

1956/81



THE MAGISTRATES' COURTS RULES 1948, AMENDMENT  
NO. 2

H. E. BARROWCLOUGH, Administrator of the Government  
ORDER IN COUNCIL

At the Government House at Wellington this 6th day of June 1956

Present:

HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT IN COUNCIL  
PURSUANT to the Magistrates' Courts Act 1947, His Excellency the  
Administrator of the Government, acting by and with the advice and  
consent of the Executive Council, hereby makes the following rules.

RULES

1. (1) These rules may be cited as the Magistrates' Courts Rules 1948, Amendment No. 2, and shall be read together with and deemed part of the Magistrates' Courts Rules 1948\* (hereinafter referred to as the principal rules).

(2) These rules shall come into force on the fourteenth day after the date of their notification in the *Gazette*.

2. Rule 18 of the principal rules is hereby amended by adding to subclause (4) the following proviso:

"Provided that where any order is made at a place other than the Court of filing the Magistrate may, instead of signing an entry in the minute book, sign a minute of the order on the plaint note or application, and the Registrar of the Court of filing shall then make an entry in the minute book, including therein the name of the Magistrate, and shall sign the entry."

3. Rule 19 of the principal rules is hereby amended by adding to subclause (2) the following proviso:

"Provided that where judgment is delivered at a place other than the Court of filing the Magistrate may, instead of signing an entry in the civil record book, sign a minute of the judgment on the plaint note, and the Registrar of the Court of filing shall then make an entry in the civil record book, including therein the name of the Magistrate, and shall sign the entry."

4. Rule 26 of the principal rules is hereby amended by revoking subclause (3), and substituting the following subclause:

\*S.R. 1948/197  
Amendment No. 1: S.R. 1952/242

“(3) Where a plaintiff desires to commence an action by virtue of subclause (1) (b) of this rule he shall include in the plaint note a certificate that the Court is the nearest Court to the place where the cause of action or a material part thereof arose.”

5. (1) Rule 73 of the principal rules is hereby amended by revoking paragraphs (d) and (e) of subclause (2), and substituting the following paragraph:

“(d) To recover any interest, except in any case to which subclause (3) of this rule applies.”

(2) The said rule 73 is hereby further amended by adding the following subclauses:

“(3) A default action may be brought to recover interest payable pursuant to any instrument, if the rate of interest payable under the instrument does not exceed ten per cent per annum.

“(4) Where a default action is brought under subclause (3) of this rule the statement of claim shall be a separate document filed pursuant to subclause (1) of rule 74 hereof, and there shall be included in it a statement that the interest claimed is payable pursuant to an instrument, which shall be specified in the statement of claim, and that the true rate of interest so payable does not exceed ten per cent per annum. The statement of claim shall be signed by the plaintiff or by his solicitor.

“(5) Where a default action is brought under subclause (3) of this rule, the Registrar may in his discretion, notwithstanding that the defendant does not file a notice of intention to defend, set the action down for hearing. In any such case the Registrar shall give to the plaintiff and the defendant not less than seven days' notice, in form 28, of the day fixed for the hearing, and thereafter the action shall be continued in all respects as an ordinary action.

“(6) For the purposes of this rule, money payable under any hire-purchase agreement within the meaning of the Hire Purchase Agreements Act 1939 shall be deemed to include interest if the total amount payable under the agreement exceeds the price at which the purchaser of the goods to which the agreement relates could, at the time of the agreement, have purchased the goods from the vendor for cash; and the difference between the total amount payable under the agreement and such cash price as aforesaid shall be deemed to be interest payable pursuant to the agreement.”

6. (1) Rule 74 of the principal rules is hereby amended by inserting, after subclause (1), the following subclauses:

“(1A) Notwithstanding anything in paragraph (b) of subclause (1) of this rule, but subject to rule 73 hereof, in a default action the plaintiff may include his statement of claim in the summons instead of filing a separate statement of claim.

“(1B) The plaintiff shall state his address for service at the foot of the statement of claim or at the foot of the summons.”

(2) Subclause (2) of the said rule 74 is hereby amended as follows:

(a) By omitting the words “the last preceding subclause”, and substituting the words “the foregoing provisions of this rule”:

(b) By inserting at the beginning of paragraph (c), before the word “Annex”, the words “Where a separate statement of claim is filed”.

(3) Rule 77 of the principal rules is hereby amended by revoking subclause (6).

(4) Form 16 in the Second Schedule to the principal rules is hereby amended by adding to the first paragraph of that form, after the words "the statement of claim annexed hereto", the words "(or the amount of £..... (being the balance of £.....) for [Set out particulars of claim in accordance with Part VIII of rules])."

