretary of State and sent by him to the Senior Master with an intimation that effect should be given to the request without requiring an application for that purpose to be made by the agent in England of any party to the matter pending or contemplated before the foreign court or tribunal; or
- (b) is received by the Senior Master in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in England or Wales for the assistance of a court or tribunal in the foreign country, and no person is named in the document as the person who will make the necessary application on behalf of such party,

the Senior Master shall send the document to the Treasury Solicitor and the Treasury Solicitor may, with the consent of the Treasury, make an application for an order under the Act of 1975, and take such other steps as may be necessary, to give effect to the request.

## PERSON TO TAKE AND MANNER OF TAKING EXAMINATION

- ### Rule 4 |
- (1) Any order made in pursuance of this order for the examination of a witness may order the examination to be taken before any fit and proper person nominated by the person applying for the order or before an examiner of the court or before such other qualified person as to the court seems fit.
  - (2) Subject to rule 6 and to any special directions contained in any order made in pursuance of this Order for the examination of any witness, the examination shall be taken in manner provided by CPR rules 34.9 and 34.10 and an order may be made under CPR rule 34.14, for payment of the fees and expenses due to the examiner, and those rules shall apply accordingly with any necessary modifications.

(48) 1977 c.37.

## DEALING WITH DEPOSITION

- Rule 5 | Unless any order made in pursuance of this order for the examination of any witness otherwise directs, the examiner before whom the examination was taken must send the deposition of that witness to the Senior Master, and the Senior Master shall –
- (a) give a certificate sealed with the seal of the Supreme Court for use out of the jurisdiction identifying the documents annexed thereto, that is to say, the request, the order of the court for examination and the deposition taken in pursuance of the order; and
  - (b) send the certificate with the documents annexed thereto to the Secretary of State, or, where the request was sent to the Senior Master by some other person in accordance with a Civil Procedure Convention to that other person, for transmission to the court or tribunal out of the jurisdiction requesting the examination.

## CLAIM TO PRIVILEGE

- Rule 6 |
- (1) The provisions of this rule shall have effect where a claim by a witness to be exempt from giving any evidence on the ground specified in section 3(1)(b) of the Act of 1975 is not supported or conceded as mentioned in subsection (2) of that section.
  - (2) The examiner may, if he thinks fit, require the witness to give the evidence to which the claim relates and, if the examiner does not do so, the court may do so, on the application without notice being served on any other party of the person who obtained the order under section 2.
  - (3) If such evidence is taken –
    - (a) it must be contained in a document separate from the remainder of the deposition of the witness;
    - (b) the examiner shall send to the Senior Master with the deposition a statement signed by the examiner setting out the claim and the ground on which it was made;
    - (c) on receipt of the statement the Senior Master shall, notwithstanding anything in rule 5, retain the document containing the part of the witness's evidence to which the claim relates and shall send the statement and a request to determine the claim to the foreign court or tribunal with the documents mentioned in rule 5;
    - (d) if the claim is rejected by the foreign court or tribunal, the Senior Master shall send to that court or tribunal the document containing that part of the witness's evidence to which the claim relates, but if the claim is upheld he shall send the document to the witness, and shall in either case notify the witness and the person who obtained the order under section 2 of the court or tribunal's determination.

**RSC ORDER 71****RECIPROCAL ENFORCEMENT OF JUDGMENTS AND  
ENFORCEMENT OF EUROPEAN COMMUNITY  
JUDGMENTS AND RECOMMENDATIONS ETC. UNDER  
THE MERCHANT SHIPPING (LINER CONFERENCES) ACT  
1982<sup>(49)</sup>****I. RECIPROCAL ENFORCEMENT: THE ADMINISTRATION OF JUSTICE ACT  
1920<sup>(50)</sup> AND THE FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT)  
ACT 1933<sup>(51)</sup>****POWERS UNDER RELEVANT ACTS EXERCISABLE BY JUDGE OR MASTER**

- Rule 1** | The powers conferred on the High Court by Part II of the Administration of Justice Act 1920 (in this Part of this Order referred to as the 'Act of 1920') or Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933 (in this Part of this order referred to as the 'Act of 1933') may be exercised by a judge and a Master of the Queen's Bench Division.

**APPLICATION FOR REGISTRATION**

- Rule 2** | (1) An application –
- (a) under section 9 of the Act of 1920, in respect of a judgment obtained in a superior court in any part of Her Majesty's dominions or other territory to which Part II of that Act applies; or
  - (b) under section 2 of the Act of 1933, in respect of a judgment to which Part I of that Act applies,
- to have the judgment registered in the High Court may be made without notice being served on any other party, but the court hearing the application may direct that a claim form be filed and served.

**EVIDENCE IN SUPPORT OF APPLICATION**

- Rule 3** | (1) An application for registration must be supported by a witness statement or affidavit –
- (a) exhibiting the judgment or a verified or certified or otherwise duly authenticated copy thereof, and where the judgment is not in the English language, a translation thereof in that language certified by a notary public or authenticated by witness statement or affidavit;
  - (b) stating the name, trade or business and the usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively, so far as known to the witness;

(49) 1982 c.37.

(50) 1920 c.81.

(51) 1933 c.13. Section 2 was amended by the Administration of Justice Act 1977 (c.38), sections 4, 32(4), Schedule 5, Part 1; section 4 was amended by the Civil Jurisdiction and Judgments Act 1982 (c.27), section 54, Schedule 14.

- (c) stating to the best of the information or belief of the witness –
    - (i) that the judgment creditor is entitled to enforce the judgment;
    - (ii) as the case may require, either that at the date of the application the judgment has not been satisfied, or the amount in respect of which it remains unsatisfied;
    - (iii) where the application is made under the Act of 1920, that the judgment does not fall within any of the cases in which a judgment may not be ordered to be registered under section 9 of that Act;
    - (iv) where the application is made under the Act of 1933, that at the date of the application the judgment can be enforced by execution in the country of the original court and that, if it were registered, the registration would not be, or be liable to be, set aside under section 4 of that Act;
  - (d) specifying, where the application is made under the Act of 1933, the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of registration;
  - (e) verifying that the judgment is not a judgment to which section 5 of the Protection of Trading Interests Act 1980<sup>(52)</sup> applies.
- (2) Where a judgment sought to be registered under the Act of 1933 is in respect of different matters, and some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments, those judgments could properly have been registered, the witness statement or affidavit must state the provisions in respect of which it is sought to register the judgment.
- (3) In the case of an application under the Act of 1933, the witness statement or affidavit must be accompanied by such other evidence with respect to the enforceability of the judgment by execution in the country of the original court, and of the law of that country under which any interest has become due under the judgment, as may be required having regard to the provisions of the Order in Council extending that Act to that country.

## SECURITY FOR COSTS

### Rule 4

Save as otherwise provided by any relevant Order in Council, the court may order the judgment creditor to give security for the costs of the application for registration and of any proceedings which may be brought to set aside the registration.

(52) 1980 c.11.

## ORDER FOR REGISTRATION

- Rule 5 |
- (1) An order giving permission to register a judgment must be drawn up by, or on behalf of, the judgment creditor.
  - (2) Except where the order is made by claim form, no such order need be served on the judgment debtor.
  - (3) Every such order shall state the period within which an application may be made to set aside the registration and shall contain a notification that execution on the judgment will not issue until after the expiration of that period.
  - (4) The court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, extend the period (either as originally fixed or as subsequently extended) within which an application to have the registration set aside may be made.

## REGISTER OF JUDGMENTS

- Rule 6 |
- (1) There shall be kept in the Central Office of the Supreme Court under the direction of the Senior Master a register of the judgments ordered to be registered under the Act of 1920 and a register of the judgments ordered to be registered under the Act of 1933.
  - (2) There shall be included in each such register particulars of any execution issued on a judgment ordered to be so registered.

## NOTICE OF REGISTRATION

- Rule 7 |
- (1) Notice of the registration of a judgment must be served on the judgment debtor 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) Permission is not required to serve such a notice out of the jurisdiction, and Order 11, rules 5, 6 and 8, shall apply in relation to such a notice as they apply in relation to a claim form.
  - (3) The notice of registration must state –
    - (a) full particulars of the judgment registered and the order for registration,
    - (b) the name and address of the judgment creditor or of his solicitor or agent on whom, and at which, any application notice or other document issued by the judgment debtor may be served,
    - (c) the right of the judgment debtor to apply to have the registration set aside, and
    - (d) the period within which an application to set aside the registration may be made.

## APPLICATION TO SET ASIDE REGISTRATION

- Rule 9 |
- (1) An application to set aside the registration of a judgment must be made in accordance with CPR Part 23 and be supported by witness statement or affidavit.
  - (2) The court hearing such application may order any issue between the judgment creditor and the judgment debtor to be tried in any manner in which an issue in a claim may be ordered to be tried.
  - (3) Where the court hearing an application to set aside the registration of a judgment registered under the Act of 1920 is satisfied that the judgment falls within any of the cases in which a judgment may not be ordered to be registered under section 9 of that Act or that it is not just or convenient that the judgment should be enforced in England or Wales or that there is some other sufficient reason for setting aside the registration, it may order the registration of the judgment to be set aside on such terms as it thinks fit.

## ISSUE OF EXECUTION

- Rule 10 |
- (1) Execution shall not issue on a judgment registered under the Act of 1920 or the Act of 1933 until after the expiration of the period which, in accordance with rule 5(3) is specified in the order for registration as the period within which an application may be made to set aside the registration or, if that period has been extended by the court, until after the expiration of that period as so extended.
  - (2) If an application is made to set aside the registration of a judgment, execution on the judgment shall not issue until after such application is finally determined.
  - (3) Any party wishing to issue execution on a judgment registered under the Act of 1920 or the Act of 1933 must produce to the court officer a witness statement or affidavit of service of the notice of registration of the judgment and any order made by the court in relation to the judgment.

## DETERMINATION OF CERTAIN QUESTIONS

- Rule 11 |
- If, in any case under the Act of 1933, any question arises whether a foreign judgment can be enforced by execution in the country of the original court, or what interest is payable under a foreign judgment under the law of the original court, that question shall be determined in accordance with the provisions in that behalf contained in the Order in Council extending Part I of that Act to that country.

## RULES TO HAVE EFFECT SUBJECT TO ORDERS IN COUNCIL

- Rule 12 |
- The foregoing rules shall, in relation to any judgment registered or sought to be registered under the Act of 1933, have effect subject to any such

provisions contained in the Order in Council extending Part I of that Act to the country of the original court as are declared by the order to be necessary for giving effect to the agreement made between Her Majesty and that country in relation to matters with respect to which there is power to make those rules.

## CERTIFIED COPY OF HIGH COURT JUDGMENT

### Rule 13

- (1) An application under section 10 of the Act of 1920 or section 10 of the Act of 1933 for a certified copy of a judgment entered in the High Court must be made without notice being served on any other party on witness statement or affidavit to a master or, in the case of a judgment given in proceedings in the Family Division, to a district judge of that Division.
- (2) A witness statement or affidavit by which an application under section 10 of the Act of 1920 is made must give particulars of the judgment, show that the judgment creditor wishes to secure the enforcement of the judgment in a part (stating which) of Her Majesty's dominions outside the United Kingdom to which Part II of that Act extends and state the name, trade or business and the usual or last known place of abode of the judgment creditor and the judgment debtor respectively, so far as known to the witness.
- (3) A witness statement or affidavit by which an application under section 10 of the Act of 1933 is made must –
  - (a) give particulars of the proceedings in which the judgment was obtained;
  - (b) have annexed to it a copy of the claim form by which the proceedings were begun, the evidence of service thereof on the defendant, copies of the statements of case or pleadings, if any, and a statement of the grounds on which the judgment was based;
  - (c) state whether the defendant did or did not object to the jurisdiction, and, if so, on what grounds;
  - (d) show that the judgment is not subject to any stay of execution;
  - (e) state that the time for appealing has expired or, as the case may be, the date on which it will expire and in either case whether notice of appeal against the judgment has been entered; and
  - (f) state the rate at which the judgment carries interest.
- (4) The certified copy of the judgment shall be an office copy sealed with the seal of the Supreme Court and indorsed with a certificate signed by a Master or, where appropriate, a district judge or a registrar certifying that the copy is a true copy of a judgment obtained in the High Court of England and that it is issued in accordance with section 10 of the Act of 1920 or section 10 of the Act of 1933, as the case may be.

- (5) Where the application is made under section 10 of the Act of 1933 there shall also be issued a certificate (signed by a Master or, where appropriate, a district judge or a registrar and sealed with the seal of the Supreme Court) having annexed to it a copy of the claim form or other process by which the proceedings were begun, and stating –
- (a) the manner in which the claim form was served on the defendant or that the defendant acknowledged service thereof;
  - (b) what objections, if any, were made to the jurisdiction;
  - (c) what statements of case, if any, were served;
  - (d) the grounds on which the judgment was based;
  - (e) that the time for appealing has expired or, as the case may be, the date on which it will expire;
  - (f) whether notice of appeal against the judgment has been entered; and
  - (g) such other particulars as it may be necessary to give to the court in the foreign country in which it is sought to obtain execution of the judgment,
- and a certificate (signed and sealed as aforesaid) stating the rate at which the judgment carries interest.

## II. ENFORCEMENT OF EUROPEAN COMMUNITY JUDGMENTS

### INTERPRETATION

#### Rule 15

In this Part of this order ‘the Order in Council’ means the European Communities (Enforcement of Community Judgments) Order 1972<sup>(53)</sup>, and expressions used in the Order in Council shall, unless the context otherwise requires, have the same meanings as in that order.

### FUNCTIONS UNDER ORDER IN COUNCIL EXERCISABLE BY JUDGE OR MASTER

#### Rule 16

The functions assigned to the High Court by the Order in Council may be exercised by a judge and a Master of the Queen’s Bench Division.

### APPLICATION FOR REGISTRATION OF COMMUNITY JUDGMENT, ETC.

#### Rule 17

An application for the registration in the High Court of a Community judgment or Euratom inspection order may be made without notice being served on any other party.

### EVIDENCE IN SUPPORT OF APPLICATION

#### Rule 18

- (1) An application for registration must be supported by a witness statement or affidavit exhibiting –

(53) S.I. 1972/1590 as amended by S.I. 1998/1259.

- (a) the Community judgment and the order for its enforcement or, as the case may be, the Euratom inspection order or, in either case, a duly authenticated copy thereof; and
  - (b) where the Community judgment or Euratom inspection order is not in the English language, a translation into English certified by a notary public or authenticated by witness statement or affidavit.
- (2) Where the application is for registration of a Community judgment under which a sum of money is payable, the witness statement or affidavit shall also state –
- (a) the name and occupation and the usual or last known place of abode or business of the judgment debtor, so far as known to the witness; and
  - (b) to the best of the witness's information and belief that at the date of the application the European Court has not suspended enforcement of the judgment and that the judgment is unsatisfied or, as the case may be, the amount in respect of which it remains unsatisfied.

## REGISTER OF JUDGMENTS AND ORDERS

- Rule 19 |
- (1) There shall be kept in the Central Office of the Supreme Court under the direction of the Senior Master a register of the Community judgments and Euratom inspection orders registered under the Order in Council.
  - (2) There shall be included in the register particulars of any execution issued on a judgment so registered.

## NOTICE OF REGISTRATION

- Rule 20 |
- (1) Upon registering a Community judgment or Euratom inspection order, the court shall forthwith send notice of the registration to every person against whom the judgment was given or the order was made.
  - (2) The notice of registration shall have annexed to it a copy of the registered Community judgment and the order for its enforcement or, as the case may be, a copy of the Euratom inspection order, and shall state the name and address of the person on whose application the judgment or order was registered or of his solicitor or agent on whom process may be served.
  - (3) Where the notice relates to a Community judgment under which a sum of money is payable, it shall also state that the judgment debtor may apply within 28 days of the date of the notice, or thereafter with the permission of the court, for the variation or cancellation of the registration on the ground that the judgment had been partly or wholly satisfied at the date of registration.

## ISSUE OF EXECUTION

- Rule 21** | Execution shall not issue without the permission of the Court on a Community judgment under which a sum of money is payable until the expiration of 28 days after the date of notice of registration of the judgment or, as the case may be, until any application made within that period for the variation or cancellation of the registration has been determined.

## APPLICATION TO VARY OR CANCEL REGISTRATION

- Rule 22** | An application for the variation or cancellation of the registration of a Community judgment on the ground that the judgment had been wholly or partly satisfied at the date of registration shall be made by claim form supported by witness statement or affidavit.

## APPLICATION FOR REGISTRATION OF SUSPENSION ORDER

- Rule 23** | An application for the registration in the High Court of an order of the European Court that enforcement of a registered Community judgment be suspended may be made without notice being served on any other party by lodging a copy of the order in the Central Office of the Supreme Court.

## APPLICATION FOR ENFORCEMENT OF EURATOM INSPECTION ORDER

- Rule 24** | An application for an order under Article 6 of the Order in Council for the purpose of ensuring that effect is given to a Euratom inspection order may, in case of urgency, be made without notice being served on any other party on witness statement or affidavit but, except as aforesaid, shall be made by claim form.

## III. RECIPROCAL ENFORCEMENT: THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982<sup>(54)</sup>

### INTERPRETATION

- Rule 25** | (1) In this Part of this Order –
- ‘the Act of 1982’ means the Civil Jurisdiction and Judgments Act 1982;
- ‘Convention territory’ means the territory or territories of any Contracting State, as defined by section 1(3) of the Act of 1982, to which the Brussels Convention or the Lugano Convention as defined in section 1(1) of the Act of 1982 apply;
- ‘judgment’ is to be construed in accordance with the definition of ‘judgment’ in section 50 of the Act of 1982;
- ‘money provision’ means a provision for the payment of one or more sums of money;

(54) 1982 c.27; section 1 was amended by S.I. 1989/1346, 1990/2591, and by the Civil Jurisdiction and Judgments Act 1991 (c.12), section 2.

‘non-money provision’ means a provision for any relief or remedy not requiring payment of a sum of money;

‘protective measures’ means the protective measures referred to in Art 39 of Schedule 1 or of Schedule 3C to the Act of 1982.

- (2) For the purposes of this Part of this Order domicile is to be determined in accordance with the provisions of sections 41 to 46 of the Act of 1982.

## ASSIGNMENT OF BUSINESS AND EXERCISE OF POWERS

- Rule 26 | Any application to the High Court under the Act of 1982 shall be assigned to the Queen’s Bench Division.

## APPLICATION FOR REGISTRATION

- Rule 27 | An application for registration of a judgment under section 4 of the Act of 1982 shall be made without notice being served on any other party.

## EVIDENCE IN SUPPORT OF APPLICATION

- Rule 28 |
- (1) An application for registration under section 4 of the Act of 1982 must be supported by a witness statement or affidavit –
    - (a) exhibiting –
      - (i) the judgment or a verified or certified or otherwise duly authenticated copy thereof together with such other document or documents as may be requisite to show that, according to the law of the State in which it has been given, the judgment is enforceable and has been served;
      - (ii) in the case of a judgment given in default, the original or a certified true copy of the document which establishes that the party in default was served with the document instituting the proceedings or with an equivalent document;
      - (iii) where it is the case, a document showing that the party making the application is in receipt of legal aid in the State in which the judgment was given;
      - (iv) where the judgment or document is not in the English language, a translation thereof into English certified by a notary public or a person qualified for the purpose in one of the Contracting States or authenticated by witness statement or affidavit;
    - (b) stating –
      - (i) whether the judgment provides for the payment of a sum or sums of money;

- (ii) whether interest is recoverable on the judgment or part thereof in accordance with the law of the State in which the judgment was given, and if such be the case, the rate of interest, the date from which interest is recoverable, and the date on which interest ceases to accrue;
- (c) giving an address within the jurisdiction of the court for service of process on the party making the application and stating, so far as is known to the witness, the name and the usual or last known address or place of business of the person against whom judgment was given;
- (d) stating to the best of the information or belief of the witness –
  - (i) the grounds on which the right to enforce the judgment is vested in the party making the application;
  - (ii) as the case may require, either that at the date of the application the judgment has not been satisfied, or the part or amount in respect of which it remains unsatisfied.
- (2) Where the party making the application does not produce the documents referred to in paragraphs (1)(a)(ii) and (iii) of this rule, the Court may –
  - (a) fix a time within which the documents are to be produced; or
  - (b) accept equivalent documents; or
  - (c) dispense with production of the documents.

## SECURITY FOR COSTS

### Rule 29

Notwithstanding the provisions of Order 23, a party making an application for registration under section 4 of the Act of 1982 shall not be required solely on the ground that he is not domiciled or resident within the jurisdiction, to give security for costs of the application.

## ORDER FOR REGISTRATION

### Rule 30

- (1) An order giving permission to register a judgment under section 4 of the Act of 1982 must be drawn up by or on behalf of the party making the application for registration.
- (2) Every such order shall state the period within which an appeal may be made against the order for registration and shall contain a notification that execution on the judgment will not issue until after the expiration of that period.
- (3) The notification referred to in paragraph (2) shall not prevent any application for protective measures pending final determination of any issue relating to enforcement of the judgment.

## REGISTER OF JUDGMENTS REGISTERED UNDER S.4 OF THE ACT OF 1982

- Rule 31 | There shall be kept in the Central Office of the Supreme Court under the direction of the Senior Master a register of the judgments ordered to be registered under section 4 of the Act of 1982.

## NOTICE OF REGISTRATION

- Rule 32 |
- (1) Notice of the registration of a judgment must be served on the person against whom judgment was given by delivering it to him personally or by sending it to him at his usual or last known address or place of business or in such other manner as the court may direct.
  - (2) Permission is not required to serve such a notice out of the jurisdiction and Order 11, rules 5, 6 and 8 shall apply in relation to such a notice as they apply in relation to a claim form.
  - (3) The notice of registration must state –
    - (a) full particulars of the judgment registered and the order for registration;
    - (b) the name of the party making the application and his address for service within the jurisdiction;
    - (c) the right of the person against whom judgment was given to appeal against the order for registration; and
    - (d) the period within which an appeal against the order for registration may be made.

## APPEALS

- Rule 33 |
- (1) An appeal under article 37 or article 40 of Schedule 1 or 3C to the Act of 1982 must be made to a judge by application in accordance with CPR Part 23.
  - (2) A claim form in an appeal to which this rule applies must be served –
    - (a) in the case of an appeal under the said article 37 of Schedule 1 or 3C, within one month of service of notice of registration of the judgment, or two months of service of such notice where that notice was served on a party not domiciled within the jurisdiction;
    - (b) in the case of an appeal under the said article 40 of Schedule 1 or 3C, within one month of the determination of the application under rule 27.
  - (3) If the party against whom judgment was given is not domiciled in a Convention territory and an application is made within two months of service of notice of registration, the court may extend the period within which an appeal may be made against the order for registration.

## ISSUE OF EXECUTION

- Rule 34
- (1) Execution shall not issue on a judgment registered under section 4 of the Act of 1982 until after the expiration of the period specified in accordance with rule 30(2) or, if that period has been extended by the Court, until after the expiration of the period so extended.
  - (2) If an appeal is made under rule 33(1), execution on the judgment shall not issue until after such appeal is determined.
  - (3) Any party wishing to issue execution on a judgment registered under section 4 of the Act of 1982 must produce to the court officer a witness statement or affidavit of service of the notice of registration of the judgment and of any order made by the court in relation to the judgment.
  - (4) Nothing in this rule shall prevent the court from granting protective measures pending final determination of any issue relating to enforcement of the judgment.

## APPLICATION FOR RECOGNITION

- Rule 35
- (1) Registration of the judgment under these rules shall serve for the purposes of the second paragraph of Article 26 of Schedule 1 or 3C to the Act of 1982 as a decision that the judgment is recognised.
  - (2) Where it is sought to apply for recognition of a judgment, the foregoing rules of this Order shall apply to such application as they apply to an application for registration under section 4 of the Act, with the exception that the applicant shall not be required to produce a document or documents which establish that according to the law of the State in which it has been given the judgment is enforceable and has been served, or the document referred to in rule 28 (1)(a)(iii).

## ENFORCEMENT OF HIGH COURT JUDGMENTS IN OTHER CONTRACTING STATES

- Rule 36
- (1) An application under section 12 of the Act of 1982 for a certified copy of a judgment entered in the High Court must be made without notice being served on any other party on witness statement or affidavit to the court.
  - (2) a witness statement or affidavit by which an application under section 12 of the Act of 1982 is made must –
    - (a) give particulars of the proceedings in which the judgment was obtained;
    - (b) have annexed to it a copy of the claim form, by which the proceedings were begun, the evidence of service thereof on the defendant, copies of the statements of case, if any, and a statement of the grounds on which the judgment was based together, where appropriate, with any document under which the

applicant is entitled to legal aid or assistance by way of representation for the purposes of the proceedings;

- (c) state whether the defendant did or did not object to the jurisdiction, and, if so, on what grounds;
  - (d) show that the judgment has been served in accordance with CPR Part 6 and CPR rule 40.4 and is not subject to any stay of execution;
  - (e) state that the time for appealing has expired, or, as the case may be, the date on which it will expire and in either case whether notice of appeal against the judgment has been given; and
  - (f) state –
    - (i) whether the judgment provides for the payment of a sum or sums of money;
    - (ii) whether interest is recoverable on the judgment or part thereof and if such be the case, the rate of interest, the date from which interest is recoverable, and the date on which interest ceases to accrue.
- (3) The certified copy of the judgment shall be an office copy sealed with the seal of the Supreme Court and there shall be issued with the copy of the judgment a certificate in Form 110, signed by a High Court judge, the Admiralty Registrar, a Master or a district judge and sealed with the seal of the Supreme Court, having annexed to it a copy of the claim form by which the proceedings were begun.

## ENFORCEMENT OF UNITED KINGDOM JUDGMENTS IN OTHER PARTS OF THE UNITED KINGDOM: MONEY PROVISIONS

### Rule 37

- (1) An application for registration in the High Court of a certificate in respect of any money provisions contained in a judgment given in another part of the United Kingdom to which section 18 of the Act of 1982 applies may be made by producing at the Central Office of the Supreme Court, within six months from the date of its issue, a certificate in the appropriate form prescribed under that Act together with a copy thereof certified by the applicant's solicitor to be a true copy.
- (2) A certificate under paragraph (1) must be filed in the Central Office of the Supreme Court and the certified copy thereof, sealed by an officer of the office in which the certificate is filed, shall be returned to the applicant's solicitor.
- (3) A certificate in respect of any money provisions contained in a judgment of the High Court to which section 18 of the Act of 1982 applies may be obtained by producing the form of certificate prescribed in Form 111 at the office in which the judgment is entered, together with a witness statement or affidavit made by the party entitled to enforce the judgment –

- (a) giving particulars of the judgment, stating the sum or aggregate of the sums (including any costs or expenses) payable and unsatisfied under the money provisions contained in the judgment, the rate of interest, if any, payable thereon and the date or time from which any such interest began to accrue;
- (b) verifying that the time for appealing against the judgment has expired, or that any appeal brought has been finally disposed of and that enforcement of the judgment is not stayed or suspended; and
- (c) stating to the best of the information or belief of the witness the usual or last known address of the party entitled to enforce the judgment and of the party liable to execution on it.

