

## 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 –
- (a) an individual authorised to act as an enforcement officer under the Courts Act 2003<sup>(1)</sup>; and
  - (b) 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.

<sup>1</sup> 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.

- (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>(1)</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

<sup>1</sup> 2003 c.39.

- (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 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;
    - (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 45

### ENFORCEMENT OF JUDGMENTS AND ORDERS: GENERAL

## INTERPRETATION

- Rule 1A | In this Order, and in RSC Orders 46 and 47 –
- (a) ‘enforcement officer’ means an individual who is authorised to act as an enforcement officer under the Courts Act 2003; and
  - (b) ‘relevant enforcement officer’ means –
    - (i) in relation to a writ of execution which is directed to an single enforcement officer, that officer;
    - (ii) in relation to a writ of execution which is directed to two or more enforcement officers, the officer to whom the writ is allocated.

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

- Rule 1 | (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.

## NOTICE OF SEIZURE

- Rule 2 | When first executing a writ of fieri facias, the Sheriff or his officer or the relevant enforcement 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 proceedings by a mortgagee or mortgagor or by any person having the right to foreclose or redeem any mortgage, being proceedings in which there is a claim for –
  - (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 person who is alleged to be in possession of the property;
  - (e) redemption;
  - (f) reconveyance of the land or its release from the security; or
  - (g) delivery of possession by the mortgagee.
- (2A) In paragraph (2) ‘mortgage’ includes a legal or equitable mortgage and a legal or equitable charge, and reference to a mortgagor, a mortgagee and mortgaged land is to be interpreted accordingly.
- (3) Such permission as is referred to in paragraph (2) 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>(1)</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.

<sup>1</sup> 1954 c.56.

## 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>(1)</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.
- (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

<sup>1</sup> 1869 c.62; 1878 c.54.

- (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 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.

## 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.

### 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.

## 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>(1)</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 –
    - (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;

<sup>1</sup> 1951 c.65.

- (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.

## 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>(1)</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.

<sup>1</sup> 1978 c.33.

- (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 or the relevant enforcement officer 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 or relevant enforcement officer.
- (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 or the relevant enforcement officer 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 or enforcement officer 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 or enforcement officer 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.

## 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 or enforcement officer 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 or the district of the relevant enforcement officer 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 paragraph 10 of Schedule 7 to the Courts Act 2003 that a sale of goods seized under an execution may be made otherwise than by public auction may be made on the application of –
  - (a) the person at whose instance the writ of execution under which the sale is to be made was issued;
  - (b) the person against whom that writ was issued (in this rule referred to as ‘the judgment debtor’);
  - (c) if the writ was directed to a sheriff, that sheriff; and
  - (d) if the writ was directed to one or more enforcement officers, the relevant enforcement officer.
- (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 or enforcement officer, the sheriff or enforcement officer must, on the demand of the applicant, send to the applicant a list stating –
  - (a) whether he has notice of the issue of another writ or writs of execution against the goods of the judgment debtor; and
  - (b) so far as is known to him, the name and address of every creditor who has obtained the issue of another such writ of execution,
 and where the sheriff or enforcement officer 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 list under paragraph (3).

- (5) Service of the application notice on a person named in the list under paragraph (3) is notice to him for the purpose of paragraph 10(3) of Schedule 7 to the Courts Act 2003.

(Paragraph 10(3) provides that if the person who seized the goods has notice of another execution or other executions, the court must not consider an application for leave to sell privately until the notice prescribed by Civil Procedure Rules has been given to the other execution creditor or creditors)

- (6) The applicant must produce the list under paragraph (3) 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 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 –
  - (a) on an application under section 88 of the Charities Act 1993<sup>(1)</sup>, by a single judge of the Chancery Division; and
  - (b) in any other case, 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.

<sup>1</sup> 1993 c.10.

- (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>(1)</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.

<sup>1</sup> 1983 c.20.

- (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.
- (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.

## WARRANT FOR ARREST

### Rule 7A

A warrant for the arrest of a person against whom an order of committal has been made shall not, without further order of the court, be enforced more than 2 years after the date on which the warrant is issued.

## 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 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 62  
COSTS

APPENDIX 3

FIXED COSTS

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

- 1
- (1) Where the claim is for the possession of land, and the claimant obtains judgment –  

(a) under CPR Part 12 (default judgment); or  
(b) 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 45, rule 3(2), 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 in 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>(1)</sup>, there shall be allowed –

Costs of registration

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

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

Where notice of the proceedings has been given to more than one person, in respect of each additional person

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

## 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).

<sup>1</sup> 1982 c.27.

## 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>(1)</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 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.