7. The principal rules are hereby amended by revoking rule 84, and substituting the following rule:

"84. Except as otherwise provided by these rules, the Registrar shall serve or cause to be served all summonses to defendants. He may also in his discretion, and shall on the direction of a Magistrate, serve or cause to be served any other document required for the purposes of any proceedings in a Magistrate's Court."

8. Rule 146 of the principal rules is hereby amended by inserting, after subclause (1), the following subclause:

"(1A) Where all the parties to the proceedings desire an adjournment, the application shall be deemed to be sufficiently made if there is filed with or sent to the Registrar a request in writing signed by the parties, or signed by one party stating in the request that the other parties consent."

9. Rule 233 of the principal rules is hereby amended by adding the following as subclause (2) thereof:

"(2) Where an application to fix security for appeal is made on notice, the amount for which security is to be given may be fixed by the Registrar."

10. (1) The principal rules are hereby further amended by inserting, after rule 239, the following heading and rule:

*"Change of Name, etc., of Party After Judgment*

"239A. Where the name, address, or occupation of any party to any judgment or order, as given in any application for any process for the enforcement of the judgment or order, differs from the name, address, or occupation in the judgment or order, and the applicant satisfies the Registrar that the amended name, address, or occupation is applicable to that party, both names, addresses, or occupations, as the case may require, shall be specified in the process applied for."

(2) Rule 245 of the principal rules is hereby consequentially amended by revoking subclause (4).

11. Rule 255 of the principal rules is hereby amended by adding the following subclauses:

"(5) Subject to the provisions of subclause (6) of this rule, no execution may be had on a warrant after a return has been made in accordance with the foregoing provisions of this rule.

"(6) Where, after a warrant has been returned in accordance with subclause (2) or subclause (3) of this rule, a Magistrate is satisfied—

"(a) That there are reasonable grounds to believe that there are in the possession or under the control of the execution debtor, or of any person on his behalf, goods on which distress could have been levied under the warrant; and

"(b) That no bankruptcy petition based on the execution or on the return has been filed,

the Magistrate may in his discretion, unless pursuant to rule 247 hereof the warrant would have expired, order that execution be levied under the warrant on any goods referred to or specified in the order, being goods on which distress could have been levied as aforesaid; and on the

making of the order the warrant shall continue in force for the purposes of the order and shall have the same duration and the same priority in respect of execution as it had under these rules when it was originally issued."

12. (1) The principal rules are hereby further amended by revoking rule 313, and substituting the following rule:

"313. (1) The fees to be taken in respect of proceedings under these rules shall be those specified in the Third Schedule hereto; and all such fees, with the exception of those mentioned in the proviso to section 113 (2) of the Act, shall be prepaid.

"(2) Subject to the provisions of subclause (3) of this rule, with respect to any proceedings taken in any Magistrate's Court or before any Magistrate under or by virtue of any enactment other than the Act, the following provisions shall apply:

"(a) If the enactment prescribes the fee payable in respect thereof, that fee shall be taken instead of any fee that would otherwise be payable in respect thereof under these rules:

"(b) If the enactment contains no provision for the payment of any fee in respect thereof, or provides that no fee shall be payable, no fee shall be taken under these rules in respect thereof.

"(3) The appropriate fees specified in the Third Schedule hereto shall be payable in respect of proceedings under section 152 of the Property Law Act 1952 (which relates to the service of notices)."

(2) The principal rules are hereby further amended by revoking the Third Schedule, and substituting the new Third Schedule set out in the Schedule to these rules.

(3) The new Third Schedule substituted by this rule shall apply in respect of any proceedings commenced on or after the date of the coming into force of these rules.

(4) In respect of any proceedings commenced before the date of the coming into force of these rules, no further fees shall be payable under the Schedule hereby revoked, and the appropriate fees, if any, set out in the new Third Schedule substituted by this rule shall be payable in respect of any step in the proceedings taken on or after that date.

(5) Rule 183 of the principal rules is hereby amended by omitting from subclause (3) the words "and on payment of the fees payable as on a judgment by consent".

(6) Rule 247 of the principal rules is hereby amended by revoking subclause (4).

(7) The Second Schedule to the principal rules is hereby amended as follows:

(a) By omitting from forms 10, 11, 12, 13, 14, 15, and 16 the words "Service fee":

(b) By omitting from form 27 the words "Court fees for entering judgment":

(c) By omitting from form 56 the words "Court fees", in both places where those words occur:

(d) By omitting from forms 69, 71, 77, 78, 79, and 106 the words "Execution fee":

(e) By omitting from form 86 the words "Fee for issue of this summons", and substituting the words "Fee for filing affidavit"; and by omitting from the same form the words "Service fee".

(8) The Magistrates' Courts Rules 1948, Amendment No. 1,\* are hereby amended by revoking rules 26 and 27.

