

1963/169



THE SUPREME COURT AMENDMENT RULES 1963

BERNARD FERGUSSON, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 23rd day of September 1963

Present:

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

PURSUANT to the Judicature Act 1908 and the Crown Proceedings Act 1950, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and at least four of the other members of the Rules Committee constituted under the Judicature Amendment Act 1930 (of whom at least one was a Judge of the Supreme Court), hereby makes the following rules.

R U L E S

1. (1) These rules may be cited as the Supreme Court Amendment Rules 1963, and shall be read together with and deemed part of the Code of Civil Procedure set out in the Second Schedule to the Judicature Act 1908 (hereinafter referred to as the Code).

(2) These rules shall come into force on the 1st day of January 1964.

2. (1) The Code is hereby amended by revoking rule 3 (as amended by rule 2 of the Supreme Court (Crown Proceedings) Rules 1952*) and Table A in the Third Schedule.

(2) Rule 2 of the Code is hereby amended by adding the following proviso:

“Provided that without prejudice to the provisions of rule 594, the plaintiff may, at any time before the service of the writ make an *ex parte* application to the Court or a Judge for an order abridging the time for filing the statement of defence.”

(3) Rule 4 of the Code (as amended by rule 3 of the Supreme Court (Crown Proceedings) Rules 1952) is hereby amended by omitting the words “The place shall be”, and substituting the words “The place at which the defendant shall file his statement of defence shall be”.

(4) Rule 96A of the Code (as inserted by rule 10 of the Supreme Court (Crown Proceedings) Rules 1952) is hereby amended by omitting from subclause (3) the words "twenty-eight days", and substituting the words "30 days".

(5) Rule 135B of the Code (as inserted by rule 3 of the Supreme Court Amendment Rules 1950*) is hereby amended by revoking the proviso (as added by rule 17 of the Supreme Court (Crown Proceedings) Rules 1952).

(6) Rule 425 of the Code (as substituted by rule 3 of the Supreme Court Amendment Rules (No. 2) 1954†) is hereby amended by adding the following paragraph:

"(h) An order abridging the time for filing the statement of defence made under the proviso to rule 2."

(7) Rule 596F of the Code (as inserted by rule 9 of the Supreme Court Amendment Rules 1950) is hereby amended by omitting the words "such one of the times specified in Table A of the Third Schedule hereto as is applicable to the case, the time being computed", and substituting the words "30 days".

(8) The Supreme Court (Crown Proceedings) Rules 1952 are hereby consequentially amended by revoking rules 2 and 17.

3. (1) The Code is hereby further amended by revoking rules 5 and 11 (as amended by rule 5 of the Supreme Court (Crown Proceedings) Rules 1952) and Table B in the Third Schedule.

(2) The Code is hereby consequentially amended in the manner indicated in the First Schedule to these rules.

(3) The Supreme Court (Crown Proceedings) Rules 1952 are hereby consequentially amended by revoking rule 5.

4. (1) The Code is hereby amended by revoking rule 132A (as substituted by rule 15 of the Supreme Court (Crown Proceedings) Rules 1952) and substituting the following rule:

"132A. **Time for filing defence to counterclaim**—The time within which the plaintiff shall file his statement of defence to the counterclaim shall be 10 days after service of the counterclaim on the plaintiff."

(2) The Supreme Court (Crown Proceedings) Rules 1952 are hereby consequentially amended by revoking rule 15.

5. (1) Rule 144 of the Code is hereby amended by adding the following proviso:

"Provided that after an action has been set down for trial a party may file an amended statement of claim or of defence only with the leave of the Court or a Judge."

(2) Rule 161A of the Code (as inserted by an Order in Council made on the 25th day of October 1911‡ and as amended by rule 23 of the Supreme Court (Crown Proceedings Rules) 1952) is hereby further amended by inserting after the words "such action", the words "and before the action shall have been set down for trial".

6. (1) The Code is hereby further amended by revoking rule 250 (as substituted by rule 6 of the Supreme Court Amendment Rules 1961), and substituting the following rule:

"250. **Setting down action for trial**—(1) Every action that is to be tried shall be entered by the Registrar in accordance with the provisions of this rule in a list kept by him for that purpose.