## ENFORCEMENT OF UNITED KINGDOM JUDGMENTS IN OTHER PARTS OF THE UNITED KINGDOM: NON-MONEY PROVISIONS

### Rule 38

- (1) An application for registration in the High Court of a judgment which contains non-money provisions, being a judgment given in another part of the United Kingdom to which section 18 of the Act of 1982 applies, may be made without notice being served on any other party, but the court hearing the application may direct a claim form to be filed and served to which rule 2 shall apply.
- (2) An application under paragraph (1) must be accompanied by a certified copy of the judgment issued under Schedule 7 to the Act of 1982 and a certificate in the appropriate form prescribed for the purposes of paragraph 4(1)(b) of that Schedule issued not more than six months before the date of application.
- (3) Rules 30 and 32 of this order shall apply to judgments registered under Schedule 7 to the Act of 1982 as they apply to judgments registered under section 4 of that Act.
- (4) Paragraphs (1) and (2) of rule 9 shall apply to applications to set aside registration of a judgment under Schedule 7 to the Act of 1982 as they apply to judgments registered under the Administration of Justice Act 1920 and the Foreign Judgments (Reciprocal Enforcement) Act 1933.
- (5) A certified copy of a judgment of the High Court to which section 18 of the Act of 1982 applies and which contains any non-money provision may be obtained by an application on witness statement or affidavit to the Court.
- (5A) An application referred to in paragraph (5) need not be served on any other party.
- (6) The requirements in paragraph (3) of rule 37 shall apply with the necessary modifications to a witness statement or affidavit made in an application under paragraph (5) of this rule.

- (7) A certified copy of a judgment shall be an office copy sealed with the seal of the Supreme Court to which shall be annexed a certificate in Form 112.

## REGISTER OF UNITED KINGDOM JUDGMENTS

- Rule 39** | There shall be kept in the Central Office of the Supreme Court under the direction of the Senior Master a register of the certificates in respect of judgments and of the judgments ordered to be registered in the Central Office of the Supreme Court under Schedule 6, or, as the case may be, Schedule 7 to the Act.

## AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

- Rule 39A** | Rules 27 to 35 inclusive (except rule 28 (1)(a)(ii)) shall apply to –
- (1) an authentic instrument to which either article 50 of Schedule 1 to the Act of 1982 or article 50 of Schedule 3C to the Act applies; and
  - (2) a settlement to which either article 51 of Schedule 1 to the Act of 1982 or article 51 of Schedule 3C to that Act applies,
- as they apply to a judgment subject to any necessary modifications.

## IV. ENFORCEMENT OF RECOMMENDATIONS ETC. UNDER THE MERCHANT SHIPPING (LINER CONFERENCES) ACT 1982<sup>(55)</sup>

### EXERCISE OF POWERS

- Rule 40** | The powers conferred on the High Court under the Merchant Shipping (Liner Conferences) Act 1982 (in this Part of this order referred to as ‘the Act of 1982’) may be exercised by a Commercial Judge.

### APPLICATION FOR REGISTRATION

- Rule 41** | An application under section 9 of the Act of 1982 for the registration of a recommendation, determination or award, shall be made by claim form.

### EVIDENCE IN SUPPORT OF APPLICATION

- Rule 42** |
- (1) An application under section 9 of the Act of 1982 for the registration of a recommendation must be supported by a witness statement or affidavit –
    - (a) exhibiting a verified or certified or otherwise duly authenticated copy of the recommendation and the reasons therefor and of the record of settlement;
    - (b) where the recommendation and reasons or the record of settlement is not in the English language, a translation thereof

(55) c.37.

into English certified by a notary public or authenticated by witness statement or affidavit;

- (c) exhibiting copies of the acceptance of the recommendation by the parties upon whom it is binding, where the acceptance was in writing, or otherwise verifying the acceptance;
  - (d) giving particulars of the failure to implement the recommendation; and
  - (e) verifying that none of the grounds which would render the recommendation unenforceable under section 9(2) of the Act of 1982 is applicable.
- (2) An application under section 9 of the Act of 1982 for the registration of a determination or award as to costs must be supported by a witness statement or affidavit –
- (a) exhibiting a verified or certified or otherwise duly authenticated copy of the recommendation or other document containing the pronouncement on costs; and
  - (b) stating that such costs have not been paid.

## ORDER FOR REGISTRATION

Rule 43

- (1) An order giving permission to register a recommendation, determination or award under section 9 of the Act of 1982 must be drawn up by or on behalf of the party making the application for registration.
- (2) Such an order shall contain a provision that the reasonable costs of registration be taxed.

## REGISTER OF RECOMMENDATIONS ETC.

Rule 44

- (1) There shall be kept in the Admiralty and Commercial Registry under the direction of the Senior Master a register of the recommendations, determinations and awards ordered to be registered under section 9 of the Act of 1982.
- (2) There shall be included in such register particulars of the enforcement of a recommendation, determination or award so registered.

### RSC ORDER 74

### APPLICATIONS AND APPEALS UNDER THE MERCHANT SHIPPING ACT 1995<sup>(56)</sup>

## ASSIGNMENT OF PROCEEDINGS

Rule 1

- (1) Subject to paragraph (2), proceedings by which any application is made to the High Court under the Merchant Shipping Act 1995 shall

(56) 1995 c.21.

be assigned to the Queen's Bench Division and taken by the Admiralty Court.

## APPEALS AND RE-HEARINGS

- Rule 2**
- (1) An appeal to the High Court under section 28 of the Pilotage Act 1913<sup>(57)</sup> against a decision of a county court judge or a magistrate shall be heard and determined by a Divisional Court of the Queen's Bench Division constituted as far as practicable of Admiralty Judges.
  - (2) Subject to the provisions of this rule, Orders 55 and 57 shall apply in relation to an appeal to the High Court under the Merchant Shipping Act 1995 and for this purpose a re-hearing and an application under section 61 of the Merchant Shipping Act 1995 shall be treated as an appeal.
  - (3) In the case of an appeal to which paragraph (2) applies, the documents required to be filed before entry for the purposes of Order 57, rule 2(1) shall include the report, if any, to the Secretary of State containing the decision from which the appeal is brought.
  - (4) Where a re-hearing by the High Court is ordered under sections 64 or 269 of the Merchant Shipping Act 1995, the Secretary of State shall cause such reasonable notice to be given to the parties whom he considers to be affected by the re-hearing as the circumstances of the case may, in his opinion, permit.

## RSC ORDER 77

### PROCEEDINGS BY AND AGAINST THE CROWN

## APPLICATION AND INTERPRETATION

- Rule 1**
- (1) These rules apply to civil proceedings to which the Crown is a party subject to the following rules of this order.
  - (2) In this order –
 

‘civil proceedings by the Crown’, ‘civil proceedings against the Crown’ and ‘civil proceedings by or against the Crown’ have the same respective meanings as in Part II of the Crown Proceedings Act 1947<sup>(58)</sup>, and do not include any of the proceedings specified in section 23(3) of that Act;

‘civil proceedings to which the Crown is a party’ has the same meaning as it has for the purposes of Part IV of the Crown Proceedings Act 1947, by virtue of section 38 (4) of that Act;

‘order against the Crown’ means any order (including an order for costs) made in any civil proceedings by or against the Crown or in any proceedings on the Crown side of the Queen's Bench Division, or in

(57) 1913 c.31.

(58) 1947 c.44.

connection with any arbitration to which the Crown is a party, in favour of any person against the Crown or against a government department or against an officer of the Crown as such;

‘order’ includes a judgment, decree, rule, award or declaration.

## TRANSFER OF PROCEEDINGS

- Rule 2 |
- (1) Subject to paragraph (2) in civil proceedings by or against the Crown no order shall be made under CPR Part 30, for the transfer of the proceedings, or of any application therein, from the Royal Courts of Justice to a district registry, except with the consent of the Crown.
  - (2) In any civil proceedings against the Crown begun by the issue of a claim form out of a district registry the Crown may acknowledge service of the claim form either in the district registry or, at the option of the Crown, in the appropriate office of the Supreme Court at the Royal Courts of Justice, and where service is acknowledged in an office of the Supreme Court at the Royal Courts of Justice the claim shall thereafter proceed in the Royal Courts of Justice and no order shall be made under CPR Part 30 for the transfer of any proceedings before the trial from the Royal Courts of Justice to a district registry.

## PARTICULARS TO BE INCLUDED IN CLAIM FORM

- Rule 3 |
- (1) In the case of a claim form which begins civil proceedings against the Crown the contents of the claim form required by CPR rule 16.2 shall include a statement of the circumstances in which the Crown’s liability is alleged to have arisen and as to the government department and officers of the Crown concerned.
  - (2) If in civil proceedings against the Crown a defendant considers that the claim form does not contain a sufficient statement as required by this rule, he may, before the expiration of the time limited for acknowledging service of the claim form, apply to the claimant by notice for a further and better statement containing such information as may be specified in the notice.
  - (3) Where a defendant gives a notice under this rule, the time limited for acknowledging service of the claim form shall not expire until 4 days after the defendant has notified the claimant in writing that the defendant is satisfied with the statement supplied in compliance with the notice or 4 days after the court has, on the application of the claimant in accordance with CPR Part 23, decided that no further information as to the matters referred to in paragraph (1) is reasonably required.
- (3A) An application notice under paragraph (3) shall be served on the defendant not less than 7 days before the hearing.

## SERVICE ON THE CROWN

- Rule 4 |
- (1) Order 11 and any other provision of these rules relating to service out of the jurisdiction shall not apply in relation to the service of any process by which civil proceedings against the Crown are begun.
  - (2) Personal service of any document required to be served on the Crown for the purpose of or in connection with any civil proceedings is not requisite; but where the proceedings are by or against the Crown service on the Crown must be effected –
    - (a) by leaving the document at the office of the person who is in accordance with section 18 of the Crown Proceedings Act 1947, to be served, or of any agent whom that person has nominated for the purpose, but in either case with a member of the staff of that person or agent; or
    - (b) by posting it in a prepaid envelope addressed to the person who is to be served as aforesaid or to any such agent as aforesaid.
  - (3) Any document (other than a claim form) service of which is effected under paragraph 2(a) between 12 noon on a Saturday and midnight on the following day or after 4 in the afternoon on any other weekday shall, for the purpose of computing any period of time after service of that document, be deemed to have been served on the Monday following that Saturday or on the day following that other weekday, as the case may be.
  - (4) Where by virtue of these rules any document is required to be served on any person but is not required to be served personally and at the time when service is to be effected that person is in default as to acknowledgment of service or has no address for service, the document need not be served on that person unless the court otherwise directs or any of these rules otherwise provides.
  - (5)
    - (a) No process shall be served or executed within the jurisdiction on a Sunday except, in case of urgency, with the permission of the court.
    - (b) For the purposes of this rule ‘process’ includes a claim form, judgment, application or other notice, order, petition, or warrant.

## COUNTERCLAIM AND SET-OFF

- Rule 6 |
- (1) A person may not in any proceedings by the Crown make any counterclaim or claim a set-off in his statement of case if the proceedings are for the recovery of, or the counterclaim or set-off arises out of a right or claim to repayment in respect of, any taxes, duties or penalties.
  - (2) No counterclaim may be made, or set-off claimed in its statements of case, without the permission of the court, by the Crown in

proceedings against the Crown, or by any person in proceedings by the Crown –

- (a) if the Crown is sued or sues in the name of a Government department and the subject-matter of the counterclaim or set-off does not relate to that department; or
  - (b) if the Crown is sued or sues in the name of the Attorney-General.
- (3) Any application for permission under this rule must be made in accordance with CPR Part 23.

## SUMMARY JUDGMENT

### Rule 7

- (1) No application shall be made against the Crown –
- (a) under CPR Part 24 in any proceedings against the Crown;
  - (b) for summary judgment on a counterclaim under CPR Part 24 in any proceedings by the Crown.
- (2) Where an application is made by the Crown under CPR Part 24 the affidavit or witness statement required in support of the application must be made by –
- (a) the solicitor acting for the Crown; or
  - (b) an officer duly authorised by the solicitor so acting or by the department concerned;

and the witness statement or affidavit shall be sufficient if it states that in the belief of the witness the applicant is entitled to the relief claimed and there is no defence to the claim or part of a claim to which the application relates or no defence except as to the amount of any damages claimed.

## SUMMARY APPLICATIONS TO THE COURT IN CERTAIN REVENUE MATTERS

### Rule 8

- (1) This rule applies to applications under section 14 of the Crown Proceedings Act 1947<sup>(59)</sup>.
- (2) An application to which this rule applies shall be made by claim form.
- (3) The person from whom any account or information or payment is claimed or by whom any books are required to be produced must be made a defendant to the application.
- (4) A claim form under this rule –
- (a) must be entitled in the matter or matters out of which the need for the application arises and in the matter of the Crown Proceedings Act 1947; and
  - (b) must refer to the enactment under which the account or information or payment or the production of books is claimed

(59) 1947 c.44; section 14 was amended by the Finance Act 1975 (c.7), section 52(1), Schedule 12, paragraph 28; by the Inheritance Tax Act 1984 (c.51), section 276, Schedule 8, paragraph 2; and by the Finance Act 1972 (c.41), section 55.

and, where information is claimed, must show (by appropriate questions or otherwise) what information is required.

- (5) Upon any application to which this rule applies a witness statement or affidavit by a duly authorised officer of the Government department concerned setting out the state of facts upon which the application is based and stating that he has reason to think that those facts exist shall be evidence of those facts; and if evidence is filed disputing any of those facts, further evidence may be filed, and the court may either decide the matter upon the witness statements or affidavits (after any cross-examination that may have been ordered) or may direct that it be decided by oral evidence in court.
- (6) An order in favour of the Crown on an application to which this rule applies shall, unless the court otherwise determines, name a time within which each of its terms is to be complied with.
- (8) Nothing in this rule shall, in relation to any case in which the only remedy claimed by the Crown is the payment of money, be construed as requiring the Crown to proceed by way of an application to which this rule applies or as preventing the Crown from availing itself of any other procedure which is open to it under these rules.

## JOINDER OF COMMISSIONERS OF INLAND REVENUE

- Rule 8A | Nothing in CPR rule 19.3 shall be construed as enabling the Commissioners of Inland Revenue to be added as a party to any proceedings except with their consent signified in writing or in such manner as may be authorised.

## JUDGMENT IN DEFAULT

- Rule 9 |
- (1) Except with the permission of the court, no judgment in default under CPR Part 12 shall be entered against the Crown in civil proceedings against the Crown.
  - (2) Except with the permission of the court, a defendant shall not enter default judgment against the Crown as a third party.
  - (3) An application for permission under this rule may be made by an application in accordance with CPR Part 23 and the application notice must be served not less than 7 days before the return day.

## THIRD PARTY NOTICES

- Rule 10 |
- (1) A Part 20 claim for service on the Crown, where the Crown is not already a party shall not be issued without the permission of the court, and the application for the grant of such permission must be made by application in accordance with CPR Part 23, and the application notice must be served on the claimant and the Crown.

- (2) Permission to issue such a claim for service on the Crown shall not be granted unless the court is satisfied that the Crown is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned.

## INTERPLEADER: APPLICATION FOR ORDER AGAINST CROWN

### Rule 11

No order shall be made against the Crown under Order 17, rule 5(3) except by application, notice of which must be served not less than 7 days before the return day.

## DISCLOSURE AND FURTHER INFORMATION

### Rule 12

- (3) Where in any proceedings an order of the court directs that a list of documents made in answer to an order for disclosure against the Crown shall be verified by witness statement or affidavit, the witness statement or affidavit shall be made by such officer of the Crown as the court may direct.
- (4) Where in any proceedings an order is made under the said section 28 for further information to be provided by the Crown, the court shall direct by what officer of the Crown the further information is to be provided.

## PLACE OF TRIAL

### Rule 13

- (1) Civil proceedings by or against the Crown shall not, except with the consent of the Crown, be directed to be tried elsewhere than at the Royal Courts of Justice.
- (2) Nothing in any of these rules shall prejudice the right of the Crown to demand a local venue for the trial of any proceedings in which the Attorney-General has waived his right to a trial at bar.

## EVIDENCE

### Rule 14

- (1) Civil proceedings against the Crown may be instituted to perpetuate any testimony in any case in which the Crown is alleged to have an interest or estate in the honour, title, dignity or office or property in question.
- (2) For the avoidance of doubt it is hereby declared that any powers exercisable by the court in regard to the taking of evidence are exercisable in proceedings by or against the Crown as they are exercisable in proceedings between subjects.

## EXECUTION AND SATISFACTION OF ORDERS

- Rule 15 |
- (1) Nothing in Orders 45 to 52 shall apply in respect of any order against the Crown.
  - (2) An application under the proviso to subsection (1) of section 25 of the Crown Proceedings Act 1947, for a direction that a separate certificate shall be issued under that subsection with respect to the costs (if any) ordered to be paid to the applicant, may be made to the court without notice being served on any other party.
  - (3) Any such certificate must be in Form No. 95 or 96 in the relevant practice direction, whichever is appropriate.

## ATTACHMENT OF DEBTS, ETC.

- Rule 16 |
- (1) No order –
    - (a) for the attachment of debts under Order 49; or
    - (b) for the appointment of a sequestrator under Order 45; or
    - (c) for the appointment of a receiver under Order 30 or 51,
 shall be made or have effect in respect of any money due or accruing due, or alleged to be due or accruing due, from the Crown.
  - (1A) No application shall be made under paragraph (2) unless the order of the court to be enforced is for a sum of money amounting in value to at least £50.
  - (2) Every application to the court for an order under section 27(1) of the Crown Proceedings Act 1947<sup>(60)</sup> restraining any person from receiving money payable to him by the Crown and directing payment of the money to the applicant or some other person must be made by claim form and, unless the court otherwise directs, served –
    - (a) on the Crown at least 15 days before the return day; and
    - (b) on the person to be restrained or his solicitor at least 7 days after the claim form has been served on the Crown and at least 7 days before the return day.
  - (2A) An application under paragraph (2) must be supported by a witness statement or affidavit –
    - (a) setting out the facts giving rise to the application;
    - (b) stating the name and last known address of the person to be restrained;
    - (c) identifying the order to be enforced and stating the amount of such order and the amount remaining unpaid under it at the time of the application; and

(60) 1947 c.44; section 27(1) was amended by the Supreme Court Act 1981 (c.54), section 139(1) and Schedule 7.

- (d) identifying the particular debt from the Crown in respect of which the application is made.

- (2B) Where the debt from the Crown in respect of which the application is made is money payable by the Crown to a person on account of a deposit in the National Savings Bank, the witness statement or affidavit must state the name and address of the branch of the Post Office at which the account is believed to be held and the number of that account or, if it be the case, that all or part of this information is not known to the witness.
- (2C) A Master, the Admiralty Registrar and a district judge of the Family Division shall have power to hear an application under paragraph (2).
- (3) Order 49, rules 5 and 6, shall apply in relation to such an application as is mentioned in paragraph (2) for an order restraining a person from receiving money payable to him by the Crown as those rules apply to an application under Order 49, rule 1, for an order for the attachment of a debt owing to any person from a garnishee, except that the court shall not have power to order execution to issue against the Crown.

## PROCEEDINGS RELATING TO POSTAL PACKETS

### Rule 17

- (1) An application by any person under section 30(5) of the Post Office Act 1969<sup>(61)</sup>, for permission to bring proceedings in the name of the sender or addressee of a postal packet or his personal representatives must be made by claim form in the Queen's Bench Division.
- (2) The Crown and the person in whose name the applicant seeks to bring proceedings must be made defendants to a claim under this rule.

## APPLICATIONS UNDER SECTIONS 17 AND 29 OF CROWN PROCEEDINGS ACT

### Rule 18

- (1) Every application to the Court under section 17(4) of the Crown Proceedings Act 1947, must be made by claim form.
- (2) An application such as is referred to in section 29(2) of the Crown Proceedings Act 1947, may be made to the court at any time before trial in accordance with CPR Part 23, or may be made at the trial of the proceedings.

## RSC ORDER 79 CRIMINAL PROCEEDINGS

## ESTREAT OF RECOGNIZANCES

### Rule 8

- (1) No recognizance acknowledged in or removed into the Queen's Bench Division shall be estreated without the order of a judge.

(61) 1969 c.48.

- (2) Every application to estreat a recognizance in the Queen's Bench Division must be made by claim form and will be heard by a judge and must be supported by a witness statement or affidavit showing in what manner the breach has been committed and proving that the claim form was duly served.
- (2A) When it issues the claim form the court will fix a date for the hearing of the application.
- (3) A claim form under this rule must be served at least 2 clear days before the day named therein for the hearing.
- (4) On the hearing of the application the judge may, and if requested by any party shall, direct any issue of fact in dispute to be tried by a jury.
- (5) If it appears to the judge that a default has been made in performing the conditions of the recognizance, the judge may order the recognizance to be estreated.

## BAIL

### Rule 9

- (1) Subject to the provisions of this rule, every application to the High Court in respect of bail in any criminal proceeding –
  - (a) where the defendant is in custody, must be made by claim form to a judge to show cause why the defendant should not be granted bail;
  - (b) where the defendant has been admitted to bail, must be made by claim form to a judge to show cause why the variation in the arrangements for bail proposed by the applicant should not be made.
- (2) Subject to paragraph (5), the claim form (in Form No. 97 or 97A in the relevant practice direction) must, at least 24 hours before the day named therein for the hearing, be served –
  - (a) where the application was made by the defendant, on the prosecutor and on the Director of Public Prosecutions, if the prosecution is being carried on by him;
  - (b) where the application was made by the prosecutor or a constable under section 3(8) of the Bail Act 1976<sup>(62)</sup>, on the defendant.
- (3) Subject to paragraph (5), every application must be supported by witness statement or affidavit.
- (4) Where a defendant in custody who desires to apply for bail is unable through lack of means to instruct a solicitor, he may give notice in writing to the court stating his desire to apply for bail and requesting that the Official Solicitor shall act for him in the application, and the court may assign the Official Solicitor to act for the applicant accordingly.

(62) 1976 c.63; section 3(8) was amended by the Criminal Law Act 1977 (c.45), section 65(4), Schedule 12.

- (5) Where the Official Solicitor has been so assigned the court may dispense with the requirements of paragraphs (1) to (3) and deal with the application in a summary manner.
- (6) Where the court grants the defendant bail, the order must be in Form No. 98 in the relevant practice direction and a copy of the order shall be transmitted forthwith –
  - (a) where the proceedings in respect of the defendant have been transferred to the Crown Court for trial or where the defendant has been committed to the Crown Court to be sentenced or otherwise dealt with, to the appropriate officer of the Crown Court;
  - (b) in any other case, to the clerk of the court which committed the defendant.
- (6A) The recognizance of any surety required as a condition of bail granted as aforesaid may, where the defendant is in a prison or other place of detention, be entered into before the governor or keeper of the prison or place as well as before the persons specified in section 8(4) of the Bail Act 1976.
- (6B) Where under section 3(5) or (6) of the Bail Act 1976<sup>(63)</sup> the court imposes a requirement to be complied with before a person's release on bail, it may give directions as to the manner in which and the person or persons before whom the requirement may be complied with.
- (7) A person who in pursuance of an order for the grant of bail made by the court under this rule proposes to enter into a recognizance or give security must, unless the court otherwise directs, give notice (in Form No. 100 in the relevant practice direction) to the prosecutor at least 24 hours before he enters into the recognizance or complies with the requirements as aforesaid.
- (8) Where in pursuance of such an order as aforesaid a recognizance is entered into or requirement complied with before any person, it shall be the duty of that person to cause the recognizance or, as the case may be, a statement of the requirement complied with to be transmitted forthwith –
  - (a) where the proceedings in respect of the defendant have been transferred to the Crown Court for trial or where the defendant has been committed to the Crown Court to be sentenced or otherwise dealt with, to the appropriate officer of the Crown Court;
  - (b) in any other case, to the clerk of the court which committed the defendant,

and a copy of such recognizance or statement shall at the same time be sent to the governor or keeper of the prison or other place of

(63) 1976 c.63; section 3(6) was amended by the Criminal Justice and Public Order Act 1994 (c.33), sections 27(2), 168(3), Schedule 11.

detention in which the defendant is detained, unless the recognizance was entered into or the requirement complied with before such governor or keeper.

- (10) An order varying the arrangements under which the defendant has been granted bail shall be in Form 98A in the relevant practice direction and a copy of the order shall be transmitted forthwith –
  - (a) where the proceedings in respect of the defendant have been transferred to the Crown Court for trial or where the defendant has been committed to the Crown Court to be sentenced or otherwise dealt with, to the appropriate officer of the Crown Court;
  - (b) in any other case, to the clerk of the court which committed the defendant.
- (11) Where in pursuance of an order of the High Court or the Crown Court a person is released on bail in any criminal proceeding pending the determination of an appeal to the High Court or House of Lords or an application for an order of certiorari, then, upon the abandonment of the appeal or application, or upon the decision of the High Court or House of Lords being given, any justice (being a justice acting for the same petty sessions area as the magistrates' court by which that person was convicted or sentenced) may issue process for enforcing the decision in respect of which such appeal or application was brought or, as the case may be, the decision of the High Court or House of Lords.
- (12) If an applicant to the High Court in any criminal proceedings is refused bail, the applicant shall not be entitled to make a fresh application for bail to any other judge or to a Divisional Court.
- (13) The record required by section 5 of the Bail Act 1976<sup>(64)</sup> to be made by the High Court shall be made by including in the file relating to the case in question a copy of the relevant order of the Court and shall contain the particulars set out in Form No. 98 or 98A in the relevant practice direction, whichever is appropriate, except that in the case of a decision to withhold bail the record shall be made by inserting a statement of the decision on the court's copy of the relevant claim form and including it in the file relating to the case in question.
- (14) In the case of a person whose return or surrender is sought under the Extradition Act 1989<sup>(65)</sup>, this rule shall apply as if references to the defendant were references to that person and references to the prosecutor were references to the state seeking the return or surrender of that person.

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(64) 1976 c.63; section 5 was amended by the Criminal Justice Act 1982 (c.48), section 60; and by the Criminal Law Act 1977 (c.45), section 65(4), Schedule 12; and by the Criminal Justice and Public Order Act 1994 (c.33), section 27(4), Schedule 3, paragraph 1.

(65) 1989 c.33.

## RSC ORDER 81

### PARTNERS

#### CLAIMS BY AND AGAINST FIRMS WITHIN JURISDICTION

- Rule 1** | Subject to the provisions of any enactment, any two or more persons claiming to be entitled, or alleged to be liable, as partners in respect of a cause of action and carrying on business within the jurisdiction may sue, or be sued, in the name of the firm (if any) of which they were partners at the time when the cause of action accrued.

#### DISCLOSURE OF PARTNERS' NAMES

- Rule 2** |
- (1) Any defendant to a claim brought by partners in the name of a firm may serve on the claimants or their solicitor a notice requiring them or him forthwith to furnish the defendant with a written statement of the names and places of residence of all the persons who were partners in the firm at the time when the cause of action accrued; and if the notice is not complied with the court may order the claimants or their solicitor to furnish the defendant with such a statement and to verify it on oath or otherwise as may be specified in the order, or may order that further proceedings in the claim be stayed on such terms as the court may direct.
  - (2) When the names of the partners have been declared in compliance with a notice or order given or made under paragraph (1) the proceedings shall continue in the name of the firm but with the same consequences as would have ensued if the persons whose names have been so declared had been named as claimants in the claim form.
  - (3) Paragraph (1) shall have effect in relation to a claim brought against partners in the name of a firm as it has effect in relation to a claim brought by partners in the name of a firm but with the substitution, for references to the defendant and the claimants, of references to the claimant and the defendants respectively, and with the omission of the words 'or may order' to the end.