13. (1) Rule 25 of the principal rules is hereby amended by revoking subclause (2), and substituting the following subclause:

"(2) Every application for a search entered in the search book shall be signed by the applicant."

(2) Rule 331 of the principal rules is hereby amended by omitting from paragraph (b) of subclause (1) the words "in stamps of the correct denomination".

14. (1) The principal rules are hereby further amended by revoking rule 314, and substituting the following rule:

"314. For the purposes of section 53 of the Act, fees, allowances, and travelling expenses shall be payable to witnesses in accordance with the Witnesses and Interpreters Fees Regulations 1954†."

(2) Rule 193 of the principal rules is hereby amended by revoking subclause (3), and substituting the following subclause:

"(3) There shall be paid or tendered to the witness at the time of the service of the summons the sum estimated to be payable to that witness for allowances and travelling expenses, but not fees, pursuant to the Witnesses and Interpreters Fees Regulations 1954."

(3) Rule 236 of the principal rules is hereby amended by omitting from subclause (3) the words "the respective sums prescribed in the Fourth Schedule hereto in respect of travelling allowances and expenses", and substituting the words "the sum estimated to be payable to him for allowances and travelling expenses, but not fees, pursuant to the Witnesses and Interpreters Fees Regulations 1954".

(4) Rule 315 of the principal rules is hereby amended as follows:

(a) By omitting the words "fees and expenses in accordance with the scales prescribed in that behalf in the Fourth Schedule hereto", and substituting the words "fees, allowances, and travelling expenses in accordance with the Witnesses and Interpreters Fees Regulations 1954":

(b) By inserting in the proviso, after the word "fees", the word "allowances".

(5) Rule 316 of the principal rules is hereby amended by omitting from subclause (3) the words "for allowances to witnesses or interpreters under the Fourth Schedule hereto, for translation fees under the Sixth Schedule hereto", and substituting the words "for fees, allowances, and travelling expenses payable to witnesses and interpreters in accordance with the Witnesses and Interpreters Fees Regulations 1954".

(6) Rule 317 of the principal rules is hereby amended by omitting from paragraph (a) the words "the scales prescribed in the Fourth Schedule hereto", and substituting the words "the Witnesses and Interpreters Fees Regulations 1954".

(7) Rule 346 of the principal rules is hereby amended by omitting from subclause (6) the words "on the scale prescribed in the Sixth Schedule hereto", and substituting the words "in accordance with the Witnesses and Interpreters Fees Regulations 1954".

(8) The principal rules are hereby further amended by revoking the Fourth and Sixth Schedules.

SCHEDULE  
—  
NEW THIRD SCHEDULE TO PRINCIPAL RULES  
THIRD SCHEDULE  
COURT FEES

—	—	Amount not Exceeding £5	Amount not Exceeding £10	Amount not Exceeding £20	Amount not Exceeding £50	Amount not Exceeding £250	Amount Exceeding £250
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
1.* Filing, in respect of a claim for a sum of money only:							
(a) Plaintiff note; or .. .. .							
(b) Counterclaim; or .. .. .							
(c) Interpleader affidavit, pursuant to s. 111 of Act, of a person other than a defendant	..	0 10 0	0 15 0	1 0 0	1 10 0	2 5 0	3 0 0
2.* Filing any document mentioned in item 1, where claim is not for money	1 0 0						
3. Filing originating application .. .. .	1 0 0						
4.* Filing (on amount owing under judgment):							
(a) Application for judgment summons; or							
(b) Application for any warrant of distress, or any warrant of committal under the Imprisonment for Debt Limitation Act 1908, or writ of arrest (in addition to the amounts payable under items 11 to 13); or	..	0 10 0	0 15 0	1 0 0	1 5 0	1 15 0	2 5 0
(c) Affidavit in support of garnishee summons .. .. .							
5.* Filing application for any warrant not mentioned in item 4 .. .. .							£ s. d. 1 0 0

\*NOTE—Where a claim for a sum of money is combined with a claim that is not for money, whether in the alternative or not, the fee payable shall be under item 1 or item 2, whichever is the higher, or, as the case may require, under item 4 or item 5, whichever is the higher.

