

# The Royal Court Civil Rules, 2007

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# The Royal Court Civil Rules, 2007

**THE ROYAL COURT**, in exercise of the powers conferred upon it by Article 64 of the Reform (Guernsey) Law, 1948<sup>a</sup> and section 12 of the Royal Court (Miscellaneous Reform Provisions) Law, 1950<sup>b</sup>, and of all other powers enabling it in that behalf, hereby orders:-

## PART I

### THE OVERRIDING OBJECTIVE

#### Statement and application of overriding objective.

1. (1) The overriding objective of these Rules is to enable the Court to deal with cases justly.

(2) Dealing with cases justly includes, so far as is practicable -

(a) ensuring that the parties are on an equal footing,

(b) saving expense,

(c) dealing with the case in ways which are proportionate -

(i) to the amount of money involved,

(ii) to the importance of the case,

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<sup>a</sup> Ordres en Conseil Vol. XIII, p. 288.

<sup>b</sup> Ordres en Conseil Vol. XIV, p. 388.

- (iii) to the complexity of the issues, and
  - (iv) to the financial position of each party,
  - (d) ensuring that it is dealt with expeditiously and fairly, and
  - (e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases.
- (3) The Court must seek to give effect to the overriding objective when it -
- (a) exercises any power given to it by these Rules, or
  - (b) interprets any rule.
- (4) The parties are required to help the Court to further the overriding objective.

## PART II

### SERVICE OF DOCUMENTS

#### **Service within the jurisdiction on an individual.**

2. Service within the jurisdiction of a document on an individual shall be effected by the Sergeant-

- (a) à personne,

- (b) à domicile,
- (c) where, in the action to which the document relates, the individual has made an *élection de domicile* in accordance with Rule 12 or 15, by leaving the document there, or
- (d) where an *élection de domicile* has been made in any document -
  - (i) upon which the action is founded, or
  - (ii) which relates to the action or to the subject-matter thereof,

being a document to which the individual was a party, by leaving the document there.

**Service within the jurisdiction on a body corporate or partnership.**

3. (1) Service within the jurisdiction of a document on a body corporate shall be effected by the Sergeant-

- (a) by leaving the document at the registered office in the Island of the body corporate,
- (b) where the body corporate has no such registered office but carries on business in the Island, by leaving the document at any place of business in the Island of the body corporate, or

(c) in accordance with Rules 2(c) or (d), as if the references therein to the individual were references to the body corporate.

(2) Service of a document on a partnership or other unincorporated body shall be effected by the Sergeant -

(a) by service à personne on any partner, manager, director or other similar officer thereof,

(b) by service à domicile at the place of residence in the Island of any partner, manager, director or other similar officer thereof,

(c) in accordance with Rule 2(c) or (d), as if the references therein to the individual were references to the body, or

(d) in the case of a partnership, at any place of business in the Island of that partnership.

(3) For the avoidance of doubt, a document served on a partnership or firm may be served in the name of the partnership or firm and need not name each individual partner.

**Service on the States of Guernsey.**

4. Service of a document on the States of Guernsey or any Department or Committee thereof shall be effected by the Sergeant leaving the document at the Chambers of the Law Officers of the Crown.



**Sergeant to make relation of mode of service.**

5. The Sergeant, having effected service of a document in accordance with Rule 2, 3 or 4, or having attempted so to effect service, shall make his relation as follows-

- (a) in the case of service in accordance with Rule 2(a) or (c), 3(1)(a) or (b), 3(2)(a) or 4, with the letter "A",
- (b) in the case of service in accordance with Rules 2(b) or (d), or 3(2)(b), where the Sergeant left the summons à domicile with a person who appeared to him to be a reliable adult and who undertook to bring the document to the attention of the person to be served, with the letter "B",
- (c) otherwise, with the letter "C".

**Effect of Sergeant's relation.**

6. A relation under Rule 5-

- (a) with the letter "A" or "B", shall enable the matter to proceed in all respects,
- (b) with the letter "C", shall enable the matter to be tabled, but nothing more unless, when the matter is tabled -
  - (i) the party who was to be served appears (in person or by his Advocate), or

- (ii) the Court is satisfied that that party has notice of the document,

in either of which cases the matter may proceed in all respects.

**Substituted service within the jurisdiction.**

7. (1) Where service within the jurisdiction of a document in the manner required by these Rules would, but for the provisions of this Rule, be impracticable or would entail undue expense, the Court may make such order for substituted or other service, whether by notice, by advertisement or otherwise, as it thinks just.

(2) A party applying for an order under paragraph (1) shall file an affidavit in support of his application.

(3) Where the Court makes an order under paragraph (1), proof of service in accordance with the order shall be by affidavit or, where service was effected by the Sergeant, by the relation of the Sergeant.

**Service out of the jurisdiction.**

8. (1) The Court may give leave to effect service of a document out of the jurisdiction.

(2) The Court shall not make an order under paragraph (1) unless satisfied (by affidavit or otherwise) that the matter to which the document relates-

(a) is properly justiciable before the Court, and

(b) is a proper one for service out of the jurisdiction.

- (3) An order of the Court under paragraph (1) shall state-
- (a) the form, manner and time in which, and conditions subject to which, service is to be effected, and
  - (b) the minimum period which must elapse between the date of service and the date upon which the matter may be pursued.

(4) Where the Court makes an order under paragraph (1), proof of service in accordance with the order shall be by affidavit or, where service was effected by the Sergeant, by the relation of the Sergeant.

**Service in other manner permitted by law.**

9. The provisions of Rules 2 to 8-
- (a) are in addition to, and not in derogation from, the provisions of any enactment or rule of court relating to the service of documents,
  - (b) do not apply where the Court orders service in some other manner.

PART III  
COMMENCEMENT OF PROCEEDINGS

**Cause to be tabled.**

- 10.** (1) In every action a cause shall be tabled before the Court.
- (2) The cause shall contain
- (a) a statement of the material facts on which the plaintiff relies for his claim, but not the evidence by which those facts are to be proved, and
  - (b) a statement of the relief sought (including, where damages are claimed, particulars of the amount thereof so far as reasonably possible).

**Summons to be served on defendant.**

- 11.** (1) A plaintiff intending to table a cause shall give notice of the fact to the defendant by serving a summons upon him.
- (2) The summons-
- (a) shall be served not less than 2 clear days before the day of the tabling of the cause,
  - (b) shall state the day and time appointed for the tabling of the cause,
  - (c) shall contain, or have annexed to it, a copy of the cause, and

(d) shall be signed by an Advocate.

**Plaintiff's élection de domicile.**

12. (1) The cause shall state the plaintiff's élection de domicile.

(2) If at any time the Court is satisfied that service cannot be effected at the domicile elected by the plaintiff it may, on the application supported by affidavit of any defendant to the action, order that the action be dismissed.

(3) The Court may at any time order the plaintiff to make an élection de domicile or to amend the élection de domicile made by him.

(4) The plaintiff may at any time change the élection de domicile made by him; but the change is not effective until written notice thereof is given to the Greffier and to all other parties to the action.

(5) The plaintiff's élection de domicile, or any amendment or change made thereto under paragraphs (3) or (4), shall remain valid until the action is terminated (whether by final execution of the judgment or otherwise).

**Failure to appear.**

13. (1) If the plaintiff does not appear at the time appointed for the tabling of the cause, the Court may dismiss the action.

(2) If the defendant does not appear when the cause is tabled, the Court may give judgment against him.

**Defended actions to be inscrite.**

14. Where the cause is tabled and the defendant intimates his intention to

defend the action, the Court shall, if it is appropriate to do so, order that the cause be inscrite on the Rôle des Causes à Plaider.

**Defendant's élection de domicile.**

**15.** (1) The defendant shall, on the first tabling of the cause after service has been effected, make an élection de domicile.

(2) If the defendant does not comply with paragraph (1), the Court may give judgment against him.

(3) If, at any time, the Court is satisfied that service cannot be effected at the domicile elected by the defendant it may, on the application supported by affidavit of the plaintiff, give judgment against the defendant.

(4) The Court may at any time order the defendant to make an élection de domicile or to amend the élection de domicile made by him.

(5) The defendant may at any time change the élection de domicile made by him; but the change is not effective until written notice thereof is given to the Greffier and to all other parties to the action.

