

**1971 No. 2127 (L.52)**
**COUNTY COURTS**
**PROCEDURE**
**The County Court (Amendment No. 3) Rules 1971**

<i>Made</i> - - -	21st December 1971
<i>Coming into Operation</i>	
<i>All provisions except Rule 11(4)</i>	24th January 1972
<i>Rule 11(4)</i>	1st March 1972

**1.—(1)** These Rules may be cited as the County Court (Amendment No. 3) Rules 1971.

(2) In these Rules an Order and Rule referred to by number means the Order and Rule so numbered in the County Court Rules 1936(a), as amended (b), and a form referred to by number means the form so numbered in Appendix A to those Rules.

(3) The Interpretation Act 1889(c) shall apply for the interpretation of these Rules as it applies for the interpretation of an Act of Parliament.

**2.** Paragraph (9) of Order 5, Rule 19, shall be omitted.

**3.** The following Rule shall be added at the end of Order 13 :—

Juries “14.—(1) An application for an order for trial with a jury may be made by any party on notice stating the grounds of the application.

(2) Notice of the application shall, if time allows, regard being had to the date of service of the summons, be given not less than 10 clear days before the return day.

(3) Where notice of the application is given less than 10 clear days before the return day or where for that or any other reason the application is not heard in time for a jury to be summoned, the judge or registrar may, on such terms as he thinks fit, postpone the trial so as to allow time for a jury to be summoned.

(4) The judge may from time to time give the registrar directions as to whether the application is to be heard by the judge or the registrar in every case or in any particular case or class of case.

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(a) S.R. & O. 1936/626 (1936 I, p. 282).

(b) The relevant amending instruments are S.R. & O. 1938/731, S.I. 1950/1231, 1993, 1952/2198, 1954/1394, 1955/1799, 1959/1251, 1960/1275, 1964/353, 1974, 1965/2147, 1969/585, 1970/204, 1971/836 (1938 I, p. 986; 1950 I, pp. 400, 440; 1952 I, p. 635; 1954 I, p. 526; 1955 I, p. 530; 1959 I, p. 795; 1960 I, p. 809; 1964 I, p. 543, III, p. 4477; 1965 III, p. 6292; 1969 I, p. 1551; 1970 I, p. 911; 1971 II, p. 2393).

(c) 1889 c. 63.

(5) Notice of an order for trial with a jury shall be communicated by the registrar to any party who was not present or represented at the hearing of the application.

(6) Where an order for trial with a jury has been made, but the proceedings are withdrawn or settled before the return day, it shall be the duty of the party at whose instance the order was made to inform the registrar."

**4. Order 16 shall be amended as follows :—**

- (1) Rule 12 shall be revoked except in relation to any proceedings transferred to a county court before 1st January 1972.
- (2) Rule 13 shall be amended as follows :—
  - (a) In paragraph (1) the words "or a widow" shall be omitted and for the words "guardian *ad litem* or widow" there shall be substituted the words "or guardian *ad litem*".
  - (b) In paragraph (4) for the words "person of unsound mind or widow" there shall be substituted the words "or person of unsound mind", and the proviso shall be omitted.
- (3) In Rule 15 for the words "guardian *ad litem* or widow" there shall be substituted the words "or guardian *ad litem*".

**5. Order 21 shall be revoked.**

**6. In Order 25, Rule 92(2), the words "or 95" shall be omitted.**

**7. The following Rule shall be added at the end of Order 27:-**

Exercise of powers by registrar "20. The powers conferred on the judge by Rules 7(4), (5) and (6), 9(1) and 16 and (where the judgment debtor does not appear) by Rule 8 of this Order may be exercised by the registrar."

**8. Order 34 shall be amended as follows :—**

- (1) Rule 4 shall be revoked.
- (2) In Rule 6 the words "Section 95 or" shall be omitted.

**9. Order 36 shall be amended as follows :—**

- (1) Rule 1 shall be revoked.
- (2) For Rule 2 there shall be substituted the following Rule :—
 

Parties to action for revocation "2. Every person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant of probate of his will or letters of administration shall be made a party to any action brought in a county court for revocation of the grant."
- (3) In Rule 4 for the words "intervene and appear" there shall be substituted the words "apply to be added as a defendant".
- (4) In Rule 6 for the words "the plaintiff and the defendant and any party intervening" there shall be substituted the words "each party".

- (5) In Rule 9 for the words “of the Probate Division of the High Court” there shall be substituted the words “of the High Court relating to probate causes and matters”.

10. In Order 45A, Rule 8(2), for the words “Principal Probate Registry” there shall be substituted the words “Principal Registry of the Family Division”.

11. The following amendments shall be made in Order 46:—

(1) Rule 1 shall be amended as follows:—

(a) For the heading there shall be substituted the following:—

“GUARDIANSHIP OF MINORS ACT 1971”.

(b) In paragraph (1) for the words “Guardianship of Infants Act 1886 and 1925” there shall be substituted the words “Guardianship of Minors Act 1971” and in the margin there shall be inserted the note “1971 c.3”.

(c) In paragraph (2) for the words from “paragraph (2A)” to “an infant” there shall be substituted the words “section 5 of the said Act for the appointment of the applicant to be the guardian of a minor”, and the marginal note “15 & 16 Geo. 5, c.45” shall be omitted.

(2) Rule 8 shall be amended as follows:—

(a) In paragraph (1) after the words “section 2” there shall be inserted the words “or, as the case may be, section 3A”.

