
SCHEDULE 1 RSC ORDER 77

PROCEEDINGS BY AND AGAINST THE CROWN

Rule 1 Application and interpretation

- (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 1947¹, 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 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.

Rule 2 Transfer of proceedings

- (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.

Rule 3 Particulars to be included in claim form

- (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

¹ 1947 c.44.

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.

Rule 4 Service on the Crown

- (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.

Rule 6 Counterclaim and set-off

- (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.

Rule 7 Summary judgment

- (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.

Rule 8 Summary applications to the Court in certain revenue matters

- (1) This rule applies to applications under section 14 of the Crown Proceedings Act 1947¹.
- (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 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.

¹ 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.

- (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.

Rule 8A Joinder of Commissioners of Inland Revenue

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.

Rule 9 Judgment in default

- (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.

Rule 10 Third party notices

- (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.

Rule 11 Interpleader: application for order against Crown

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.

Rule 12 Disclosure and further information

- (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.

Rule 13 Place of trial

- (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.

Rule 14 Evidence

- (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.

Rule 15 Execution and satisfaction of orders

- (1) Nothing in—
- (a) CPR Parts 69 to 73; and
 - (b) Orders 45 to 47 and 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.

Rule 16 Attachment of debts, etc.

- (1) No order –
- (a) for the attachment of debts under CPR Part 72; or
 - (b) for the appointment of a sequestrator under Order 45; or
 - (c) for the appointment of a receiver under CPR Part 69,
- 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 1947¹ 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;

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

- (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
 - (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 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) CPR rule 72.8 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 that rule applies to an application under CPR rule 72.2 for a third party debt order, except that the court shall not have power to order enforcement to issue against the Crown.

Rule 17 Proceedings relating to postal packets

- (1) An application by any person under section 92 of the Postal Services Act 2000¹, 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.

Rule 18 Applications under sections 17 and 29 of Crown Proceedings Act

- (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.

¹ 1969 c.48.