

## Serial Number 1952/122



## THE SUPREME COURT (CROWN PROCEEDINGS) RULES 1952

FREYBERG, Governor-General  
ORDER IN COUNCIL

At the Government Buildings at Wellington, this 16th day of June 1952

Present:

THE RIGHT HON. S. G. HOLLAND 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 six other members of the Rules Committee constituted under the Judicature Amendment Act 1930 (three of such other members being Judges of the Supreme Court), hereby makes the following rules.

## RULES

1. (1) These rules may be cited as the Supreme Court (Crown Proceedings) Rules 1952, 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 fourteenth day after the date of their notification in the *Gazette*.

## FORM OF WRIT

2. Rule 3 of the Code (which relates to the time for filing a statement of defence) is hereby amended by adding the following proviso:—

“Provided that where the action is against the Crown the time to be so stated shall be twenty-eight days.”

3. Rule 4 of the Code (which relates to the place for filing a statement of defence) is hereby amended by adding the following proviso:—

“Provided that where the action is against the Crown the place to be so stated in the writ shall be the office of the Court—

“(a) In the district in which is situated the place where the cause of action or some material part thereof arose; and

“(b) Nearest to the last-mentioned place.”

4. Rule 7 of the Code (which relates to the place of trial where sittings are held in more than one town) is hereby amended by adding the following proviso:—

“Provided that where the action is against the Crown the place at which the defendant shall be required to attend shall be the town nearest to the place where the cause of action or some material part thereof arose, being a town in which sittings of the Court for the trial of actions are held in the district.”

**5.** Rule 11 of the Code (which relates to the time for trial) is hereby amended by adding the following proviso:—

“Provided that where the action is against the Crown the number of days to be so stated shall not be fewer than thirty-five days nor more than one hundred and twenty days.”

#### SERVICE OF WRIT OF SUMMONS

**6.** The Code is hereby amended by inserting, after rule 45, the following rule:—

“45A. In any civil proceedings against the Crown that are instituted against the Attorney-General, and in any civil proceedings to which the Crown is joined by joining the Attorney-General as a party or third party, rules 25, 27, and 31 shall not apply in connection with service on the Attorney-General; and rule 26 shall have effect subject to section 16 of the Crown Proceedings Act 1950.”

**7.** The Code is hereby further amended by inserting, after rule 51G, the following rule:—

“51H. Rules 48 to 51G shall apply to civil proceedings by the Crown or in which the Crown is joined as a plaintiff, but shall not apply to civil proceedings against the Crown alone or in respect of service on the Crown in cases where the Crown is joined as a defendant or third party.”

#### PARTIES

**8.** The Code is hereby further amended by inserting, after rule 94, the following rule:—

“94A. In respect of civil proceedings by or against the Crown, rules 59 to 94 shall have effect subject to section 14 of the Crown Proceedings Act 1950.”

#### JOINDER OF THIRD PARTIES

**9.** Rule 96 of the Code (which relates to applications for leave to issue a third-party notice) is hereby amended by inserting, before the words “may be made *ex parte*”, the words “except as provided by rule 96A”.

**10.** The Code is hereby further amended by inserting, after rule 96, the following rule:—

“96A. (1) Leave to issue a third-party notice for service on the Crown shall not be granted except by the Court or a Judge on application made by notice of motion served upon the plaintiff and the Crown not less than seven days before the date specified in the notice for hearing the motion.

“(2) Such leave shall not be granted unless the Court or Judge is satisfied that the Crown has had previous notice in writing giving reasonable particulars of the circumstances in which it is alleged that the liability of the Crown has arisen and of the Government Departments and officers of the Crown concerned.

“(3) The Court or Judge shall not fix less than twenty-eight days as the time within which the Crown is to be required to file and serve its statement of defence to the third-party notice.”

**11.** Rule 99D of the Code (which relates to the effect of default by a third party) is hereby amended by adding the following proviso:—

“Provided that in the case of third-party proceedings against the Crown the foregoing provisions of this rule shall not apply, unless the Court or a Judge so orders upon an application made by notice of motion served upon the Crown not less than seven days before the date specified in the notice for hearing the motion.”

**12.** The Code is hereby further amended by adding to rule 99E the following proviso:—

“Provided that a defendant shall not in any event be entitled to enter judgment against the Crown under this rule without leave of the Court or a Judge obtained upon notice of motion served upon the Crown not less than seven days before the date specified in the notice for hearing the motion.”

#### SET-OFF AND COUNTERCLAIM

**13.** The Code is hereby further amended by inserting, before rule 130, and after the heading “Set-off and Counterclaim”, the following rules:—

“129A. A person shall not be entitled to avail himself of any set-off or counterclaim in any civil proceedings by the Crown for the recovery of taxes, duties, or penalties, nor to avail himself in civil proceedings of any other nature by the Crown of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties, or penalties.