#### ACKNOWLEDGMENT OF SERVICE IN A CLAIM AGAINST FIRM

- Rule 4** |
- (1) Where persons are sued as partners in the name of their firm, service may not be acknowledged in the name of the firm but only by the partners thereof in their own names, but the claim shall nevertheless continue in the name of the firm.
  - (2) Where in a claim against a firm the claim form by which the claim is begun is served on a person as a partner, that person, if he denies that he was a partner or liable as such at any material time, may acknowledge service of the claim form and state in his acknowledgment that he does so as a person served as a partner in the defendant firm but who denies that he was a partner at any material time.

An acknowledgment of service given in accordance with this paragraph shall, unless and until it is set aside, be treated as an acknowledgment by the defendant firm.

- (3) Where an acknowledgment of service has been given by a defendant in accordance with paragraph (2) then –
  - (a) the claimant may either apply to the court to set it aside on the ground that the defendant was a partner or liable as such at a material time or may leave that question to be determined at a later stage of the proceedings;
  - (b) the defendant may either apply to the court to set aside the service of the claim form on him on the ground that he was not a partner or liable as such at a material time or may at the proper time serve a defence on the claimant denying in respect of the claimant's claim either his liability as a partner or the liability of the defendant firm or both.
- (4) The court may at any stage of the proceedings in a claim in which a defendant has acknowledged service in accordance with paragraph (2) on the application of the claimant or of that defendant, order that any question as to the liability of that defendant or as to the liability of the defendant firm be tried in such manner and at such time as the court directs.

## ENFORCING JUDGMENT OR ORDER AGAINST FIRM

### Rule 5

- (1) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may, subject to rule 6, issue against any property of the firm within the jurisdiction.
- (2) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may, subject to rule 6 and to the next following paragraph, issue against any person who –
  - (a) acknowledged service of the claim form as a partner; or
  - (b) having been served as a partner with the claim form, failed to acknowledge service of it; or
  - (c) admitted in his statement of case that he is a partner; or
  - (d) was adjudged to be a partner.
- (3) Execution to enforce a judgment or order given or made against a firm may not issue against a member of the firm who was out of the jurisdiction when the claim form was issued unless he –
  - (a) acknowledged service of the claim form as a partner; or
  - (b) was served within the jurisdiction with the claim form as a partner; or
  - (c) was, with the permission of the court given under Order 11, served out of the jurisdiction with the claim form, as a partner,

and, except as provided by paragraph (1) and by the foregoing provisions of this paragraph, a judgment or order given or made against a firm shall not render liable, release or otherwise affect a member of the firm who was out of the jurisdiction when the claim form was issued.

- (4) Where a party who has obtained a judgment or order against a firm claims that a person is liable to satisfy the judgment or order as being a member of the firm, and the foregoing provisions of this rule do not apply in relation to that person, that party may apply to the court for permission to issue execution against that person, the application to be made in accordance with CPR Part 23 and the application notice must be served personally on that person.
- (5) Where the person against whom an application under paragraph (4) is made does not dispute his liability, the court hearing the application may, subject to paragraph (3) give permission to issue execution against that person, and, where that person disputes his liability, the court may order that the liability of that person be tried and determined in any manner in which any issue or question in a claim may be tried and determined.

## ENFORCING JUDGMENT OR ORDER IN ACTIONS BETWEEN PARTNERS, ETC.

### Rule 6

- (1) Execution to enforce a judgment or order given or made in –
  - (a) a claim by or against a firm in the name of the firm against or by a member of the firm; or
  - (b) a claim by a firm in the name of the firm against a firm in the name of the firm where those firms have one or more members in common,
 shall not issue except with the permission of the court.
- (2) The court hearing an application under this rule may give such directions, including directions as to the taking of accounts and the making of inquiries, as may be just.

## ATTACHMENT OF DEBTS OWED BY FIRM

### Rule 7

- (1) An order may be made under Order 49, rule 1, in relation to debts due or accruing due from a firm carrying on business within the jurisdiction notwithstanding that one or more members of the firm is resident out of the jurisdiction.
- (2) An order to show cause under the said rule 1 relating to such debts as aforesaid must be served on a member of the firm within the jurisdiction or on some other person having the control or management of the partnership business.

- (3) Where an order made under the said rule 1 requires a firm to appear before the court, an appearance by a member of the firm constitutes a sufficient compliance with the order.

## APPLICATION TO PERSON CARRYING ON BUSINESS IN ANOTHER NAME

- Rule 9** | An individual carrying on business within the jurisdiction in a name or style other than his own name, may whether or not he is within the jurisdiction be sued in that name or style as if it were the name of a firm, and rules 2 to 8 shall, so far as applicable, apply as if he were a partner and the name in which he carries on business were the name of his firm.

## APPLICATIONS FOR ORDERS CHARGING PARTNER'S INTEREST IN PARTNERSHIP PROPERTY, ETC.

- Rule 10** |
- (1) Every application to the court by a judgment creditor of a partner for an order under section 23 of the Partnership Act 1890<sup>(68)</sup> (which authorises the High Court or a judge thereof to make certain orders on the application of a judgment creditor of a partner, including an order charging the partner's interest in the partnership property) and every application to the court by a partner of the judgment debtor made in consequence of the first mentioned application must be made in accordance with CPR Part 23.
  - (2) A Master or the Admiralty Registrar or a district judge may exercise the powers conferred on a judge by the said section 23.
  - (3) Every application notice issued by a judgment creditor under this rule, and every order made on such an application, must be served on the judgment debtor and on such of his partners as are within the jurisdiction or, if the partnership is a cost book company, on the judgment debtor and the purser of the company.
  - (4) Every application notice issued by a partner of a judgment debtor under this rule, and every order made on such an application, must be served –
    - (a) on the judgment creditor; and
    - (b) on the judgment debtor; and
    - (c) on such of the other partners of the judgment debtor as do not join in the application and are within the jurisdiction or, if the partnership is a cost book company, on the purser of the company.
  - (5) An application notice or order served in accordance with this rule on the purser of a cost book company or, in the case of a partnership not being such a company, on some only of the partners thereof, shall be deemed to have been served on that company or on all the partners of that partnership, as the case may be.

(68) 1890 c.39; section 23 was amended by the Statute Law Revision Act 1908 (c.49); and by the Courts Act 1971 (c.23), section 56(4), Schedule 11, Part II.

## RSC ORDER 82

### DEFAMATION CLAIMS

#### APPLICATION

- Rule 1 | These rules apply to claims for libel or slander subject to the following rules of this order.

#### INDORSEMENT OF CLAIM IN LIBEL CLAIM

- Rule 2 | Before a claim form in a claim for libel is issued it must be indorsed with a statement giving sufficient particulars of the publications in respect of which the claim is brought to enable them to be identified.

#### OBLIGATION TO GIVE PARTICULARS

- Rule 3 |
- (1) Where in a claim for libel or slander the claimant alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he must give particulars of the facts and matters on which he relies in support of such sense.
  - (2) Where in a claim for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or states in his statement of case to the like effect, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.
    - (2A) Subject to paragraph (2B), where the defendant makes an allegation as described in paragraph (2), the claimant shall serve a reply specifically admitting or denying any such allegation raised by the defendant and specifying any fact or matter upon which he relies in opposition to the defendant's allegations.
    - (2B) No reply shall be required under paragraph (2A) where all the facts or matters on which the claimant intends to rely in opposition to the defendant's allegations as described in paragraph (2) are already particularised elsewhere in the statements of case.
  - (3) Where in a claim for libel or slander the claimant alleges that the defendant maliciously published the words or matters complained of, he need not in his particulars of claim give particulars of the facts on which he relies in support of the allegation of malice, but if the defendant states in his statement of case that any of those words or matters are fair comment on a matter of public interest or were published upon a privileged occasion and the claimant intends to allege that the defendant was actuated by express malice, he must serve a reply giving particulars of the fact and matters from which the malice is to be inferred.

- (3A) The claimant must give full particulars in the particulars of claim of the facts and matters on which he relies in support of his claim for damages, including details of any conduct by the defendant which it is alleged has increased the loss suffered and of any loss which is peculiar to the claimant's own circumstances.
- (4) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the claimant and the party against whom it is made the defendant.

## RULING ON MEANING

### Rule 3A

- (1) At any time after the service of the particulars of claim either party may apply to the court for an order determining whether or not the words complained of are capable of bearing a particular meaning or meanings attributed to them in the statements of case.
- (2) If it appears to the court on the hearing of an application under paragraph (1) that none of the words complained of are capable of bearing the meaning or meanings attributed to them in the statements of case, it may dismiss the claim or make such other order or give such judgment in the proceedings as may be just.
- (3) Subject to paragraph (4), each party to the proceedings may make only one application under paragraph (1).
- (4) Where a party has made an application under paragraph (1) and the respondent to that application subsequently amends his statements of case to allege a new meaning, the court may allow the other party to make a further application under paragraph (1) in relation to that new meaning.
- (5) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the claimant and the party against whom it is made the defendant, and as if the counterclaim were the statement of claim.

## PROVISIONS AS TO PAYMENT INTO COURT

### Rule 4

- (1) Where in a claim for libel or slander against several defendants sued jointly the claimant, in accordance with CPR rule 36.11(1) accepts money paid into court by any of those defendants in satisfaction of his cause of action against that defendant, then, notwithstanding anything in CPR rule 36.17, the claim shall be stayed as against that defendant only, but –
  - (a) the sum recoverable under any judgment given in the claimant's favour against any other defendant in the claim by way of damages shall not exceed the amount (if any) by which the amount of the damages exceeds the amount paid into court by the defendant as against whom the claim has been stayed; and

- (b) the claimant shall not be entitled to his costs of the claim against the other defendant after the date of the payment into court unless either the amount of the damages awarded to him is greater than the amount paid into court and accepted by him or the court is of opinion that there was reasonable ground for him to proceed with the claim against the other defendant.
- (2) Where in a claim for libel a party in his statement of case relies on the defence for which section 2 of the Libel Act 1843<sup>(69)</sup>, provides, CPR rule 36.19 shall not apply in relation to that statement of case.

## STATEMENT IN OPEN COURT

### Rule 5

- (1) Where a party wishes to accept money paid into court in satisfaction of a cause of action for libel or slander, malicious prosecution or false imprisonment, that party may before or after accepting the money apply to the court in accordance with CPR Part 23 for permission to make a statement in terms approved by the judge.
- (2) Where a party to a claim for libel or slander, malicious prosecution or false imprisonment which is settled before trial desires to make a statement referred to in paragraph (1), an application must be made to the court for an order that the claim be set down for trial, and before the date fixed for the trial the statement must be submitted for the approval of the court before whom it is to be made.
- (3) The court may approve a statement under paragraph (1) or (2) which refers not only to a cause of action mentioned in those paragraphs but also to any other cause of action joined thereto.

## FURTHER INFORMATION NOT ALLOWED IN CERTAIN CASES

### Rule 6

In a claim for libel or slander where the defendant states in his statement of case that the words or matters complained of are fair comment on a matter of public interest or were published on a privileged occasion, no further information as to the defendant's sources of information or grounds of belief shall be allowed.

## FULFILMENT OF OFFER OF AMENDS UNDER SECTION 4 OF THE DEFAMATION ACT 1952<sup>(70)</sup>

### Rule 8

- (1) An application to the court under section 4 of the Defamation Act 1952, to determine any question as to the steps to be taken in fulfilment of an offer of amends made under that section must, unless the application is made in the course of proceedings for libel or slander in respect of the publication to which the offer relates, be made in private in the Queen's Bench Division, but only a judge may determine such question.

(69) 1843 (c.96); section 2 was amended by the Statute Law Revision Act 1891 (c.67); and by the Statute Law Revision Act 1892 (c.19).  
 (70) 1952 c.66.

- (2) Such an application is to be made by a claim form.

## **RSC ORDER 85**

### **ADMINISTRATION AND SIMILAR ACTIONS**

#### **INTERPRETATION**

##### **Rule 1**

In this order 'administration claim' means a claim for the administration under the direction of the court of the estate of a deceased person or for the execution under the direction of the court of a trust.

#### **DETERMINATION OF QUESTIONS, ETC., WITHOUT ADMINISTRATION**

##### **Rule 2**

- (1) A claim may be issued for the determination of any question or for any remedy which could be determined or granted, as the case may be, in an administration claim and a claim need not be made for the administration or execution under the direction of the court of the estate or trust in connection with which the question arises or the remedy is sought.
- (2) Without prejudice to the generality of paragraph (1), a claim may be brought for the determination of any of the following questions –
  - (a) any question arising in the administration of the estate of a deceased person or in the execution of a trust;
  - (b) any question as to the composition of any class of persons having a claim against the estate of a deceased person or a beneficial interest in the estate of such a person or in any property subject to a trust;
  - (c) any question as to the rights or interests of a person claiming to be a creditor of the estate of a deceased person or to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust.
- (3) Without prejudice to the generality of paragraph (1), a claim may be brought for any of the following remedies –
  - (a) an order requiring an executor, administrator or trustee to furnish and, if necessary, verify accounts;
  - (b) an order requiring the payment into court of money held by a person in his capacity as executor, administrator or trustee;
  - (c) an order directing a person to do or abstain from doing a particular act in his capacity as executor, administrator or trustee;
  - (d) an order approving any sale, purchase, compromise or other transaction by a person in his capacity as executor, administrator or trustee;
  - (e) an order directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust which the court could order to be done if the estate or trust were being

administered or executed, as the case may be, under the direction of the court.

## PARTIES

### Rule 3

- (1) All the executors or administrators of the estate or trustees of the trust, as the case may be, to which an administration claim or such a claim as is referred to in rule 2 relates must be parties to the proceedings, and where the proceedings are made by executors, administrators or trustees, any of them who does not consent to being joined as a claimant must be made a defendant.
- (2) Notwithstanding anything in CPR Rule 19.2 and without prejudice to the powers of the court under that CPR Part, all the persons having a beneficial interest in or claim against the estate or having a beneficial interest under the trust, as the case may be, to which such a claim as is mentioned in paragraph (1) relates need not be parties to the proceedings; but the claimant may make such of those persons, whether all or anyone or more of them, parties as, having regard to the nature of the remedy claimed in the proceedings, he thinks fit.
- (3) Where, in proceedings under a judgment or order given or made in a claim for the administration under the direction of the court of the estate of a deceased person, a claim in respect of a debt or other liability is made against the estate by a person not a party to the proceedings, no party other than the executors or administrators of the estate shall be entitled to appear in any proceedings relating to that claim without the permission of the court, and the court may direct or allow any other party to appear either in addition to, or in substitution for, the executors or administrators on such terms as to costs or otherwise as it thinks fit.

## JUDGMENTS AND ORDERS IN ADMINISTRATION CLAIMS

### Rule 5

- (1) A judgment or order for the administration or execution under the direction of the court of an estate or trust need not be given or made unless in the opinion of the court the questions at issue between the parties cannot properly be determined otherwise than under such a judgment or order.
- (2) Where an administration claim is brought by a creditor of the estate of a deceased person or by a person claiming to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust, and the claimant alleges that no or insufficient accounts have been furnished by the executors, administrators or trustees, as the case may be, then, without prejudice to its other powers, the court may –
  - (a) order that proceedings be stayed for a period specified in the order and that the executors, administrators or trustees, as the case may be, shall within that period furnish the claimant with proper accounts;

- (b) if necessary to prevent proceedings by other creditors or by other persons claiming to be entitled as aforesaid, give judgment or make an order for the administration of the estate to which the claim relates and include therein an order that no proceedings are to be taken under the judgment or order, or under any particular account or inquiry directed, without the permission of the judge in person.

## CONDUCT OF SALE OF TRUST PROPERTY

- Rule 6** | Where in an administration claim an order is made for the sale of any property vested in executors, administrators or trustees, those executors, administrators or trustees, as the case may be, shall have the conduct of the sale unless the court otherwise directs.

## RSC ORDER 87

### DEBENTURE HOLDERS' CLAIMS: RECEIVER'S REGISTER

## RECEIVER'S REGISTER

- Rule 1** | Every receiver appointed by the court in proceedings to enforce registered debentures or registered debenture stock shall, if so directed by the court, keep a register of transfers of, and other transmissions of title to, such debentures or stock (in this order referred to as 'the receiver's register').

## REGISTRATION OF TRANSFERS, ETC.

- Rule 2** |
- (1) Where a receiver is required by rule 1 to keep a receiver's register, then, on the application made in accordance with CPR Part 23 of any person entitled to any debentures or debenture stock by virtue of any transfer or other transmission of title, and on production of such evidence of identity and title as the receiver may reasonably require, the receiver shall, subject to the following provisions of this rule, register the transfer or other transmission of title in that register.
  - (2) Before registering a transfer the receiver must, unless the due execution of the transfer is proved by witness statement or affidavit, send by post to the registered holder of the debentures or debenture stock transferred at his registered address a notice stating –
    - (a) that an application for the registration of the transfer has been made; and
    - (b) that the transfer will be registered unless within the period specified in the notice the holder informs the receiver that he objects to the registration,

and no transfer shall be registered until the period so specified has elapsed.

The period to be specified in the notice shall in no case be less than 7 days after a reply from the registered holder would in the ordinary

course of post reach the receiver if the holder had replied to the notice on the day following the day when in the ordinary course of post the notice would have been delivered at the place to which it was addressed.

- (3) On registering a transfer or other transmission of title under this rule the receiver must indorse a memorandum thereof on the debenture or certificate of debenture stock, as the case may be, transferred or transmitted, containing a reference to the proceedings and to the order appointing him receiver.

## APPLICATION FOR RECTIFICATION OF RECEIVER'S REGISTER

- Rule 3 |
- (1) Any person aggrieved by any thing done or omission made by a receiver under rule 2 may apply in accordance with CPR Part 23 to the court for rectification of the receiver's register; the application to be made in the proceedings in which the receiver was appointed.
  - (2) The copy of the application notice shall in the first instance be served only on the claimant or other party having the conduct of the proceedings but the court may direct a copy of the application notice to be served on any other person appearing to be interested.
  - (3) The court hearing an application under this rule may decide any question relating to the title of any person who is party to the application to have his name entered in or omitted from the receiver's register and generally may decide any question necessary or expedient to be decided for the rectification of that register.

## RECEIVER'S REGISTER EVIDENCE OF TRANSFERS, ETC.

- Rule 4 |
- Any entry made in the receiver's register, if verified by a witness statement or affidavit made by the receiver or by such other person as the court may direct, shall in all proceedings in which the receiver was appointed be evidence of the transfer or transmission of title to which the entry relates and, in particular, shall be accepted as evidence thereof for the purpose of any distribution of assets, notwithstanding that the transfer or transmission has taken place after the making of a certificate in the proceedings certifying the holders of the debentures or debenture stock certificates.

## PROOF OF TITLE OF HOLDER OF BEARER DEBENTURE, ETC.

- Rule 5 |
- (1) This rule applies in relation to proceedings to enforce bearer debentures or to enforce debenture stock in respect of which the company has issued debenture stock bearer certificates.
  - (2) Notwithstanding that judgment has been given in the proceedings and that a certificate has been made therein certifying the holders of such debentures or certificates as are referred to in paragraph (1), the title of any person claiming to be such a holder shall (in the absence

of notice of any defect in the title) be sufficiently proved by the production of the debenture or debenture stock certificate, as the case may be, together with a certificate of identification signed by the person producing the debenture or certificate identifying the debenture or certificate produced and certifying the person (giving his name and address) who is the holder thereof.

- (3) Where such a debenture or certificate as is referred to in paragraph (1) is produced in Chancery Chambers, the solicitor of the claimant in the proceedings must cause to be indorsed thereon a notice stating –
  - (a) that the person whose name and address is specified in the notice (being the person named as the holder of the debenture or certificate in the certificate of identification produced under paragraph (2)) has been recorded in Chancery Chambers as the holder of the debenture or debenture stock certificate, as the case may be; and
  - (b) that that person will, on producing the debenture or debenture stock certificate, as the case may be, be entitled to receive payment of any dividend in respect of that debenture or stock unless before payment a new holder proves his title in accordance with paragraph (2); and
  - (c) that if a new holder neglects to prove his title as aforesaid he may incur additional delay, trouble and expense in obtaining payment.
- (4) The solicitor of the claimant in the proceedings must preserve any certificates of identification produced under paragraph (2) and must keep a record of the debentures and debenture stock certificates so produced and of the names and addresses of the persons producing them and of the holders thereof, and, if the court requires it, must verify the record by witness statement or affidavit.

## REQUIREMENTS IN CONNECTION WITH PAYMENTS

### Rule 6

- (1) Where in proceedings to enforce any debentures or debenture stock an order is made for payment in respect of the debentures or stock, the Accountant General shall not make a payment in respect of any such debenture or stock unless either there is produced to him the certificate for which paragraph (2) provides or the court has in the case in question for special reason dispensed with the need for the certificate and directed payment to be made without it.
- (2) For the purpose of obtaining any such payment the debenture or debenture stock certificate must be produced to the solicitor of the claimant in the proceedings or to such other person as the court may direct, and that solicitor or other person must indorse thereon a memorandum of payment and must make and sign a certificate certifying that the statement set out in the certificate has been indorsed on the debenture or debenture stock certificate, as the case may be, and send the certificate to the Accountant General.

## RSC ORDER 88

### MORTGAGE CLAIMS

#### APPLICATION AND INTERPRETATION

- Rule 1
- (1) This order applies to any claim by a mortgagee or mortgagor or by any person having the right to foreclose or redeem any mortgage, being a claim in which there is a claim for any of the following remedies, namely –
    - (a) payment of moneys secured by the mortgage;
    - (b) sale of the mortgaged property;
    - (c) foreclosure;
    - (d) delivery of possession (whether before or after foreclosure or without foreclosure) to the mortgagee by the mortgagor or by any other person who is or is alleged to be in possession of the property;
    - (e) redemption;
    - (f) reconveyance of the property or its release from the security;
    - (g) delivery of possession by the mortgagee.
  - (2) In this order ‘mortgage’ includes a legal and an equitable mortgage and a legal and an equitable charge, and references to a mortgagor, a mortgagee and mortgaged property shall be construed accordingly.
  - (3) A claim to which this order applies is referred to in this order as a mortgage claim.
  - (4) These rules apply to mortgage claims subject to the following provisions of this order.

#### ASSIGNMENT OF CERTAIN ACTIONS TO CHANCERY DIVISION

- Rule 2
- Without prejudice to section 61(1) of the Act (which provides for the assignment to the Chancery Division of proceedings for the purposes, among others, of the redemption or foreclosure of mortgages and the sale and distribution of the proceeds of property subject to any lien or charge) any claim in which there is a claim for –
- (a) payment of moneys secured by a mortgage of any real or leasehold property; or
  - (b) delivery of possession (whether before or after foreclosure) to the mortgagee of any such property by the mortgagor or by any other person who is or is alleged to be in possession of the property,
- shall be assigned to the Chancery Division.

## COMMENCEMENT OF CLAIM

- Rule 3 |
- (1) A claim form by which a mortgage claim is begun may not be issued out of a district registry, which is not a Chancery district registry, unless the mortgaged property is situated in the district of the registry.
  - (3) The claim form by which a mortgage claim is begun shall be indorsed with or contain a statement showing –
    - (a) where the mortgaged property is situated; and
    - (b) if the claimant claims possession of the mortgaged property and it is situated outside Greater London, whether the property consists of or includes a dwelling house,
 and a certificate that the claim is not one to which section 141 of the Consumer Credit Act 1974<sup>(71)</sup> applies.

## CLAIM FOR POSSESSION: FAILURE BY A DEFENDANT TO ACKNOWLEDGE SERVICE

- Rule 4 |
- (1) Where in a mortgage claim in the Chancery Division being a claim in which the claimant is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both, any defendant fails to acknowledge service of the claim form, the following provisions of this rule shall apply, and references in those provisions to the defendant shall be construed as references to any such defendant.
  - (2) Not less than 4 clear days before the day fixed for the first hearing of the claim the claimant must serve on the defendant a copy of the notice of appointment for the hearing and a copy of the witness statement or affidavit in support of the claim.
  - (4) Where the hearing is adjourned, then, subject to any directions given by the court, the claimant must serve notice of the appointment for the adjourned hearing, together with a copy of any further witness statement or affidavit intended to be used at that hearing, on the defendant not less than 2 clear days before the day fixed for the hearing.
  - (5) Service under paragraph (2) or (4) and the manner in which it was effected, may be proved by a certificate signed by the claimant, if he sues in person, and otherwise by his solicitor.  
  
The certificate may be indorsed on the witness statement or affidavit in support of the claim or, as the case may be, on any further witness statement or affidavit intended to be used at an adjourned hearing.
  - (6) A copy of any exhibit to a witness statement or affidavit need not accompany the copy of the witness statement or affidavit served under paragraph (2) or (4).

(71) 1974 c.39.

## CLAIM IN CHANCERY DIVISION FOR POSSESSION OR PAYMENT: EVIDENCE

## Rule 5

- (1) The witness statement or affidavit in support of the claim (other than a claim to which rule 5A applies) to which this rule applies is begun must comply with the following provisions of this rule.

This rule applies to a mortgage claim in the Chancery Division in which the claimant is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both.

- (2) The witness statement or affidavit must exhibit a true copy of the mortgage and the original mortgage or, in the case of a registered charge, the charge certificate must be produced at the hearing of the claim.
- (2A) Unless the court otherwise directs the witness statement or affidavit may contain statements of information or belief with the sources and grounds thereof.
- (3) Where the claimant claims delivery of possession the witness statement or affidavit must show the circumstances under which the right to possession arises and, except where the court in any case or class of case otherwise directs, the state of the account between the mortgagor and mortgagee with particulars of –
- (a) the amount of the advance;
  - (b) the amount of the periodic payments required to be made;
  - (c) the amount of any interest or instalments in arrear at the date of issue of the claim form and at the date of the witness statement or affidavit; and
  - (d) the amount remaining due under the mortgage.
- (4) Where the claimant claims delivery of possession the witness statement or affidavit must –
- (a) give particulars of every person who to the best of the claimant's knowledge is in possession of the mortgaged property; and
  - (b) state, in the case of a dwelling house, whether –
    - (i) a land charge of Class F has been registered, or a notice or caution registered under section 2(7) of the Matrimonial Homes Act 1967<sup>(72)</sup> or a notice registered under section 2(8) of the Matrimonial Homes Act 1983<sup>(73)</sup> has been entered, and, if so, on whose behalf; and
    - (ii) he has served notice of the proceedings on the person on whose behalf the land charge is registered or the notice or caution entered.
- (5) If the mortgage creates a tenancy other than a tenancy at will between the mortgagor and mortgagee, the witness statement or affidavit must

(72) 1967 c.75.

(73) 1983 c.19.

show how and when the tenancy was determined and if by service of notice when the notice was duly served.

- (6) Where the claimant claims payment of money secured by the mortgage the witness statement or affidavit must show how the claim is calculated including –
  - (a) the amount of the advance and the amount and dates of any periodic repayments and any interest claimed;
  - (b) the amount which would have to be paid (after taking into account any adjustment for early settlement) in order to redeem the mortgage at the date of commencement of the proceedings and at a stated date not more than 14 days after the date of commencement of the proceedings, specifying the amount of the solicitor's costs and administrative charges which would be payable;
  - (c) the dates between which a particular rate of interest applied, the number of days in that period, and the capital on which the interest was calculated.
- (7) Where the claimant's claim includes a claim for interest to judgment, the witness statement or affidavit must state the amount of a day's interest.