(6) The defendant's élection de domicile, or any amendment or change validly made thereto under paragraphs (4) or (5), shall remain valid until the action is terminated (whether by final execution of the judgment or otherwise).

**Defences.**

**16.** (1) The defendant shall, subject to paragraph (3) and Rule 94(3), and unless the Court orders otherwise, table his defences to the action 28 days after the inscription of the action on the Rôle des Causes à Plaider.

(2) The period after which defences must be tabled pursuant to paragraph (1) may from time to time be varied by practice direction.

(3) Should the defendant intend to table his defences earlier than 28 days after the inscription of the action on the Rôle des Causes à Plaider, or such other period as may be substituted in accordance with paragraph (2), he shall give notice of such intention to the plaintiff by signification.

(4) Notwithstanding the provisions of paragraph (1), the period within which defences may be tabled in respect of any action may be extended by agreement between the parties thereto (without reference to the Court) up to a maximum of 3 months after the inscription of the action on the Rôle des Causes à Plaider.

(5) Where the defences include exceptions, the exceptions shall be pleaded separately from the niances and prétentions.

(6) When defences have been tabled the action shall, unless the Court otherwise directs, be inscribed on the Rôle des Causes en Preuve, notwithstanding that the defences include exceptions.

(7) The inclusion of an exception de forme shall be deemed to be a request by the defendant for further information under the provisions of Rule 60.

(8) Pleadings subsequent to such defences shall be successively styled répliques and dupliques.

(9) The Court may allow a party acting in person to table defences or subsequent pleadings styled otherwise than as hereinbefore provided.

**Judgment in default of defences.**

17. (1) Where the defendant does not table his defences in accordance with Rule 16, the Court may give judgment against him.

(2) Where the Court has given judgment in default of defences pursuant to paragraph (1), it may subsequently set aside such judgment, or vary its terms, where-

- (a) an Advocate has certified, or the Court is otherwise satisfied, that the defendant has a real prospect of successfully defending the action, or
- (b) it appears to the Court that there is some other good reason why the judgment should be set aside or varied or the defendant allowed to defend the action.

(3) When considering whether to set aside or vary a judgment in default of defences, the matters to which the Court must have regard include whether the application for the judgment to be set aside or varied has been made promptly.

(4) An application for a judgment in default of defences to be set aside or varied must be supported by affidavit evidence of the reasons for the application.



PART IV  
SUMMARY JUDGMENT

**Application of Part IV.**

**18.** Rule 19 shall apply to

- (a) any claim by a plaintiff against a defendant, and
- (b) any counterclaim by the defendant against the plaintiff,

and, unless the context otherwise requires, references to a plaintiff or a defendant shall include a party bringing or defending any claim in those proceedings.

**Power to give summary judgment.**

**19.** (1) The Court may, at any time after inscription of the action on the Rôle des Causes à Plaider, on the application of a party to the action, give summary judgment against any other party on the whole of the claim or on a particular issue.

(2) The grounds of the application for summary judgment shall be that-

- (a) the plaintiff has no real prospect of succeeding on the claim or issue, or
- (b) the defendant has no real prospect of successfully defending the claim or issue,

and there is no other compelling reason why the claim or issue should be disposed of at a trial.

**Notice of application for summary judgment.**

20. (1) A party intending to apply for summary judgment under Rule 19 shall give notice of his intention to all other parties to the action by service of a signification upon each of them.

(2) Such signification-

- (a) shall be served not less than 4 clear days before the date of the application,
- (b) shall state the day and time appointed for the hearing of the application,
- (c) shall be signed by the applicant or his Advocate,
- (d) shall contain, or have annexed to it, a copy of the application and of the affidavit required under Rule 21, and
- (e) shall contain a statement of the effect of the application, if successful.

**Application to be supported by affidavit.**

21. An application under Rule 19 shall be supported by an affidavit -

- (a) identifying concisely any point of law or provision in a document on which the applicant relies, and/or
- (b) state that it is made because the applicant believes that on the evidence the respondent has no real prospect of

succeeding on the claim or issue or, as the case may be, of successfully defending the claim or issue to which the application relates,

and in either case must state that the applicant knows of no other reason why the disposal of the claim or issue should be disposed of at a trial.

**Judgment of Court.**

22. On the hearing of an application under Rule 19, the Court may-

- (a) dismiss the application, or
- (b) give judgment on the whole of the claim or on one or more particular issues,

and may make any other order, including the stay of execution of any judgment and the attachment of conditions, as the Court considers just.

**Respondent may show cause against the application.**

23. (1) The respondent to an application made under Rule 19 may show cause against the application by affidavit or otherwise to the satisfaction of the Court.

(2) The Court may order a respondent showing cause (or, where the respondent is a body corporate or a partnership or other unincorporated body, any director, partner, manager, secretary or similar officer thereof, or any person purporting to act in any such capacity)-

- (a) to produce any document,

- (b) if it appears to the Court that there are special circumstances making it desirable that he should do so, to attend and be examined on oath.

**Further conduct of action.**

24. (1) Where an application (whether or not successful) has been made under Rule 19, the Court may make such order as to the further conduct of the action as it considers just.

(2) Where an application under Rule 19 succeeds, the applicant may proceed with the claim or counterclaim, as the case may be, as respects the remainder thereof or against any other defendant thereto.

PART V  
INTERPLEADER

**Interpleader relief.**

25. Where a person is under a liability in respect of a debt or in respect of any money or personalty and he is, or expects to be, sued for or in respect thereof by two or more persons making adverse claims thereto, the person under liability may apply to the Court for relief by way of interpleader.

**Procedure on interpleader application.**

26. (1) An interpleader application shall be commenced by summons and is without prejudice to the Court's powers under Rules 36 and 37.

(2) The summons -

- (a) shall be served at least 3 clear days before the return date,

- (b) shall state the return date and the time appointed for the hearing,
- (c) shall be signed by the party claiming interpleader relief or his Advocate, and
- (d) shall contain or have annexed to it a copy of the application.

(3) An interpleader application must be supported by affidavit evidence that the applicant -

- (a) claims no interest in the subject-matter in dispute other than for charges or costs,
- (b) does not collude with any of the claimants to that subject-matter, and
- (c) is willing to pay or transfer that subject-matter into Court or to dispose of it as the Court may direct.

**Hearing of interpleader claim.**

27. (1) Where, on the hearing of an interpleader application, all the persons making adverse claims to the subject-matter in dispute ("the adverse claimants") appear, the Court may order -

- (a) that any adverse claimant be made a defendant in any claim pending with respect to the subject-matter in dispute, in substitution for, or in addition to, the

applicant for interpleader relief, or

- (b) that an issue between the adverse claimants be stated and tried and may direct which of the adverse claimants is to be claimant and which defendant.

(2) Where -

- (a) all the adverse claimants consent, or any of them so requests, or
- (b) the question at issue between the adverse claimants is a question of law and the facts are not in dispute,

the Court may summarily determine the question at issue between the adverse claimants and make an order accordingly on such terms as may be just.

(3) Where an adverse claimant, having been served with an interpleader summons, does not appear at the hearing or, having appeared, fails or refuses to comply with an order made in the proceedings, the Court may make an order declaring the adverse claimant, and all persons claiming under him, forever barred from prosecuting his claim against the applicant for interpleader relief, but such an order shall not affect the rights of the adverse claimants as between themselves.

**Power to stay proceedings.**

28. Where a defendant to a claim applies for interpleader relief under this Part, the Court may, by order, stay all further proceedings in the claim.

**Ancillary powers of Court on interpleader claim.**

**29** (1) Subject to the preceding rules of this Part, the Court may, in or for the purposes of any interpleader proceedings, make such order as to costs or any other matter as it thinks just.

(2) The Court, on trial of an interpleader issue, may give such judgment or make such order to dispose of all questions arising in the interpleader proceedings as it thinks just.

(3) Where the claimant, having been served in an interpleader issue with a summons, does not appear at the hearing of the summons or, having appeared, fails or refuses to comply with an order made in the proceedings, the Court may dismiss the action.

(4) Where the claimant so requests or any party so requests, the Court may summarily determine the issue.

**PART VI**

**COUNTERCLAIMS AND CONSOLIDATION, ETC.**

**Counterclaims.**

**30.** (1) A defendant may, by his defences tabled in any action, set up a counterclaim against the plaintiff.

(2) The counterclaim shall have effect as a cross-action, enabling the Court to pronounce a final judgment in the action both in the plaintiff's claim and on the counterclaim.