“129B. A person shall not be entitled, without leave of the Court or a Judge, to avail himself of any set-off or counterclaim in any civil proceedings by the Crown if either the subject matter of the set-off or counterclaim does not relate to the Government Department or officer of the Crown in whose name the proceedings are brought, or the proceedings are brought in the name of the Attorney-General.

“129C. The Crown, when sued in the name of a Government Department or of an officer of the Crown, shall not be entitled, without leave of the Court or a Judge, to avail itself of any set-off or counterclaim if the subject matter thereof does not relate to that Department or officer.

“129D. The Crown, when sued in the name of the Attorney-General, shall not be entitled, without leave of the Court or a Judge, to avail itself of any set-off or counterclaim.

“129E. An application for leave pursuant to rule 129B or rule 129C or rule 129D shall be made by notice of motion, which, in the case of an application under rule 129B, shall be served on the Crown not less than seven days before the date specified in the notice for hearing the motion.”

**14.** Rule 130 of the Code (which relates to counterclaims) is hereby amended by inserting, at the beginning of the rule, the words “Subject to rules 129A to 129E”.

**15.** (1) The Code is hereby further amended by revoking rule 132A, as inserted by paragraph (a) of rule 2 of the Supreme Court (Miscellaneous) Amendment Rules 1936\*, and by revoking the additional rule 132A, as inserted by rule 7 of the Supreme Court (Miscellaneous) Amendment Rules 1939†, and by substituting the following rule:—

“132A. The time within which the plaintiff shall file his statement of defence to the counterclaim shall be—

“(a) Seven days after service of the counterclaim on the plaintiff, where the plaintiff resides not more than twenty miles from the office of the Court in which that statement of defence is to be filed:

“(b) Ten days after such service, where the plaintiff resides more than twenty but not more than one hundred miles from that office:

\* Gazette, 26 March 1936, Vol. I, page 536.

† Statutory Regulations 1939, Serial number 1939/9, page 50.

“(c) Fourteen days after such service, where the plaintiff resides more than one hundred miles from that office:

“Provided that where the counterclaim is against the Crown the time within which the Crown shall file its statement of defence to the counterclaim shall be twenty-eight days after service of the counterclaim on the Crown.”

(2) Paragraph (a) of rule 2 of the Supreme Court (Miscellaneous) Amendment Rules 1936\* and rule 7 of the Supreme Court (Miscellaneous) Amendment Rules 1939† are hereby consequentially revoked.

**16.** Rules 135 and 135A of the Code, as substituted by rule 3 of the Supreme Court Amendment Rules 1950‡, are hereby amended by inserting, at the beginning of each rule, the words “Subject to rules 129A to 129E”.

**17.** Rule 135B of the Code, as inserted by rule 3 of the Supreme Court Amendment Rules 1950, is hereby amended by adding the following proviso:—

“Provided that where the Crown is a defendant to the counterclaim the time within which the Crown shall file its statement of defence to the counterclaim shall not be fixed at less than twenty-eight days after service of the counterclaim on the Crown.”

#### STATEMENTS OF CLAIM

**18.** The Code is hereby further amended by inserting, after rule 136, the following rule:—

“136A. Statements of claim in civil proceedings against the Crown that are instituted against the Attorney-General shall give, in addition to the particulars required by rule 136, particulars of the Government Departments and officers of the Crown concerned.”

#### PROCEEDINGS IN REM

**19.** The Code is hereby further amended by inserting, after rule 154, the following rule:—

“154A. Any application pursuant to subsection (2) of section 28 of the Crown Proceedings Act 1950 (which relates to proceedings *in rem* instituted against property belonging to the Crown) may be made to the Court or a Judge at any time before trial by notice of motion, or may be made orally at the trial of the proceedings.”

#### DISCOVERY

**20.** Rule 155 of the Code is hereby amended by adding the following words: “In granting leave to deliver interrogatories to the Crown in civil proceedings to which the Crown is a party or third party, the Court shall direct by what officer of the Crown the interrogatories are to be answered.”

**21.** The Code is hereby further amended by inserting, after rule 159, the following rule:—

“159A. If, in civil proceedings to which the Crown is a party or third party, an order is made requiring the Crown to answer interrogatories, the order shall direct by what officer of the Crown the interrogatories are to be answered.”

\* *Gazette*, 26 March 1936, Vol. I, page 536.

† Statutory Regulations 1939, Serial number 1939/9, page 50.

‡ Statutory Regulations 1950, Serial number 1950/58, page 199.

**22.** Rule 161 of the Code is hereby amended by adding the following words: "If, in civil proceedings to which the Crown is a party or third party, an order is made directing the Crown to make discovery, the order shall direct by what officer of the Crown the affidavit in compliance with the order shall be made."

**23.** Rule 161A of the Code (which relates to orders for discovery as of course) is hereby amended by adding the following proviso:—

"Provided that no party shall be entitled to issue under this rule any order directing the Crown to make discovery."