## CLAIM FOR THE ENFORCEMENT OF CHARGING ORDER BY SALE

### Rule 5A

- (1) This rule applies to a mortgage claim in the Chancery Division to enforce a charging order by sale of the property charged.
- (2) The witness statement or affidavit in support of the claim must –
  - (a) identify the charging order sought to be enforced and the subject matter of the charge;
  - (b) specify the amount in respect of which the charge was imposed and the balance outstanding at the date of the witness statement or affidavit;
  - (c) verify, so far as known, the debtor's title to the property charged;
  - (d) identify any prior incumbrancer on the property charged stating, so far as is known, the names and addresses of the incumbrancers and the amounts owing to them;
  - (e) set out the claimant's proposals as to the manner of sale of the property charged together with estimates of the gross price which would be obtained on a sale in that manner and of the costs of such a sale; and
  - (f) where the property charged consists of land in respect of which the claimant claims delivery of possession –
    - (i) give particulars of every person who to the best of the claimant's knowledge is in possession of the property charged or any part of it; and

- (ii) state, in the case of a dwelling house, whether a land charge of Class F has been registered, or a notice or caution pursuant to section 2(7) of the Matrimonial Homes Act 1967, or a notice pursuant to section 2(8) of the Matrimonial Homes Act 1983 has been entered and, if so, on whose behalf, and whether he has served notice of the proceedings on the person on whose behalf the land charge is registered or the notice or caution entered.

## FORECLOSURE IN REDEMPTION CLAIM

- Rule 7** | Where foreclosure has taken place by reason of the failure of the claimant in a mortgage claim for redemption to redeem, the defendant in whose favour the foreclosure has taken place may apply in accordance with CPR Part 23 for an order for delivery to him of possession of the mortgaged property, and the court may make such order thereon as it thinks fit.

## RSC ORDER 91 REVENUE PROCEEDINGS

## ASSIGNMENT TO CHANCERY DIVISION, ETC.

- Rule 1** | The following proceedings, namely –
- (a) any case stated for the opinion of the High Court under –
    - (i) section 13 of the Stamp Act 1891<sup>(74)</sup> or
    - (ii) section 705A of the Income and Corporation Taxes Act 1988<sup>(75)</sup>; or
    - (iii) regulation 22 of the General Commissioners (Jurisdiction and Procedure) Regulations 1994<sup>(76)</sup>;
  - (b) any appeal to the High Court under –
    - (i) section 53, 56A or 100C(4) of the Taxes Management Act 1970<sup>(77)</sup>; or
    - (ii) section 222(3), 225, 249(3) or 251 of the Inheritance Tax Act 1984<sup>(78)</sup>; or
    - (iii) regulation 8(3) or 10 of the Stamp Duty Reserve Tax Regulations 1986<sup>(79)</sup>;
  - (c) any application for permission to appeal under the said section 222(3) or the said regulation 8(3); and

(74) 1891 c.39; section 13 was amended by the Administration of Justice (Miscellaneous Provisions) Act 1933 (c.36), section 10(3), Schedule 3.

(75) 1988 c.1; section 705A was inserted by S.I. 1994/1813.

(76) S.I. 1994/1812.

(77) 1970 c.9; sections 53 and 56A were substituted by S.I. 1994/1813. Section 100C was inserted by the Finance Act 1989 (c.26).

(78) 1984 c.51; sections 225 and 251 were substituted by S.I. 1994/1813.

(79) S.I. 1986/1711.

- (d) proceedings to which the provisions of section 56A of the Taxes Management Act 1970<sup>(80)</sup> apply under any enactment or regulation,

shall be assigned to the Chancery Division and heard and determined by a single judge.

## APPEAL UNDER SECTION 222 OF THE INHERITANCE TAX ACT 1984<sup>(81)</sup>

### Rule 2

- (1) Order 55 shall not apply in relation to an appeal to the High Court under section 222(3) of the Inheritance Tax Act 1984 or regulation 8(3) of the Stamp Duty Reserve Tax Regulations 1986.
- (2) Such an appeal must be brought by a notice of appeal which must –
  - (a) state the date on which the Commissioners of Inland Revenue (in this rule referred to as the ‘Board’) gave notice to the appellant under section 221 of the said Act<sup>(82)</sup> or regulation 6 of the said Regulations of the determination which is the subject of the appeal;
  - (b) state the date on which the appellant gave to the Board notice of appeal under section 222(1) of the said Act, or regulation 8(1) of the said Regulations and, if the notice was not given within the time limited, whether the Board or the Special Commissioners have given consent to the appeal being brought out of time, and, if they have, the date on which it was given; and
  - (c) either state that the appellant and the Board have agreed that the appeal may be to the High Court or contain an application for permission to appeal to the High Court.
- (3) At the time of issuing the notice of appeal the appellant shall file in Chancery Chambers –
  - (a) two copies of the notice referred to in paragraph (2)(a);
  - (b) two copies of the notice of appeal (under section 222(1) of the said Act, or regulation 8(1) of the said Regulations) referred to in paragraph (2)(b); and
  - (c) where the notice of appeal contains an application for permission to appeal, a witness statement or affidavit setting out the grounds on which it is alleged that the matters to be decided on the appeal are likely to be substantially confined to questions of law.
- (4) The notice of appeal must be issued and served on the Board within 30 days of the date on which the appellant gave to the Board notice of appeal under section 222(1) of the said Act or regulation 8(1) of the said Regulations or, if the Board or the Special Commissioners

(80) 1970 c.9; section 56A was substituted by S.I. 1994/1813.

(81) 1984 c.51.

(82) Section 221 was amended by the Finance Act 1985 (c.54), section 94, Schedule 26, paragraph 5.

have given consent to the appeal being brought out of time, within 30 days of the date on which such consent was given.

- (5) The notice of appeal, must specify a date of hearing being not less than 40 days from the issue of the notice of appeal.
- (6) Where the notice of appeal contains an application for permission to appeal to the High Court, a copy of the witness statement or affidavit lodged pursuant to paragraph (3)(c) shall be served on the Board with the notice of appeal and the Board may, within 30 days after service, file in the judge's chambers a witness statement or affidavit in answer and a copy of any such witness statement or affidavit shall be served by the Board on the appellant.
- (7) Except with the permission of the court, the appellant shall not be entitled on the hearing of an appeal to rely on any grounds of appeal not specified in the notice referred to in paragraph (2)(b).

## SETTING DOWN CASE STATED UNDER TAXES MANAGEMENT ACT 1970

### Rule 3

- (1) At any time after a case stated under section 705A of the Income and Corporation Taxes Act 1988 or regulation 22 of the General Commissioners (Jurisdiction and Procedure) Regulations 1994 has been filed in Chancery Chambers either party may set down the case for hearing.
- (2) On setting down the case the party who sets it down must give notice to the other party that he has done so.

## CASE STATED: NOTICE TO BE GIVEN OF CERTAIN MATTERS

### Rule 4

Not less than 10 days before the hearing of such a case as is mentioned in rule 1(a) either party must give notice to the other of any point which he intends to take at the hearing and which might take the other party by surprise and leave at Chancery Chambers two copies of the notice for the use of the court.

## APPEALS UNDER SECTION 53 AND 100C(4) OF THE TAXES MANAGEMENT ACT 1970

### Rule 5

- (1) The notice of appeal by which an appeal under section 53 or 100C (4) of the Taxes Management Act 1970 or section 249(3) or 251 of the Inheritance Tax Act 1984 is brought must be issued out of Chancery Chambers.
- (2) Order 55, rule 3(2), shall apply in relation to the notice of appeal as if the decision, award or determination appealed against were the decision of a court.
- (3) The persons to be served with the notice are the General or Special Commissioners against whose decision, award or determination the appeal is brought and –

- (a) in the case of an appeal brought under section 100C(4) of the Taxes Management Act 1970 or section 249(3) of the Inheritance Tax Act 1984 by any party other than the defendant in the proceedings before the Commissioners, that defendant;
  - (b) in any other case, the Commissioners of Inland Revenue.
- (4) Order 55, rules 4(2) and 5, shall apply in relation to any such appeal as if for the period of 28 days and 21 days therein specified there were substituted a period of 30 days and 35 days respectively.
  - (5) Within 30 days after the service on them of the notice by which any such appeal is brought, the General or Special Commissioners, as the case may be, must file in Chancery Chambers two copies of a note of their findings and of the reasons for their decision, award or determination and must serve a copy of the note on every other party to the appeal.
  - (6) Any document required or authorised to be served on the General or Special Commissioners in proceedings to which this rule relates may be served by delivering or sending it to their clerk.
  - (7) Order 57 shall not apply to proceedings to which this rule applies.

#### APPEALS UNDER SECTION 56A OF THE TAXES MANAGEMENT ACT 1970, SECTION 225 OF THE INHERITANCE TAX ACT 1984 AND REGULATION 10 OF THE STAMP DUTY RESERVE TAX REGULATIONS 1986

##### Rule 5A

- (1) This rule applies to appeals under section 56A of the Taxes Management Act 1970, section 225 of the Inheritance Tax Act 1984 and regulation 10 of the Stamp Duty Reserve Tax Regulations 1986.
- (2) The notice of appeal by which such an appeal is brought must be issued out of Chancery Chambers.
- (3) Order 55, rule 3(2) shall apply in relation to the notice of appeal as if the decision or determination appealed against were the decision of a court.
- (4) Order 55, rule 4(2) shall apply in relation to such an appeal as if for the period of 28 days specified in that rule there were substituted a period of 56 days, except where the appeal is made following the refusal of the Special Commissioners to issue a certificate under section 56A(2)(b) of the Taxes Management Act 1970 or the refusal of permission to appeal to the Court of Appeal under section 56A(2)(c) of that Act.
- (5) Where the appeal is made following the refusal of the Special Commissioners to issue a certificate under section 56A(2)(b) of the Taxes Management Act 1970, the period of 28 days specified in Order 55, rule 4(2) shall be calculated from the date of the release of the decision of the Special Commissioners containing the refusal.

- (6) Where the appeal is made following the refusal of permission to appeal to the Court of Appeal under section 56A(2)(c) of the Taxes Management Act 1970, the period of 28 days specified in Order 55, rule 4(2) shall be calculated from the date when permission is refused.
- (7) Order 57 shall not apply to proceedings to which this rule applies.

## APPEALS FROM VALUE ADDED TAX TRIBUNALS

### Rule 6

- (1) A party to proceedings before a value added tax tribunal who is dissatisfied in point of law with a decision of the tribunal may appeal under section 11(1) of the Tribunals and Inquiries Act 1992<sup>(83)</sup> to the High Court and Order 94, rule 9 shall not apply in relation to such an appeal.
- (2) Such an appeal shall be heard and determined by a single judge of the Chancery Division.
- (3) Order 55, rule 4(2) shall apply in relation to any such appeal as if for the period of 28 days specified in that rule there were substituted a period of 56 days, except where the appeal is made following the refusal of the Value Added Tax Tribunal to grant a certificate under article 2(b) of the Value Added Tax Tribunal Appeals Order 1986<sup>(84)</sup>.
- (3A) Where the tribunal has refused to grant a certificate under article 2(b) of the Value Added Tax Tribunal Appeals Order 1986, the 28-day period mentioned in Order 55, rule 4(2) shall be calculated from the date of the release of the decision of the tribunal containing the refusal.
- (4) This rule is without prejudice to the right of the parties to appeal direct to the Court of Appeal in accordance with Order 59, rule 22.

## RSC ORDER 92

### LODGMENT, INVESTMENT, ETC., OF FUNDS IN COURT: CHANCERY DIVISION

## PAYMENT INTO COURT BY LIFE ASSURANCE COMPANY

### Rule 1

- (1) A company wishing to make a payment into court under the Life Assurance Companies (Payment into Court) Act, 1896<sup>(85)</sup> (hereinafter referred to as 'the Act of 1896') must file a witness statement or affidavit, made by its secretary or other authorised officer, setting out –
  - (a) a short description of the policy in question and a statement of the persons entitled thereunder with their names and addresses so far as known to the company;

(83) 1992 c.53; section 11(1) was amended by the Education Act 1993 (c.35) section 181(2); the Sea Fish Conservation Act 1992 (c.60), section 9; and by the Education Act 1996 (c.56), section 582(1), Schedule 37, Part 1, paragraph 118.

(84) S.I. 1986/2288.

(85) 1896 c.8.

- (b) a short statement of the notices received by the company claiming an interest in or title to the money assured, or withdrawing any such claim, with the dates of receipt thereof and the names and addresses of the persons by whom they were given;
  - (c) a statement that, in the opinion of the board of directors of the company, no sufficient discharge can be obtained otherwise than by payment into court under the Act of 1896;
  - (d) the submission by the company to pay into court such further sum, if any, as the court may direct and to pay any costs ordered by the court to be paid by the company;
  - (e) an undertaking by the company forthwith to send to the Accountant-General any notice of claim received by the company after the making of the witness statement or affidavit with a letter referring to the title of the witness statement or affidavit; and
  - (f) an address where the company may be served with any application, claim form, court order, or notice of any proceedings, relating to the money paid into court.
- (2) The company shall not deduct from the money payable by them under the policy any costs of or incidental to the payment into court.
  - (3) No payment shall be made into court under the Act of 1896 where any proceedings to which the company is a party are pending in relation to the policy or moneys thereby assured except with the leave of the court to be obtained by an application made in accordance with CPR Part 23.
  - (4) Unless the court otherwise directs, a CPR Part 23 application by which a claim with respect to money paid into court under the Act of 1896 is made shall not, except where the application includes an application for payment of a further sum of costs by the company who made the payment, be served on that company, but it must be served on every person who appears by the witness statement or affidavit on which the payment into court was made to be entitled to, or interested in, the money in court or to have a claim upon it or who has given a notice of claim which has been sent to the Accountant-General in accordance with the undertaking referred to in rule 1(1)(e).

## PAYMENT INTO COURT UNDER TRUSTEE ACT 1925

### Rule 2

- (1) Subject to paragraph (2) any trustee wishing to make a payment into court under section 63 of the Trustee Act 1925<sup>(86)</sup>, must make and file a witness statement or affidavit setting out –
  - (a) a short description of the trust and of the instrument creating it or, as the case may be, of the circumstances in which the trust arose;

(86) 1925 c.19; section 63 was amended by the Administration of Justice Act 1965 (c.2), section 36(4), Schedule 3.

- (b) the names of the persons interested in or entitled to the money or securities to be paid into court with their addresses so far as known to him;
  - (c) his submission to answer all such inquiries relating to the application of such money or securities as the court may make or direct; and
  - (d) an address where he may be served with any application notice or order, or notice of any proceedings, relating to the money or securities paid into court.
- (2) Where the money or securities represents a legacy, or residue or any share thereof, to which a child or a person resident outside the United Kingdom is absolutely entitled, no witness statement or affidavit need be filed under paragraph (1) and the money or securities may be paid into court in the manner prescribed by the Supreme Court Funds Rules for the time being in force.

## PAYMENTS INTO COURT UNDER SECTION 26 OF THE BANKING ACT 1987

- Rule 3A** | Where the Bank of England, having sold shares in pursuance of an order under section 26 of the Banking Act 1987<sup>(87)</sup>, pays the proceeds of sale, less the costs of the sale, into court, it shall cause a witness statement or affidavit to be made and filed setting out the names and, so far as known, the addresses of the persons beneficially entitled to the proceeds of sale and shall file a copy of the order.

## NOTICE OF LODGMENT

- Rule 4** | Any person who has lodged money or securities in court in accordance with rule 1, 2, or 3A must forthwith send notice of the lodgment to every person appearing from the witness statement or affidavit on which the lodgment was made to be entitled to, or to have an interest in, the money or securities lodged.

## APPLICATIONS WITH RESPECT TO FUNDS IN COURT

- Rule 5** | (1) Where an application to the High Court –
- (a) for the payment or transfer to any person of any funds in court standing to the credit of any cause or matter or for the transfer of any such funds to a separate account or for the payment to any person of any dividend of or interest on any securities or money comprised in such funds;
  - (b) for the investment, or change of investment, of any funds in court;
  - (c) for payment of the dividends of or interest on any funds in court representing or comprising money or securities lodged in court under any enactment; or

(87) 1987 c.22; section 26 was amended by the Bank of England Act 1998 (c.11), section 23(1), Schedule 5, paragraphs 1, 9.

(d) for the payment or transfer out of court of any such funds as are mentioned in sub-paragraph (c),

is made in the Chancery Division the application may be disposed of by the court sitting in private.

- (2) Subject to paragraph (3), any such application made in the Chancery Division must be made by the issue of a claim form, unless the application is made in pending proceedings or an application for the same purpose has previously been made by such a claim form.
- (3) Where an application under paragraph 1(d) is required to be made by a claim form, then, if the funds to which the application relates do not exceed £15,000 in value, and subject to paragraph (4), the application may be made to the Chief Master, or to such master as he may designate, and the master may dispose of the application or may direct it to be made by a claim form. Unless otherwise directed, an application under this paragraph shall be made by witness statement or affidavit, and need not be served on any other person.
- (4) Where the application to which paragraph (3) applies relates to funds lodged in court in a Chancery district registry, the application may be made to, and the power conferred by paragraph (3) on a master may be exercised by, the district judge of that registry.
- (5) This rule does not apply to any application for an order under CPR Part 36 and CPR Part 37.

### **RSC ORDER 93**

#### **APPLICATIONS AND APPEALS TO HIGH COURT UNDER VARIOUS ACTS: CHANCERY DIVISION**

#### **NOTICE OF PETITION UNDER SECTION 55 OF THE NATIONAL DEBT ACT 1870<sup>(88)</sup>**

##### **Rule 1**

Where a petition is presented under section 55 of the National Debt Act 1870, the petitioner must, before the petition is heard, apply to a judge of the Chancery Division for directions with respect to giving notice of the claim to which the petition relates, and the judge may direct that notice thereof be given by advertisement or in such other manner as he may direct or may dispense with the giving of such notice.

#### **APPLICATION UNDER THE PUBLIC TRUSTEE ACT 1906<sup>(89)</sup>**

##### **Rule 2**

Without prejudice to sections 10(2) and 13(7) of the Public Trustee Act, 1906, the jurisdiction of the High Court under that Act shall be exercised by a judge of the Chancery Division sitting in private.

<sup>(88)</sup> 1870 c.71.

<sup>(89)</sup> 1906 c.55.

## PROCEEDINGS UNDER THE TRUSTEE ACT 1925<sup>(90)</sup>

- Rule 4 | All proceedings brought in the High Court under the Trustee Act 1925, shall be assigned to the Chancery Division.

## APPLICATION UNDER SECTION 2(3) OF THE PUBLIC ORDER ACT 1936<sup>(91)</sup>

- Rule 5 |
- (1) Proceedings by which an application is made to the High Court under section 2(3) of the Public Order Act 1936, shall be assigned to the Chancery Division.
  - (2) Such an application shall be made by claim form and the persons to be made defendants to the claim shall be such persons as the Attorney-General may determine.
  - (3) In the absence of other sufficient representation the court may appoint the Official Solicitor to represent any interests which in the opinion of the court ought to be represented on any inquiry directed by the court under the said section 2(3).

## APPLICATION UNDER THE VARIATION OF TRUSTS ACT 1958<sup>(92)</sup>

- Rule 6 |
- (1) Proceedings by which an application is made to the High Court under section 1 of the Variation of Trusts Act 1958, shall be assigned to the Chancery Division.
  - (2) Such an application shall be made by claim form and in addition to any other persons who are necessary and proper defendants to the claim, the settlor and any other person who provided property for the purposes of the trusts to which the application relates must, if still alive and not the claimant, be made a defendant unless the court for some special reason otherwise directs.

## RIGHT OF APPEAL UNDER THE LAW OF PROPERTY ACT

- Rule 9 | An appeal shall lie to the High Court against a decision of the Minister of Agriculture, Fisheries and Food under paragraph 16 of Schedule 15 to the Law of Property Act 1922<sup>(93)</sup>.

## DETERMINATION OF APPEAL OR CASE STATED UNDER VARIOUS ACTS

- Rule 10 |
- (1) An appeal to the High Court against an order of a county court made under the Land Registration Act 1925<sup>(94)</sup>, shall be heard and determined by a Divisional Court of the Chancery Division.

(90) 1925 c.19.

(91) 1936 c.2.

(92) 1958 c.53.

(93) 1922 c.16; paragraph 16 was amended by the Law of Property (Amendment) Act 1924 (c. 5), section 2, Schedule 2.

(94) 1925 c.21.

- (2) Subject to paragraph (1) any appeal to the High Court, and any case stated or question referred for the opinion of that court, under any of the following enactments, that is to say –
- (c) paragraph 16 of Schedule 15 to the Law of Property Act 1922<sup>(95)</sup>;
  - (d) the Industrial Assurance Act 1923<sup>(96)</sup>;
  - (f) the Land Registration Act 1925<sup>(97)</sup>;
  - (g) section 205(4) of the Water Resources Act 1991<sup>(98)</sup>;
  - (j) section 38 (3) of the Clergy Pensions Measure 1961<sup>(99)</sup>;
  - (m) the Industrial and Provident Societies Act 1965<sup>(100)</sup>;
  - (n) section 173 of the Pension Schemes Act 1993<sup>(101)</sup>;
  - (o) section 151 of the Pension Schemes Act 1993.

shall be heard and determined by a single judge of the Chancery Division.

- (3) No appeal shall lie from the decision of the court on an appeal under any of the enactments mentioned in paragraph (2)(c), (f) or (o) except with the permission of the court or the Court of Appeal.

## APPEAL UNDER SECTION 17 OF THE INDUSTRIAL ASSURANCE ACT 1923<sup>(102)</sup>

### Rule 11

- (1) An application to the judge for permission to appeal to the High Court against a direction of the Commissioner under section 17(3) of the Industrial Assurance Act 1923 must be made within 21 days after the date of the Commissioner's refusal or direction.
- (2) An application for the grant of such permission must be made without notice being served on any other party by a witness statement or affidavit stating the material facts, the effect of the Commissioner's refusal or direction, the grounds on which the application is made and that the witness is advised and believes that the applicant has good grounds for appealing.
- (3) No order under this rule granting permission to appeal shall be drawn up but the court officer shall indorse on the notice of appeal by which the appeal is brought a note signed by him stating that permission to appeal was granted by the court and the date on which it was granted.

A copy of such note shall appear on any copy of such notice served on a respondent to the appeal.

(95) 1922 c.16.

(96) 1923 c.8.

(97) 1925 c.21.

(98) 1991 c.57.

(99) 1961 No. 3.

(100) 1965 c.12.

(101) 1993 c.48.

(102) 1923 c.8; section 17 was amended by the Friendly Societies Act 1971 (c.66), sections 5(5), 14(2), Schedule 3 and by the Friendly Societies Act 1992 (c.40), section 100, Schedule 19, Part I, paragraphs 1, 5 and 6.

- (4) Order 55, rule 4(2) shall not apply in relation to an appeal with respect to which permission has been granted under this rule, but the notice of appeal by which the appeal is brought must be served, and the appeal entered, within 28 days after permission to appeal was granted.

## APPEALS, ETC., AFFECTING INDUSTRIAL AND PROVIDENT SOCIETIES, ETC.

### Rule 12

- (1) At any stage of the proceedings on an appeal under –
- (a) the Friendly Societies Act 1896<sup>(103)</sup> or the Friendly Societies Act 1974<sup>(104)</sup>;
  - (c) the Industrial Assurance Act 1923<sup>(105)</sup>; or
  - (e) the Industrial and Provident Societies Act 1965<sup>(106)</sup>,

the court may direct that the notice of appeal by which the appeal is brought be served on any person or may direct that notice be given by advertisement or otherwise of the bringing of the appeal, the nature thereof and the time when it will or is likely to be heard or may give such other directions as it thinks proper for enabling any person interested in the society, trade union, alleged trade union or industrial assurance company concerned or in the subject-matter of the appeal to appear and be heard on the appeal.

- (2) An application for directions under paragraph (1) may be made by either party to the appeal in accordance with CPR Part 23 returnable at Chancery Chambers.

## APPLICATION UNDER SECTION 19 OR 27 OF THE LEASEHOLD REFORM ACT 1967<sup>(107)</sup>

### Rule 15

Proceedings by which an application is made to the High Court under section 19 or 27 of the Leasehold Reform Act 1967 shall be assigned to the Chancery Division.

## PROCEEDINGS UNDER THE COMMONS REGISTRATION ACT 1965<sup>(108)</sup>

### Rule 16

- (1) Proceedings in the High Court under section 14 or 18 of the Commons Registration Act 1965 shall be assigned to the Chancery Division.
- (2) The time within which a person aggrieved by the decision of a Commons Commissioner may require the Commissioner to state a case for the opinion of the High Court pursuant to the said section 18 shall be six weeks from the date on which notice of the decision was sent to the person aggrieved.

(103) 1896 c.25.

(104) 1974 c.66.

(105) 1923 c.8.

(106) 1965 c.12.

(107) 1967 c.88; section 19 was amended by the Local Land Charges Act 1975 (c.76), section 17(2), Schedule 1.

(108) 1965 c.65.

- (3) An appeal by way of case stated under the said section 18 shall be heard and determined by a single judge.

## PROCEEDINGS UNDER SECTION 21 OR 25 OF THE LAW OF PROPERTY ACT 1969<sup>(109)</sup>

- Rule 17 | Proceedings in the High Court under section 21 or 25 of the Law of Property Act 1969 shall be assigned to the Chancery Division.

## PROCEEDINGS UNDER SECTION 86 OF THE CIVIL AVIATION ACT 1982<sup>(110)</sup>

- Rule 18 |
- (1) Proceedings in the High Court for the amendment of any register of aircraft mortgages kept pursuant to an Order in Council made under section 86 of the Civil Aviation Act 1982 shall be assigned to the Chancery Division.
  - (2) Such proceedings shall be brought by claim form and every person, other than the claimant, appearing in the register as mortgagee or mortgagor of the aircraft in question shall be made a defendant to the claim.
  - (3) A copy of the claim form shall also be sent to the Civil Aviation Authority and the Authority shall be entitled to be heard in the proceedings.

## PROCEEDINGS UNDER SECTION 85 (7) OF THE FAIR TRADING ACT 1973<sup>(111)</sup> AND THE CONTROL OF MISLEADING ADVERTISEMENTS REGULATIONS 1988<sup>(112)</sup>

- Rule 19 |
- (1) Proceedings to which this rule applies shall be assigned to the Chancery Division and may be begun by claim form.
  - (2) This rule applies to any application to the High Court for an order under section 85(7) of the Fair Trading Act 1973, or under any provision to which that section applies or under the Control of Misleading Advertisements Regulations 1988.

## PROCEEDINGS UNDER SECTION 50 OF THE ADMINISTRATION OF JUSTICE ACT 1985<sup>(113)</sup>

- Rule 20 |
- (1) Proceedings by which an application is made to the High Court under section 50 of the Administration of Justice Act 1985 for an order appointing a substituted personal representative or terminating the appointment of an existing personal representative shall be assigned to the Chancery Division.

(109) 1969 c.59; section 25 was amended by the Limitation Act 1980 (c.58), section 40(2), Schedule 3, paragraph 9; and by the Land Charges Act 1972 (c.61), section 18, Schedule 5.

(110) 1982 c.16; section 86 was amended by the Merchant Shipping Act 1995 (c.21), section 314(2), Schedule 13, paragraph 64.

(111) 1973 c.41.

(112) S.I. 1988/915.

(113) 1985 c.61.

