

1963/64

**THE MAGISTRATES' COURTS RULES 1948,
AMENDMENT NO. 5**

—
BERNARD FERGUSSON, Governor-General
ORDER IN COUNCIL

At the Government Buildings at Wellington this 6th day of May 1963

Present:

THE RIGHT HON. KEITH HOLYOAKE, C.H., PRESIDING IN COUNCIL

PURSUANT to the Magistrates' Courts Act 1947, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following rules.

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RULES

1. (1) These rules may be cited as the Magistrates' Courts Rules 1948, Amendment No. 5, 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 seventh day after the date of their notification in the *Gazette*.

2. Rule 37 of the principal rules is hereby amended by adding the words "or for possession of chattels let therewith".

3. Rule 77 of the principal rules is hereby amended by omitting from subclause (5) the words "exceeds £500", and substituting the words "exceeds £1,000".

4. Rule 78 of the principal rules is hereby amended by omitting the words "claim £500", and substituting the words "claim £1,000".

5. The principal rules are hereby further amended by inserting, after rule 81, the following heading and rule:

"Defamation

"81A. In an action for defamation, if the plaintiff alleges that the words or matter complained of were used in a defamatory sense other than their ordinary meaning, he shall give particulars of the facts and matters on which he relies in support of that allegation."

*S.R. 1948/197
Amendment No. 1: S.R. 1952/242
Amendment No. 2: S.R. 1956/81
Amendment No. 3: (*Revoked by S.R. 1961/22*)
Amendment (S.R. 1961/13): (*Revoked by S.R. 1961/22*)
Amendment No. 4: S.R. 1961/22

6. Rule 88 of the principal Act is hereby amended by revoking subclause (3), and substituting the following subclause:

“(3) Any bailiff or constable required to serve the document shall return a copy to the Registrar from whom he received it together with proof of service or with a note of the fact that it has not been served and from what cause.”

7. The principal rules are hereby further amended by inserting after rule 113, the following headings and rules:

“Particulars Where Fair Comment Pleaded

“113A. Where in an action for defamation the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and, in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he shall give particulars stating which of the words complained of he alleges are statements of fact and particulars of the facts and matters on which he relies in support of the allegation that the words are true.

“Particulars of Malice

“113B. Where in an action for defamation the defendant pleads that any of the words or matters complained of are fair comment on a matter of public interest or were published on a privileged occasion, the plaintiff, if he intends to allege that the defendant was actuated by express malice, shall serve upon the defendant, within seven days after service on the plaintiff of the statement of defence, a notice giving particulars of the facts and matters from which that malice is to be inferred.”

8. Rule 170 of the principal rules is hereby amended by omitting the words “not exceeding £500”, and substituting the words “not exceeding £1,000”.

9. Rule 171 of the principal rules is hereby amended by omitting the figures “£500” wherever they occur, and substituting in each case the figures “£1,000”.

10. (1) Rule 211 of the principal rules is hereby amended by omitting from subclause (3) the word “reading” wherever it occurs, and substituting in each case the word “delivery”.

(2) Rule 211 of the principal rules is hereby further amended by omitting from the same subclause the word “read”, and substituting the word “deliver”.

(3) Rule 211 of the principal rules is hereby further amended by omitting from subclause (4) the word “read”, and substituting the word “delivered”.

11. Rule 328 of the principal rules is hereby amended by omitting from the proviso the figures “£500”, and substituting the figures “£1,000”.

12. (1) The principal rules are hereby further amended by revoking the Third Schedule (as substituted by rule 3 of the Magistrates' Courts Rules 1948, Amendment No. 4), and substituting the new Third Schedule set out in the Schedule to these rules.

(2) 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.

(3) In respect of any proceedings commenced before the date of the coming into force of these rules, no further fee 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.

(4) Rules 3 and 4 of the Magistrates' Courts Rules 1948, Amendment No. 4, and the Schedule to those rules are hereby revoked.

5.* Filing application for any warrant not mentioned in item 4 £ s. d.
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*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.

	£	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 the Magistrate's notes when notice of appeal has been lodged: For each folio of 72 words	0	0	2
11. Copy of Magistrate's notes in any other case or of Registrar's notes or of judgment or any other document: For each folio of 72 words	0	0	8
12. 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.			
13. For storage, cartage, and removal of goods, or advertising of goods for sale: Actual and reasonable disbursements.			
14. 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 1959.*			

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

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.

Rule 2 enables a claim for the possession of chattels let with land to be joined with an action for the recovery of that land. At present the leave of the Court must be obtained before this can be done.

Rules 3 and 4 make amendments consequential on the passing of the Magistrates' Courts Amendment Act 1961 giving the Courts increased jurisdiction.

Rule 5 inserts a new rule which requires a plaintiff in an action for defamation who pleads an innuendo to give particulars in support of the innuendo. This new rule is in the same terms as rule 136B of the Code of Civil Procedure.

Rule 6 amends rule 88 of the principal rules which deals with service at a distance. At present the bailiff or constable who effects service must give proof of service by making an affidavit of service. This amendment will enable such proof to be given either by endorsement on a copy of the document or by an affidavit of service.

Rule 7 inserts two new rules dealing with particulars in defamation actions. The new rule 113A (which is in the same form as rule 136c of the Code of Civil Procedure) requires a defendant pleading fair comment in the form known as "the rolled-up plea" to specify which of the alleged defamatory words are claimed by him to be statements of fact, and to give particulars of the facts and matters on which he relies in support of his allegation that the words are true. Where the defendant has pleaded fair comment or privilege the new rule 113B (which is in the same form as rule 136D of the Code of Civil Procedure) requires a plaintiff intending to allege that the defendant was actuated by express malice to serve on the defendant, within seven days after the service of the statement of defence, a notice giving particulars of the facts and matters from which malice is to be inferred.

Rules 8 and 9 make consequential amendments relating to the increased jurisdiction of the Magistrates' Courts.

Rule 10 amends rule 211 which deals with the delivery of decisions. At present where a Magistrate sends a reserved decision to a Registrar for delivery the Registrar must deliver it by reading it to the parties. The amendment does away with the requirement that the judgment must be read. This will enable the Registrar to deliver it by handing typewritten copies of it to the parties.

Rule 11 makes a consequential amendment relating to the increased jurisdiction of the Courts.

Rule 12 substitutes a new Schedule of Court fees. The only changes made are changes required because of the Courts' increased jurisdiction.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 9 May 1963.

These regulations are administered in the Department of Justice.