

**1976/195**

## THE MAGISTRATES' COURTS (ADMIRALTY) RULES 1976

DENIS BLUNDELL, Governor-General

### ORDER IN COUNCIL

At the Government House at Wellington this 12th day of July 1976

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 11 (2) of the Admiralty Act 1973 and section 122 of 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.

### ANALYSIS

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| <ol style="list-style-type: none"> <li>1. Title and commencement</li> <li>2. Interpretation</li> <li>3. Application of rules</li> <li>4. Rules to be part of Magistrates' Courts Rules 1948</li> <li>5. Forms</li> <li>6. Commencement of action</li> <li>7. Counterclaim in action arising out of collision between ships</li> <li>8. Default in filing and service of statement of claim</li> <li>9. Notice of intention to defend and statement of defence</li> </ol> | <ol style="list-style-type: none"> <li>10. Judgment by default in action arising out of collision between ships</li> <li>11. Collisions: Preliminary acts</li> <li>12. Failure to lodge a preliminary act</li> <li>13. Pleadings</li> <li>14. Trial without pleadings</li> <li>15. Consolidation of proceedings</li> <li>16. Consent orders</li> <li>17. Appointment of Court expert</li> <li>18. Inspection of ship or other property</li> </ol> |
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### RULES

**1. Title and commencement**—(1) These rules may be cited as the Magistrates' Courts (Admiralty) Rules 1976.

(2) These rules shall come into force on the date of the commencement of the Admiralty Act 1973.

**2. Interpretation**—In these rules, unless the context otherwise requires,—

“Court” means a Magistrate's Court having civil jurisdiction:

“Registrar” means the Registrar of a Magistrate's Court; and includes a Deputy Registrar:

"The principal rules" means the Magistrates' Courts Rules 1948\*: Terms and expressions not defined in these rules but defined in the Admiralty Act 1973 shall have the meanings so defined.

**3. Application of rules**—These rules shall apply to any proceedings in any Magistrate's Court in its Admiralty jurisdiction.

**4. Rules to be part of Magistrates' Courts Rules 1948**—(1) These rules shall be deemed part of the principal rules.

(2) The provisions of the Magistrates' Courts Act 1947, the principal rules, and the general practice of the Court, including the course of procedure and practice in chambers, shall in cases not provided for by the Admiralty Act 1973 or these rules, and so far as they are applicable and not inconsistent with the Admiralty Act 1973 or these rules, apply to all proceedings under the Admiralty Act 1973 or these rules.

**5. Forms**—(1) The forms in the Second Schedule to the principal rules shall be used in every case where they are appropriate.

(2) Every such form shall be intituled "In the Magistrate's Court held at ..... In Admiralty".

(3) Where any such form so intituled is used, such further variations may be made therein as the circumstances of any particular case may require.

**6. Commencement of action**—(1) Every action brought in a Magistrate's Court in its Admiralty jurisdiction, other than an action arising out of a collision between ships, shall be brought as an ordinary action and shall be commenced by filing a plaint note, statement of claim, and summons in accordance with rule 74 of the principal rules.

(2) Every action arising out of a collision between ships shall be brought as an ordinary action, and shall be commenced by filing a plaint note and a summons which, before being issued, shall be endorsed (either on the summons or on a separate document attached thereto) with a concise statement of the nature of the claim, and of the relief or remedy required and of the amount claimed (if any).

(3) In an action arising out of a collision between ships, unless the Court gives leave to the contrary, the plaintiff shall,—

- (a) Within 7 days after there has been served on him notice of the filing of a preliminary act by the defendant:
- (b) Where there are 2 or more defendants all of whom have filed a preliminary act, within 7 days after there has been served on him notice of the filing of all those preliminary acts:
- (c) Where there are 2 or more defendants, some but not all of whom have filed a preliminary act, within 7 days after the time fixed by rule 12 of these rules for filing a preliminary act has expired,—

file in the Court and serve on every defendant who has filed a preliminary act a statement of claim:

Provided that nothing in this subclause shall apply where the Court orders the action to be tried without pleadings.

**7. Counterclaim in action arising out of a collision between ships—**Where, in an action arising out of a collision between ships, a defendant intends to set up a counterclaim, these rules shall apply as if the counterclaim were a claim in such an action.

**8. Default in filing and service of statement of claim—**(1) Where the plaintiff is required by these rules to file in Court a statement of claim and serve it on a defendant and he fails to do so, the defendant may, after the expiration of the period fixed by or under these rules for filing the statement of claim, apply to the Court for an order to strike out the action.