- (2) An application under the said section 50 shall be made by claim form or, if it is made in existing proceedings, by an application in accordance with CPR Part 23
- (3) All the existing personal representatives and, subject to any direction of the court, such of the persons having a beneficial interest in the estate as the claimant thinks fit, must be made parties to the application.
- (4) Such an application must be supported by:
  - (a) a sealed or certified copy of the grant of probate or letters of administration; and
  - (b) a witness statement or affidavit containing the grounds of the application and the following particulars so far as the claimant can gain information with regard to them –
    - (i) short particulars of the property comprised in the estate, with an approximate estimate of its income, and capital value;
    - (ii) short particulars of the liabilities of the estate;
    - (iii) particulars of the persons who are in possession of the documents relating to the estate;
    - (iv) the names of the beneficiaries and short particulars of their respective interests; and
    - (v) the name, address and occupation of any proposed substituted personal representative;
  - (c) where the application is for the appointment of a substituted personal representative –
    - (i) a signed or (in the case of the Public Trustee or a corporation) sealed consent to act; and
    - (ii) a witness statement or affidavit as to the fitness of the proposed substituted personal representative, if an individual, to act.
- (5) On the hearing of an application under the said section 50 the personal representative shall produce to the Court the grant of representation to the deceased's estate and, if an order is made under the said section, the grant (together with a sealed copy of the order) shall be sent to and remain in the custody of the Principal Registry of the Family Division until a memorandum of the order has been endorsed on or permanently annexed to the grant.

## PROCEEDINGS UNDER SECTION 48 OF THE ADMINISTRATION OF JUSTICE ACT 1985

### Rule 21

Proceedings by which an application is made to the High Court under section 48 of the Administration of Justice Act 1985 shall be assigned to

the Chancery Division and shall be begun by claim form but the claim need not be served on any other party.

## PROCEEDINGS UNDER THE FINANCIAL SERVICES ACT, 1986<sup>(114)</sup>

- Rule 22 |
- (1) In this rule 'the Act' means the Financial Services Act 1986 and a section referred to by number means the section so numbered in that Act.
  - (2) Proceedings in the High Court under the Act (other than application for mandamus) and actions for damages for breach of a statutory duty imposed by the Act shall be assigned to the Chancery Division.
  - (3) Such proceedings and actions shall be begun by claim form except for applications by petition by the Secretary of State or a designated agency under section 72.
  - (4) No order shall be made under sections 6, 61, 71, 91, 104, 131, 184 or paragraph 22 of Schedule 11 against any person unless he is a party to the relevant proceedings.

Where there is a question of the construction of any of the rules or regulations referred to in section 61(1)(a) of the Act, the Secretary of State, designated agency, or any person referred to in section 61(1)(a)(iv) may make representations to the court.

## PROCEEDINGS UNDER THE BANKING ACT 1987<sup>(115)</sup>

- Rule 23 |
- (1) In this rule 'the Act' means the Banking Act 1987 and a section referred to by number means the section so numbered in the Act.
  - (2) Proceedings in the High Court under the following sections of the Act shall be assigned to the Chancery Division and shall be begun –
    - (a) as to applications under section 26(3), 71(3) and (5) and 77(3) and (5), by claim form;
    - (b) as to appeals under section 31(1), by notice of appeal;
    - (c) as to applications under sections 48(1), 49(1) and 93(1) and (2), by claim form.
  - (3) No order shall be made under section 48(1) against any person unless he is a party to the proceedings.
  - (4) Where an application has been made under section 71(3) or (5) or section 77(3) or (5) the Bank of England shall within 28 days after service on it of copies of the claimant's witness statement or affidavit evidence cause a witness statement or affidavit to be made, filed and served on the claimant setting out the reasons for its objection to the claimant's name.

(114) 1986 c.60.

(115) 1987 c.22.

**RSC ORDER 94****APPLICATIONS AND APPEALS TO HIGH COURT UNDER  
VARIOUS ACTS: QUEEN'S BENCH DIVISION****JURISDICTION OF HIGH COURT TO QUASH CERTAIN ORDERS, SCHEMES, ETC.**

- Rule 1**
- (1) Where by virtue of any enactment the High Court has jurisdiction, on the application of any person, to quash or prohibit any order, scheme, certificate or plan, any amendment or approval of a plan, any decision of a Minister or government department or any action on the part of a Minister or government department, the jurisdiction shall be exercisable by a single judge of the Queen's Bench Division.
  - (2) The application must be made by claim form which must state the grounds of the application.

**FILING AND SERVICE OF CLAIM FORM**

- Rule 2**
- (1) A claim form under rule 1 must be filed at the Crown Office, and served, within the time limited by the relevant enactment for making the application.
  - (2) Subject to paragraph (4) the claim form must be served on the appropriate Minister or government department, and –
    - (a) if the application relates to a compulsory purchase order made by an authority other than the appropriate Minister or government department, or to a clearance order under the Housing Act 1985<sup>(116)</sup>, on the authority by whom the order was made;
    - (b) if the application relates to a scheme or order to which Schedule 2 to the Highways Act 1980<sup>(117)</sup>, applies made by an authority other than the Secretary of State, on that authority;
    - (c) if the application relates to a structure plan, local plan or other development plan within the meaning of the Town and Country Planning Act 1990<sup>(118)</sup>, on the local planning authority who prepared the plan;
    - (d) if the application relates to any decision or order, or any action on the part of a Minister of the Crown to which section 21 of the Land Compensation Act 1961<sup>(119)</sup>, or section 288 of the Town and Country Planning Act 1990, applies, on the authority directly concerned with such decision, order or action or, if that authority is the applicant, on every person who would, if he were aggrieved by the decision, order or action, be entitled to apply to the High Court under the said section 21 or the said section 245, as the case may be;

<sup>(116)</sup> 1985 c.68.<sup>(117)</sup> 1980 c.66.<sup>(118)</sup> 1990 c.8.<sup>(119)</sup> 1961 c.33.

- (e) if the application relates to a scheme to which Schedule 32 to the Local Government, Planning and Land Act 1980<sup>(120)</sup> applies, on the body which adopted the scheme.
- (3) In paragraph (2) ‘the appropriate Minister or government department’ means the Minister of the Crown or government department by whom the order, scheme, certificate, plan, amendment, approval or decision in question was or may be made, authorised, confirmed, approved or given or on whose part the action in question was or may be taken.
- (4) Where the application relates to an order made under the Road Traffic Regulation Act 1984<sup>(121)</sup>, the claim form must be served –
  - (a) if the order was made by a Minister of the Crown, on that Minister;
  - (b) if the order was made by a local authority with the consent, or in pursuance of a direction, of a Minister of the Crown, on that authority and also on that Minister;
  - (c) in any other case, on the local authority by whom the order was made.

## FILING OF WITNESS STATEMENT OR AFFIDAVITS, ETC.

### Rule 3

- (1) Evidence at the hearing of an application under rule 1 shall be by witness statement or affidavit.
- (2) Any witness statement or affidavit in support of the application must be filed by the applicant in the Crown Office within 14 days after service of the claim form and the applicant must, at the time of filing, serve a copy of the witness statement or affidavit and of any exhibit thereto on the respondent.
- (3) Any witness statement or affidavit in opposition to the application must be filed by the respondent in the Crown Office within 21 days after the service on him under paragraph (2) of the applicant’s witness statement or affidavit and the respondent must, at the time of filing, serve a copy of his witness statement or affidavit and of any exhibit thereto on the applicant.
- (4) When filing a witness statement or affidavit under this rule a party must leave a copy thereof and of any exhibit thereto at the Crown Office for the use of the court.
- (5) Unless the court otherwise orders, an application under rule 1 shall not be heard earlier than 14 days after the time for filing a witness statement or affidavit by the respondent has expired.

(120) 1980 c.65.

(121) 1984 c.27.

## RECTIFICATION OF REGISTER OF DEEDS OF ARRANGEMENT

- Rule 4 |
- (1) Every application to the Court under section 7 of the Deeds of Arrangement Act 1914<sup>(122)</sup>, for an order –
    - (a) that any omission to register a deed of arrangement within the time prescribed by that Act be rectified by extending the time for such registration; or
    - (b) that any omission or mis-statement of the name, residence or description of any person be rectified by the insertion in the register of his true name, residence or description,
 must be made by witness statement or affidavit without notice being served on any other party to a master of the Queen's Bench Division.
  - (2) The witness statement or affidavit must set out particulars of the deed of arrangement and of the omission or mis-statement in question and must state the grounds on which the application is made.

## EXERCISE OF JURISDICTION UNDER REPRESENTATION OF THE PEOPLE ACTS

- Rule 5 |
- (1) Proceedings in the High Court under the Representation of the People Acts shall be assigned to the Queen's Bench Division.
  - (2) Subject to paragraphs (3) and (4) the jurisdiction of the High Court under the said Acts in matters relating to parliamentary and local government elections shall be exercised by a Divisional Court.
  - (3) Paragraph (2) shall not be construed as taking away from a single judge or a Master any jurisdiction under the said Acts which, but for that paragraph, would be exercisable by a single judge or, as the case may be, by a Master.
  - (4) Where the jurisdiction of the High Court under the said Acts is by a provision of any of those Acts made exercisable in matters relating to parliamentary elections by a single judge, that jurisdiction in matters relating to local government elections shall also be exercisable by a single judge.

## APPEAL TO HIGH COURT WHERE COURT'S DECISION IS FINAL

- Rule 6 |
- (1) This rule applies to an appeal to the High Court under any of the following enactments, namely –
    - (a) section 22 of the Architects Act 1997<sup>(123)</sup>;
    - (b) sections 82(3) and 83(2) of the Medicines Act 1968<sup>(124)</sup>;
    - (d) section 12 of the Nurses, Midwives & Health Visitors Act 1997<sup>(125)</sup>;

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(122) 1914 c.47.

(123) 1997 c.22.

(124) 1968 c.24.

(125) 1997 c.24.

(e) section 10 of the Pharmacy Act 1954<sup>(126)</sup>.

- (2) Every appeal to which this rule applies must be supported by witness statement or affidavit and, if the court so directs, by evidence given orally.
- (4) Order 55, rule 4(2) shall apply in relation to an appeal under the enactments mentioned in paragraph (1)(c) and (h) as if for the period of 28 days therein specified there were substituted a period of 21 days.
- (5) In the case of an appeal under an enactment specified in column (1) of the following table, the persons to be made respondents are the persons specified in relation to that enactment in column (2) of that table and the person to be served with notice of appeal is the person so specified in column (3) thereof:

(1)	(2)	(3)
Enactment	Respondents	Person to be served
Architects Act 1997, s.22	The Architects' Registration Council of the United Kingdom	The registrar of the Council
Medicines Act 1968, s.82(3) and s.83(2)	The Pharmaceutical Society of Great Britain	The registrar of the Society
Nurses, Midwives and Health Visitors Act, 1997 s.12	The United Kingdom Central Council for Nursing Midwifery and Health Visiting	The registrar of the Council
Pharmacy Act, 1954, s.10	The Pharmaceutical Society of Great Britain	The registrar of the Society

## REFERENCE OF QUESTION OF LAW BY AGRICULTURAL LAND TRIBUNAL

### Rule 7

- (1) Any question of law referred to the High Court by an Agricultural Land Tribunal under section 6 of the Agriculture (Miscellaneous Provisions) Act 1954<sup>(127)</sup>, shall be referred by way of case stated by the tribunal.
- (2) The claim form by which an application is made to the court for an order under the said section 6 directing such a tribunal to refer a question of law to the court, and the claim form by which an application is made to the court to determine a question of law so referred, must, where the proceedings before the tribunal arose on an application under section 11 of the Agricultural Holdings Act 1986<sup>(128)</sup>, be served on the authority having power to enforce the statutory requirement specified in the application as well as on every other party to those proceedings and on the secretary of the tribunal.

(126) 1954 c.61.

(127) 1954 c.39.

(128) 1986 c.5.

- (3) Where in accordance with the provisions of this rule a claim form is served on the authority mentioned in paragraph (2) that authority shall be entitled to appear and be heard in the proceedings.

## TRIBUNALS AND INQUIRIES ACT 1992<sup>(129)</sup>: APPEAL FROM TRIBUNAL

### Rule 8

- (1) A person who was a party to proceedings before any such tribunal as is mentioned in section 11(1) of the Tribunals and Inquiries Act 1992 and is dissatisfied in point of law with the decision of the tribunal may appeal to the High Court.
- (2) Order 55, rule 4(1)(b) shall apply in relation to such an appeal as if for the reference to the chairman of a tribunal there were substituted –
- (a) in the case of a tribunal which has no chairman or member who acts as a chairman, a reference to the member or members of the tribunal; and
  - (b) in the case of any such tribunal as is specified in paragraph 16 of Schedule 1 to the said Act of 1992, a reference to the secretary of the tribunal.
- (3) Where such an appeal is against the decision of –
- (a) the tribunal constituted under section 46 of the National Health Service Act 1977<sup>(130)</sup> or
  - (b) a tribunal established under section 1 of the Industrial Tribunals Act 1996<sup>(131)</sup>,

Order 55, rule 4(2) shall apply in relation to the appeal as if for the period of 28 days therein specified there were substituted, in the case of the tribunal mentioned in sub-paragraph (a) a period of 14 days and, in the case of a tribunal mentioned in sub-paragraph (b) a period of 42 days.

## TRIBUNALS AND INQUIRIES ACT 1992: CASE STATED BY TRIBUNAL

### Rule 9

- (1) Any such tribunal as is mentioned in section 11(1) of the Tribunals and Inquiries Act 1992 may, of its own initiative or at the request of any party to proceedings before it, state in the course of proceedings before it in the form of a special case for the decision of the High Court any question of law arising in the proceedings.
- (2) Any party to proceedings before any such tribunal who is aggrieved by the tribunal's refusal to state such a case may apply to the High Court for an order directing the tribunal to do so.
- (3) A case stated by any such tribunal which has no chairman or member who acts as a chairman must be signed by the member or members of the tribunal.

(129) 1992 c.53.

(130) 1977 c.49.

(131) 1996 c.17.

## TRIBUNALS AND INQUIRIES ACT 1971<sup>(132)</sup>: APPEAL FROM MINISTER OF TRANSPORT

### Rule 10

- (1) A person who is dissatisfied on a point of law with a decision of the Secretary of State on such an appeal as is mentioned in section 13(5) of the Tribunals and Inquiries Act 1971, and had, or if aggrieved would have had, a right to appeal to that Secretary of State, whether or not he exercised that right, may appeal to the High Court.
- (2) The persons to be served with the notice of appeal by which such an appeal is brought are the Secretary of State and every person who had, or if aggrieved would have had, a right to appeal to the Secretary of State.
- (3) The court hearing the appeal may remit the matter to the Secretary of State to the extent necessary to enable him to provide the court with such further information in connection with the matter as the court may direct.
- (4) If the court is of the opinion that the decision appealed against was erroneous on a point of law, it shall not set aside or vary that decision but shall remit the matter to the Minister with the opinion of the court for rehearing and determination by him.
- (5) Order 55, rule 7(5) shall not apply in relation to the appeal.

## CONSUMER CREDIT ACT 1974<sup>(133)</sup>: APPEAL FROM SECRETARY OF STATE

### Rule 10A

- (1) A person who is dissatisfied in point of law with a decision of the Secretary of State on an appeal under section 41 of the Consumer Credit Act 1974 from a determination of the Director General of Fair Trading and had a right to appeal to the Secretary of State, whether or not he exercised that right, may appeal to the High Court.
- (2) The persons to be served with the notice of appeal by which such an appeal is brought are the Secretary of State and, where the appeal is by a licensee under a group licence against compulsory variation, suspension or revocation of that licence, the original applicant, if any; but the court may in any case direct that the notice of appeal be served on any other person.
- (3) The court hearing the appeal may remit the matter to the Secretary of State to the extent necessary to enable him to provide the court with such further information in connection with the matter as the court may direct.
- (4) If the court is of the opinion that the decision appealed against was erroneous in point of law, it shall not set aside or vary that decision but shall remit the matter to the Secretary of State with the opinion of the court for hearing and determination by him.

(132) 1971 c.62.

(133) 1974 c.39.

- (5) Order 55, rule 7(5) shall not apply in relation to the appeal.

## CASE STATED BY MENTAL HEALTH REVIEW TRIBUNAL

### Rule 11

- (1) In this rule 'the Act' means the Mental Health Act 1983<sup>(134)</sup>.
- (2) The reference in paragraph (3) to a party to proceedings before a Mental Health Review Tribunal, and the references in Order 56, rules 8(1), 9(2) and 10 to a party to proceedings shall be construed as references to –
  - (a) the person who initiated the proceedings; and
  - (b) any person to whom, in accordance with rules made under section 78 of the Act, the tribunal sent notice of the application or reference or a request instead of notice of reference.
- (3) A party to proceedings before a Mental Health Review Tribunal shall not be entitled to apply to the High Court for an order under section 78 (8) of the Act directing the tribunal to state a case for determination by the court unless –
  - (a) within 21 days after the decision of the tribunal was communicated to him in accordance with rules made under section 78 of the Act he made a written request to the tribunal to state a case, and
  - (b) either the tribunal failed to comply with the last-mentioned request within 21 days after it was made or the tribunal refused to comply with it.
- (4) The period for issuing the claim form by which an application to the court for such an order as is mentioned in paragraph (3) is made, and for service of the claim form shall be –
  - (a) where the tribunal refused the applicant's request to state a case, 14 days after receipt by the applicant of notice of the refusal of his request;
  - (b) where the tribunal failed to comply with that request within the period mentioned in paragraph (3)(b) 14 days after the expiration of that period.
- (5) A Mental Health Review Tribunal by whom a case is stated shall be entitled to appear and be heard in the proceedings for the determination of the case.
- (6) If the court is of opinion that any decision of such a tribunal on the question of law raised by the case was erroneous, the court may give any direction which the tribunal ought to have given under Part V of the Act.

(134) 1983 c.20.

# APPLICATIONS FOR PERMISSION UNDER SECTION 289(6) OF THE TOWN AND COUNTRY PLANNING ACT 1990<sup>(135)</sup> AND SECTION 65(5) OF THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990<sup>(136)</sup>

## Rule 12

- (1) An application for permission to appeal to the High Court under section 289 of the Town and Country Planning Act 1990 or section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990 shall be made within 28 days after the date on which notice of the decision was given to the applicant.
- (2) An application shall –
  - (a) include, where necessary, any application to extend the time for applying;
  - (b) be in writing setting out the reasons why permission should be granted, and if the time for applying has expired, the reasons why the application was not made within that time;
  - (c) be made by filing it in the Crown Office together with the decision, a draft claim form, and a witness statement or affidavit verifying any facts relied on;
  - (d) before being filed under sub-paragraph (c), be served together with the draft claim form and a copy of the witness statement or affidavit to be filed with the application, upon the persons who are referred to in rule 13(5); and
  - (e) be accompanied by a witness statement or affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the application and, if any person who ought to be served has not been served, the witness statement or affidavit must state that fact and the reason for it.
- (3) An application shall be heard –
  - (a) by a single judge;
  - (b) unless the court otherwise orders, not less than 21 days after it was filed at the Crown Office.

Any person served with the application shall be entitled to appear and be heard.
- (4) If on the hearing of an application the court is of opinion that any person who ought to have been served has not been served, the court may adjourn the hearing on such terms (if any) as it may direct in order that the application may be served on that person.
- (5) If the court grants permission –
  - (a) it may impose such terms as to costs and as to giving security as it thinks fit;
  - (b) it may give directions; and

(135) 1990 c.8.

(136) 1990 c.9.

- (c) the claim form by which the appeal is to be brought shall be served and filed within 7 days of the grant.
- (6) Any respondent who intends to use a witness statement or affidavit at the hearing shall file it in the Crown Office and serve a copy thereof on the applicant as soon as is practicable and in any event, unless the court otherwise allows, at least 2 days before the hearing.

The court may allow the applicant to use a further witness statement or affidavit.

## PROCEEDINGS UNDER SECTIONS 289 AND 290 OF THE TOWN AND COUNTRY PLANNING ACT 1990 AND UNDER SECTION 65 OF THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990

### Rule 13

- (1) In this rule a reference to 'section 65' is a reference to section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990, but, save as aforesaid, a reference to a section by number is a reference to the section so numbered in the Town and Country Planning Act 1990.
- (2) An appeal shall lie to the High Court on a point of law against a decision of the Secretary of State under subsection (1) or (2) of section 289 or under subsection (1) of section 65 at the instance of any person or authority entitled to appeal under any of those subsections respectively.
- (3) In the case of a decision to which section 290 applies, the person who made the application to which the decision relates, or the local planning authority, if dissatisfied with the decision in point of law, may appeal against the decision to the High Court.
- (4) Any appeal under section 289(1) or (2), section 65(1) or section 290, and any case stated under section 289(3) or section 65(2), shall be heard and determined by a single judge unless the court directs that the matter shall be heard and determined by a Divisional Court.
- (5) The persons to be served with the claim form by which an appeal to the High Court is brought by virtue of section 289(1) or (2), section 65(1) or section 290 are –
  - (a) the Secretary of State;
  - (b) the local planning authority who served the notice or gave the decision, as the case may be, or, where the appeal is brought by that authority, the appellant or applicant in the proceedings in which the decision appealed against was given;
  - (c) in the case of an appeal brought by virtue of section 289(1) or section 65(1), any other person having an interest in the land to which the notice relates, and;
  - (d) in the case of an appeal brought by virtue of section 289(2), any other person on whom the notice to which those proceedings related was served.

- (6) The court hearing any such appeal may remit the matter to the Secretary of State to the extent necessary to enable him to provide the court with such further information in connection with the matter as the court may direct.
- (7) Where the court is of opinion that the decision appealed against was erroneous in point of law, it shall not set aside or vary that decision but shall remit the matter to the Secretary of State with the opinion of the court for re-hearing and determination by him.
- (8) Order 55, rule 7(5) shall not apply in relation to any such appeal.
- (9) The court may give directions as to the exercise, until an appeal brought by virtue of section 289(1) is finally concluded and any re-hearing and determination by the Secretary of State has taken place, of the power to serve, and institute proceedings (including criminal proceedings) concerning –
  - (a) a stop notice under section 183; and
  - (b) a breach of condition notice under section 187A.

#### APPLICATIONS UNDER SECTION 13 OF THE CORONERS ACT 1988<sup>(137)</sup>

##### Rule 14

- (1) Any application under section 13 of the Coroners Act 1988 shall be heard and determined by a Divisional Court.
- (2) The application must be made by claim form and the claim form must state the grounds of the application and, unless the application is made by the Attorney General, shall be accompanied by his fiat.
- (3) The claim form must be filed in the Crown Office and served upon all persons directly affected by the application within six weeks after the grant of the fiat.

#### APPLICATIONS UNDER SECTION 42 OF THE SUPREME COURT ACT 1981<sup>(138)</sup>

##### Rule 15

- (1) Every application to the High Court by the Attorney General under section 42 of the Supreme Court Act 1981 shall be heard and determined by a Divisional Court.
- (2) The application must be made by claim form which, together with a witness statement or affidavit in support, shall be filed in the Crown Office and served on the person against whom the order is sought.

#### PROCEEDINGS UNDER THE PROTECTION FROM HARASSMENT ACT 1997(A)

##### Rule 16

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

(137) 1988 c.13.

(138) 1981 c.54.

- (2) This rule shall apply to injunctions granted on or after 1st September 1998 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 claimant has informed the police of the defendant's conduct as described in sub-paragraph (b); and
  - (d) state whether, to the claimant'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—
    - (i) may be dealt with within 14 days of the day on which he was arrested; and
    - (ii) be given not less than 2 day's notice of the adjourned hearing.
- (6) This rule applies to the proceedings under section 3 of the Act in a county court with the following modifications-
  - (a) Such proceedings in a county court shall be begun-
    - (i) in the court for the district in which the claimant resides or carries on business; or
    - (ii) in the court for the district in which the defendant resides or carries on business.
  - (b) Where a county court-
    - (i) grants an injunction under section 3 of the Act; or
    - (ii) issues a warrant for the arrest of the defendant,
 the injunction or warrant shall be issued in the appropriate prescribed form.

**RSC ORDER 95****BILLS OF SALE ACTS 1878<sup>(139)</sup> AND 1882<sup>(140)</sup> AND THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT 1967<sup>(141)</sup>****RECTIFICATION OF REGISTER**

- Rule 1** | (1) Every application to the court under section 14 of the Bills of Sale Act 1878, for an order –
- (a) that any omission to register a bill of sale or a witness statement or affidavit of renewal thereof within the time prescribed by that Act be rectified by extending the time for such registration; or
  - (b) that any omission or mis-statement of the name, residence or occupation of any person be rectified by the insertion in the register of his true name, residence or occupation,
- must be made by witness statement or affidavit to a Master of the Queen's Bench Division, and a copy of the witness statement or affidavit need not be served on any other person.
- (2) Every application for such an order as is described in paragraph (1) shall be supported by a witness statement or affidavit setting out particulars of the bill of sale and of the omission or mis-statement in question and stating the grounds on which the application is made.

**ENTRY OF SATISFACTION**

- Rule 2** | (1) Every application under section 15 of the Bills of Sale Act 1878, to a Master of the Queen's Bench Division for an order that a memorandum of satisfaction be written on a registered copy of a bill of sale must be made by claim form
- (1A) If a consent to the satisfaction signed by the person entitled to the benefit of the bill of sale can be obtained, the claim form and the documents set out in paragraph (2) must not be served on any other person.
- (2) Where paragraph (1A) applies, the claim form must be supported by –
- (a) particulars of the consent referred to in that paragraph; and
  - (b) a witness statement or affidavit by a witness who attested the consent verifying the signature on it.
- (3) Where paragraph (1A) does not apply, must be served on the person entitled to the benefit of the bill of sale and must be supported by evidence that the debt (if any) for which the bill of sale was made has been satisfied or discharged.

(139) 1878 c.31.

(140) 1882 c.43.

(141) 1967 c.48.

## RESTRAINING REMOVAL ON SALE OF GOODS SEIZED

- Rule 3 | An application to the court under the proviso to section 7 of the Bills of Sale Act (1878) Amendment Act 1882 must be made by the issue of a claim form.

## SEARCH OF REGISTER

- Rule 4 | Any Master of the Queen's Bench Division shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the register of bills of sale and issue a certificate of the result of the search.

## APPLICATION UNDER SECTION 1(5) OF THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT 1967<sup>(142)</sup>

- Rule 5 | Every application to the court under section 1(5) of the Industrial and Provident Societies Act 1967 for an order –
- (a) that the period for making an application for recording a charge be extended; or
  - (b) that any omission from or mis-statement in such an application be rectified,
- must be made to a Master of the Queen's Bench Division by witness statement or affidavit setting out particulars of the charge and of the omission or mis-statement in question and stating the grounds of the application, and need not be served on any other person.

## ASSIGNMENT OF BOOK DEBTS

- Rule 6 |
- (1) There shall continue to be kept in the Central Office, under the supervision of the registrar, a register of assignments of book debts.
  - (2) Every application for registration of an assignment of a book debt under section 344 of the Insolvency Act 1986<sup>(143)</sup> shall be made by producing at the Filing and Record Department of the Central Office –
    - (a) a true copy of the assignment, and of every schedule thereto; and
    - (b) a witness statement or affidavit verifying the date and the time, and the due execution of the assignment in the presence of the witness, and setting out the particulars of the assignment and the parties thereto.
  - (3) On an application being made in accordance with the preceding paragraph, the documents there referred to shall be filed, and the particulars of the assignment, and of the parties to it, shall be entered in the register.

<sup>(142)</sup> 1967 c.48.

<sup>(143)</sup> 1986 c.45.