(b) In paragraph (2) after the words “section 1” there shall be inserted the words “or section 3(2) or (3)”.

(c) In paragraph (4) after the words “section 2(1)” there shall be inserted the words “or section 3A(1)”, and after the words “section 1” there shall be inserted the words “or section 3(2)”.

(3) The following Rule shall be added after Rule 21:—

“THE INDUSTRIAL RELATIONS ACT 1971

22. In deciding whether to stay proceedings in tort under section 1971 c. 72. 131 of the Industrial Relations Act 1971, the court shall take into account all relevant circumstances, including the question whether, notwithstanding that the proceedings are framed in tort, the complaint is in substance one of an unfair industrial practice within the meaning of that Act, or whether the matters in issue in the proceedings are for any other reason more suitable to be determined by the National Industrial Relations Court or an industrial tribunal than by the appropriate mode of trial in the county court (including, where applicable, trial with a jury).”

(4) The following Rule shall be added at the end of Order 46:—

“PART III OF THE FAMILY LAW REFORM ACT 1969

23.—(1) In this Rule—

1969 c. 46. “the Act” means Part III of the Family Law Reform Act 1969;

“blood samples” and “blood tests” have the meanings assigned to them by section 25 of the Act;

“direction” means a direction for the use of blood tests under section 20(1) of the Act.

(2) Except with the leave of the court, an application in any proceedings for a direction shall be made on notice to every party to the proceedings (other than the applicant) and to any other person from whom the direction involves the taking of blood samples.

(3) Where an application is made for a direction involving the taking of blood samples from a person who is not a party to the proceedings in which the application is made, the notice of application shall be served on him personally and the court may at any time direct him to be made a party to the proceedings.

(4) Where an application is made for a direction in respect of a person (in this paragraph referred to as a person under disability) who is either—

(a) under 16, or

1959 c. 72 (b) suffering from mental disorder within the meaning of the Mental Health Act 1959 and incapable of understanding the nature and purpose of blood tests,

- ♦ the notice of application 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.

(5) Where the court gives a direction in any proceedings, the registrar shall send a copy to every party to the proceedings and to every other person from whom the direction involves the taking of blood samples and, unless otherwise ordered, the proceedings shall stand adjourned until the court receives a report pursuant to the direction.

(6) On receipt by the court of a report made pursuant to a direction, the registrar shall send a copy to every party to the proceedings and to every other person from whom the direction involved the taking of blood samples.”

**12.** The following paragraph shall be added at the end of Order 47, Rule 30 :—

“(6) Rule 21(4) of this Order shall apply to an application for a certificate under paragraph (5) of this Rule as it applies to an application for a certificate under that Rule.”

**13.** Forms 123, 124, 125, 126, 127, 263 and 276 shall be omitted.

**14.** In Form 278 for the words “Section 95 [*or* 84]” and “juror [*or* witness]” there shall be substituted the words “section 84” and “witness” respectively.

**15.** In Form 309 the words “the Probate, Divorce and Admiralty Division of” and “the said division of” shall be omitted.

**16.** In Forms 329 and 370 for the words “Probate, Divorce and Admiralty” there shall in each case be substituted the word “Family”.

We, the undersigned members of the Rule Committee appointed by the Lord Chancellor under section 102 of the County Courts Act 1959(a) having by virtue of the powers vested in us in this behalf made the foregoing Rules, do hereby certify the same under our hand and submit them to the Lord Chancellor accordingly.

*D. O. McKee.*  
*Conolly H. Gage.*  
*H. S. Ruttle.*  
*David Pennant.*  
*W. Granville Wingate,*  
*W. Ralph Davies.*  
*E. A. Everett.*  
*K. W. Mellor.*  
*M. J. P. Macnair.*  
*D. A. Marshall.*  
*E. W. Sankey.*

I allow these Rules, which shall come into operation on 24th January 1972, with the exception of Rule 11(4) which shall come into operation on 1st March 1972.

Dated 21st December 1971.

*Hailsham of St. Marylebone, C.*

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#### EXPLANATORY NOTE

*(This Note is not part of the Rules.)*

The amendments made by these Rules are mainly consequential on a number of recent statutes. The provisions of the Law Reform (Miscellaneous Provisions) Act 1971 (c.43) relating to the limitation of actions and the control of widows' damages are dealt with in Rules 2, 4(2) and (3) and 11(2). The matters to be taken into account in deciding whether to stay proceedings in tort under section 131 of the Industrial Relations Act 1971 are defined by Rule 11(3) and blood tests under the Family Law Reform Act 1969 are provided for by Rule 11(4). Changes in the law relating to the summoning of juries and the abolition of the Salford Hundred Court effected by the Courts Act 1971 (c.23) necessitate the amendments made by Rules 3, 4(1), 8, 13 and 14. Other provisions result from the reorganisation of the High Court under the Administration of Justice Act 1970 (c.31) (Rules 9, 10, 15 and 16), the consolidation of enactments by the Guardianship of Minors Act 1971 (c.3) (Rule 11(1)) and the abolition of distress damage feasant under the Animals Act 1971 (c.22) (Rule 13).

Rule 7 enables uncontested garnishee proceedings to be heard by the registrar and Rule 12 provides for the allowance of an increased fee for an expert witness after the day of trial or where an action does not go to trial.

SI 1971/2127  
ISBN 0-11-012127-9



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