(2) On the making of an application under subclause (1) of this rule, the Court may order the proceedings to be struck out, and in such a case the Court may adjudge to the defendant by way of costs such sum as the Court thinks fit, or make such terms as it thinks fit.

(3) The Court may on application and, on such terms as it thinks just, set aside or vary any judgment entered under this rule.

**9. Notice of intention to defend and statement of defence—**In any action arising out of a collision between ships, every defendant who disputes his liability for the whole or any part of the claim shall within the time allowed by the principal rules serve on the plaintiff and file in the Court office a notice of intention to defend and, within 14 days after the day on which a statement of claim is served on him, unless the Court orders otherwise, file in the Court and serve on the plaintiff a statement of defence or a counterclaim.

**10. Judgment by default in action arising out of collision between ships—**(1) Notwithstanding anything in subclauses (2) and (5) of rule 113 of the principal rules, where in an action arising out of a collision between ships the defendant fails to file and serve a notice of intention to defend or (unless under rule 9 of these rules a statement of defence is not required) a statement of defence, the plaintiff may, after the expiration of the period fixed by or under these rules for filing the notice of intention to defend or the statement of defence, apply to the Court for judgment to be entered against the defendant.

(2) On the hearing of such an application, the Court, on proof of service and of facts entitling the plaintiff to relief, may give such judgment or make such order as may be just.

(3) The Court may, on application and on such terms as it thinks just, set aside or vary any judgment entered under this rule.

**11. Collisions: Preliminary acts—**(1) In an action arising out of a collision between ships, unless the Court otherwise orders (on application by any intended party to the action), the plaintiff when he files his plaint and the defendant when (or before) he files a notice of intention to defend or a counterclaim, as the case may be, shall file a document (in these rules referred to as a preliminary act) containing a statement of the following particulars:

- (a) The names of the ships which came into collision and their ports of registry;
- (b) Particulars (referring to the period immediately before the collision) of the person in command, the persons on the bridge,

and the persons keeping a look-out on the plaintiff's ship where the plaintiff is filing a preliminary act, and on the defendant's ship where the defendant is filing a preliminary act:

- (c) The date and time of the collision:
- (d) The place of the collision:
- (e) The direction and force of the wind:
- (f) The state of the weather, including visibility;
- (g) The state, direction, and force of the tidal or other current:
- (h) The course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with reference to its presence, whichever was the earlier:
- (i) The lights (if any) carried by the ship:
- (j) The distance and bearing of the other ship if and when its echo was first observed by radar:
- (k) The distance, bearing, and approximate heading of the other ship when first seen:
- (l) What light or combination of lights (if any) of the other ship was first seen:
- (m) What other lights or combinations of lights (if any) of the other ship were subsequently seen before the collision, and when:
- (n) What alterations (if any) were made to the course and speed of the ship after the earlier of the two times referred to in paragraph (h) of this subclause up to the time of the collision, and when, and what measures (if any), other than alterations of course or speed, were taken to avoid the collision, and when:
- (o) The parts of each ship which first came into contact and the approximate angle between the 2 ships at the moment of contact:
- (p) What sound or other signals (if any) were given, and when:
- (q) What sound or other signals (if any) were heard or seen from the other ship, and when.

(2) Every preliminary act shall be sealed by the Registrar and shall be filed in a closed envelope (sealed with the seal of the Court and showing the date of filing), and, unless the Court otherwise orders, no envelope shall be opened until a date has been fixed for the hearing and a consent, signed by each of the parties who has filed a preliminary act, to the opening of the preliminary act has been filed.

(3) Every party filing a preliminary act shall, within 3 days thereof, serve notice of the filing on every other party.

**12. Failure to lodge a preliminary act**—When, in an action arising out of a collision between ships a defendant fails within the prescribed period to file a preliminary act, rule 10 of these rules shall apply as if the failure to file a preliminary act was a failure to file and serve a statement of defence.

**13. Pleadings**—Every action shall be heard with pleadings, unless the Court on application made to it in that behalf under rule 14 (1) of these rules orders to the contrary.

**14. Trial without pleadings**—(1) Where in any action any defendant has given notice of his intention to defend, the plaintiff or that defendant

may apply to the Court for an order that the action be tried without pleadings or further pleadings, as the case may be.