- (4) In this rule, 'the registrar' has the meaning given in section 13 of the Bills of Sale Act 1878.

## **RSC ORDER 96**

### **THE MINES (WORKING FACILITIES AND SUPPORT) ACT 1966<sup>(144)</sup>, ETC.**

#### **ASSIGNMENT TO CHANCERY DIVISION**

- Rule 1** | Any proceedings in which the jurisdiction conferred on the High Court by section 1 of the Railway and Canal Commission (Abolition) Act 1949<sup>(145)</sup> is invoked shall be assigned to the Chancery Division and be begun by claim form which need not be served on any other party

#### **REFERENCE BY SECRETARY OF STATE OF CERTAIN APPLICATIONS**

- Rule 2** | Where under any provision of the Mines (Working Facilities and Support) Act 1966, the Secretary of State refers any application to the High Court, he shall –
- (a) file the reference, signed by him or by an officer authorised by him for the purpose, in Chancery Chambers, together with all documents and plans deposited with him by the applicant; and
  - (b) within 3 days after doing so give notice to the applicant of the filing of the reference.

#### **ISSUE OF CLAIM FORM**

- Rule 3** | Within 10 days after receipt of the notice mentioned in rule 2(b) the applicant must issue a claim form which need not be served on any other party which must state the application of the applicant under the said Act of 1966 and any other relief sought.

#### **APPOINTMENT FOR DIRECTIONS**

- Rule 4** |
- (1) Within 7 days after issue of the claim form the applicant, having applied at Chancery Chambers for the name of the Master assigned to hear the claim, must take an appointment before that Master for the hearing of the claim and must forthwith serve notice of the appointment on the Secretary of State.
  - (2) Not less than 2 clear days before the day appointed for the first hearing of the claim, the applicant must leave at Chancery Chambers –
    - (a) a witness statement or affidavit of facts in support of the claim, giving particulars of all persons known to the applicant to be interested in or affected by the application; and

(144) 1966 c.4.

(145) 1949 c.11.

- (b) a draft of any proposed advertisement or notice of the application.
- (3) On the appointment the master shall –
  - (a) fix a time within which any notice of objection under rule 5 must be given;
  - (b) fix a date for the further hearing of the claim; and
  - (c) direct what, if any, advertisements and notices of the application and of the date fixed for the further hearing of the claim are to be inserted and given, and what persons, if any, are to be served with a copy of the application and of any other document in the proceedings.
- (4) Any such advertisement or notice must include a statement of the effect of rule 5.

## OBJECTIONS TO APPLICATION

### Rule 5

- (1) Any person wishing to oppose the application must, within the time fixed by the Master under rule 4 (3), serve on the applicant a notice of objection stating –
  - (a) his name and address and the name and address of his solicitor, if any;
  - (b) the grounds of his objection and any alternative methods of effecting the objects of the application which he alleges may be used; and
  - (c) the facts on which he relies.
- (2) Any notice required to be served on a person who has given notice of objection (hereafter in this order referred to as ‘the objector’) may be served by delivering it or sending it by prepaid post –
  - (a) where the name and address of a solicitor is stated in the notice of objection, to the solicitor at that address; and
  - (b) in any other case, to the objector at his address stated in the notice of objection.
- (3) An objector shall be entitled to appear in person or by a solicitor or counsel at the further hearing of the claim and to take such part in the proceedings as the Master or judge thinks fit; but if he does not so appear his notice of objection shall be of no effect and he shall not be entitled to take any part in the proceedings unless the Master or judge otherwise orders.

## LIST OF OBJECTORS

### Rule 6

Not less than 2 clear days before the day fixed for the further hearing of the claim, the applicant must leave at Chancery Chambers any notices of

objection served on the applicant together with a list arranged in 3 columns stating –

- (a) in column 1, the names and addresses of the objectors;
- (b) in column 2, the names and addresses of their respective solicitors, if any; and
- (c) in column 3, short summaries of their respective grounds of objection.

## DIRECTIONS ON FURTHER HEARING

**Rule 7** | At the further hearing of the claim the Master shall –

- (a) give directions as to the procedure to be followed before the claim is set down for hearing, including, if he thinks fit, a direction –
  - (i) that further particulars be given of any of the grounds or facts relied on in support of or in opposition to the application made by the claim;
  - (ii) that the applicant may serve a reply to any notice of objection;
  - (iii) that any particular fact be proved by witness statement or affidavit;
  - (iv) that statements of case or points of claim or defence be served; and
- (b) adjourn the claim for hearing before the judge in such manner, as he shall think best adapted to secure the just, expeditious and economical disposal of the proceedings.

## OTHER APPLICATIONS

**Rule 8** | Rules 2 to 7 shall, so far as applicable and with the necessary adaptations, apply in relation to any other application to the High Court falling within rule 1 as they apply in relation to an application under the Mines (Working Facilities and Support) Act 1966.

### RSC ORDER 97

### THE LANDLORD AND TENANT ACTS 1927<sup>(146)</sup>, 1954<sup>(147)</sup> AND 1987<sup>(148)</sup>

## INTERPRETATION

**Rule 1** | (1) In this order, ‘the act of 1927’ means the Landlord and Tenant Act 1927, ‘the Act of 1954’ means the Landlord and Tenant Act 1954 and ‘the Act of 1987’ means the Landlord and Tenant Act 1987.

(146) 1927 c. 36; section 1 was amended by the Landlord and Tenant Act 1954 (c.56), section 47(5). Section 8 was amended by the 1954 Act, sections 45, 68(1) and Schedule 7.

(147) 1954 c.56.

(148) 1987 c.31.

- (2) In relation to any proceedings under Part II of the Act of 1954, any reference in this order to a landlord shall, if the interest of the landlord in question is subject to a mortgage and the mortgagee is in possession or a receiver appointed by the mortgagee or by the court is in receipt of the rents and profits, be construed as a reference to the mortgagee.

## ASSIGNMENT OF PROCEEDINGS TO CHANCERY DIVISION, ETC.

- Rule 2 | All proceedings in the High Court under Part I of the Act of 1927 or Part II of the Act of 1954 or the Act of 1987 shall be assigned to the Chancery Division and, subject to rules 9A and 12, be begun by claim form.

## ISSUE, ETC., OF CLAIM FORM

- Rule 3 |
- (1) Any claim or application under Part I of the Act of 1927 or Part II of the Act of 1954 or the Act of 1987 may be issued out of the district registry for the district in which the premises to which the claim or application relates are situated instead of Chancery Chambers.
- (3) The court will set a day for the hearing of such a claim which shall be a day which will allow an interval of at least 14 days between the date of service of the claim form and the day so fixed.

## CLAIM FOR COMPENSATION IN RESPECT OF IMPROVEMENT

- Rule 4 |
- (1) A claim under section 1 of the Act of 1927 for compensation in respect of any improvement, and a claim by a mesne landlord under section 8 of that Act, must be a written claim, signed by the claimant or his solicitor or agent, containing –
- a statement of the name and address of the claimant and of the landlord against whom the claim is made;
  - a description of the holding in respect of which the claim is made and of the trade or business carried on there;
  - a concise statement of the nature of the claim;
  - particulars of the improvement, including the date when it was completed and the cost thereof; and
  - a statement of the amount claimed.
- (2) Where any document relating to any proposed improvement, or to any claim, is sent to or served on a mesne landlord in pursuance of Part I of the Act of 1927, he must forthwith serve on his immediate superior landlord a copy of the document, together with a notice in writing stating the date on which he received the document, and if the last-mentioned landlord is himself a mesne landlord he must accordingly comply with this paragraph.

## PROCEEDINGS UNDER PART I OF THE ACT OF 1927

- Rule 5 |
- (1) The claim form by which any claim or application under Part I of the Act of 1927 is made must state –
    - (a) the nature of the claim or application or the matter to be determined;
    - (b) the holding in respect of which the claim or application is made and the trade or business carried on there;
    - (c) particulars of the improvement or proposed improvement to which the claim or application relates; and
    - (d) if the claim is for payment of compensation, the amount claimed.
  - (2) The claimant's immediate landlord shall be made a defendant.
  - (3) No witness statement or affidavit shall be filed in the first instance in support of or in answer to any such claim form.
  - (4) Any certificate of the court under section 3 of the Act of 1927 that an improvement is a proper improvement or has been duly executed shall be embodied in an order.

## APPLICATION FOR NEW TENANCY UNDER SECTION 24 OF THE ACT OF 1954

- Rule 6 |
- (1) The claim form by which an application under section 24 of the Act of 1954<sup>(149)</sup> for a new tenancy is made must state –
    - (a) the premises to which the application relates and where a business is carried on there, the nature of such business;
    - (b) particulars of the claimant's current tenancy of the premises and of every notice or request given or made in respect of that tenancy under section 25 or 26 of that Act; and
    - (c) the claimant's proposals as to the terms of the new tenancy applied for including, in particular, terms as to the duration thereof and as to the rent payable thereunder.
  - (2) The person who, in relation to the claimant's current tenancy, is the landlord as defined by section 44 of the Act of 1954<sup>(150)</sup> shall be made a defendant.
  - (3) A claim form under this rule must be served within 2 months after the date of issue whether served within or out of the jurisdiction and CPR rules 7.5(2) and 7.5(3) will not apply.

## APPLICATION TO AUTHORISE AGREEMENT

- Rule 6A |
- (1) An application under section 38(4) of the Act of 1954 for the authorisation of an agreement shall be made without notice being

(149) Section 24 was amended by the Law of Property Act 1969 (c.59), sections 3(2) and 4(1).

(150) Section 44 was amended by the Law of Property Act 1969 (c.59), section 14(1).

served on any other party by claim form and may be heard and determined in private.

- (2) Notwithstanding that the application must be made jointly by the landlord or proposed landlord and the tenant or proposed tenant and the claim form is accordingly issued by one solicitor on behalf of both of them, they may appear and be heard at any hearing by separate solicitors or counsel or, in the case of an individual applicant, in person; and where at any stage of the proceedings it appears to the court that one of the applicants is not but ought to be separately represented, the court may adjourn the proceedings until he is.

## EVIDENCE ON APPLICATION UNDER SECTION 24 OF THE ACT OF 1954

### Rule 7

- (1) Not less than 14 days before the day fixed for the first hearing in an application under section 24 of the Act of 1954 for a new tenancy the claimant must file a witness statement or affidavit verifying the statements of fact made in the claim form.
- (2) Not less than 4 days before the day fixed for the first hearing the defendant must file a witness statement or affidavit stating –
  - (a) whether he opposes the grant of a new tenancy and, if he does, on what grounds;
  - (b) whether, if a new tenancy is granted, he objects to any of the claimant's proposals as to the terms thereof and, if he does, the terms to which he objects and the terms he proposes insofar as they differ from the terms proposed by the claimant;
  - (c) whether he is a tenant under a lease having less than 14 years unexpired at the date of the termination of the claimant's current tenancy, and, if he is, the name and address of his immediate landlord.

## PARTIES TO CERTAIN PROCEEDINGS

### Rule 8

- (1) Any person affected by any proceedings under rule 5, 6, 14, 15, 16 or 17 may apply to be made a party to the proceedings and the court may give such directions on the application as appear necessary.
- (2) An application under paragraph (1) must in the first instance be made without notice being given to any other party but the court may require notice thereof to be given to the parties to the proceedings before making any order.
- (3) The foregoing provisions are without prejudice to the power of the court, either with or without an application by any party, to order notice of the proceedings to be given to any person or any person to be made a party to the proceedings, but nothing in this rule shall be construed as requiring the court to make any such order and, if it appears that any person though he is affected by the proceedings is

not sufficiently affected for it to be necessary for him to be made a party to the proceedings or given notice thereof, the court may refuse to make him a party or, as the case may be, to require him to be given notice of the proceedings.

## ORDER DISMISSING APPLICATION UNDER SECTION 24 WHICH IS SUCCESSFULLY OPPOSED

- Rule 9 | Where the court hearing an application under section 24 of the Act of 1954 is precluded by section 31 of that Act from making an order for the grant of a new tenancy by reason of any of the grounds specified in section 30(1) of that Act, the order dismissing the application shall state all the grounds by reason of which the court is so precluded.

## APPLICATION TO DETERMINE INTERIM RENT

- Rule 9A | (1) An application under section 24A of the Act of 1954 to determine an interim rent shall –
- (a) if the tenant has begun proceedings for a new tenancy under section 24 of the Act, be made by an application in accordance with CPR Part 23 in those proceedings; and
  - (b) in any other case, be made by claim form.

## OTHER APPLICATIONS UNDER PART II OF THE ACT OF 1954

- Rule 10 | (1) An application for an order under section 31(2)(b) of the Act of 1954 and, unless made at the hearing of the application under section 24 thereof, an application for a certificate under section 37(4) of that Act may be made without notice being served on any other party.
- (2) The mesne landlord to whose consent an application for the determination of any question arising under paragraph 4(3) of Schedule 6 to the Act of 1954 relates shall be made a defendant to the claim.

## TRANSFER OF PROCEEDINGS FROM COUNTY COURT

- Rule 11 |
- (2) Any proceedings under Part I of the Act of 1927 or Part II of the Act of 1954 that have been transferred from a county court shall proceed in the High Court as if they had been begun by claim form issued out of Chancery Chambers, and within 7 days after receipt of notification of the transfer the claimant must apply in the High Court for the appointment of a day and time for the attendance of the parties before the court.
- (3) If the claimant fails to apply for an appointment within the period prescribed by paragraph (2) the defendant may do so.

## APPLICATION FOR RELIEF UNDER SECTION 16, ETC., OF THE ACT OF 1954

- Rule 12 | In any such proceedings as are mentioned in section 16(1) of the Act of 1954, paragraph 9(1) of Schedule 5 to that Act or paragraph 10(1) of that Schedule, an application for relief under that section or paragraph, as the case may be, may be made –
- (a) in the applicant's statement of case; or
  - (b) in accordance with CPR Part 23 at any time before the trial; or
  - (c) at the trial.

## EVIDENCE OF RATEABLE VALUE

- Rule 13 | Where any dispute as to the rateable value of any holding has been referred under section 37(5) of the Act of 1954 to the Commissioners of Inland Revenue for decision by a valuation officer, any document purporting to be a statement by the valuation officer of his decision shall be admissible as evidence of the matters contained in it.

## APPLICATION UNDER SECTION 19 OF THE ACT OF 1987

- Rule 14 | A copy of the notice served under section 19(2)(a) of the Act of 1987 shall be appended to the claim form issued under section 19(1) thereof, and an additional copy of the notice shall be filed.

## APPLICATION FOR ACQUISITION ORDER UNDER SECTION 29 OF THE ACT OF 1987

- Rule 16 |
- (1) An application for an acquisition order under section 29 of the Act of 1987 shall –
    - (a) identify the premises to which the application relates and give such details of them as are necessary to show that section 25 of the Act of 1987 applies thereto;
    - (b) give such details of the applicants as are necessary to show that they constitute the requisite majority of qualifying tenants;
    - (c) state the name and address of the applicants and of the landlord of the premises, or, where the landlord cannot be found or his identity ascertained, the steps taken to find him or ascertain his identity;
    - (d) state the name and address of the person nominated by the applicants for the purposes of Part III of the Act of 1987;
    - (e) state the name and address of every person known to the applicants who is likely to be affected by the application, including, but not limited to, the other tenants of flats contained in the premises (whether or not they could have made an application), any mortgagee or superior landlord of the landlord, and any tenant's association; and

(f) state the grounds of the application,

and a copy of the notice served on the landlord under section 27 of the Act of 1987 shall be appended to the claim form, unless the requirement to serve such a notice has been dispensed with, and an additional copy of the notice shall be filed.

- (2) The defendants to an application for an acquisition order under section 29 of the Act of 1987 shall be the landlord of the premises and the nominated person, where he is not an applicant.
- (3) A copy of the claim form shall be served on each of the persons named by the applicant under paragraph (1)(e), together with a notice stating that he may apply under rule 8 to be made a party to the proceedings.
- (4) Where the nominated person pays money into court in accordance with an order under section 33(1) of the Act of 1987, he shall file a copy of the certificate of the surveyor selected under section 33(2)(a) thereof.

## APPLICATION FOR ORDER UNDER SECTION 38 OR SECTION 40 OF THE ACT OF 1987

### Rule 17

- (1) An application for an order under section 38 or section 40 of the Act of 1987 shall state –
  - (a) the name and address of the applicant and of the other current parties to the lease or leases to which the application relates;
  - (b) the date of and parties to the lease or leases, the premises demised thereby, the relevant terms thereof and the variation sought;
  - (c) the name and address of every person who the applicant knows or has reason to believe is likely to be affected by the variation, including, but not limited to, the other tenants of flats contained in the premises of which the demised premises form a part, any mortgagee or superior landlord of the landlord, any mortgagee of the applicant, and any tenants' association; and
  - (d) the grounds of the application.
- (2) The other current parties to the lease or leases shall be made defendants to the application.
- (3) A copy of the application shall be served by the applicant on each of the persons named by the applicant under paragraph (1)(c) and by the defendant on any other person who he knows or has reason to believe is likely to be affected by the variation, together, in each case, with a notice stating that the person may apply under rule 8 to be made a party to the proceedings.

- (4) Any application under section 36 of the Act of 1987 shall be contained in the defendant's witness statement or affidavit, and paragraphs (1) to (3) shall apply to such an application as if the defendant were an applicant.

## SERVICE OF NOTICES IN PROCEEDINGS UNDER THE ACT OF 1987

- Rule 18** | Where a notice is to be served in or before proceedings under the Act of 1987, it shall be served in accordance with section 54 and, in the case of service on a landlord, it shall be served at the address furnished under section 48(1).

## TENANTS' ASSOCIATIONS

- Rule 19** | In rules 15, 16 and 17 a reference to a tenants' association is a reference to a recognised tenants' association within the meaning of section 29 of the Landlord and Tenant Act 1985<sup>(151)</sup> which represents tenants of the flats of which the demised premises form a part.

### RSC ORDER 98

### LOCAL GOVERNMENT FINANCE ACT 1982<sup>(152)</sup>, PART III

## INTERPRETATION

- Rule 1** | In this order 'the Act' means the Local Government Finance Act 1982 and a section referred to by number means the section so numbered in that Act.

## APPLICATION BY AUDITOR FOR DECLARATION

- Rule 2** |
- (1) Any application for a declaration under section 19(1) of the Act that an item of account is contrary to law shall be made by claim form.
  - (2) The claim form shall be served on the body to whose accounts the application relates and on any person against whom an order is sought under section 19(2).
  - (3) Not later than 7 days after filing the claim form in the Crown Office in accordance with Order 57, rule 2, the applicant shall file in that office a witness statement or affidavit stating the facts on which he intends to rely at the hearing of the application.
  - (4) The claim shall be entered for hearing within 6 weeks after the claim form has been filed in the Crown Office but, unless the court otherwise directs, the application shall not be heard sooner than 28 days after service of the claim form.

<sup>(151)</sup> 1985 c.70.

<sup>(152)</sup> 1982 c.32.

## APPEAL AGAINST DECISION OF AUDITOR

- Rule 3 |
- (1) A claim form by which an appeal is brought under section 19(4) or section 20(3) against the decision of an auditor shall be served on –
    - (a) the auditor who for the time being has responsibility for the audit of the accounts of the body in relation to whom the appeal relates;
    - (b) that body; and
    - (c) in the case of an appeal against a decision not to certify under section 20(1) that a sum or amount is due from another person, that person.
  - (2) Order 55, rules 4(2) and 5, shall apply to the appeal with the modification that the period of 28 days mentioned in the said rule 4(2) shall be calculated from the day on which the appellant received the auditor's statement of the reasons for his decision pursuant to a requirement under section 19(4) or section 20(2).
  - (3) Not later than seven days after filing the claim form in the Crown Office in accordance with Order 57, rule 2, the appellant must file in that office a witness statement or affidavit stating –
    - (a) the reasons stated by the auditor for his decision;
    - (b) the date on which he received the auditor's statement;
    - (c) the facts on which he intends to rely at the hearing of the appeal;
    - (d) in the case of a decision not to apply for a declaration, such facts within the appellant's knowledge as will enable the court to consider whether to exercise the powers conferred on it by section 19(2).

## GENERAL PROVISIONS

- Rule 4 |
- (1) Any proceedings in which the jurisdiction conferred on the High Court by section 19 or section 20 of the Act is invoked shall be assigned to the Queen's Bench Division and be heard by a single judge, unless the court directs that the matter shall be heard by a Divisional Court; and the court may, at any stage direct that any officer or member of the body to whose accounts the application of appeal relates be joined as a respondent.
  - (2) Except insofar as the court directs that the evidence on any such application or appeal shall be given orally, it shall be given by witness statement or affidavit.
  - (3) The applicant or appellant must forthwith after filing any witness statement or affidavit under rule 2(3) or 3(3) serve a copy thereof on every respondent and any person intending to oppose the application or appeal must, not less than 4 days before the hearing, serve on the applicant or appellant a copy of any witness statement or affidavit filed by him in opposition.

- (4) Except by permission of the court, no witness statement or affidavit may be used at the hearing unless a copy thereof was served in accordance with paragraph (3).

## **RSC ORDER 99**

### **INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975<sup>(153)</sup>**

#### **ORDER TO APPLY TO HIGH COURT AND COUNTY COURT**

- Rule A1** | This order applies to proceedings both in the High Court and the county court.

#### **INTERPRETATION**

- Rule 1** | In this order ‘the Act’ means the Inheritance (Provision for Family and Dependents) Act 1975 and a section referred to by number means the section so numbered in that Act.

#### **ASSIGNMENT TO CHANCERY OR FAMILY DIVISION IF PROCEEDINGS IN HIGH COURT**

- Rule 2** | Proceedings in the High Court under the Act may be assigned to the Chancery Division or to the Family Division.

#### **APPLICATION FOR FINANCIAL PROVISION**

- Rule 3** |
- (1) An application under section 1 is made by the issue of a claim form.
  - (3) There shall be filed with the court a witness statement or affidavit by the applicant in support of the claim, exhibiting an official copy of the grant of representation to the deceased’s estate and of every testamentary document admitted to proof, and a copy of the witness statement or affidavit shall be served on every defendant with the claim form.

#### **POWERS OF COURT AS TO PARTIES**

- Rule 4** |
- (1) The court may at any stage of proceedings under the Act direct that any person be added as a party to the proceedings or that notice of the proceedings be served on any person.
  - (2) Order 15, rule 13 shall apply to proceedings under the Act as it applies to the proceedings mentioned in paragraph (1) of that rule.

#### **WITNESS STATEMENT OR AFFIDAVIT IN ANSWER**

- Rule 5** |
- (1) A defendant to an application under section 1 who is a personal representative of the deceased shall and any other defendant may,

(153) 1975 c.63.

within 21 days after service of the claim form on him, inclusive of the day of service, file with the court a witness statement or affidavit in answer to the application.

- (2) The witness statement or affidavit filed by a personal representative pursuant to paragraph (1) shall state to the best of the witness's ability –
  - (a) full particulars of the value of the deceased's net estate, as defined by section 25(1);
  - (b) the person or classes of persons beneficially interested in the estate, giving the names and (in the case of those who are not already parties) the addresses of all living beneficiaries, and the value of their interests so far as ascertained;
  - (c) if such be the case, that any living beneficiary (naming him) is a child or patient within the meaning of CPR rule 21.1(2); and
  - (d) any facts known to the witness which might affect the exercise of the court's powers under the Act.
- (3) Every defendant who lodges a witness statement or affidavit shall at the same time serve a copy on the claimant and on every other defendant who is not represented by the same solicitor.

## SEPARATE REPRESENTATION

- Rule 6 | Where an application under section 1 is made jointly by two or more applicants and the claim form is accordingly issued by one solicitor on behalf of all of them, they may, if they have conflicting interests, appear on any hearing of the claim by separate solicitors or counsel or in person, and where at any stage of the proceedings it appears to the court that one of the applicants is not but ought to be separately represented, the court may adjourn the proceedings until he is.

## ENDORSEMENT OF MEMORANDUM ON GRANT

- Rule 7 | On the hearing of an application under section 1 the personal representative shall produce to the court the grant of representation to the deceased's estate and, if an order is made under the Act, the grant shall remain in the custody of the court until a memorandum of the order has been endorsed on or permanently annexed to the grant in accordance with section 19(3).

## SUBSEQUENT APPLICATIONS IN PROCEEDINGS UNDER SECTION 1

- Rule 9 | Where an order has been made on an application under section 1, any subsequent application under the Act, whether made by a party to the proceedings or by any other person, shall be made by the issue of an application notice in accordance with CPR Part 23.

## DRAWING UP AND SERVICE OF ORDERS

**Rule 10** | The provisions of the Family Proceedings Rules relating to the drawing up and service of orders shall apply to proceedings in the Family Division under this order as if they were proceedings under those rules.

In this rule 'Family Proceedings Rules' means rules made under section 40 of the Matrimonial and Family Proceedings Act 1984.

### RSC ORDER 101

### THE PENSIONS APPEAL TRIBUNALS ACT 1943<sup>(154)</sup>

## ASSIGNMENT TO QUEEN'S BENCH DIVISION

**Rule 1** | Proceedings in the High Court under the Pensions Appeal Tribunals Act 1943, shall be assigned to the Queen's Bench Division.

## CONSTRUCTION OF REFERENCE TO JUDGE

**Rule 2** | In this order references to the judge shall be construed as references to the judge nominated by the Lord Chancellor under section 6(2) of the Pensions Appeal Tribunals Act 1943.

## APPLICATION FOR PERMISSION TO APPEAL

- Rule 3** |
- (1) An application to the judge for permission to appeal against the decision of a Pensions Appeal Tribunal may not be made unless an application for such permission was made to the tribunal and was refused and must be made within 28 days after the date of the tribunal's refusal.
  - (2) The application to the judge, which may be made without notice being served on any other party must be made by filing in the Crown Office a written statement of –
    - (a) the name and description of the applicant;
    - (b) the point of law as respects which the applicant alleges that the tribunal's decision was erroneous; and
    - (c) the date of the tribunal's decision refusing permission to appeal.
  - (3) If the application is made with the consent of the other party to the proceedings before the tribunal, that fact shall be included in the statement.
  - (4) On the making of the application the court officer shall request the chairman of the tribunal to give the judge a written statement of the reasons for the tribunal's decision to refuse permission to appeal, and within 7 days after receiving the request the chairman shall give the judge such a statement.

(154) 1943 c.39.

- (5) The judge may determine the application without a hearing or may direct that the application be set down for hearing in private.
- (6) Where the application is determined without a hearing, a copy of the judge's order shall be sent from the Crown Office to the applicant and to the other party to the proceedings before the tribunal; and where the application is to be set down for hearing, notice of the day and time fixed for the hearing shall be sent from that office to the applicant.

## APPEAL

### Rule 4

- (1) Without prejudice to Order 55, rule 3(2), the notice of appeal by which an appeal against the decision of a Pensions Appeal Tribunal is brought must state the question of law on which the appeal is brought, the date on which permission to appeal was granted and whether such permission was granted by the judge or the tribunal.
- (2) Order 55, rules 3(3) and 4(2), shall not apply in relation to such an appeal, but the notice must be served and the appeal entered within 28 days after permission to appeal was granted.
- (3) Within 28 days after service of the notice of appeal on him, the chairman of the tribunal must state a case setting out the facts on which the decision appealed against was based and must file the case in the Crown Office and serve a copy thereof on the appellant and on the respondent.
- (4) Order 55, rule 5, shall apply in relation to such an appeal as if for the period of 21 days therein mentioned there were substituted a period of 6 weeks.
- (5) At the hearing of the appeal the judge may order the case to be returned to the chairman for amendment.
- (6) Order 55, rule 7(2), shall not apply in relation to the appeal.
- (7) A copy of the judge's order on the appeal must be sent by the court officer to the appellant, the respondent and the chairman of the tribunal.