*S.R. 1950/58

†S.R. 1954/155

‡Gazette, 1911, Vol. II, p. 3268

“(2) Where a statement of defence has been filed in the action the entry shall be made only on the filing of a praecipe in the form No. 18A in the First Schedule hereto signed by the parties to the action:

“Provided that the Registrar may on the application of any party who desires the action to be set down for trial enter any action in the list even though the praecipe is not signed by all the parties to the action. Where the Registrar enters an action in the list under this proviso he shall endorse the praecipe accordingly.

“(3) An action may not be set down under the proviso to subclause (2) of this rule unless 30 days have elapsed since the day when the statement of defence was filed.

“(4) Where a statement of defence has not been filed in the action the entry may be made at any time after the time for filing the statement of defence has expired on the filing of a praecipe in the form No. 18A in the First Schedule hereto signed by the plaintiff alone.

“(5) Where an action in which no statement of defence has been filed is to be tried at any place other than Auckland, Wellington, Christchurch, or Dunedin, the praecipe shall be filed at least six clear days before the day appointed for the sitting of the Court, and except by the leave of the Court or a Judge, no such action shall be tried at such sitting where the praecipe has not been so filed.

“(6) Where an action in which a statement of defence has been filed is to be tried at any sitting of the Court it shall not be tried, except by leave of the Court or a Judge, unless a fixture has been made for the trial of that action in accordance with rule 251A.”

(2) Rule 275 of the Code is hereby consequentially amended by omitting the words “but the plaintiff may set down the action for trial at any subsequent sittings, and in that case shall give ten days’ notice thereof to the defendant”.

(3) The Supreme Court Amendment Rules 1961* are hereby consequentially amended by revoking rule 6.

7. (1) The Code is hereby further amended by revoking rule 250A (as inserted by rule 3 of the Supreme Court Amendment Rules 1940†), and substituting the following rules:

“250A. **Notice of hearing**—(1) The party to an action who files the praecipe setting it down for trial shall, within 24 hours after doing so, serve a copy thereof upon each other party who has taken any step in the action.

“(2) It shall be the duty of all parties to an action entered in any list to furnish without delay to the Registrar all available information as to the action being or being likely to be settled or affecting the estimated length of the trial, and, if the action is settled or withdrawn, to notify him without delay.

“Cf. 0, 36, r. 9

“250B. **Judge may direct trial at any time**—(1) Notwithstanding the provisions of rules 250 and 251A, where a Judge is satisfied that the exigencies of the case so require, he may at any time, on the application of any party, order that any action, although not set down and without requiring it to be set down, shall be tried at such time as the Judge in the circumstances thinks proper.

*S.R. 1961/174
†S.R. 1940/17

“(2) Every application under this rule shall be made upon notice to all other parties.

“(3) Upon making an order under this rule the Judge may make such order as he thinks convenient as to the time for filing statements of defence, the place of trial, the time for service of the order for trial, and any other incidental matter.”

(2) The Supreme Court Amendment Rules 1940 are hereby consequentially revoked.

8. (1) The Code is further amended by inserting, after rule 251, the following rule:

“251A. (1) **Fixtures for the trial of defended actions**—Not less than 14 days before the commencement of each period in which time is likely to be available for the trial of defended actions which do not already hold current fixtures the Registrar shall cause to be posted, in a prominent place in the Courthouse, a list of such of those actions as are set down for hearing, and shall on the list appoint a time and day for the making of fixtures in respect thereof. The day so appointed shall be not less than 10 days before the commencement of the period in which time is likely to be so available.

“(2) On that day any party to an action that is included on the list may apply to the Registrar for a fixture. The Registrar may then make a fixture for such date in that period as he thinks fit.

“(3) The party who applied for the fixture shall inform the other parties to the action without delay of the time and date allotted.

“(4) The Registrar may also make a fixture for the hearing of any action on the list at any time during that period if the parties to the action consent and there is time available for the action to be heard.