(3) The Court may order that a counterclaim be struck out or tried separately if satisfied that the subject-matter thereof ought not to be disposed

of by way of counterclaim but in an independent action.

(4) A counterclaim may be proceeded with, and shall remain inscribed on the Rôle des Causes à Plaider notwithstanding that the plaintiff's claim is stayed, discontinued or dismissed, or that judgment is given for the plaintiff on his claim.

(5) The plaintiff shall, subject to paragraph (7), and unless the Court orders otherwise, table his defences to the counterclaim 28 days after the inscription of the counterclaim on the Rôle des Causes à Plaider.

(6) The period after which defences must be tabled pursuant to paragraph (5) may from time to time be varied by practice direction.

(7) Should the plaintiff intend to table his defences earlier than 28 days after the inscription of the action on the Rôle des Causes à Plaider, or such other period as may be substituted in accordance with paragraph (6), he shall give notice of such intention to the defendant.

(8) Notwithstanding the provisions of paragraph (5), the period within which defences may be tabled in respect of any counterclaim may be extended by agreement between the parties (without reference to the Court) up to a maximum of 3 months after the inscription of the counterclaim on the Rôle des Causes à Plaider.

(9) When defences have been tabled the counterclaim shall, unless the Court otherwise directs, be inscribed on the Rôle des Causes en Preuve, notwithstanding that the defences contain exceptions.

(10) The inclusion of an exception de forme shall be deemed to be



a request by the plaintiff for further information under the provisions of Rule 60.

(11) Pleadings subsequent to such defences shall be successively styled répliques and dupliques.

(12) The Court may allow a party acting in person to table defences or subsequent pleadings styled otherwise than as hereinbefore provided.

(12) Where the plaintiff does not table his defences in accordance with this rule, the Court may give judgment against him on the counterclaim.

**Consolidation or severance of actions.**

**31.** (1) Where two or more actions or counterclaims are pending before the Court, and it appears to the Court that-

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

the Court may order the actions or counterclaims to be crochéées (consolidated), or to be tried at the same time, or one immediately after another, or that any of them shall be stayed until any other of them is determined.

(2) Where in the same action or counterclaim-

- (a) there are claims in respect of two or more causes of action or there are two or more plaintiffs or defendants, and
- (b) it appears to the Court that inconvenience, embarrassment or delay may result,

the Court may order that the action or counterclaim be severed and that there shall be separate trials.

(3) An order under paragraph (2) may be made notwithstanding that the action or counterclaim has at some stage of the proceedings been consolidated under paragraph (1).

## PART VII PARTIES TO PROCEEDINGS

### **Actions by or against infants etc.**

32. (1) An infant or person under legal disability may not be a party to, intervene in, or make or resist any application in any proceedings before the Court except by his tuteur or curateur, as the case may be, or by any other person appointed for that purpose by the Court.

(2) Anything which in the ordinary course of any proceedings is required or authorised by these Rules to be done by a party to the proceedings shall or may, if the party is an infant or person under legal disability, be done by his tuteur or curateur, as the case may be, or by the person appointed to act on his behalf pursuant to paragraph (1).

(3) In this Rule, for the avoidance of doubt, the expression "tuteur" shall be deemed to include, without limitation, a natural parent of an infant.

**Representative proceedings.**

33. (1) Where more than one person has the same interest in a claim

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(a) the claim may be begun, or

(b) the court may order that the claim be continued,

by or against one or more of the persons who have the same interest as representatives of any other persons who have that interest.

(2) The Court may direct that a person may not act as a representative.

(3) Any party may apply to the Court for an order under paragraph (2).

(4) Unless the Court otherwise directs, any judgment or order given in a claim in which a party is acting as a representative under this Rule -

(a) is binding on all persons represented in the claim, but

(b) may only be enforced by or against a person who is not a party to the claim with the permission of the Court.

(5) This Rule does not apply to a claim to which Rule 34 applies.

**Representation of interested persons who cannot be ascertained.**

34. (1) This Rule applies to actions concerning-

- (a) the estate of a deceased person,
- (b) property subject to a trust, or
- (c) the meaning of a document, including an enactment.

(2) The Court may make an order appointing a person to represent any other person or persons in the action where the person or persons to be represented-

- (a) are unborn,
- (b) cannot be found,
- (c) cannot easily be ascertained, or
- (d) is a class of persons who have the same interest in a action and-
  - (i) one or more members of that class are within sub-paragraphs (a), (b) or (c); or
  - (ii) to appoint a representative would further the overriding objective.

(3) An application for an order under paragraph (2)-

- (a) may be made by-
  - (i) any person who seeks to be appointed under the order, or
  - (ii) any party to the action, and
- (b) may be made at any time before or after the action has started.

(4) A party intending to apply for an order under paragraph (2) shall give notice of his intention by service of a signification, together with a copy of any affidavit evidence supporting his application, upon-

- (a) all parties to the action, if the action has started,
- (b) the person sought to be appointed, if that person is not the applicant or a party to the action, and
- (c) any other person as directed by the Court.

(5) The Court's approval is required to settle an action in which a party is acting as a representative under this Rule.

(6) The Court may approve a settlement where it is satisfied that the settlement is for the benefit of all represented persons.

(7) Unless the Court otherwise directs, any judgment or order given in an action in which a party is acting as a representative under this Rule-

- (a) is binding on all persons represented in the action, but
- (b) may only be enforced by or against a person who is not a party to the action with the leave of the Court.

**Representation of beneficiaries by trustees, etc.**

**35.** (1) An action may be brought by or against trustees, executors or administrators in that capacity without adding as parties any persons who have a beneficial interest in the trust or estate ("the beneficiaries").

(2) Any judgment or order given or made in the action is binding on the beneficiaries unless the Court orders otherwise in the same or other proceedings.

**Third parties.**

**36.** (1) Where in any action the defendant claims -

- (a) against a person not a party to the action, any contribution or indemnity,
- (b) against any such person, any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff, or
- (c) that any question or issue relating to or connected with the original subject-matter of the action should be determined not only between the plaintiff and himself, but also between either or both of them and a person

not a party to the action,

the defendant may add that person as a third party by serving upon him a summons in that behalf signed by the defendant or his Advocate.

(2) The Court may make such order as it thinks just in relation to the addition of the third party as to -

- (a) the filing of pleadings,
- (b) the delivery of affidavits, and
- (c) any other incidental matter.

(3) Where a third party is added, he shall from that time be a party to the action as if he were a defendant sued in the ordinary way by the party who added him, and the provisions of these Rules shall apply accordingly.

(4) Where judgment (by default or otherwise) is pronounced against a third party, the judgment shall not affect the rights of the original parties to the action as between themselves.

(5) Where a third party is added, the Court may, at or after the trial of the action (or, if the action is decided otherwise than by trial, on an application by any party to the action), give such judgment as the nature of the case may require for the defendant against the third party or for the third party against the defendant.

(6) Where judgment is pronounced -

- (a) against a defendant, and
- (b) for the defendant against a third party,

the judgment against the third party shall not be executed without leave of the Court, whether or not the judgment against the defendant has been wholly or partially satisfied.

- (7) Where in any action the defendant claims in his defences -
  - (a) against a person already a party to the action, any contribution or remedy,
  - (b) against any such person, any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff, or
  - (c) that any question or issue relating to or connected with the original subject-matter of the action should be determined not only between the plaintiff and himself, but also between either or both of them and a person already a party to the action,

the Court may order that that person be added as a third party, and the provisions of paragraph (2) shall apply accordingly.

(8) Where a third party is added, and he makes such a claim as is mentioned in paragraph (1) or (7), this Rule shall apply as if that third party were a defendant.



(9) For the purposes of this Rule, "third party" shall mean any party to the action other than the plaintiff or defendant.

**Removal or adding of parties.**

37. (1) The Court may in any proceedings order that -

(a) any person who has been improperly or unnecessarily made a party, or who has ceased to be a proper or necessary party, shall cease to be a party,

(b) any person -

(i) who ought to have been added as a party, or

(ii) between whom and any party to the proceedings there exists a question or issue arising out of or relating to or connected with any relief or remedy claimed in the proceedings which, in the opinion of the Court, it would be just and convenient to determine as between him and that party as well as between the parties to the proceedings,

shall be added as a party.