## RSC ORDER 106

### PROCEEDINGS RELATING TO SOLICITORS: THE SOLICITORS ACT, 1974<sup>(155)</sup>

## INTERPRETATION

### Rule 1

- (1) In this order –  
  
‘the Act’ means the Solicitors Act 1974 and a section referred to by number means the section so numbered in that Act;

(155) 1974 c.47.

‘appeal’ means an appeal to the High Court against an order made by the tribunal on an application or complaint under the Act.

- (2) Expressions used in this order which are used in the Act have the same meanings in this order as in the Act.

## JURISDICTION UNDER PART III OF ACT

### Rule 2

- (2) The jurisdiction of the High Court under Part III of the Act may be exercised by –
- (a) A judge;
  - (b) A master, a taxing master or a district judge of the Family Division; or
  - (c) A district judge if the costs are for contentious business done in proceedings in the district registry of which he is the district judge or for non contentious business.

## POWER TO ORDER SOLICITOR TO DELIVER CASH ACCOUNT, ETC.

### Rule 3

- (1) Where the relationship of solicitor and client exists or has existed the court may, on the application of the client or his personal representatives, make an order for –
- (a) the delivery by the solicitor of a cash account;
  - (b) the payment or delivery up by the solicitor of money or securities;
  - (c) the delivery to the claimant of a list of the moneys or securities which the solicitor has in his possession or control on behalf of the claimant;
  - (d) the payment into or lodging in court of any such moneys or securities.
- (2) An application for an order under this rule must be made by the issue of a claim form, or if in proceedings by an application in accordance with CPR Part 23.
- (3) If the defendant alleges that he has a claim for costs, the court may make such order for detailed assessment in accordance with CPR Part 47 and payment, or securing the payment, thereof and the protection of the defendant’s lien, if any, as the court thinks fit.

## CERTIFICATE TO BE SUBMITTED WITH SOLICITOR’S APPLICATION FOR DETAILED ASSESSMENT

### Rule 5A

A solicitor who applies for an order under the Act for the detailed assessment in accordance with CPR Part 47 of his bill of costs shall lodge

with his application a certificate that all the relevant requirements of the Act have been satisfied.

## APPLICATIONS UNDER SCHEDULE 1 TO ACT

- Rule 6 |
- (1) Proceedings in the High Court under Schedule 1 to the Act shall be assigned to the Chancery Division.
  - (2) The claim form by which an application for an order under the said Schedule is made must be entitled in the matter of a solicitor, or a deceased solicitor, as the case may be (without naming him) and in the matter of the Act.
  - (3) Where an order has been made under paragraph 9(4), 9(5) or 10 of the said Schedule an application for an order under paragraph 9(8) or 9(10) may be made in accordance with CPR Part 23 in the proceedings in which the first mentioned order was made.

## DEFENDANTS TO APPLICATIONS UNDER SCHEDULE 1 TO ACT

- Rule 7 |
- The defendant to a claim by which an application for an order under Schedule 1 to the Act is made shall be –
- (a) if the application is for an order under paragraph 5 thereof, the solicitor or, as the case may be, every member of the firm, on whose behalf the money in respect of which the order is sought is held;
  - (b) if the application is for an order under paragraph 6(4) or 9(8) thereof, the Law Society;
  - (c) if the application is for an order under paragraph 8, 9(4) or 9(5) thereof, the person against whom the order is sought;
  - (d) if the application is for an order under paragraph 9(10) thereof, the person from whom the Law Society obtained possession of the documents by virtue of paragraph 9 or 10;
  - (e) if the application is for an order under paragraph 10 thereof for the re-direction of postal packets addressed to a solicitor or his firm, the solicitor or, as the case may be, every member of the firm;
  - (f) if the application is for an order under paragraph 11 thereof, the solicitor or personal representative in substitution for whom the appointment of a new trustee is sought and, if he is a co-trustee, the other trustee or trustees.

## INTERIM ORDER RESTRICTING PAYMENT OUT OF BANKING ACCOUNT

- Rule 8 |
- At any time after the issue of a claim form by which an application for an order under paragraph 5 of Schedule 1 to the Act is made, the court may, on the application of the claimant made without notice in accordance with

CPR Part 23 make an interim order under that paragraph to have effect until the hearing of the application and include therein a further order requiring the defendant to show cause at the hearing why an order under that paragraph should not be made.

## ADDING PARTIES, ETC.

- Rule 9 | The court may, at any stage of proceedings under Schedule 1 to the Act, order any person to be added as a party to the proceedings or to be given notice thereof.

## SERVICE OF DOCUMENTS

- Rule 10 |
- (1) Any document required to be served on the Law Society in proceedings under this order shall be served by sending it by prepaid post to the secretary of the Law Society.
  - (2) Subject to paragraph (1) a claim form by which an application under Schedule 1 to the Act is made, an order under paragraph 5 of that Schedule or rule 8 and any other document not required to be served personally which is to be served on a defendant to proceedings under the said Schedule shall, unless the court otherwise directs, be deemed to be properly served by sending it by prepaid post to the defendant at his last known address.

## CONSTITUTION OF DIVISIONAL COURT TO HEAR APPEALS

- Rule 11 | Every appeal shall be heard by a Divisional Court of the Queen's Bench Division consisting, unless the Lord Chief Justice otherwise directs, of not less than three judges.

## TITLE, SERVICE, ETC., OF NOTICE OF APPEAL

- Rule 12 |
- (1) The notice of appeal by which an appeal is brought must be entitled in the matter of a solicitor, or, as the case may be, a solicitor's clerk, without naming him, and in the matter of the Act.
  - (2) Unless the court otherwise orders, the persons to be served with such notice are every party to the proceedings before the tribunal and the Law Society.
  - (3) Order 55, rule 4(2) shall apply in relation to the appeal as if for the period of 28 days therein specified there were substituted a period of 14 days.
  - (4) Order 55, rule 4(4) shall not apply and the said period of 14 days shall begin with the day on which a statement of the tribunal's findings was filed pursuant to section 48(1).

## LAW SOCIETY TO PRODUCE CERTAIN DOCUMENTS

- Rule 13 |
- (1) Within 7 days after being served with the notice of appeal the Law Society must lodge in the Crown Office three copies of each of the following documents –
    - (a) the order appealed against, together with the statement of the tribunal's findings required by section 48(1) of the Act;
    - (b) any document lodged by a party with the tribunal which is relevant to a matter in issue on the appeal; and
    - (c) the transcript of the shorthand note, or, as the case may be, the note taken by the chairman of the tribunal of the evidence in the proceedings before the tribunal.
  - (2) At the hearing of the appeal the court shall direct by whom the costs incurred in complying with paragraph (1) are to be borne and may order them to be paid to the Law Society by one of the parties notwithstanding that the Society does not appear at the hearing.

## RESTRICTION ON REQUIRING SECURITY FOR COSTS

- Rule 14 |
- No person other than an appellant who was the applicant in the proceedings before the tribunal, shall be ordered to give security for the costs of an appeal.

## DISCIPLINARY COMMITTEE'S OPINION MAY BE REQUIRED

- Rule 15 |
- The court may direct the tribunal to furnish the court with a written statement of their opinion on the case which is the subject-matter of an appeal or on any question arising therein, and where such a direction is given, the clerk to the tribunal must as soon as may be lodge three copies of such statement in the Crown Office and at the same time send a copy to each of the parties to the appeal.

## PERSONS ENTITLED TO BE HEARD ON APPEAL

- Rule 16 |
- A person who has not been served with the notice of appeal but who desires to be heard in opposition to the appeal shall, if he appears to the court to be a proper person to be so heard, be entitled to be so heard.

## DISCONTINUANCE OF APPEAL

- Rule 17 |
- (1) An appellant may at any time discontinue his appeal by serving notice of discontinuance on the clerk to the tribunal and every other party to the appeal and, if the appeal has been entered, by lodging a copy of the notice in the Crown Office.
  - (2) Where an appeal has been discontinued in accordance with paragraph (1) it shall be treated as having been dismissed with an

order for payment by the appellant of the costs of and incidental to the appeal, including any costs incurred by the Law Society in complying with rule 13(1).

## **RSC ORDER 108**

### **PROCEEDINGS RELATING TO CHARITIES: THE CHARITIES ACT 1993<sup>(156)</sup>**

#### **INTERPRETATION**

##### **Rule 1** In this order –

‘the Act’ means the Charities Act 1993;

‘certificate’ means a certificate that a case is a proper one for an appeal;

‘charity proceedings’ means proceedings in the High Court under the court’s jurisdiction with respect to charities or under the court’s jurisdiction with respect to trusts in relation to the administration of a trust for charitable purposes;

‘the Commissioners’ means the Charity Commissioners for England and Wales.

#### **ASSIGNMENT TO CHANCERY DIVISION**

##### **Rule 2** Charity proceedings and proceedings brought in the High Court by virtue of the Act shall be assigned to the Chancery Division.

#### **APPLICATION FOR PERMISSION TO APPEAL OR TO TAKE CHARITY PROCEEDINGS**

- ##### **Rule 3**
- (1) An application shall not be made under section 16(13) of the Act for permission to appeal against an order of the Commissioners unless the applicant has requested the Commissioners to grant a certificate and they have refused to do so.
  - (2) An application under section 33(5) of the Act for permission to start charity proceedings must be made within 21 days after the refusal by the Commissioners of an order authorising proceedings.
  - (3) The application must be made by lodging in Chancery Chambers a statement showing –
    - (a) the name, address and description of the applicant;
    - (b) particulars of the order against which it is desired to appeal or of the proceedings which it is desired to take;
    - (c) the date of the Commissioners’ refusal to grant a certificate or an order authorising the taking of proceedings;

(156) 1993 c.10.

- (d) the grounds on which the applicant alleges that it is a proper case for an appeal or for taking proceedings.
- (4) The application may be made without notice in the first instance and if it is made with the consent of any other party to the proposed appeal or proposed proceedings that fact shall be mentioned in the statement.
- (5) If the judge on considering the application so directs, the Commissioners shall furnish him with a written statement of their reasons for refusing a certificate or, as the case may be, an order authorising the taking of proceedings, and a copy of any such statement shall be sent from Chancery Chambers to the applicant.
- (6) Unless, after considering the applicant's statement and the statement (if any) of the Commissioners, the judge decides to give the permission applied for without a hearing, the application shall be set down for hearing, and the hearing may be in private if the judge so directs.
- (7) Where the application is determined without a hearing, a copy of the judge's order shall be sent from Chancery Chambers to the applicant and the Commissioners; and where the application is to be set down for hearing, notice of the day and time fixed for the hearing shall be sent from that office to the applicant.

## APPLICATION FOR ENFORCEMENT OF ORDER OR DIRECTION OF COMMISSIONERS

- Rule 4 | Order 52, rule 1(4), shall apply in relation to an application under section 88 of the Act as if for the reference in that rule to a single judge of the Queen's Bench Division there was substituted a reference to a single judge of the Chancery Division.

## APPEAL AGAINST ORDER, ETC., OF COMMISSIONERS

- Rule 5 |
- (1) An appeal against an order or decision of the Commissioners shall be heard and determined by a single judge.
  - (2) Such an appeal must be brought by a notice of appeal to which the Attorney-General, unless he is the appellant, shall be made a defendant in addition to any other person who is a proper defendant thereto.
  - (3) A notice of appeal under this rule must state the grounds of the appeal and, except with the permission of the judge hearing the appeal, the appellant shall not be entitled to rely on any ground not so stated.

## SERVICE ON COMMISSIONERS

- Rule 6** | Any document required or authorised to be served on the Commissioners in proceedings to which this order relates must be served on the Treasury Solicitor in accordance with Order 77, rule 4(2).

### RSC ORDER 109

### THE ADMINISTRATION OF JUSTICE ACT 1960<sup>(157)</sup>

## APPLICATIONS UNDER ACT

- Rule 1** | (1) Any of the following applications, that is to say –
- (a) an application under section 2 of the Administration of Justice Act 1960, or under that section as applied by section 13 of that Act, to extend the time within which an application may be made to a Divisional Court for permission to appeal to the House of Lords under section 1 of that Act, or section 13 thereof, from an order or decision of that court, and
  - (b) an application by a defendant under section 9(3) of that Act to a Divisional Court for permission to be present on the hearing of any proceedings preliminary or incidental to an appeal to the House of Lords under section 1 of that Act from a decision of that court
- must be made to a Divisional Court except in vacation when it may be made to a judge.
- (2) Any such application to a Divisional Court, if not made in the proceedings before the Divisional Court from whose order or decision the appeal in question is brought, must be made by the issue of a claim form.
  - (3) Any such application to a judge must, in the case of such an application as is referred to in paragraph (1)(a) be made by the issue of a claim form and, in the case of such an application as is referred to in paragraph (1)(b) need not be served on any other person unless, in the latter case, the judge otherwise directs.
  - (4) No application notice or copy of the claim form (as the case may be) by which such an application as is referred to in paragraph (1)(b) is made, need be given to any party affected thereby unless the Divisional Court otherwise directs.
  - (5) Where any application to which this rule applies is made in vacation to a single judge and the judge refuses the application, the applicant shall be entitled to have the application determined by a Divisional Court.

(157) 1960 c.65.

## APPEALS UNDER SECTION 13 OF ACT

- Rule 2 |
- (1) An appeal to a Divisional Court of the High Court under section 13 of the Administration of Justice Act 1960, shall be heard and determined by a Divisional Court of the Queen's Bench Division.
  - (3) Order 55, rules 4(2) and 5, shall not apply in relation to an appeal to a Divisional Court under the said section 13.
  - (4) Unless the court gives permission, there shall be not more than 4 clear days between the date on which the order or decision appealed against was made and the day named in the notice of appeal for the hearing of the appeal.
  - (5) The notice must be served, and the appeal entered, not less than one clear day before the day named in the notice for the hearing of the appeal.

## RELEASE OF APPELLANT ON BAIL

- Rule 3 |
- (1) Where, in the case of an appeal under section 13 of the Administration of Justice Act 1960, to a Divisional Court or to the House of Lords from a Divisional Court, the appellant is in custody, the High Court may order his release on his giving security (whether by recognizance, with or without sureties, or otherwise and for such reasonable sum as the court may fix) for his appearance, within 10 days after the judgment of the Divisional Court or, as the case may be, of the House of Lords, on the appeal before the court from whose order or decision the appeal is brought unless the order or decision is reversed by that judgment.
  - (2) Order 79, rule 9(1) to (6) and (8) shall apply in relation to an application to the High Court for bail pending an appeal under the said section 13 to which this rule applies, and to the admission of a person to bail in pursuance of an order made on the application, as they apply in relation to an application to that court for bail in criminal proceedings, and to the admission of a person to bail in pursuance of an order made on the application, but with the substitution, for references to the defendant, of references to the appellant, and, for references to the prosecutor, of references to the court officer of the court from whose order or decision the appeal is brought and to the parties to the proceedings in that court who are directly affected by the appeal.

## RSC ORDER 110

## ENVIRONMENTAL CONTROL PROCEEDINGS

## INJUNCTIONS TO PREVENT ENVIRONMENTAL HARM

- Rule 1 |
- (1) An injunction under –

- (a) section 187B or 214A of the Town and Country Planning Act 1990<sup>(158)</sup>;
- (b) section 44A of the Planning (Listed Buildings and Conservation Areas) Act 1990<sup>(159)</sup>; or
- (c) section 26AA of the Planning (Hazardous Substances) Act 1990<sup>(160)</sup>

may be granted against a person whose identity is unknown to the applicant; and in the following provisions of this rule such an injunction against such a person is referred to as “an injunction under paragraph (1)” and the person against whom it is sought is referred to as “the defendant”.

- (2) An applicant for an injunction under paragraph (1) shall, in the claim form, describe the defendant by reference to -
  - (a) a photograph,
  - (b) a thing belonging to or in the possession of the defendant, or
  - (c) any other evidence,
 with sufficient particularity to enable service to be effected.
- (3) An applicant for an injunction under paragraph (1) shall file in support of the application evidence by witness statement or affidavit -
  - (a) verifying that he was unable to ascertain, within the time reasonably available to him, the defendant’s identity,
  - (b) setting out the action taken to ascertain the defendant’s identity, and
  - (c) verifying the means by which the defendant has been described in the application and that the description is the best that the applicant is able to provide.
- (4) Paragraph (2) is without prejudice to the power of the Court to make an order for service by an alternative method or dispensing with service.

## **RSC ORDER 111**

### **THE SOCIAL SECURITY ADMINISTRATION ACT 1992<sup>(161)</sup>**

#### **JUDGE BY WHOM APPEALS AND REFERENCES TO BE HEARD**

##### **Rule 1**

Any appeal to the High Court against a decision of the Secretary of State on a question of law under the Social Security Administration Act 1992, and any question of law referred to the High Court by the Secretary of State under the Act, shall be heard and determined by a single judge of the Queen’s Bench Division.

(158) 1990 c.8.

(159) 1990 c.9.

(160) 1990 c.10.

(161) 1992 c.5.

## APPEAL: PRELIMINARY STATEMENT OF FACTS BY SECRETARY OF STATE

**Rule 2** | Any person who by virtue of section 18 or 58(8) of the Social Security Administration Act 1992 is entitled and wishes to appeal against a decision of the Secretary of State on a question of law must within the prescribed period or within such further time as the Secretary of State may allow serve on the Secretary of State a notice of appeal requiring him to state a case setting out the facts on which his decision was based and his decision.

If within 28 days after receipt of notice of the decision a request is made to the Secretary of State in accordance with regulations made under the Act to furnish a statement of the grounds of the decision, the prescribed period for the purpose of this rule shall be 28 days after receipt of that statement, and if no such request is made within 28 days after receipt of notice of the decision the prescribed period for that purpose shall be 28 days after receipt of that notice.

## SPECIAL PROVISIONS AS TO APPEALS

**Rule 3** | Order 55 shall not apply in relation to an appeal under the said section 18 or 58(8) but Order 56, rules 9 to 12, shall apply in relation to the case stated by the Secretary of State for the purpose of any such appeal as they apply in relation to any other case stated by a Minister except that Order 56, rule 10(4) and (7) as so applied, shall have effect as if for the period of 14 days and 7 days therein specified there were substituted a period of 28 days.

## REFERENCE OF QUESTION OF LAW

- Rule 4** |
- (1) Where under the said section 18 or 58(8) the Secretary of State refers to the High Court for decision any question of law, he must state that question together with the facts relating thereto in a case.
  - (2) Order 56, rules 9(1), 10(1), 11 and 12, shall apply in relation to a case stated under paragraph (1) of this rule as they apply in relation to any other case stated by a Secretary of State.
  - (3) The notice of appeal by which proceedings for the determination of the question of law stated in the case are begun, together with a copy of the case, must be served by the Secretary of State on every person as between whom and the Secretary of State the question has arisen.
  - (4) Unless the court having jurisdiction to determine the question of law otherwise directs, the appeal or reference shall not be heard sooner than 28 days after service of notice of appeal.

## POWERS OF COURT HEARING APPEAL OR REFERENCE

- Rule 5** |
- (1) Without prejudice to Order 56, rule 11, as applied by rules 3 and 4 of this order, the court hearing an appeal or reference under the said section 18 or 58(8) may order the case stated by the Secretary of State to be returned to the Secretary of State for him to hear further evidence.

- (2) The court hearing such an appeal or reference shall determine all questions arising thereon, and in the case of any such appeal may reverse, affirm or amend the decision appealed against or make such other order as it thinks fit.

## **RSC ORDER 112**

### **APPLICATIONS FOR USE OF BLOOD TESTS IN DETERMINING PATERNITY**

#### **INTERPRETATION**

##### **Rule 1**

In this order –

‘the Act’ means Part III of the Family Law Reform Act 1969<sup>(162)</sup>;

‘blood samples’ and ‘blood tests’ have the meanings assigned to them by section 25 of the Act;

‘direction’ means a direction for the use of blood tests under section 20(1) of the Act;

‘the court officer’ means the officer of the court who draws up a direction.

#### **APPLICATION FOR DIRECTION**

##### **Rule 2**

- (1) Except with the permission of the court, an application in any proceedings for a direction shall be in accordance with CPR Part 23 and a copy of the application notice shall be served on every party to the proceedings (other than the applicant) and to any other person from whom the direction involves the taking of blood samples.
- (3) Any notice required by this rule to be served on a person who is not a party to the proceedings shall be served on him personally.

#### **APPLICATIONS INVOLVING CHILDREN UNDER 16 AND PATIENTS**

##### **Rule 3**

Where an application is made for a direction in respect of a person who is either –

- (a) under 16; or
- (b) suffering from a mental disorder within the meaning of the Mental Health Act 1983<sup>(163)</sup> and incapable of understanding the nature and purpose of blood tests,

the application notice shall state the name and address of the person having the care and control of the person under disability and shall be served on him instead of on the person under disability.

(162) 1969 c.46.

(163) 1983 c.20.

## ADDITION AS A PARTY OF PERSON TO BE TESTED

- Rule 4** | Where an application is made for a direction involving the taking of blood samples from a person who is not a party to the proceedings in which the application is made, the court may at any time direct that person to be made a party to the proceedings.

## SERVICE OF DIRECTION AND ADJOURNMENT OF PROCEEDINGS

- Rule 5** | Where the court gives a direction in any proceedings, the court officer shall send a copy to every party to the proceedings and to every other person from whom the direction involves the taking of blood samples and, unless otherwise ordered, further consideration of the proceedings shall be adjourned until the court receives a report pursuant to the direction.

## SERVICE OF COPY REPORT

- Rule 6** | On receipt by the court of a report made pursuant to a direction, the proper officer shall send a copy to every party to the proceedings and to every other person from whom the direction involved the taking of blood samples.

### RSC ORDER 113

### SUMMARY PROCEEDINGS FOR POSSESSION OF LAND

## PROCEEDINGS TO BE BROUGHT BY CLAIM FORM

- Rule 1** |
- (1) Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings shall be brought by claim form in accordance with the provisions of this order.
  - (2) Where proceedings of the type referred to in paragraph (1) are brought, the court will fix a day for the hearing when it issues the claim form.

## JURISDICTION OF MASTERS

- Rule 1A** | Proceedings under this order may be heard and determined by a Master, who may refer them to a judge if he thinks they should properly be decided by the judge.

## FORMS OF CLAIM FORM

- Rule 2** |
- (1) The claim form shall be as set out in the relevant practice direction and no acknowledgment of service of it shall be required.

- (2) The claim form shall be endorsed with or contain a statement showing whether possession is claimed in respect of residential premises or in respect of other land.

## WITNESS STATEMENT OR AFFIDAVIT IN SUPPORT

Rule 3 | The claimant shall file in support of the claim form a witness statement or affidavit stating –

- (a) his interest in the land;
- (b) the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises; and
- (c) that he does not know the name of any person occupying the land who is not named in the claim form;

and, unless the court directs, any such witness statement or affidavit may contain statements of information or belief with the sources and grounds thereof.

## SERVICE OF CLAIM FORM

Rule 4 | (1) Where any person in occupation of the land is named in the claim form, the claim form together with a copy of the witness statement or affidavit in support shall be served on him –

- (a) personally; or
- (b) by leaving a copy of the claim form and of the witness statement or affidavit or sending them to him, at the premises; or
- (c) in such other manner as the court may direct.

(2) Where any person not named as a defendant is in occupation of the land, the claim form shall be served (whether or not it is also required to be served in accordance with paragraph (1)), unless the court otherwise directs, by –

- (a) affixing a copy of the claim form and a copy of the witness statement or affidavit to the main door or other conspicuous part of the premises and, if practicable, inserting through the letter-box at the premises a copy of the claim form and a copy of the witness statement or affidavit enclosed in a sealed transparent envelope addressed to ‘the occupiers’; or
- (b) placing stakes in the ground at conspicuous parts of the occupied land, to each of which shall be affixed a sealed transparent envelope addressed to ‘the occupiers’ and containing a copy of the claim form and a copy of the witness statement or affidavit.

(2A) Every copy of a claim form for service under paragraph (1) or (2) shall be sealed with the seal of the Office of the Supreme Court out of which the claim form was issued.

## APPLICATION BY OCCUPIER TO BE MADE A PARTY

- Rule 5** | Any person not named as a defendant who is in occupation of the land and wishes to be heard on the question whether an order for possession should be made may apply at any stage of the proceedings to be joined as a defendant.

## ORDER FOR POSSESSION

- Rule 6** |
- (1) A final order for possession in proceedings under this order shall, except in case of emergency and by permission of the court, not be made –
    - (a) in the case of residential premises, less than five clear days after the date of service; and
    - (b) in the case of other land, less than two clear days after the date of service.
  - (2) An order for possession in proceedings under this order shall be in Form No. 42A.
  - (3) Nothing in this order shall prevent the court from ordering possession to be given on a specified date, in the exercise of any power which could have been exercised if possession had been sought otherwise than in accordance with this order.

## WRIT OF POSSESSION

- Rule 7** |
- (1) Order 45, rule 3(2) shall not apply in relation to an order for possession under this order but no writ of possession to enforce such an order shall be issued after the expiry of three months from the date of the order without the permission of the court.  
  
An application for permission may be made without notice being served on any other party unless the court otherwise directs.
  - (2) The writ of possession shall be in Form No. 66A.

## SETTING ASIDE ORDER

- Rule 8** | The court may, on such terms as it thinks just, set aside or vary any order made in proceedings under this order.

## RSC ORDER 114

## REFERENCES TO THE EUROPEAN COURT

## INTERPRETATION

- Rule 1** | In this order –  
  
‘the court’ means the court by which an order is made and includes the Court of Appeal;

‘the European Court’ means the Court of Justice of the European Communities; and

‘order’ means an order referring a question to the European Court for a preliminary ruling under article 177 of the Treaty establishing the European Community, article 150 of the Treaty establishing the European Atomic Energy Community or article 41 of the Treaty establishing the European Coal and Steel Community or for a ruling on the interpretation of any of the Brussels Conventions (within the meaning of section 1(1) of the Civil Jurisdiction and Judgments Act 1982<sup>(164)</sup>) or any of the instruments referred to in section 1 of the Contracts (Applicable Law) Act 1990<sup>(165)</sup>.

## MAKING OF ORDER

- Rule 2 |
- (1) An order may be made by the court of its own initiative at any stage in proceedings, or on application by a party before or at the trial or hearing thereof.
  - (2) Where an application is made before the trial or hearing, it shall be made in accordance with CPR Part 23.
  - (3) In the High Court no order shall be made except by a judge in person.

## SCHEDULE TO ORDER TO SET OUT REQUEST FOR RULING

- Rule 3 |
- An order shall set out in a schedule the request for the preliminary ruling of the European Court, and the court may give directions as to the manner and form in which the schedule is to be prepared.

## STAY OF PROCEEDINGS PENDING RULING

- Rule 4 |
- The proceedings in which an order is made shall, unless the court otherwise orders, be stayed until the European Court has given a preliminary ruling on the question referred to it.

## TRANSMISSION OF ORDER TO THE EUROPEAN COURT

- Rule 5 |
- When an order has been made, the Senior Master shall send a copy thereof to the Registrar of the European Court; but in the case of an order made by the High Court, he shall not do so, unless the court otherwise orders, until the time for appealing against the order has expired or, if an appeal is entered within that time, until the appeal has been determined or otherwise disposed of.