“(5) Actions in respect of which no fixture is made shall, unless otherwise finally disposed of, be carried forward onto the list for the next period for which time is likely to be available:

“Provided that where the parties agree that the action is not to be included on a list for an agreed period the Registrar shall not carry the action forward onto the next list but shall bring it up on the first list compiled after the agreed period has expired.”

(2) Rule 251 of the Code is hereby consequentially amended by adding the following proviso:

“Provided that actions allotted fixtures under rule 251A shall be tried in the order of the fixtures so allotted.”

9. (1) The Code is hereby further amended by revoking rule 254 (as inserted by rule 7 of the Supreme Court Amendment Rules 1961), and substituting the following rule:

“254. **Jury notices**—Where either party to an action to which section 2 of the Judicature Amendment Act (No. 2) 1955 applies requires the action to be tried before a Judge and a jury he shall give notice to that effect to the Court and to the other party in the praecipe entering the action for trial where he signs that praecipe, or, where he does not sign that praecipe and the other party has entered the action for trial before a Judge alone, he shall give such notice in the form No. 19 in the First Schedule hereto within four days from the day when he receives notice that the action has been so entered for trial.”

(2) The Supreme Court Amendment Rules 1961 are hereby consequentially amended by revoking rule 7.

10. (1) The First Schedule to the Code is hereby amended by revoking Form 2 (as amended by Order in Council made on the 7th day of December 1914* and by the Supreme Court (Office Hours) Rules 1936†), and substituting the new form set out in the Second Schedule hereto.

(2) The said Order in Council made on the 7th day of December 1914 is hereby consequentially amended by revoking rule 593A set out in the Schedule thereto.

(3) The Supreme Court (Office Hours) Rules 1936 are hereby consequentially amended by revoking rules 4 and 5.

(4) The amendments made by subclauses (1) to (3) of this rule shall not affect the validity of any writ of summons issued before the commencement of these rules.

11. (1) The First Schedule to the Code is hereby further amended by revoking the last paragraph of Form No. 8, the last paragraph of Form No. 8A, and the last paragraph of Form No. 8B (as inserted by rule 10 of the Supreme Court Amendment Rules 1950‡), and substituting in each case the following paragraph:

“The trial of the action, if a trial is necessary, will take place at [*Here specify place*] at a time to be fixed by the Court.”

(2) The amendments made by subclause (1) of this rule shall not affect the validity of any third-party notice or counterclaim notice issued before the commencement of these rules.

12. The First Schedule to the Code is hereby further amended by inserting, after Form No. 18, the new form set out in the Third Schedule hereto.

SCHEDULES

Rule 3 (2) FIRST SCHEDULE

CONSEQUENTIAL AMENDMENTS TO RULES

Rule Amended	Amendment
Rule 6	By omitting the words “the defendant shall be required to attend”, and substituting the words “the action shall be tried, if a trial is necessary.”
Rule 7 (as substituted by an Order in Council made on the 18th day of November 1909§)	By omitting from the proviso (as added by rule 4 of the Supreme Court (Crown Proceedings) Rules 1952) the words “the defendant shall be required to attend”, and substituting the words “the action shall be tried, if a trial is necessary.”
Rule 9	By omitting the words “the defendant shall be required to attend”, and substituting the words “the action shall be tried, if a trial is necessary.”