(2) No person shall be added as a plaintiff without his consent.

PART VIII  
CASE MANAGEMENT BY COURT

*General provisions*

**Court's duty to manage cases.**

38. (1) The Court shall actively manage cases.
- (2) Active case management includes (without limitation)-
- (a) encouraging the parties to co-operate with each other in the conduct of the proceedings,
  - (b) identifying the issues at an early stage,
  - (c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;
  - (d) deciding the order in which issues are to be resolved;
  - (e) encouraging the parties to use any appropriate form of alternative dispute resolution and facilitating the use of such procedures;
  - (f) actively encouraging and assisting parties to settle the whole or part of their case on terms that are fair to each party;
  - (g) setting time limits or otherwise controlling the progress

- of the case;
- (h) considering whether the likely benefits of taking a particular step will justify the cost of taking that step;
  - (i) dealing with as many aspects of the case as is practicable on the same occasion;
  - (j) dealing with the case, or any aspect of it, where it appears appropriate to do so, without requiring the parties to attend court;
  - (k) making appropriate use of technology;
  - (l) giving directions to ensure that the trial of the case proceeds quickly and efficiently; and
  - (m) ensuring that no party gains an unfair advantage by reason of that party's failure to give full disclosure of all relevant facts prior to the trial or the hearing of any application.

*Case management conference*

**Setting of date for case management conference.**

**39.** (1) Within 14 days of the inscription of an action on the Rôle des Causes en Preuve, the plaintiff shall apply to the Court for a date to be set for a case management conference to be held for the purpose of considering the management of the case.

(2) The Court may, on an application being made or of its own

volition, set a date for a case management conference at any time before the expiration of the period mentioned in paragraph (2) where -

- (a) the parties so agree, or
- (b) in the Court's opinion it is expedient so to do having regard to the urgency of the case.

**Court may dispense with case management conference.**

**40.** (1) The Court may, on the application of any of the parties, dispense with the case management conference if it is satisfied that -

- (a) the case may be dealt with justly without a case management conference,
- (b) the cost to the parties of a case management conference would be disproportionate to the value of the proceedings and the benefits that might be achieved by a case management conference, or
- (c) in the Court's opinion it is expedient so to do having regard to the urgency of the case.

(2) Where the Court dispenses with the necessity for a case management conference, it shall immediately -

- (a) give written directions concerning the preparation of the case,
- (b) set a timetable for steps in the case to be taken between

the giving of directions and the trial,

- (c) fix a date for a pre-trial review (unless it is satisfied that the case may be dealt with justly without a pre-trial review), and
- (d) fix -
  - (i) the trial date, or
  - (ii) the trial period,

and, in either case, the date by which a listing questionnaire, unless the Court dispenses with the listing questionnaire, must be lodged at the Greffe by the parties.

**Case management conference.**

**41.** (1) The following paragraphs of this Rule apply to the Court's functions in a case management conference.

- (2) The Court must give directions-
  - (a) as to what disclosure of documents, if any, is necessary,
  - (b) as to inspection of documents,
  - (c) as to provision of expert reports, if any, and

(d) as to exchange of witness statements, if any,

by such date, or dates, as the Court may direct.

(3) The Court may give directions requiring the preparation by the parties of agreed statements as to some or all of the following matters-

(a) the facts,

(b) the issues,

(c) the technical, scientific or medical matters in issue,  
and

(d) any relevant specialist area of law (provided that such statement shall not be binding on the Court).

(4) The Court must direct whether the trial is to be heard by a judge sitting alone or a judge sitting with Jurats.

(5) The Court must fix a date for a pre-trial review unless it is satisfied that the case may be dealt with justly without the necessity for a pre-trial review.

(6) The Court shall fix-

(a) the trial date, or the trial period, and

(b) unless the Court dispenses with the listing questionnaire, the date by which the listing

questionnaire is to be lodged at the Greffe by the parties.

**Adjournment of case management conference.**

42. (1) The Court shall not adjourn a case management conference without fixing a new date, time and place for the adjourned case management conference to take place.

(2) Where the Court is satisfied that -

- (a) the parties are in the process of negotiating, or are likely to negotiate, a settlement,
- (b) the parties are attending, or have arranged to attend, a form of alternative dispute resolution procedure, or
- (c) in all the circumstances of the case it is for any other reason appropriate so to do,

the Court may adjourn the case management conference to a suitable date, time and place to enable the negotiations, or the alternative dispute resolution procedure, to continue and may give such directions concerning the preparation of the case for trial as it thinks fit.

(3) Where a case management conference is adjourned pursuant to paragraph (2), and the claim is subsequently settled, it shall be the duty of the parties to notify the Court in writing of the fact of such settlement.

(4) So far as practicable, the resumption of an adjourned case management conference shall take place before the Court which conducted the first conference.

**Variation of directions.**

**43.** (1) A party must apply to the Court if he wishes to vary the date which the Court has fixed for -

- (a) a case management conference,
- (b) a pre-trial review,
- (c) the return of the listing questionnaire,
- (d) the trial date or the trial period, or
- (e) any act required to be performed by any party where the order specified the consequences of failure to comply by the fixed date.

(2) Subject to paragraph (3), the parties may agree in writing to vary any date for doing any act other than any of the dates mentioned in paragraph (1) unless these Rules provide otherwise or the Court orders otherwise, and where the parties so agree they must -

- (a) file a consent application for an order to that effect, and
- (b) certify on that application that the variation agreed will not affect the date fixed for the trial or the trial period,

and the timetable shall accordingly be varied unless the Court directs otherwise.



(3) No date set by the Court or these Rules for doing any act may be varied by the parties pursuant to paragraph (2) if the variation would make it necessary to vary any of the dates mentioned in paragraph (1).

(4) A party seeking to vary any date set by the Court or these Rules for doing any act without the agreement of all the other parties must apply to the Court before the date set for the act to be done.

**Listing questionnaire.**

44. (1) Subject to Rule 49, each party must file with the Court a completed listing questionnaire, in such form as may from time to time be prescribed by practice direction, by the date fixed for that purpose by the Court pursuant to these Rules.

(2) Where -

- (a) a party fails to file the completed listing questionnaire by the date fixed, or fails to give all the information requested by the listing questionnaire, or
- (b) the Court considers that a hearing is necessary in order to enable it to decide what directions to give in order to complete preparation of the case,

the Court may fix a listing appointment and direct any or all of the parties to attend the appointment.

(3) The Court must give the parties at least 7 days' notice of the date, time and place of the listing appointment and shall require the attendance of

any or all of the parties as it thinks fit.

- (4) At the listing appointment, the Court must -
  - (a) give any directions which the Court considers to be necessary for completion of the preparation of the case for trial without any adjournment of the trial, and
  - (b) where the listing appointment has been fixed pursuant to paragraph (2)(a), order the party at fault to pay the costs of the hearing unless the Court is of the opinion that there is a good reason why the Court should not so order.

(5) In addition to the requirement to complete and file a listing questionnaire pursuant to this Rule, the Court may at any time require the parties, or any of them, to complete and file a questionnaire in such form as the Court may determine to assist the Court in the management of the case.

**Fixing or confirming the trial date or period.**

- 45.** (1) As soon as practicable after -
- (a) each party has filed with the Court a completed listing questionnaire,
  - (b) the Court has held a listing appointment fixed pursuant to Rule 44(2), or
  - (c) the Court has dispensed with a listing questionnaire pursuant to Rule 49,

the Court shall fix a date for the trial or the trial period or, if the Court has already done so, confirm that date and notify the parties.

(2) The Court must give to the parties at least 8 weeks' notice of the date of the trial or the period in which the trial is to commence except that the Court may give shorter notice -

(a) if the parties agree, or

(b) where the Court considers it necessary in the interests of justice.

#### *Pre-trial review*

#### **Discretion of Court.**

**46.** (1) At a case management conference and at any subsequent hearing in the proceedings prior to the trial, the Court shall consider whether to hold a pre-trial review or, if a pre-trial review has already been fixed, whether to cancel it.

(2) Any party to an action may apply to the Court for a direction that a pre-trial review be held.

(3) In considering whether or not a pre-trial review should be held, the Court shall have regard to whether the holding of a pre-trial review would assist the Court in dealing justly with the case.