(164) 1982 c.27.

(165) 1990 c.36.

## APPEALS FROM ORDERS MADE BY HIGH COURT

- Rule 6 | On an appeal to the Court of Appeal from an order made by the High Court the period within which a notice of appeal must be served under Order 59, rule 4(1) shall be 14 days.

### RSC ORDER 115

### CONFISCATION AND FORFEITURE IN CONNECTION WITH CRIMINAL PROCEEDINGS

## I. DRUG TRAFFICKING ACT 1994<sup>(166)</sup> AND CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT 1990<sup>(167)</sup>

### INTERPRETATION

- Rule 1 |
- (1) In this Part of this order, 'The Act' means the Drug Trafficking Act 1994 and a section referred to by number means the section so numbered in the Act.
  - (2) Expressions used in this Part of this order which are used in the Act have the same meanings in this Part of this order as in the Act and include any extended meaning given by the Criminal Justice (Confiscation) (Northern Ireland) Order 1990.

### ASSIGNMENT OF PROCEEDINGS

- Rule 2 | Subject to rule 12, the jurisdiction of the High Court under the Act shall be exercised by a judge of the Chancery Division or of the Queen's Bench Division.

### TITLE OF PROCEEDINGS

- Rule 2A | An application made in accordance with CPR Part 23, or a claim form issued in relation to proceedings under this Part of this order shall be entitled in the matter of the defendant, naming him, and in the matter of the Act, and all subsequent documents in the matter shall be so entitled.

### APPLICATION FOR CONFISCATION ORDER

- Rule 2B |
- (1) An application by the prosecutor for a confiscation order under section 19 shall be made in accordance with CPR Part 23 where there have been proceedings against the defendant in the High Court, and shall otherwise be made by the issue of a claim form.
  - (2) The application shall be supported by a witness statement or affidavit giving full particulars of the following matters –
    - (a) the grounds for believing that the defendant has died or absconded;

(166) 1994 c.37.

(167) 1990 c.5.

- (b) the date or approximate date on which the defendant died or absconded;
  - (c) where the application is made under section 19(2), the offence or offences of which the defendant was convicted, and the date and place of conviction;
  - (d) where the application is made under section 19(4), the proceedings which have been initiated against the defendant (including particulars of the offence and the date and place of institution of those proceedings); and
  - (e) where the defendant is alleged to have absconded, the steps taken to contact him.
- (3) The prosecutor's statement under section 11 shall be exhibited to the witness statement or affidavit and shall include the following particulars –
- (a) the name of the defendant;
  - (b) the name of the person by whom the statement is given;
  - (c) such information known to the prosecutor as is relevant to the determination whether the defendant has benefited from drug trafficking and to the assessment of the value of his proceeds of drug trafficking.
- (4) Unless the court otherwise orders, a witness statement or affidavit under paragraph (2) may contain statements of information and belief, with their sources and grounds.
- (5) The application and the witness statement or affidavit in support shall be served not less than 7 days before the date fixed for the hearing of the application on –
- (a) the defendant (or on the personal representatives of a deceased defendant);
  - (b) any person who the prosecutor reasonably believes is likely to be affected by the making of a confiscation order; and
  - (c) the receiver, where one has been appointed in the matter.

## APPLICATION FOR RESTRAINT ORDER OR CHARGING ORDER

### Rule 3

- (1) An application for a restraint order under section 26 or for a charging order under section 27 (to either of which may be joined an application for the appointment of a receiver) may be made by the prosecutor by the issue of a claim form notice of which need not be served on any other party.
- (2) An application under paragraph (1) shall be supported by a witness statement or affidavit, which shall –
  - (a) give the grounds for the application; and

- (b) to the best of the witness's ability, give full particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property.
- (3) Unless the court otherwise directs, a witness statement or affidavit under paragraph (2) may contain statements of information or belief with the sources and grounds thereof.

## RESTRAINT ORDER AND CHARGING ORDER

- Rule 4 |
- (1) A restraint order may be made subject to conditions and exceptions, including but not limited to conditions relating to the indemnifying of third parties against expenses incurred in complying with the order, and exceptions relating to living expenses and legal expenses of the defendant, but the prosecutor shall not be required to give an undertaking to abide by any order as to damages sustained by the defendant as a result of the restraint order.
  - (2) Unless the court otherwise directs, a restraint order made where notice of it has not been served on any person shall have effect until a day which shall be fixed for the hearing where all parties may attend on the application and a charging order shall be an order to show cause, imposing the charge until such day.
  - (3) Where a restraint order is made the prosecutor shall serve copies of the order and of the witness statement or affidavit in support on the defendant and on all other named persons restrained by the order and shall notify all other persons or bodies affected by the order of its terms.
  - (4) Where a charging order is made the prosecutor shall serve copies of the order and of the witness statement or affidavit in support on the defendant and, where the property to which the order relates is held by another person, on that person and shall serve a copy of the order on such of the persons or bodies specified in Order 50, rule 2(1)(b) to (d) as shall be appropriate.

## DISCHARGE OR VARIATION OF ORDER

- Rule 5 |
- (1) Any person or body on whom a restraint order or a charging order is served or who is notified of such an order may make an application in accordance with CPR Part 23 to discharge or vary the order.
  - (2) The application notice and any witness statement or affidavit in support shall be lodged with the court and served on the prosecutor and, where he is not the applicant, on the defendant, not less than two clear days before the date fixed for the hearing of the application.
  - (3) Upon the court being notified that proceedings for the offences have been concluded or that the amount, payment of which is secured by a charging order has been paid into court, any restraint order or charging order, as the case may be, shall be discharged.

- (4) The court may also discharge a restraint order or a charging order upon receiving notice from the prosecutor that it is no longer appropriate for the restraint order or the charging order to remain in place.

## FURTHER APPLICATION BY PROSECUTOR

- Rule 6 |
- (1) Where a restraint order or a charging order has been made the prosecutor may apply by an application in accordance with CPR Part 23 with notice or, where the case is one of urgency or the giving of notice would cause a reasonable apprehension of dissipation of assets, without notice –
    - (a) to vary such order; or
    - (b) for a restraint order or a charging order in respect of other realisable property; or
    - (c) for the appointment of a receiver.
  - (2) An application under paragraph (1) shall be supported by a witness statement or affidavit which, where the application is for a restraint order or a charging order, shall to the best of the witness's ability give full particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property.
  - (3) The application and witness statement or affidavit in support shall be lodged with the court and served on the defendant and, where one has been appointed in the matter, on the receiver, not less than two clear days before the date fixed for the hearing of the application.
  - (4) Rule 4(3) and (4) shall apply to the service of restraint orders and charging orders respectively made under this rule on persons other than the defendant.

## REALISATION OF PROPERTY

- Rule 7 |
- (1) An application by the prosecutor under section 29 shall, where there have been proceedings against the defendant in the High Court, be made by an application in accordance with CPR Part 23 and shall otherwise be made by the issue of a claim form
  - (2) The application notice or claim form, as the case may be, shall be served with the evidence in support not less than 7 days before the date fixed for the hearing of the application or claim on –
    - (a) the defendant;
    - (b) any person holding any interest in the realisable property to which the application relates; and
    - (c) the receiver, where one has been appointed in the matter.
  - (3) The application shall be supported by a witness statement or affidavit, which shall, to the best of the witness's ability, give full particulars of

the realisable property to which it relates and specify the person or persons holding such property, and a copy of the confiscation order, of any certificate issued by the Crown Court under section 5(2) and of any charging order made in the matter shall be exhibited to such witness statement or affidavit.

- (4) The Court may, on an application under section 29 –
  - (a) exercise the power conferred by section 30(2) to direct the making of payments by a receiver;
  - (b) give directions in respect of the property interests to which the application relates; and
  - (c) make declarations in respect of those interests.

## RECEIVERS

### Rule 8

- (1) Subject to the provisions of this rule, the provisions of Order 30, rules 2 to 8 shall apply where a receiver is appointed in pursuance of a charging order or under sections 26 or 29.
- (2) Where the receiver proposed to be appointed has been appointed receiver in other proceedings under the Act, it shall not be necessary for a witness statement or affidavit of fitness to be sworn or for the receiver to give security, unless the court otherwise orders.
- (3) Where a receiver has fully paid the amount payable under the confiscation order and any sums remain in his hands, he shall make an application to the court for directions in accordance with CPR Part 23, as to the distribution of such sums.
- (4) An application under paragraph (3) shall be served with any evidence in support not less than 7 days before the date fixed for the hearing of the application on –
  - (a) the defendant; and
  - (b) any other person who held property realised by the receiver.
- (5) A receiver may apply for an order to discharge him from his office by making an application in accordance with CPR Part 23, which shall be served, together with any evidence in support, on all persons affected by his appointment not less than 7 days before the day fixed for the hearing of the application.

## CERTIFICATE OF INADEQUACY

### Rule 9

- (1) The defendant or a receiver appointed under section 26 or 29 or in pursuance of a charging order may apply in accordance with CPR Part 23 for a certificate under section 17(1).
- (2) An application under paragraph (1) shall be served with any supporting evidence not less than 7 days before the date fixed for the

hearing of the application on the prosecutor and, as the case may be, on either the defendant or the receiver (where one has been appointed).

## CERTIFICATE UNDER SECTION 16

- Rule 9A** | An application under section 16(2) (increase in realisable property) shall be served with any supporting evidence not less than 7 days before the date fixed for the hearing of the application on the defendant and, as the case may be, on either the prosecutor or (where one has been appointed in the matter) on the receiver.

## COMPENSATION

- Rule 10** | An application for an order under section 18 shall be made in accordance with CPR Part 23, which shall be served, with any supporting evidence, on the person alleged to be in default and on the relevant authority under section 18(5) not less than 7 days before the date fixed for the hearing of the application.

## DISCLOSURE OF INFORMATION

- Rule 11** |
- (1) An application by the prosecutor under section 59 shall be made in accordance with CPR Part 23 and the application notice shall state the nature of the order sought and whether material sought to be disclosed is to be disclosed to a receiver appointed under section 26 or 29 or in pursuance of a charging order or to a person mentioned in section 59(8).
  - (2) The application notice and witness statement or affidavit in support shall be served on the authorised Government Department in accordance with Order 77, rule 4 not less than 7 days before the date fixed for the hearing of the application.
  - (3) The witness statement or affidavit in support of an application under paragraph (1) shall state the grounds for believing that the conditions in section 59(4) and, if appropriate, section 59(7) are fulfilled.

## COMPENSATION FOR, DISCHARGE AND VARIATION OF CONFISCATION ORDER

- Rule 11A** |
- (1) An application under section 21, 22 or 23 shall be made in accordance with CPR Part 23 which, together with any evidence in support, shall be lodged with the court and served on the prosecutor not less than 7 days before the day fixed for the hearing of the application.
  - (2) Notice shall also be served on any receiver appointed in pursuance of a charging order or under section 26 or 29.
  - (3) An application for an order under section 22 shall be supported by a witness statement or affidavit giving details of –

- (a) the confiscation order made under section 19(4);
  - (b) the acquittal of the defendant;
  - (c) the realisable property held by the defendant; and
  - (d) the loss suffered by the applicant as a result of the confiscation order.
- (4) An application for an order under section 23 shall be supported by a witness statement or affidavit giving details of –
- (a) the confiscation order made under section 19(4);
  - (b) the date on which the defendant ceased to be an absconder;
  - (c) the date on which proceedings against the defendant were instituted and a summary of the steps taken in the proceedings since then; and
  - (d) any indication given by the prosecutor that he does not intend to proceed against the defendant.
- (5) An application made under section 21 shall be supported by a witness statement or affidavit giving details of –
- (a) the confiscation order made under section 19(4);
  - (b) the circumstances in which the defendant ceased to be an absconder; and
  - (c) the amounts referred to in section 21(2).
- (6) Where an application is made for an order under section 23(3) or 24(2)(b), the witness statement or affidavit shall also include –
- (a) details of the realisable property to which the application relates; and
  - (b) details of the loss suffered by the applicant as a result of the confiscation order.
- (7) Unless the court otherwise orders, a witness statement or affidavit under paragraphs (3) to (6) may contain statements of information and belief, with the sources and grounds thereof.

## EXERCISE OF POWERS UNDER SECTIONS 37 AND 40

- Rule 12** | The powers conferred on the High Court by sections 37 and 40 may be exercised by a judge or a Master of the Queen's Bench Division.

## APPLICATION FOR REGISTRATION

- Rule 13** | An application for registration of an order specified in an Order in Council made under section 37 or of an external confiscation order under section 40(1) must be made in accordance with CPR Part 23, and may be made without notice.

## EVIDENCE IN SUPPORT OF APPLICATION UNDER SECTION 37

- Rule 14 | An application for registration of an order specified in an Order in Council made under section 37 must be made in accordance with CPR Part 23, and be supported by a witness statement or affidavit –
- (i) exhibiting the order or a certified copy thereof; and
  - (ii) stating, to the best of the witness's knowledge, particulars of what property the person against whom the order was made holds in England and Wales, giving the source of the witness's knowledge.

## EVIDENCE IN SUPPORT OF APPLICATION UNDER SECTION 40(1)

- Rule 15 |
- (1) An application for registration of an external confiscation order must be made in accordance with CPR Part 23, and be supported by a witness statement or affidavit –
    - (a) exhibiting the order or a verified or certified or otherwise duly authenticated copy thereof and, where the order is not in the English language, a translation thereof into English certified by a notary public or authenticated by witness statement or affidavit; and
    - (b) stating –
      - (i) that the order is in force and is not subject to appeal;
      - (ii) where the person against whom the order was made did not appear in the proceedings, that he received notice thereof in sufficient time to enable him to defend them;
      - (iii) in the case of money, either that at the date of the application the sum payable under the order has not been paid or the amount which remains unpaid, as may be appropriate, or, in the case of other property, the property which has not been recovered; and
      - (iv) to the best of the witness's knowledge, particulars of what property the person against whom the order was made holds in England and Wales, giving the source of the witness's knowledge.
  - (2) Unless the court otherwise directs, a witness statement or affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

## REGISTER OF ORDERS

- Rule 16 |
- (1) There shall be kept in the Central Office under the direction of the Master of the Crown Office a register of the orders registered under the Act.
  - (2) There shall be included in such register particulars of any variation or setting aside of a registration and of any execution issued on a registered order.

## NOTICE OF REGISTRATION

- Rule 17 |
- (1) Notice of the registration of an order must be served on the person against whom it was obtained by delivering it to him personally or by sending it to him at his usual or last known address or place of business or in such other manner as the court may direct.
  - (2) Service of such a notice out of the jurisdiction is permissible without leave, and Order 11, rules 5, 6 and 8 shall apply in relation to such a notice as they apply in relation to a claim form.

## APPLICATION TO VARY OR SET ASIDE REGISTRATION

- Rule 18 |
- An application made in accordance with CPR Part 23 by the person against whom an order was made to vary or set aside the registration of an order must be made to a judge and be supported by witness statement or affidavit.

## ENFORCEMENT OF ORDER

- Rule 19 |
- (2) If an application is made under rule 18, an order shall not be enforced until after such application is determined.

## VARIATION, SATISFACTION AND DISCHARGE OF REGISTERED ORDER

- Rule 20 |
- Upon the court being notified by the applicant for registration that an order which has been registered has been varied, satisfied or discharged, particulars of the variation, satisfaction or discharge, as the case may be, shall be entered in the register.

## RULES TO HAVE EFFECT SUBJECT TO ORDERS IN COUNCIL

- Rule 21 |
- Rules 12 to 20 shall have effect subject to the provisions of the Order in Council made under section 37 or, as the case may be, of the Order in Council made under section 39.

## CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT 1990: EXTERNAL FORFEITURE ORDERS

- Rule 21A |
- The provisions of this Part of this order shall, with such modifications as are necessary and subject to the provisions of any Order in Council made under section 9 of the Criminal Justice (International Co-operation) Act 1990<sup>(168)</sup>, apply to proceedings for the registration and enforcement of external forfeiture orders as they apply to such proceedings in relation to external confiscation orders.

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(168) 1990 c.5.

For the purposes of this rule, an external forfeiture order is an order made by a court in a country or territory outside the United Kingdom which is enforceable in the United Kingdom by virtue of any such Order in Council.

## II. PART VI OF THE CRIMINAL JUSTICE ACT 1988<sup>(169)</sup>

### INTERPRETATION

#### Rule 22

- (1) In this Part of this order, 'the 1988 Act' means the Criminal Justice Act 1988 and a section referred to by number means the section so numbered in that Act.
- (2) Expressions which are used in this Part of this order which are used in the 1988 Act have the same meanings in this Part of this order as in the 1988 Act and include any extended meaning given by the Criminal Justice (Confiscation) (Northern Ireland) Order 1990.

### APPLICATION OF PART I OF ORDER 115

#### Rule 23

Part I of Order 115 (except rule 11) shall apply for the purposes of proceedings under Part VI of the 1988 Act with the necessary modifications and, in particular –

- (a) references to drug trafficking offences and to drug trafficking shall be construed as references to offences to which Part VI of the 1988 Act applies and to committing such an offence;
- (b) references to the Drug Trafficking Act 1994 shall be construed as references to the 1988 Act and references to sections 5(2), 26, 27, 29, 30(2), 17(1), 18, 18(5), 39 and 40 of the 1994 Act shall be construed as references to sections 73(6), 77, 78, 80, 81, 81(1), 83(1), 89, 89(5), 96 and 97 of the 1988 Act respectively;
- (c) rule 3(2) shall have effect as if the following sub-paragraphs were substituted for sub-paragraphs (a) and (b) –
  - '(a) state, as the case may be, either that proceedings have been instituted against the defendant for an offence to which Part VI of the 1988 Act applies (giving particulars of the offence) and that they have not been concluded or that, whether by the laying of an information or otherwise, a person is to be charged with such an offence;
  - (b) state, as the case may be, either that a confiscation order has been made or the grounds for believing that such an order may be made;'
- (d) rule 7 (3) shall have effect as if the words 'certificate issued by a magistrates' court or the Crown Court' were substituted for the words 'certificate issued by the Crown Court';
- (e) rule 8 shall have effect as if the following paragraph were added at the end –

(169) 1988 c.33.

- ‘(6) Where a receiver applies in accordance with CPR Part 23 for the variation of a confiscation order, the application notice shall be served, with any supporting evidence, on the defendant and any other person who may be affected by the making of an order under section 83 of the 1988 Act, not less than 7 days before the date fixed for the hearing of the application.’;
- (f) rule 11 shall apply with the necessary modifications where an application is made under section 93J of the 1988 Act for disclosure of information held by government departments.

### III: PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1989<sup>(170)</sup>

#### INTERPRETATION

Rule 24 | In this Part of this order –

- (a) ‘the Act’ means the Prevention of Terrorism (Temporary Provisions) Act 1989;
- (b) ‘Schedule 4’ means Schedule 4 to the Act; and
- (c) expressions used have the same meanings as they have in Part III of, and Schedule 4 to, the Act.

#### ASSIGNMENT OF PROCEEDINGS

- Rule 25 |
- (1) Subject to paragraph (2), the jurisdiction of the High Court under the Act shall be exercised by a judge of the Queen’s Bench Division or of the Chancery Division.
  - (2) The jurisdiction conferred on the High Court by paragraph 9 of Schedule 4 may also be exercised by a Master of the Queen’s Bench Division.

#### APPLICATION FOR RESTRAINT ORDER

- Rule 26 |
- (1) An application for a restraint order under paragraphs 3 and 4 of Schedule 4 may be made by the prosecutor by a claim form, which need not be served on any person.
  - (2) An application under paragraph (1) shall be supported by a witness statement or affidavit, which shall –
    - (a) state, as the case may be, either that proceedings have been instituted against a person for an offence under Part III of the Act and that they have not been concluded or that, whether by the laying of an information or otherwise, a person is to be charged with such an offence; and, in either case, give particulars of the offence;

(170) 1989 c.4.

- (b) state, as the case may be, that a forfeiture order has been made in the proceedings or the grounds for believing that such an order may be made;
  - (c) to the best of the witness's ability, give full particulars of the property in respect of which the order is sought and specify the person or persons holding such property and any other persons having an interest in it;
  - (d) where proceedings have not been instituted, verify that the prosecutor is to have the conduct of the proposed proceedings;
  - (e) where proceedings have not been instituted, indicate when it is intended that they should be instituted.
- (3) A claim form under paragraph (1) shall be entitled in the matter of the defendant, naming him, and in the matter of the Act, and all subsequent documents in the matter shall be so entitled.
  - (4) Unless the court otherwise directs, a witness statement or affidavit under paragraph (2) may contain statements of information or belief with the sources and grounds thereof.

## RESTRAINT ORDER

### Rule 27

- (1) A restraint order may be made subject to conditions and exceptions, including but not limited to conditions relating to the indemnifying of third parties against expenses incurred in complying with the order, and exceptions relating to living expenses and legal expenses of the defendant, but the prosecutor shall not be required to give an undertaking to abide by any order as to damages sustained by the defendant as a result of the restraint order.
- (2) Unless the court otherwise directs, a restraint order made without notice of it being served on any person shall have effect until a day which shall be fixed for the hearing where all parties may attend on the application.
- (3) Where a restraint order is made the prosecutor shall serve copies of the order and of the witness statement or affidavit in support on the defendant and on all other persons affected by the order.

## DISCHARGE OR VARIATION OF ORDER

### Rule 28

- (1) Subject to paragraph (2), an application to discharge or vary a restraint order shall be made in accordance with CPR Part 23.
- (2) Where the case is one of urgency, an application under this rule by the prosecutor may be made without notice.
- (3) The application and any witness statement or affidavit in support shall be lodged with the court and, where the application is made in accordance with CPR Part 23 the application notice shall be served on the following persons (other than the applicant) –

- (a) the prosecutor;
  - (b) the defendant; and
  - (c) all other persons restrained or otherwise affected by the order;
- not less than two clear days before the date fixed for the hearing of the application.
- (4) Where a restraint order has been made and has not been discharged, the prosecutor shall notify the court when proceedings for the offence have been concluded, and the court shall thereupon discharge the restraint order.
  - (5) Where an order is made discharging or varying a restraint order, the applicant shall serve copies of the order of discharge or variation on all persons restrained by the earlier order and shall notify all other persons affected of the terms of the order of discharge or variation.

## COMPENSATION

### Rule 29

An application for an order under paragraph 7 of Schedule 4 shall be made in accordance with CPR Part 23, and the application notice, shall be served, with any supporting evidence, on the person alleged to be in default and on the relevant authority under paragraph 7(5) not less than 7 days before the date fixed for the hearing of the application.

## APPLICATION FOR REGISTRATION

### Rule 30

An application for registration of a Scottish order, a Northern Ireland order or an Islands order must be made in accordance with CPR Part 23 and may be made without notice.

## EVIDENCE IN SUPPORT OF APPLICATION

### Rule 31

- (1) An application for registration of any such order as is mentioned in rule 30 must be supported by a witness statement or affidavit –
  - (a) exhibiting the order or a certified copy thereof; and
  - (b) which shall, to the best of the witness's ability, give particulars of such property in respect of which the order was made as is in England and Wales, and specify the person or persons holding such property.
- (2) Unless the court otherwise directs, a witness statement or affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

## REGISTER OF ORDERS

- Rule 32
- (1) There shall be kept in the Central Office under the direction of the Master of the Crown Office a register of the orders registered under the Act.
  - (2) There shall be included in such register particulars of any variation or setting aside of a registration, and of any execution issued on a registered order.

## NOTICE OF REGISTRATION

- Rule 33
- (1) Notice of the registration of an order must be served on the person or persons holding the property referred to in rule 31(1)(b) and any other persons appearing to have an interest in that property.
  - (2) Service of such a notice out of the jurisdiction is permissible without leave, and Order 11, rules 5, 6 and 8 shall apply in relation to such a notice as they apply in relation to a claim form.

## APPLICATION TO VARY OR SET ASIDE REGISTRATION

- Rule 34
- An application to vary or set aside the registration of an order must be made to a judge in accordance with CPR Part 23 and be supported by a witness statement or affidavit.

This rule does not apply to a variation or cancellation under rule 36.

## ENFORCEMENT OF ORDER

- Rule 35
- (2) If an application is made under rule 34, an order shall not be enforced until after such application is determined.
  - (3) This rule does not apply to the taking of steps under paragraph 5 or 6 of Schedule 4, as applied by paragraph 9(6) of that Schedule.

## VARIATION AND CANCELLATION OF REGISTRATION

- Rule 36
- If effect has been given (whether in England or Wales or elsewhere) to a Scottish, Northern Ireland or Islands order, or if the order has been varied or discharged by the court by which it was made, the applicant for registration shall inform the court and –
- (a) if such effect has been given in respect of all the money or other property to which the order applies, or if the order has been discharged by the court by which it was made, registration of the order shall be cancelled;

- (b) if such effect has been given in respect of only part of the money or other property, or if the order has been varied by the court by which it was made, registration of the order shall be varied accordingly.

## **RSC ORDER 116**

### **THE CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996<sup>(1)</sup>**

#### **APPLICATION**

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

#### **INTERPRETATION**

- Rule 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;
- “magistrates’ court” has the same meaning as in section 148 of the Magistrates’ Courts Act 1980<sup>(2)</sup>;
- “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.
- “witness” means a witness whose evidence is contained in a witness statement or affidavit filed under rule 5, 7, 8 or 9;

#### **ASSIGNMENT OF PROCEEDINGS**

- Rule 3** | The jurisdiction of the High Court under section 54(3) of the Act shall be exercised by a single judge.

(1) 1996 c. 25.  
(2) 1980 c. 43.

## TIME LIMIT FOR MAKING APPLICATION

- Rule 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<sup>(3)</sup>) or, as the case may be, rule 11 of the Crown Court Rules 1982<sup>(4)</sup>).

## APPLICATION

- Rule 5 |
- (1) An application under section 54(3) of the Act shall be made by claim form which shall be issued out of the Crown Office by the prosecutor.
  - (2) The application shall be accompanied by—
    - (a) a witness statement or 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

- Rule 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 witness statement or affidavit on which he intends to rely.

(3) S.I. 1968/1262.

(4) S.I. 1982/1109; the relevant amending instruments are S.I. 1988/952 and 1322.

## WITNESS STATEMENT OR AFFIDAVIT OF SERVICE ON AN ACQUITTED PERSON

- Rule 7 | The prosecutor shall, as soon as practicable after service of the notice under rule 6, file at the Crown Office a witness statement or affidavit of service which exhibits a copy of the notice.

## RESPONSE OF ACQUITTED PERSON

- Rule 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 a witness statement or 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

- Rule 9 |
- (1) A witness statement or affidavit filed under rule 5, 7, 8 of 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 for an order granting permission to file further evidence without notice being served on any other party.
  - (3) If the single judge grants permission, the order shall specify a period within which further 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

- Rule 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 witness.
  - (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 initiative 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 witness 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 initiative or on the application of the prosecutor or acquitted person, order a witness 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 filing the application under paragraph (3), serve a copy of it on the other party, and file in the Crown Office a witness statement or 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) a witness statement or 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 witness statement or 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 witness statement or affidavit of service has been filed and
  - (b) no representations under paragraph (8) have been received after the expiry of 7 days from the filing 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 witness for the other party to attend the hearing in order to be cross-examined, he must apply for an order under paragraph (5) giving his reasons without notice being served on any other party.
- (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 witness ordered to attend for cross-examination.
- (13) A hearing ordered under paragraph (3) above shall be in public 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.