1 1947 c.44.

- (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>(1)</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 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.

<sup>1</sup> 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.

- (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 –
  - (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.

## ATTACHMENT OF DEBTS, ETC.

### Rule 16

- (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 1947<sup>(1)</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

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



- (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
  - (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.

## PROCEEDINGS RELATING TO POSTAL PACKETS

- Rule 17
- (1) An application by any person under section 92 of the Postal Services Act 2000<sup>(1)</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.

1 1969 c.48.

- (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.
- (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>(1)</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.
- (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 justices' chief executive for 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>(2)</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 –

<sup>1</sup> 1976 c.63; section 3(8) was amended by the Criminal Law Act 1977 (c.45), section 65(4), Schedule 12.

<sup>2</sup> 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.

(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 justices' chief executive for 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 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 justices' chief executive for 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 a quashing order, 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>(1)</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.

<sup>1</sup> 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.

- (14) In the case of a person whose return or surrender is sought under the Extradition Act 1989<sup>(1)</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.

## 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.

1 1989 c.33.

- (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 Section III of CPR Part 6, 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 CPR rule 72.2, 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 interim third party debt order under CPR rule 72.4(2) 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 rules 72.2 or 72.4(2) 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>(1)</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.

<sup>1</sup> 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.



- (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.

### **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>(1)</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>(2)</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.

#### **PROCEEDINGS UNDER THE TRUSTEE ACT 1925<sup>(1)</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>(4)</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).

1 1870 c.71.

2 1906 c.55.

1 1925 c.19.

4 1936 c.2.

## 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>(1)</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>(2)</sup>, shall be heard and determined by a Divisional Court of the Chancery Division.

## PROCEEDINGS UNDER THE COMMONS REGISTRATION ACT 1965<sup>(3)</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.

## PROCEEDINGS UNDER SECTION 21 OR 25 OF THE LAW OF PROPERTY ACT 1969<sup>(4)</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>(5)</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.
  - (2) 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>(6)</sup> AND THE CONTROL OF MISLEADING ADVERTISEMENTS REGULATIONS 1988<sup>(7)</sup>

- Rule 19 | (1) Proceedings to which this rule applies shall be assigned to the Chancery Division and may be begun by claim form.

1 1922 c.16; paragraph 16 was amended by the Law of Property (Amendment) Act 1924 (c. 5), section 2, Schedule 2.

2 1925 c.21.

3 1965 c.65.

4 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.

5 1982 c.16; section 86 was amended by the Merchant Shipping Act 1995 (c.21), section 314(2), Schedule 13, paragraph 64.

6 1973 c.41.

7 S.I. 1988/915.

- (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 THE FINANCIAL SERVICES AND MARKETS ACT 2000<sup>(1)</sup>

### Rule 22

- (1) In this rule ‘the Act’ means the Financial Services and Markets Act 2000 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 applications for a mandatory order) 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 Financial Services Authority under section 367.
- (4) Where there is a question of the construction of any rule or other instrument made by or with the approval or consent of the Financial Services Authority under the Act, that Authority may make representations to the court.

## 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 –

<sup>1</sup> 2000 c.60.

- (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>(1)</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>(2)</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>(3)</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>(4)</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;
  - (e) if the application relates to a scheme to which Schedule 32 to the Local Government, Planning and Land Act 1980<sup>(5)</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>(6)</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.

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1 1985 c.68.

2 1980 c.66.

3 1990 c.8.

4 1961 c.33.

5 1980 c.65.

6 1984 c.27.

## 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.

## 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>(1)</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.

1 1914 c.47.

- (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.

## TRIBUNALS AND INQUIRIES ACT 1992<sup>(1)</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<sup>(b)</sup> and is dissatisfied in point of law with the decision of the tribunal may appeal to the High Court.
- (2) The appellant's notice must be served –
  - (a) on the chairman of the tribunal;
  - (b) in the case of a tribunal which has no chairman or member who acts as a chairman, on the member or members of that tribunal; or
  - (c) in the case of any such tribunal as is specified in paragraph 16 of Schedule 1 to the said Act of 1992, on the secretary of the tribunal.
- (3) Where an appeal is against the decision of the tribunal constituted under section 46 of the National Health Service Act 1977<sup>(2)</sup> the appellant's notice must be filed at the High Court within 14 days after the date of that decision.
- (4) Where an appeal is against the decision of a tribunal established under section 1 of the Employment Tribunals Act 1996<sup>(3)</sup> the appellant's notice must be filed at the High Court within 42 days after the date of that decision.

## 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.

<sup>1</sup> 1992 c.53.

<sup>2</sup> 1977 c.49.