THIRD SCHEDULE—*continued*COURT FEES—*continued*

											£	s.	d.
6. Filing application for examination pursuant to rule 236 or rule 237 (irrespective of number of persons to be examined)	..	..	..	..	..	..	..	..	..	..	0	15	0
7. Filing application for (a) Variation of judgment or order; or (b) Leave to enforce judgment or order	..	..	..	..	..	..	..	..	..	..	0	10	0
8. Issue of certificate of judgment or order	..	..	..	..	..	..	..	..	..	..	0	3	0
9. For search: In any one matter	..	..	..	..	..	..	..	..	..	..	0	2	0
General search	..	..	..	..	..	..	..	..	..	..	0	5	0
10. Copy of Magistrate's or Registrar's notes or of judgment or any other document: For each folio of 72 words	..	..	..	..	..	..	..	..	..	..	0	0	8
11. For expenses of execution of any warrant of committal or writ of arrest: The actual expenses incurred by the bailiff or constable, including the costs of conveyance and lodging in prison of the person arrested.													
12. For storage, cartage, and removal of goods, or advertising of goods for sale: Actual and reasonable disbursements.													
13. For each man left in possession of any premises: Fees, allowances, and expenses as allowed to a witness in accordance with the Witnesses and Interpreters Fees Regulations 1954*.													

T. J. SHERRARD,  
Clerk of the Executive Council.

\*S.R. 1954/236

## EXPLANATORY NOTE

*This note is not part of the rules, but is intended to indicate their general effect.*

These rules make miscellaneous amendments to the Magistrates' Courts Rules 1948. The amendments come into force on the fourteenth day after the date of their notification in the *Gazette*.

Rules 2 and 3 provide that where an order or judgment is made or given at a place other than the Court of filing, the Magistrate may sign a minute on the plaint note or application, and the Registrar will then make the necessary entry in the minute book or civil record book.

Rule 4: At present, a plaintiff desiring to commence an action in the Court nearest to the place where the cause of action or a material part of it arose is required to include a certificate in the statement of claim. The amendment made by this rule requires the certificate to be included in the plaint note instead.

Rule 5: At present, a default action may not be brought to recover money payable under a hire-purchase agreement, or to recover interest. The effect of the amendments made by this rule is that such claims may be made by default action where the interest is payable pursuant to any instrument and the rate of interest payable does not exceed ten per cent per annum. Where such a default action is brought the statement of claim must include a statement that the interest is payable under an instrument (which is to be specified) and that the true rate of interest so payable does not exceed ten per cent per annum; and the statement of claim is to be signed by the plaintiff or his solicitor. In the case of a hire-purchase agreement, the difference between the cash price and the total amount payable under the agreement is to be treated as interest for the purposes of these provisions. The Registrar, however, may in his discretion set the action down for hearing as an ordinary action, whether or not the defendant admits the claim.

Rule 6: At present, every statement of claim must be filed as a separate document. This rule provides that in a default action the plaintiff may include his statement of claim in the summons instead of filing a separate statement. The form of default summons is amended to allow this to be done. The amendments will not apply to a claim for interest (see rule 5 (2) of these rules). The plaintiff's address for service may now be stated either at the foot of the summons or, as at present, at the foot of the statement of claim.

Rule 7 substitutes a new rule for rule 84 of the principal rules. The new rule provides that, except as otherwise provided in the principal rules, the Registrar is to serve or cause to be served all summonses to defendants. He may also in his discretion, and shall on the direction of a Magistrate, serve or cause to be served any other document in any proceedings.

Rule 8 provides that where all parties desire an adjournment the application for the adjournment may be made by a request to the Registrar in writing signed by the parties, or signed by one party stating that the other parties consent.

Rule 9 provides that where an application to fix security for appeal is made on notice, the amount of the security may be fixed by the Registrar.

Rule 10 inserts a new rule providing that where the description of any party to a judgment or order, as given in an application for any enforcement process, differs from the description in the judgment or order, and the Registrar is satisfied that the amended description applies to the party, both descriptions are to be specified in the process. Formerly a similar rule applied only to distress warrants.

Rule 11 authorises a Magistrate to order that execution be levied under a warrant that has been returned (whether the return is one of *nulla bona* or not) if he is satisfied that there are reasonable grounds to believe that there are goods on which execution could have been levied under the warrant and that no bankruptcy petition based on the execution or on the return has been filed.

Rule 12: The effect of the amendments made by this rule is that a new and simpler scale of Court fees will apply to all proceedings commenced on or after the date of the coming into force of these rules, and to all steps taken on or after that date in proceedings commenced before that date. The new scale is set out in the Schedule to these rules. Generally speaking, fees will be payable at only two stages, namely at the commencement of proceedings and on the filing of an application for an enforcement process.

Rule 13 is consequential on the enactment of the Stamp Duties (Fees) Regulations 1954, under which, in some Courts, fees are payable in cash instead of in stamps.



Rule 14: The effect of this rule is to apply to witnesses and interpreters, for all the purposes of the principal rules, the Witnesses and Interpreters Fees Regulations 1954 (which already apply to criminal proceedings in Magistrates' Courts and to civil and criminal proceedings in the Supreme Court).

The Schedule contains the new scale of Court fees.

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Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 7 June 1956.

These regulations are administered in the Department of Justice.