(4) Where the Court decides that a pre-trial review should be held, it shall fix a date for such pre-trial review.

**Pre-trial memorandum.**

47. (1) Not less than 7 days before the date fixed for the pre-trial review, the parties shall file with the Court a pre-trial memorandum ("memorandum") in accordance with this Rule.

(2) The parties must seek to agree the contents of the memorandum and file an agreed memorandum but, if they are not able so to agree, each party should file his own memorandum and serve a copy on all other parties not less than 3 clear days before the date fixed for the pre-trial review.

(3) A pre-trial memorandum shall contain -

- (a) a concise statement of the nature of the proceedings,
- (b) details of any admissions made,
- (c) the factual and legal contentions of the party or parties filing it, and
- (d) a statement of the issues to be determined at the trial.

(4) A pre-trial memorandum shall be accompanied by a copy of all such documents that each party intends to produce at the trial or which may be of assistance in settling the action.

**Pre-trial review hearing.**

48. (1) At the pre-trial review the Court shall give directions as to the conduct of the trial in order to ensure the fair, expeditious and economic trial of the

issues.

- (2) In particular, the Court may -
  - (a) direct any party to provide further information to the other party or parties,
  - (b) give directions that each party should file and serve on the other party or parties one or more of the following documents -
    - (i) a skeleton argument,
    - (ii) a chronology of relevant events,
    - (iii) a summary of any legal propositions to be relied upon at the trial, and
    - (iv) a list of authorities which it is proposed to cite in support of such propositions,
  - (c) direct the parties to prepare one or more of the following -
    - (i) a core bundle of documents (that is to say, a bundle containing only such documents as the Court will need to review or to which it will be necessary to refer repeatedly at the trial),
    - (ii) an agreed statement of facts,

- (iii) an agreed statement of the basic technical, scientific or medical matters in issue, and
  - (iv) an agreed statement as to any relevant specialist area of law (which statement shall not be binding on the Court),
- (d) direct when and by whom the documents listed in paragraph (c) should be filed at the Court,
  - (e) give directions as to the extent to which evidence may be given at the trial in written form,
  - (f) direct the times to be allocated to opening and closing addresses,
  - (g) decide on the total time to be allowed for the trial, and
  - (h) direct how that time shall be allocated between the respective parties.

**Summary procedure in certain cases.**

**49.** (1) Where

- (a) the parties consent, or
- (b) the Court is satisfied that it can justly dispose of the action summarily

the Court may --

- (i) dispense with a case management conference and a pre-trial review,
- (ii) fix the trial date and dispense with a listing questionnaire,
- (iii) dispense with all or any of the requirements relating to the preparation and filing of bundles of documents, and
- (iv) give any directions which in its opinion will assist in the speedy and just trial of the action.

(2) Written directions given by the Court pursuant to paragraph (1) shall be delivered to all parties together with notice of the trial date or the trial period.

## PART IX CONDUCT OF PROCEEDINGS

### **General powers of Court.**

**50.** (1) The Court has the powers set out in this Rule, except where these Rules provide otherwise, in addition to any powers conferred on the Court by these Rules or any other rule, practice direction or enactment.

(2) The Court may -

- (a) extend or shorten the time for compliance with any rule, practice direction, order or direction of the Court, even if the application for an extension is made after the time for compliance has expired,
- (b) adjourn or bring forward a hearing,
- (c) stay the whole or part of any proceedings or judgment generally or until a specified date or event,
- (d) decide the order in which issues are to be tried,
- (e) dismiss or give judgment in an action after a decision on a preliminary issue,
- (f) exclude an issue from determination if in the opinion of the Court the determination of that issue is unnecessary in order to achieve substantive justice between the parties,
- (g) waive any requirement that evidence in support of any application be given by affidavit,
- (h) require the maker of an affidavit to attend Court for cross-examination or generally to give evidence in the proceedings,
- (i) require any party or party's Advocate to attend the Court,



- (j) deal with any matter in the absence of any party,
- (k) hold a hearing and receive evidence by telephone or other electronic means or by using any other method of direct oral communication: Provided that where evidence is received by telephone or other electronic means, all persons participating must be able to hear one other and to identify each other so far as is practicable,
- (l) deal with a matter on written representations submitted by the parties instead of by oral representations,
- (m) direct that any evidence be given in written form,
- (n) where any two or more parties are represented by the same Advocate -
  - (i) direct that they be separately represented,
  - (ii) if necessary, adjourn any hearing to a fixed date to enable separate representation to be arranged,
- (o) direct that notice of any proceedings or application be given to any person, and
- (p) take any other step or make any other order for the purpose of managing the case and ensuring the just resolution of the case.

- (3) When the Court makes an order or gives a direction, it may -
- (a) make the order or give the direction subject to conditions, and
  - (b) specify the consequence of failure to comply with the order, direction or a condition.
- (4) The conditions which the Court may impose include (without limitation)-
- (a) requiring a party to pay costs or give security in accordance with Rule 82,
  - (b) requiring a party to give any undertakings, and
  - (c) requiring a sum of money to be paid into court or as the Court may direct
- (5) Where a party pays money into court pursuant to an order under paragraph (4)(c), that money shall be security for any sum payable by that party to any other party in the proceedings, subject to the right of a defendant to treat all or part of any money paid into court as a payment in support of an offer to settle.
- (6) In considering whether to make an order, the Court may take into account whether a party is prepared to give an undertaking.
- (7) A power of the Court under these Rules to make an order -

- (a) may be made at any stage of the proceedings, and
- (b) includes a power to vary or revoke that order.

**Court's power to make order of its own initiative.**

**51.** (1) Except where a rule or enactment provides otherwise, the Court may exercise its powers on an application or of its own initiative.

(2) Where the Court proposes to make an order of its own initiative, it must give any person likely to be affected a reasonable opportunity to make representations, whether orally, in writing, by telephone or by such other means as the Court considers appropriate.

**Power to strike out a pleading.**

**52.** (1) In this rule, reference to a pleading includes reference to part of a pleading.

- (2) The Court may strike out a pleading if it appears to the Court-
  - (a) that the pleading discloses no reasonable grounds for bringing or defending an action,
  - (b) that the pleading is an abuse of the Court's process or is otherwise likely to obstruct the just disposal of the proceedings, or
  - (c) that there has been a failure to comply with a rule, practice direction or Court order.

(3) The Court may also order a pleading to be struck out for want of prosecution.

(4) Where the Court strikes out a pleading it may make any consequential order it considers appropriate.

(5) Where -

(a) the Court has struck out a plaintiff's pleading,

(b) the plaintiff has been ordered to pay costs to the defendant, and

(c) before the plaintiff pays those costs he starts another action against the same defendant based on the same or substantially the same facts,

the Court may, on the application of the defendant, stay that other action until the costs of the first action have been paid.

(7) This rule is without prejudice to any other power of the Court to strike out a pleading.

**Unless orders.**

**53.** (1) Where a party has failed to comply with any of these Rules, or any court order in respect of which no sanction for non-compliance has been imposed, any other party may apply to the Court for an unless order as defined in paragraph (6).

(2) An application under paragraph (1) may be made without

notice but must be accompanied by -

(a) evidence on affidavit, or otherwise to the satisfaction of the Court, which -

(i) identifies the rule or order which has not been complied with,

(ii) states the nature of the breach, and

(iii) certifies that the other party is in default, and

(b) a draft order.

(3) The Court may -

(a) grant the application,

(b) seek the views of the other parties, or

(c) direct that a date be fixed for the purpose of considering the application.

(4) Where a date is fixed pursuant to paragraph (3)(c), the applicant must give not less than 7 days' notice of the date, time and place of such application to all other parties.

(5) Where an unless order is made, the party in default shall be ordered to pay the costs of the application.

(6) In this Rule, an unless order is an order which identifies a breach, requires the party in default to remedy that breach within a specified period and specifies the consequences of failure to do so.

**Judgment without trial after striking out.**

54. (1) This Rule applies where the Court makes an order which includes a term that the pleading of a party be struck out if that party does not comply with the order.

(2) Where an order has been made striking out the whole of a party's pleading, any other party may apply for judgment with costs to be entered in his favour.

(3) A party may apply for judgment under this Rule by filing a request for judgment, which request must -

- (a) state that the order of the Court has not been complied with, and
- (b) certify that, in consequence, the right to enter judgment has arisen.