<sup>3</sup> 1996 c.17; see section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c.8)

- (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.

**APPLICATIONS FOR PERMISSION UNDER SECTION 289(6) OF THE TOWN AND COUNTRY PLANNING ACT 1990<sup>(1)</sup> AND SECTION 65(5) OF THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990<sup>(2)</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 appellant's notice, 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 appellant's notice 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.

<sup>1</sup> 1990 c.8.

<sup>2</sup> 1990 c.9.



- (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
  - (c) the appellant's notice 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 appellant's notice 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.
  - (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>(1)</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>(2)</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.

<sup>1</sup> 1988 c.13.

<sup>2</sup> 1981 c.54.

- (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.

## RSC ORDER 95

### BILLS OF SALE ACTS 1878<sup>(1)</sup> AND 1882<sup>(2)</sup> AND THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT 1967<sup>(3)</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.

1 1878 c.31.

2 1882 c.43.

3 1967 c.48.

- (3) Where paragraph (1A) does not apply, the claim form 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.

## 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>(1)</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>(2)</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.

<sup>1</sup> 1967 c.48.

<sup>2</sup> 1986 c.45.

- (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.
- (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>(1)</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>(2)</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 –

<sup>1</sup> 1966 c.4.

<sup>2</sup> 1949 c.11.

- (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
  - (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 106

### PROCEEDINGS RELATING TO SOLICITORS: THE SOLICITORS ACT, 1974<sup>(1)</sup>

## INTERPRETATION

- Rule 1 | (1) In this order –

1 1974 c.47.

‘the Act’ means the Solicitors Act 1974 and a section referred to by number means the section so numbered in that Act;

‘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 appellant's notice 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) The appellant's notice must be filed at the court within 14 days after the date on which a statement of the tribunal's findings was filed pursuant to section 48(1)<sup>(1)</sup>.

## LAW SOCIETY TO PRODUCE CERTAIN DOCUMENTS

- Rule 13 |
- (1) Within 7 days after being served with the appellant's notice 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

1 Solicitors Act 1974 (c.47)

(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 appellant's notice 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 109

### THE ADMINISTRATION OF JUSTICE ACT 1960<sup>(1)</sup>

## APPLICATIONS UNDER ACT

**Rule 1** (1) Any of the following applications, that is to say –

<sup>1</sup> 1960 c.65.

- (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.

## 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.
- (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.

## RELEASE OF APPELLANT ON BAIL BY THE COURT OF APPEAL

### Rule 4

- (1) Where, in the case of an appeal under section 13 of the Administration of Justice Act 1960<sup>(1)</sup>, 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 of decision the appeal is brought unless the order or decision is reserved by that judgment.
- (2) An application for the release of a person under paragraph (1) 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.

<sup>1</sup> 1960 c.65; section 13 was amended by the Courts Act 1971 (c.23), Schedule 8, paragraph 40, and Schedule 11, Part II; by the County Courts Act 1984 (c.28), Schedule 2, paragraph 25; by the Magistrates' Courts Act 1980 (c.43), section 154, Schedule 7, paragraph 37; by the Criminal Appeal Act 1968 (c.19), Schedule 5; and by the Supreme Court Act 1981 (c.54), Schedule 7.

- (3) Order 79, rules 9 (6), (6A) 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.
- (4) 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>(1)</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 is aforesaid must be in Form 98 in the relevant Practice Direction with the necessary adaptations.
- (5) Where in pursuance of an order of the Court of Appeal under paragraph (4) 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 justices' chief executive for 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.
- (6) The powers conferred on the Court of Appeal by paragraphs (1), (3) and (4) of this rule may be exercised by a single judge.

## 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>(2)</sup>;
  - (b) section 44A of the Planning (Listed Buildings and Conservation Areas) Act 1990<sup>(3)</sup>; or
  - (c) section 26AA of the Planning (Hazardous Substances) Act 1990<sup>(4)</sup>

1 1980 c.43.

2 1990 c.8.

3 1990 c.9.

4 1990 c.10.(162) 1969 c.46.

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 112

### APPLICATIONS FOR USE OF SCIENTIFIC TESTS IN DETERMINING PARENTAGE

#### INTERPRETATION

##### Rule 1

In this order –

- ‘the Act’ means Part III of the Family Law Reform Act 1969<sup>(1)</sup>;
- ‘bodily samples’ and ‘scientific tests’ have the meanings assigned to them by section 25 of the Act;
- ‘direction’ means a direction for the use of scientific tests under section 20(1) of the Act;
- ‘the court officer’ means the officer of the court who draws up a direction.

<sup>1</sup> 1969 c.46.