(2) If, on the hearing of an application under this rule, the Court is satisfied that the issues in dispute between the parties can be defined without pleadings or further pleadings, or that for any other reason the action can be properly tried without pleadings or further pleadings, as the case may be, the Court shall order the action to be so tried, and may direct the parties to prepare a statement of the issues in dispute, or, if the parties are unable to agree on such a statement, may settle the statement.

(3) Where the Court makes an order under subclause (2) of this rule, the order shall, and where an application is dismissed such order may, give directions as to the further conduct of the action as may be appropriate.

**15. Consolidation of proceedings**—Where 2 or more actions or matters are pending and it appears to the Court—

- (a) That some common question of law or fact arises in both or all of them; or
- (b) That the rights to relief claimed therein are in respect of or arise out of the same transactions or series of transactions; or
- (c) That for some other reason it is desirable to make an order under this rule,—

the Court may order those actions or matters to be consolidated on such terms as it thinks just, or may order them to be tried at the same time or one immediately after another, or may order any of them to be stayed until after the determination of any other of them, or make such further or other order as the Court in its discretion thinks fit.

**16. Consent orders**—Any agreement in writing between the parties to any proceedings in the Admiralty jurisdiction of the Court, dated, and signed by the parties or their solicitors, may, if the Court or a Registrar allows it, be filed, and the agreement shall thereupon become an order of the Court.

**17. Appointment of Court expert**—(1) In any Admiralty action or matter in which any question for an expert witness arises, the Court may, at any time on its own motion or on the application of any party, appoint an independent expert to enquire and report upon any question of fact or opinion. An expert shall be a person who has such knowledge or experience of or in connection with that question that his opinion on it would be admissible in evidence. An independent witness so appointed is referred to in this rule as a Court expert.

(2) Any Court expert shall, if possible, be a person agreed between the parties and, failing agreement, shall be appointed by the Court.

(3) The question to be submitted to the Court expert and the instructions (if any) given to him shall, failing agreement between the parties, be settled by the Court.

(4) The Court expert shall send his report to the Court, together with such number of copies thereof as the Court may direct, and the Registrar shall send copies of the report to the parties or their solicitors.

(5) The Court may direct the Court expert to make a further supplemental report or reports.

(6) Any part of a Court expert's report which is not accepted by all the parties shall be treated as information furnished to the Court and be given such weight as the Court thinks fit.

(7) If the Court expert is of opinion that an experiment or test of any kind (other than one of a trifling character) is necessary to enable him to make a satisfactory report, he shall inform the parties or their solicitors, and shall, if possible, make an arrangement with them as to the expenses involved, the persons to attend and other relevant matters; and, if the parties are unable to agree on any such matter, it shall be settled by the Court.

(8) Any party may, within 7 days after receiving a copy of the Court expert's report, apply to the Court for leave to cross-examine the expert on his report, and on that application the Court shall make an order for the cross-examination of the expert by all the parties either—

(a) At the trial; or

(b) Before the Court or a Registrar at such time and place as may be specified in the order.

(9) The remuneration of the Court expert shall be fixed by the Court, and shall include a fee for his report and a proper sum for each day during which he is required to be present either in Court or for cross-examination.

(10) Without prejudice to any order providing for payment of the Court expert's remuneration as part of the costs of the cause or matter, the parties shall be jointly and severally liable to pay the amount fixed by the Court for his remuneration, but, where the appointment of a Court expert is opposed, the Court may, as a condition of making the appointment, require the party applying for the appointment to give such security for the remuneration of the expert as the Court thinks fit.

(11) Where a Court expert is appointed, any party may, on giving to the other parties a reasonable time before the trial notice of his intention to do so, call one expert witness to give evidence on the question reported on by the Court expert, but no party may call more than one such witness without the leave of the Court, and the Court shall not grant leave unless it considers the circumstances of the case to be exceptional.

**18. Inspection of ship or other property**—Without prejudice to its powers under the Magistrates' Courts Act 1947 or the principal rules, the Court may, on the application of any party, make an order for the inspection by a Court expert, or by any party or witness, of any ship or other property, whether real or personal, the inspection of which may be necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the action.

P. G. MILLEN,  
Clerk of the Executive Council.

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#### EXPLANATORY NOTE

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

These rules prescribe the practice and procedure of Magistrates' Courts in their Admiralty jurisdiction.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 15 July 1976.

These rules are administered in the Department of Justice.