(4) Where the party applying for judgment is the plaintiff and the claim is for -

- (a) a specified sum of money,
- (b) an amount of money to be decided by the Court,
- (c) delivery of goods, where the claim gives the defendant

the alternative of paying their value, or

(d) any combination of these remedies,

judgment shall be in accordance with the terms of the particulars of the claim together with any interest and costs after giving credit for any payment that may have been made.

(5) Where the party applying for judgment is the plaintiff and the claim is for some other remedy, the judgment shall be such as the Court considers to be appropriate.

**Application for judgment to be set aside.**

**55.** (1) A party against whom the Court has entered judgment under Rule 54, may apply to the Court to set it aside.

(2) An application under paragraph (1) must be made within 14 days after the order for judgment has been served on the party making the application.

(3) Where the right to enter judgment had not arisen at the time when judgment was entered, the Court must set the judgment aside.

(4) Where the application to set aside is made for any other reason, Rule 57 (relief from sanctions) applies.

**Sanctions for failure to comply with order etc.**

**56.** (1) Wherever the Court makes an order or gives directions, the Court shall, whenever practicable, unless the Court considers it inappropriate to do so, specify the consequences of failure to comply.

(2) Where a party has failed to comply with -

(a) any of these Rules, or

(b) any such order or direction,

any sanction for non-compliance imposed by the rule, order or direction shall have effect unless the party in default applies for and obtains relief from the sanction.

(3) Where a rule, order or direction -

(a) requires a party to do something within a specified time, and

(b) specifies the consequences of failure to comply,

the time for doing the act in question may not be extended by agreement between the parties.

**Relief from sanctions.**

**57.** (1) On an application for relief from any sanction imposed for a failure to comply with any rule, order or direction, the Court will consider all the circumstances, including -

(a) the interests of the administration of justice,

(b) whether the application for relief has been made promptly,



- (c) whether the failure to comply was intentional,
- (d) whether there is a good explanation for the failure,
- (e) the extent to which the party in default has complied with other rules, orders or directions,
- (f) whether the failure to comply was caused by the party or his Advocate,
- (g) whether the trial date or likely trial date can still be met if relief is granted,
- (h) the effect which the failure to comply had on each party, and
- (i) the effect which the granting of relief would have on each party.

(2) An application for relief must be supported by affidavit evidence.

**Rectification of errors of procedure.**

**58.** Where there has been an error of procedure such as a failure to comply with a rule or practice direction -

- (a) the error does not invalidate any step taken in the proceedings unless the Court so orders, and
- (b) the Court may make an order to remedy the error.

**Amendment of pleadings.**

**59.** No party to an action may amend his pleadings except with the consent of all other parties or by leave of the Court.

**Obtaining further information.**

**60.** (1) Subject to any rule of law to the contrary, the Court may at any time order any party to -

- (a) clarify any matter which is in dispute in the proceedings, or
- (b) give additional information in relation to any such matter,

whether or not the matter is contained or referred to in any pleadings.

(2) Where the Court makes an order under paragraph (1), the party against whom it is made must -

- (a) file his response, and
- (b) serve it on the other parties

within the time specified by the Court.

(3) The Court may require a response to an order made under this rule to be supported by affidavit evidence.

**Discontinuance and withdrawal of actions.**

61. (1) No party may -

(a) discontinue or withdraw an action, counterclaim or any claim therein, or

(b) withdraw his defences or any part thereof,

except with the consent of all other parties to the action or by leave of the Court.

(2) Subject to the terms of any order by which leave to discontinue or withdraw is granted, the fact that a party has discontinued or withdrawn an action, counterclaim or claim is not a defence to a subsequent action, counterclaim or claim.

(3) A party who discontinues an action, claim or counterclaim may not make another claim against the same defendant without the leave of the Court if -

(a) he discontinued the claim after the defences had been filed, and

(b) the other claim is for the same or substantially the same cause of action.

(4) Where a party -

(a) is liable to pay any costs in respect of an action, counterclaim or claim which has been discontinued or withdrawn under paragraph (1), and

- (b) before payment of such costs, brings or makes an action, counterclaim or claim for the same or substantially the same cause of action,

the Court may order the action, counterclaim or claim to be stayed until the costs are paid.

**Payment into Court or offer to settle.**

**62.** (1) A party to an action may at any time -

- (a) pay into Court a sum of money in satisfaction of any claim made against him in the action, or
- (b) offer to settle the whole or any part of any claim made by or against him in the action by making an offer to settle.

(2) Where a party makes a payment into Court under paragraph (1)(a), he shall -

- (a) notify in writing the other party or parties in respect of whose claim the payment is made, and
- (b) at the same time, lodge at the Greffe the sum of money to be paid into Court.

(3) Where a party lodges a sum of money at the Greffe pursuant to paragraph (2), the Greffier shall -

- (a) deposit the money with an institution holding a banking licence under the Banking Supervision (Bailiwick of Guernsey) Law, 1994, as amended<sup>c</sup>,
- (b) within 7 days of the making of the deposit, give notice that he has done so to the party making the payment and to every other party in respect of whose claim the payment was made.

(4) Where a party ("the offeror") makes an offer to settle pursuant to paragraph (1)(b), he shall -

- (a) notify in writing every other party ("offeree") to whom the offer is made, and
- (b) at the same time, lodge at the Greffe a copy of the offer to settle.

(5) An offer to settle made pursuant to paragraph (1)(b) shall specify -

- (a) whether the offer relates to the whole of the claim or to part of it and, if so, to which part,
- (b) whether the offer takes account of any counterclaim,

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<sup>c</sup> Order in Council No. XIII of 1994; amended by No. XVII of 2002 and No. XVI of 2003.

(c) whether the offer includes interest and, if so, how this has been calculated, and

(d) whether the offer includes costs.

(6) The offeree may, within 14 days of an offer being made, request the offeror to clarify the offer and, if the offeror does not give the clarification requested within 14 days of receiving the request, or the offeree is still, having received the clarification requested, not satisfied either -

(a) as to whether the offer constitutes an offer within the meaning of this Rule, or

(b) as to the extent and scope of the offer,

the offeree may apply to the Court, by notice in writing to the Greffier requesting that the application be heard by a judge of the Court not otherwise involved in the proceedings, for an order requiring the offeror to clarify the offer.

(7) No payment into Court or offer to settle may be withdrawn except with the consent of all parties to the action in respect of whose claim the payment into Court was made, or to whom the offer to settle was made.

(8) Unless the payment into Court or offer to settle is disclosed to the Court by the party who made the payment or offer, the fact of the payment or offer shall not be so disclosed until all questions of liability and of the amount of damages or indebtedness have been determined except with the consent of all parties to the action in respect of whose claim the payment into Court was made, or to whom the offer to settle was made.

(9) Where a party wishes to accept payment into Court or an offer to settle, he shall -

(a) notify the party who made the payment into Court or the offer to settle in writing of his unconditional acceptance of the payment into Court or offer to settle, and

(b) lodge at the Greffe a copy of his notice of acceptance.

(10) Where a payment into Court or offer to settle is accepted, the proceedings, or that part of the proceedings to which the payment into Court or offer to settle relates, shall be stayed with effect from the date when the notice of acceptance is lodged at the Greffe.

(11) In any proceedings in which a payment into Court or offer to settle has been made, the Court shall take the fact, date and acceptance or non-acceptance of such payment into Court or offer to settle into account when considering the question of costs.

## PART X

### DISCLOSURE AND INSPECTION OF DOCUMENTS

#### General provisions.

63. (1) For the purposes of this Part -

(a) "**document**" means anything in which information of any description is recorded,

- (b) "**copy**", in relation to a document, means anything onto which information recorded in the document has been copied by whatever means and whether directly or indirectly,
- (c) "**disclosure statement**" means a statement made under Rule 69(3), and
- (d) a party discloses a document by stating that the document exists or has existed.

(2) The provisions of this Part shall be without prejudice to the powers of the Court to order disclosure and inspection of documents in accordance with any other rule of Court or enactment.

(3) The provisions of this Part do not affect any rule of law which permits or requires a document to be withheld from disclosure or inspection on the ground that its disclosure or inspection would damage the public interest.