## 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 bodily 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>(1)</sup> and incapable of understanding the nature and purpose of scientific 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.

## ADDITION AS A PARTY OF PERSON TO BE TESTED

- Rule 4
- Where an application is made for a direction involving the taking of bodily 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 bodily 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 bodily samples.

1 1983 c.20.

**RSC ORDER 113****SUMMARY PROCEEDINGS FOR POSSESSION OF LAND****WRIT OF POSSESSION****Rule 7**

- (1) Order 45, rule 3(2) shall not apply in relation to an order for possession in a possession claim against trespassers under Part 55 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.

**RSC ORDER 115****CONFISCATION AND FORFEITURE IN CONNECTION WITH CRIMINAL PROCEEDINGS****I. DRUG TRAFFICKING ACT 1994<sup>(1)</sup> AND CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT 1990<sup>(2)</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.

<sup>1</sup> 1994 c.37.

<sup>2</sup> 1990 c.5.



## 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;
  - (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 CPR rule 73.5(1)(c) to (e) 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 CPR Part 69 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) Permission is not required to serve such a notice out of the jurisdiction and CPR rules 6.24, 6.25 and 6.29 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>(1)</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.

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>(2)</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;

1 1990 c.5.

2 1988 c.33.

- (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 –
  - (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: TERRORISM ACT 2000<sup>(1)</sup>

#### INTERPRETATION

##### Rule 24

In this Part of this order –

- (a) ‘the Act’ means the Terrorism Act 2000;
- (b) ‘Schedule 4’ means Schedule 4 to the Act;
- (ba) ‘the prosecutor’ means the person with conduct of proceedings which have been instituted in England and Wales for an offence under any of sections 15 to 18 of the Act, or the person who the High Court is satisfied will have the conduct of any proceedings for such an offence; and
- (c) other expressions used have the same meanings as they have in 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.

<sup>1</sup> 2000 c.11.

## APPLICATION FOR RESTRAINT ORDER

### Rule 26

- (1) An application for a restraint order under paragraph 5 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 –
    - (i) that proceedings have been instituted against a person for an offence under any of sections 15 to 18 of the Act and that they have not been concluded; or
    - (ii) that a criminal investigation has been started in England and Wales with regard to such an offence,
 and in either case give details of the alleged or suspected offence and of the defendant's involvement;
  - (b) where proceedings have been instituted, 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;
  - (ba) where proceedings have not been instituted –
    - (i) indicate the state of progress of the investigation and when it is anticipated that a decision will be taken on whether to institute proceedings against the defendant;
    - (ii) state the grounds for believing that a forfeiture order may be made in any proceedings against the defendant; and
    - (iii) verify that the prosecutor is to have the conduct of any such proceedings;
  - (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.
- (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 the application for 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 unless the court otherwise orders, 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 9 or 10 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 person or body by whom compensation, if ordered, will be payable under paragraph 9(6) or 10(4) 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 Administrative Court 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) Permission is not required to serve such a notice out of the jurisdiction and CPR rules 6.24, 6.25 and 6.29 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 7 or 8 of Schedule 4, as applied by paragraph 13(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.

## IV. INTERNATIONAL CRIMINAL COURT ACT 2001: FINES, FORFEITURES AND REPARATION ORDERS

### INTERPRETATION

### Rule 37

In this Part of this Order –

- (a) “the Act” means the International Criminal Court Act 2001<sup>(1)</sup>;
- (b) “the ICC” means the International Criminal Court;
- (c) “an order of the ICC” means –
  - (i) a fine or forfeiture ordered by the ICC; or
  - (ii) an order by the ICC against a person convicted by the ICC specifying a reparation to, or in respect of, a victim.

## REGISTRATION OF ICC ORDERS FOR ENFORCEMENT

### Rule 38

- (1) An application to the High Court to register an order of the ICC for enforcement, or to vary or set aside the registration of an order, may be made to a judge or a Master of the Queen’s Bench Division.
- (2) Rule 13 and rules 15 to 20 in Part I of this Order shall, with such modifications as are necessary and subject to the provisions of any regulations made under section 49 of the Act, apply to the registration for enforcement of an order of the ICC as they apply to the registration of an external confiscation order.

<sup>1</sup> 2001 c.17.

**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.

**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

1 1996 c. 25.

2 1980 c. 43.



- (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>(1)</sup> or, as the case may be, rule 11 of the Crown Court Rules 1982<sup>(2)</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.

## 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.

<sup>1</sup> S.I. 1968/1262.

<sup>2</sup> S.I. 1982/1109; the relevant amending instruments are S.I. 1988/952 and 1322.

## 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' chief executive; or
  - (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.