*Gazette, 1914, Vol. II, p. 4262

†S.R. 102/1937

‡S.R. 1950/58

§Gazette, 1909, Vol. II, p. 3011

FIRST SCHEDULE—*continued*

Rule Amended	Amendment
Rule 51	By omitting the words “and the sittings of the Court at which the action is to be heard”, and substituting the words “and the place at which the action is to be tried, if a trial is necessary”.
Rule 54 (as amended by rule 3 of the Supreme Court Amendment Rules 1951* and by rule 5 of the Supreme Court Amendment Rules (No. 2) 1954†)	By omitting the words “to be named in the writ of summons”.
Rule 99c (as inserted by rule 6 of the Supreme Court (Miscellaneous) Amendment Rules 1939‡ and as amended by rule 2 of the Supreme Court Amendment Rules (No. 2) 1954)	By revoking this rule, and substituting the following rule: “99c. Court may adjourn trial—If a third-party notice is served after a fixture has been made for the trial of the action, then the Court or a Judge may on the application of any party to the action postpone or adjourn the trial for such time and on such terms as to payment of costs and otherwise as may seem just”.
Rule 135B (as inserted by rule 3 of the Supreme Court Amendment Rules 1950 and as amended by sub-clause (5) of rule 2 of these rules)	By omitting the words “and as to the time for the trial of the claim or counter-claim”.
Rule 135G (as inserted by rule 3 of the Supreme Court Amendment Rules 1950)	By omitting the words “a person other than the plaintiff is thereby required to attend a sitting of the Court at a place where he could not be required to attend if he”, and substituting the words “the trial of the action, if a trial is necessary, is to be held at a place where it could not be held if a person other than the plaintiff”.
Rule 229	By revoking this rule, and substituting the following rule: “229. Value of chattels may be assessed—If the possession of any of the chattels claimed is not recovered the plaintiff may have the action tried for the purpose of assessing the value of those chattels.”

*S.R. 1951/75
†S.R. 1954/155
‡S.R. 1939/9

FIRST SCHEDULE—continued

Rule Amended	Amendment
Rule 230	By omitting the words “at the time mentioned in the writ of summons”.
Rule 232 (b)	By omitting the words “at the sittings of the Court at which the defendant was required by the writ of summons to attend for the trial thereof or at any subsequent sittings of the Court for the trial of actions”.
Rule 596H (as inserted by rule 9 of the Supreme Court Amendment Rules 1950)	By revoking this rule, and substituting the following rule: “596H. The place at which the action shall be tried, if a trial is necessary, shall be the place at which the action would have been tried had the action been commenced by writ of summons.”

Rule 10 (1)

SECOND SCHEDULE

NEW FORM OF WRIT OF SUMMONS

“No. 2 – Writ of Summons

Rule 2

To the above-named defendant.

TAKE notice that, unless within 30 days after and exclusive of the day on which this writ is served upon you, you file in the office of this Court at [*Here insert place where statement of defence is to be filed*] a statement of your defence to the plaintiff’s claim, a copy of which is hereunto annexed, the plaintiff may proceed in his action without having it heard in Court and judgment may be given in your absence. The trial of the action, if a trial is necessary, will take place at [*Here specify place*] at a time to be fixed by the Court.

Issued under the seal of the Supreme Court at, this day of 19..... } [Seal]

Registrar.

N.B.—This writ is issued by the plaintiff in person [*or by his solicitor, YZ.*], whose address for service is

The plaintiff claims £..... for costs of service of this writ and incidental thereto.

(See indorsements on the back of the writ.)

Indorsements

This writ must be served on you within 12 months from the date thereof, or within six months from the date of renewal, if renewed.

If the last day for filing your statement of defence falls on a Saturday, a Sunday, or a holiday, or within the period commencing with the 21st day of December and ending with the 20th day of January, you may file your statement of defence on the day next following that Saturday, Sunday, or holiday or the expiration of that period, as the case may require, which is not a holiday.

SECOND SCHEDULE—*continued*

If you file a statement of defence you must also, within the time limited for filing the same in the office of the Court, serve a copy of such statement on the plaintiff.

If you have a counterclaim against the plaintiff you should, within the time limited for filing your statement of defence, file in the office of the Court and serve on the plaintiff a statement of such counterclaim.

If the claim is for a sum of money only and you admit the whole claim, you may, within the time limited for filing your statement of defence, pay such sum and costs and proceedings in the action will be stayed; if you pay after the expiration of that time you will be liable to pay any further costs your delay may have caused the plaintiff to incur.

If you confess the plaintiff's claim or any part thereof, you should sign and file your confession in the office of the Court before the expiration of the time limited for filing your statement of defence; but you may file a confession at any time before the case is called on, subject to the payment of any further costs which your delay may have caused the plaintiff to incur.