**Right of inspection of a disclosed document.**

**64.** (1) A party to whom a document has been disclosed has a right to inspect that document except where -

- (a) the document is no longer in the control of the party who disclosed it,
- (b) the party disclosing the document has a right or duty to withhold inspection of it, or
- (c) paragraph (2) applies.



(2) Where a party considers that it would be disproportionate to the issues in the case to permit inspection of documents within a category or class of document disclosed under standard disclosure -

- (a) he is not required to permit inspection of documents within a category or class, but
- (b) he must state in his disclosure statement that inspection of those documents will not be permitted on the grounds that to do so would be disproportionate.

**Disclosure limited to standard disclosure.**

**65.** (1) An order to give disclosure is an order to give standard disclosure unless the Court directs otherwise.

(2) The Court may dispense with or limit standard disclosure.

(3) The parties may agree in writing to dispense with or to limit standard disclosure.

(4) Standard disclosure requires a party to disclose only -

- (a) the documents on which he relies, and
- (b) the documents which -
  - (i) adversely affect his own case,
  - (ii) adversely affect another party's case, or

- (iii) support another party's case, and
- (c) the documents which he is required to disclose by a relevant practice direction.

**Duty of search.**

**66.** (1) When giving standard disclosure, a party is required to make a reasonable search for documents falling within Rule 65(4)(b) or (c).

(2) The factors relevant in deciding the reasonableness of a search include the following -

- (a) the number of documents involved,
- (b) the nature and complexity of the proceedings,
- (c) the ease and expense of retrieval of any particular document, and
- (d) the significance of any document which is likely to be located during the search.

(3) Where a party has not searched for a category or class of document on the grounds that to do so would be unreasonable, he must state this in his disclosure statement and identify the category or class of document.

**Duty of disclosure limited to documents which are or have been in a party's control.**

**67.** (1) A party's duty to disclose documents is limited to documents

which are or have been in his control.

(2) For this purpose a party has or has had a document in his control if -

- (a) it is or was in his physical possession,
- (b) he has or has had a right to possession of it, or
- (c) he has or has had a right to inspect or take copies of it.

**Disclosure of copies.**

**68.** (1) A party need not disclose more than one copy of a document.

(2) A copy of a document that contains a modification, obliteration or other marking or feature -

- (a) on which a party intends to rely, or
- (b) which adversely affects his own case or another party's case or supports another party's case

shall be treated as a separate document.

**Procedure for standard disclosure.**

**69.** (1) In the case of standard disclosure, each party shall serve on every other party a list of documents identifying the documents in a convenient order and manner and as concisely as possible.

(2) The list referred to in paragraph (1) must indicate -

- (a) those documents in respect of which the party claims a right or duty to withhold inspection, and
  - (b) those documents which are no longer in the control of that party, and what has happened to those documents.
- (3) The list must include a disclosure statement -
  - (a) setting out the extent of the search that has been made to locate documents which he is required to disclose,
  - (b) certifying that he understands the duty to disclose documents, and
  - (c) certifying that to the best of his knowledge he has carried out that duty.
- (4) Where the party making the disclosure statement is a company, firm, association or other organisation, the statement must also -
  - (a) identify the person making the statement, and
  - (b) explain why he is considered an appropriate person to make the statement.
- (5) The parties may agree in writing -
  - (a) to disclose documents without making a list, and

- (b) to disclose documents without the disclosing party making a disclosure statement.

**Duty of disclosure continues during proceedings.**

70. Any duty of disclosure continues until the proceedings are concluded, and if documents to which that duty extends come to a party's notice at any time during the proceedings, he must immediately notify every other party.

**Specific disclosure or inspection.**

71. (1) The Court may make an order for specific disclosure or specific inspection.

(2) An order for specific disclosure is an order that a party must do one or more of the following things -

- (a) disclose documents or classes of documents specified in the order,
- (b) carry out a search to the extent stated in the order,
- (c) disclose any documents located as a result of that search.

(3) An order for specific inspection is an order that a party permit inspection of a document referred to in Rule 64(2).

**Disclosure in stages.**

72. The parties may agree in writing, or the Court may direct, that disclosure or inspection or both shall take place in stages.

**Documents referred to in pleadings etc.**

73. A party may inspect a document mentioned in -

- (a) any pleadings,
- (b) any witness statement,
- (c) an affidavit, or
- (d) any expert reports.

**Inspection and copying of documents.**

74. Where a party has a right to inspect a document -

- (a) that party must give the party who disclosed the document written notice of his wish to inspect it,
- (b) the party who disclosed the document must permit inspection not more than 7 days after the date on which he received the notice, and
- (c) that party may request a copy of the document and, if he also undertakes to pay reasonable copying costs, the party who disclosed the document must supply him with a copy not more than 7 days after the date on which he received the request.

**Disclosure of documents in respect of claims relating to personal injury or death.**

75. (1) On the application in accordance with this rule of a person

who appears to the Court to be likely to be a party to subsequent proceedings in the Court in which a claim in respect of personal injuries to a person, or in respect of a person's death, is likely to be made, the Court may order a person who appears to the Court to be likely to be a party to the proceedings and to be likely to have or have had in his control any documents which are relevant to an issue arising or likely to arise out of that claim -

(a) to disclose whether those documents are in his control,  
and

(b) to produce such of those documents as are in his control to the applicant or, on such conditions as may be specified in the order -

(i) to the applicant's Advocate,

(ii) to the applicant's Advocate and any medical or other professional adviser of the applicant,  
or

(iii) if the applicant is not represented by an Advocate, to any medical or other professional adviser of the applicant.

(2) The Court may make an order under paragraph (1) only where -

(a) if proceedings had started, the respondent's duty by way of standard disclosure, set out in Rule 65(4), would extend to the documents or classes of documents

of which the applicant seeks disclosure, and

(b) disclosure before proceedings have started is desirable in order to-

(i) dispose fairly of the anticipated proceedings,

(ii) assist the dispute to be resolved without proceedings, or

(iii) save costs.

(3) An application for an order under paragraph (1) shall be supported by an affidavit which shall -

(a) state the grounds on which it is alleged that the applicant and the person against whom the order is sought are likely to be parties to subsequent proceedings in which a claim in respect of personal injuries or death is likely to be made,

(b) specify or describe the documents in respect of which the order is sought and show, if practicable by reference to any pleading intended to be served in the proceedings -

(i) that the documents are relevant to an issue arising or likely to arise out of a claim in respect of personal injuries or death likely to be made in the proceedings, and



- (ii) that the person against whom the order is sought is likely to have or have had them in his control.

(4) On the application in accordance with this rule of a party to any proceedings in which a claim is made in respect of personal injuries to a person, or in respect of a person's death, the Court shall have power to order a person who is not a party to the proceedings and who appears to the Royal Court to be likely to have or to have had in his control any documents which are relevant to an issue arising out of the said claim -

- (a) to disclose whether those documents are in his control, and
- (b) to produce such documents as are in his control to the applicant or, on such conditions as may be specified in the order -
  - (i) to the applicant's Advocate,
  - (ii) to the applicant's Advocate and any medical or other professional adviser of the applicant, or
  - (iii) if the applicant is not represented by an Advocate, to any medical or other professional adviser of the applicant.

(5) The Court may make an application under paragraph (4) only

where -

- (a) the documents of which disclosure is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings, and
- (b) disclosure is necessary in order to dispose fairly of the claim or to save costs.

(6) An application under paragraph (4) shall be instituted by summons served on the person not a party to the proceedings against whom the order for disclosure is sought and on every party to the proceedings other than the applicant, and shall be supported by an affidavit which -

- (a) shall specify or describe the documents in respect of which the order is sought, and
- (b) show, if practicable by reference to any pleading served or intended to be served in the proceedings -
  - (i) that the documents are relevant to an issue arising or likely to arise out of a claim in respect of personal injuries or death made or likely to be made in the proceedings, and
  - (ii) that the person against whom the order is sought is likely to have or to have had them in his control.

(7) Where a summons is required to be served on any person under paragraphs (3) or (6), a copy of the supporting affidavit shall be served with the summons in each case.

(8) An order under paragraph (1) or (4) for the disclosure and production of documents -

(a) may be conditional on the applicant giving security for the costs of the person against whom the order is made,

(b) may be made on such other terms and conditions as the Court thinks just, and

(c) shall require the person against whom the order is made to make an affidavit stating whether any documents specified or described in the order are, or at any time have been, in his control, when he parted from them and what has become of them.