**24.** The Code is hereby further amended by inserting, after rule 167B, and before the heading "Admission of Documents", the following rule:—

"167c. Any order made under the powers conferred by subsection (1) of section 27 of the Crown Proceedings Act 1950 shall be construed as not requiring disclosure of the existence of any document if, in the opinion of a Minister of the Crown, it would be injurious to the public interest to disclose the existence of the document."

#### JUDGMENT BY DEFAULT

**25.** Rule 232 of the Code is hereby amended by inserting, at the beginning of paragraph (a), the words "Subject to rule 237A".

**26.** The Code is hereby further amended by inserting, after rule 237, the following rule:—

"237A. Judgment by default under rules 226 to 235 shall not in any event be entered against the Crown except by leave of the Court or a Judge obtained upon notice of motion served not less than seven days before the day specified in the notice for hearing the motion."

#### CHARGING ORDERS

**27.** (1) Rule 314 of the Code (which relates to cases where charging orders may be issued) is hereby amended by inserting, after paragraph (a), the following paragraph:—

"(aa) Any debts payable by or accruing due from the Crown to such opposite party and not excepted by the proviso to section 26 of the Crown Proceedings Act 1950:—"

(2) The said rule 314 is hereby further amended by omitting from paragraph (b) the words "the General Government or any other public body", and substituting the words "any public body".

**28.** Rule 321 of the Code is hereby amended by omitting the words "the General Government", and substituting the words "the Crown".

#### EXECUTION

**29.** The Code is hereby further amended by inserting, after rule 393, the following rule:—

"393A. Notwithstanding anything in these rules, no execution or attachment or process in the nature thereof shall be issued for enforcing satisfaction by the Crown, or by the Attorney-General, or by any Government Department or officer of the Crown, of any judgment, order, decree, rule, award, or declaration made in any civil proceedings under the Crown Proceedings Act 1950, except as provided in section 24 of that Act."

## BILLS OF EXCHANGE

**30.** Rule 490 of the Code is hereby amended by adding the following as a second proviso thereto:—

“Provided also that no action shall be commenced against the Crown under this rule.”

## PERPETUATING TESTIMONY

**31.** The Code is hereby further amended by revoking rule 535, and substituting the following rule:—

“535. In all actions to perpetuate testimony touching any matter or thing in which the Crown may have any estate or interest, the plaintiff may proceed against the Crown under section 14 of the Crown Proceedings Act 1950, and the provisions of that Act and these rules shall apply accordingly.”

## SERVICE

**32.** Rule 584 of the Code (which relates to the address for service in contentious proceedings not commenced by writ of summons) is hereby amended by adding to paragraph (c) the following proviso:—

“Provided that the foregoing provisions of this paragraph shall not apply where, in civil proceedings against the Crown to which the Attorney-General is a party or third party, no address for service has been given on behalf of the Attorney-General; and in any such case service of notice of any further proceedings in connection with the matter, and of copies of any further affidavits filed in the proceedings, shall be effected in the manner provided by section 16 of the Crown Proceedings Act 1950.”

**33.** Rule 586 of the Code is hereby amended by adding the following as subclause (2) thereof:—

“(2) In any civil proceedings against the Crown that are instituted against the Attorney-General, and in any civil proceedings to which the Crown is joined by joining the Attorney-General as a party or third party, the provisions of this rule shall have effect, in connection with service on the Attorney-General, subject to section 16 of the Crown Proceedings Act 1950.”

## INTERPRETATION

**34.** (1) Rule 607 of the Code is hereby amended by inserting, after the definition of the term “chattels”, the following definitions:—

“‘Civil proceedings’, in relation to the Crown, has the same meaning as in the Crown Proceedings Act 1950:

“The ‘Crown’ has the same meaning as in the Crown Proceedings Act 1950.”

(2) The said rule 607 is hereby further amended by adding the following words:—

“References in these rules to actions for the recovery of land or for the recovery of possession of land shall be construed as including proceedings against the Crown for an order declaring that the plaintiff is entitled as against the Crown to the land or to the possession thereof:

“References in these rules to actions for the recovery or delivery or specific delivery of property other than land, or to the possession of such property, shall be construed as including proceedings against the Crown for an order declaring that the plaintiff is entitled as against the Crown to the property or to the possession thereof.”

## SAVING

**35.** Where before the commencement of these rules any civil proceedings have been commenced by or against the Crown pursuant to the Crown Proceedings Act 1950, and those proceedings are pending or in progress at the commencement of these rules, the provisions of the Code, as amended by these rules, shall, subject to the provisions of the Crown Proceedings Act 1950, apply to those proceedings:

Provided that nothing in these rules shall invalidate any act or thing done in or in connection with any such proceedings before the commencement of these rules.

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 such modifications of the Code of Civil Procedure as are necessary for the purposes of civil proceedings by or against the Crown under the Crown Proceedings Act 1950.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 19 June 1952.

These regulations are administered in the Department of Justice.