If you admit only a part of the claim, you may, at any time before hearing, pay the amount admitted into Court, together with such amount for costs as you may consider yourself liable for, and you must forthwith give notice of such payment to the plaintiff. If the plaintiff proceed and recover no further amount than shall have been paid into Court, he may be ordered to pay any costs incurred by you subsequent to receipt of such notice as aforesaid.

Summonses to secure the attendance of witnesses will be issued on application at the office of the Court.

The office hours are from 10 a.m. to 3 p.m., except on Saturdays, Sundays, and Court holidays, and except during the Easter vacation and from the 23rd day of December to the 20th day of January (both days inclusive) when they are from 10 a.m. to 1 p.m."

THIRD SCHEDULE

Rule 12

NEW FORM INSERTED IN FIRST SCHEDULE TO CODE

Rule 250

"No. 18A – Praecipe to Set Down Action for Trial

Please set this action down for trial on the first available date after [State date] before a Judge alone [or before a Judge and a jury of 12 [or four] persons].

A fixture is not desired during the period to

The pleadings and all interlocutory and other matters have been completed. [*Delete where the action is undefended or where the praecipe is not signed by all the parties to the action.*]

The plaintiff/defendant requires the action to be tried before a Judge and a jury of 12 [or four] persons.

The estimated duration of the hearing is days.

We believe that this action will be in all respects ready for trial.

Dated at this day of 19.....

(Solicitor for) Plaintiff.

(Solicitor for) Defendant.

(Solicitor for) additional parties (if any).

THIRD SCHEDULE—*continued*

To the Registrar of the Supreme Court at.....

I authorise the setting down of this action under the proviso to sub-clause (2) of rule 250.

.....
Registrar.”

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 several important amendments to the Code of Civil Procedure.

Rules 2 and 10 amend the Code so that every defendant to an action will have 30 days in which to file his statement of defence unless this time is abridged by order of the Court before the writ is served.

Rule 3: The defendant, if he files a statement of defence, is at present required to attend a particular sitting of the Court mentioned in the writ of summons. This requirement is abolished. Where a defendant files a statement of defence he is notified when the action is set down for trial.

Rule 4 substitutes a new rule 132A. This rule fixes the time within which a plaintiff must file a statement of defence to a counterclaim. The time is to be within 10 days after service of the counterclaim on the plaintiff.

Rule 5: Subclause (1) amends rule 144 so that after an action has been set down for trial the pleadings may only be amended with the leave of the Court or a Judge. At present the pleadings may be amended without leave at any time before trial.

Subclause (2) amends rule 161A so that an order for discovery may not issue as of course after an action has been set down for trial.

Rule 6 substitutes a new rule 250. This rule prescribes a new procedure for setting down actions for trial.

Rule 7 inserts a new rule 250A in the Code. The existing rule 250A is re-enacted, with amendment, as rule 250B.

The new rule 250A requires the party to an action who files the praecipe setting it down for trial to serve a copy thereof, within 24 hours, upon each other party who has taken any step in the action. It also imposes a duty on all parties to an action entered in any list to furnish without delay to the Registrar all available information as to the action being or being likely to be settled or affecting the estimated length of the trial, and, if the action is settled or withdrawn, to notify him without delay.

The new rule 250B enables a Judge to direct trial of any action at any time if he is satisfied that the exigencies of the case so require. At present a Judge does not have this power in respect of an action to be tried before a jury.

Rule 8 inserts a new rule 251A. This new rule sets out a procedure for making fixtures for the trial of defended actions.

Rule 9 substitutes a new rule 254 which relates to the giving of jury notices. It has been consequentially amended to fit in with the new procedure prescribed by the new rule 250.

Rule 10 substitutes a new form of writ of summons.

Rule 11 makes consequential amendments to the forms of third-party notice and the notice to accompany counterclaim against person other than plaintiff.

Rule 12 prescribes a form of praecipe to set down action for trial.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 26 September 1963.

These regulations are administered in the Department of Justice.