(9) An order under paragraph (1) or (4) for the disclosure and production of documents may be varied or rescinded by the Court on the application of any person who was a party to the application pursuant to which the order was made.

(10) No person shall be compelled by an order under paragraph (1) or (4) for the disclosure and production of documents to produce any document which he could not be compelled to produce -

(a) in the case of an order under paragraph (1), if the

subsequent proceedings had already begun, or

- (b) in the case of an order under paragraph (4), if he had been served with a summons to produce the documents at the trial.

(11) Where the Court makes an order under paragraph (1) or (2) for the disclosure and production of documents, the provisions of this Part shall apply in all respects as if the party against whom the order is made were a party to the proceedings.

(12) This rule shall not limit any other power which the Court may have to order disclosure before proceedings start or against a person who is not a party to the proceedings.

**Claim to withhold inspection or disclosure of a document.**

**76.** (1) A person may apply, without notice, for an order permitting him to withhold disclosure of a document on the ground that disclosure would damage the public interest.

(2) Unless the Court orders otherwise, an order of the Court under paragraph (1) -

- (a) must not be served on any other person, and
- (b) must not be open to inspection by any person.

(3) A person who wishes to claim that he has a right or a duty to withhold inspection of a document, or part of a document, must state in writing -

- (a) that he has such a right or duty, and
  - (b) the grounds on which he claims that right or duty.
- (4) The statement referred to in paragraph (3) must be made -
- (a) in the list in which the document is disclosed, or
  - (b) if there is no list, to the person wishing to inspect the document.
- (5) A party may apply to the Court to decide whether a claim made under paragraph (3) should be upheld.
- (6) For the purpose of deciding an application under paragraph (1) or paragraph (3), the Court may -
- (a) require the person seeking to withhold disclosure or inspection of a document to produce that document to the Court, and
  - (b) invite any person, whether or not a party, to make representations.
- (7) An application under paragraph (1) or paragraph (5) must be supported by evidence.

**Restriction on the use of a privileged document inspection of which has been inadvertently allowed.**

77. Where a party inadvertently allows a privileged document to be

inspected, the party who has inspected the document may use it or its contents only with the leave of the Court.

**Consequence of failure to disclose documents or permit inspection.**

78. A party may not rely on any document which he fails to disclose or in respect of which he fails to permit inspection except with the leave of the Court.

**Subsequent use of disclosed documents.**

79. (1) A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, except where -

- (a) the document has been read to or by the Court, or referred to, at a hearing which has been held in public,
- (b) the Court gives leave, or
- (c) the party who disclosed the document and the person to whom the document belongs agree.

(2) The Court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the Court, or referred to, at a hearing which has been held in public.

(3) An application for such an order may be made -

- (a) by a party, or
- (b) by any person to whom the document belongs.

PART XI  
REQUÊTES CIVILES

**Requêtes civiles.**

**80.** (1) A requête civile shall henceforth be presented to, and determined by, the Ordinary Court or, where the order from which the relief is sought was made by the Full Court, by the Full Court.

(2) A requête civile shall be presented by way of petition which shall be signed by the petitioner or his Advocate.

(3) A requête civile shall not be presented except by leave of the Court following an application made ex parte.

(4) A person given leave under paragraph (3) shall give notice to the respondent that he intends to present a requête civile by serving a signification upon him.

(5) The signification -

(a) shall be served not less than 2 clear days before the day of the hearing of the petition,

(b) shall state the date and time appointed for the hearing,  
and

- (c) shall contain or have annexed to it a copy of the requête civile.
- (6) The Court may at any time order the petitioner -
  - (a) to lodge at the Greffe a monetary sum, or security therefor,
  - (b) to give security for costs,

in such amount, on such terms and in such manner as the Court thinks just.

## PART XII GENERAL PROVISIONS

### **Mode of making application to Court.**

**81.** (1) Save as expressly provided by these Rules, a person intending to apply to the Court for an order under these Rules shall give notice of the fact to the respondent to the application by serving a signification on him.

- (2) The signification -
  - (a) shall be served not less than 4 clear days before the day of the application,
  - (b) shall state the date and time appointed for the hearing of the application,
  - (c) shall contain or have annexed to it a copy of the



application, and

(d) shall be signed by the applicant or his Advocate.

**Costs and security therefor.**

**82.** (1) The Court may, in any action -

- (a) make such order as to the costs of the proceedings, or of any stage or application in the proceedings, and
- (b) order any party to give security for costs in such amount, on such terms and in such manner,

as the Court thinks just.

(2) An order under paragraph (1)(b) for the giving of security for costs may provide that -

- (a) the proceedings shall be stayed until the security is given, and
- (b) if the security is not given within such time as may be specified in the order, the proceedings may be dismissed by order of the Court.

**Full or partial indemnity costs.**

**83.** (1) Notwithstanding the provisions of the Royal Court (Costs and

Fees) Rules, 2000<sup>d</sup> ("the 2000 Rules"), or of any other rule of Court or enactment, the Court may, in the circumstances mentioned in paragraph (2), order that costs or security for costs shall be paid on a full or partial indemnity basis.

(2) The circumstances referred to in paragraph (1) are as follows-

(a) where, in the special circumstances of the case, it is the opinion of the Court that costs should be ordered otherwise than on the basis provided by the 2000 Rules, or

(b) where any party has pleaded or otherwise pursued or defended an action, claim or counterclaim unreasonably, scandalously, frivolously or vexatiously, or has otherwise abused the process of the Court.

(3) In the event of any difference or dispute between the parties as to the costs recoverable under an order of the Court, the difference or dispute should be determined in accordance with the 2000 Rules.

**Interim assessment of costs.**

**84.** (1) The Court may, at the conclusion of a hearing or application at any interim stage of an action, which hearing or application has lasted not more than one day, order a party to pay to another party the costs ("interim costs") of such hearing or application.

(2) Where the Court orders a party to pay interim costs to another party, it may, subject to paragraph (3), determine, by way of a summary assessment

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<sup>d</sup> Order of the Royal Court No. I of 2000.

of costs, the amount payable by the party liable to pay the costs, such costs to be payable forthwith.

(3) Where a party applies for a summary assessment of costs, the Court may order that party, and any other party in the proceedings, to submit to the Court, within such period as the Court may order, a Statement of Costs.

**Witness summonses.**

**85.** Every summons requiring the attendance of a witness in Court shall, unless the Court orders otherwise, be served by the Sergeant on the witness à personne not less than 4 clear days before the day of the hearing.

**Péremption.**

**86.** Where an action becomes périmée -

- (a) the Court's powers to make orders for costs are not prejudiced, and
- (b) any party to the action may apply to the Court for an order that the action be restored.

**Recovery of penalties or amendes.**

**87.** Notwithstanding the provisions of any enactment or rule of Court, Rule 13(2) shall apply to an action for the recovery, forfeiture or enforcement of a penalty or amende.

**Affidavits.**

**88.** An affidavit for the purposes of these Rules shall be made -

- (a) in the Island of Guernsey, Herm or Jethou, before the

Bailiff, Deputy Bailiff or Lieutenant-Bailiff, a Judge of the Royal Court, a Jurat of the Royal Court, a Notary Public or an Advocate of 5 years' standing or more,

- (b) in the Island of Alderney, before a Jurat of the Court of Alderney, a Notary Public or an Advocate of 5 years' standing or more,
- (c) in the Island of Sark, before the Seneschal or his deputy or before a Notary Public or an Advocate of 5 years' standing or more,
- (d) in a place outside the Bailiwick -
  - (i) before a person empowered to administer oaths in that place, or
  - (ii) in accordance with the rules in force in that place governing the administration of oaths for any judicial or other legal purpose, or
  - (iii) where the deponent is serving in any of the regular armed forces of the Crown, shall be made before an officer holding a commission in any of those forces.

**Commencement of actions.**

**89.** (1) Subject to subsections (2) and (3), for the purposes of these Rules, an action commences when the summons is handed by the plaintiff to the Sergeant.

(2) Where the Court makes an order for substituted service within the jurisdiction pursuant to Rule 7, or for leave to effect service out of the jurisdiction pursuant to Rule 8, the action shall be deemed to have commenced when the application for such order is lodged at the Greffe.

(3) Where a party's Advocate has agreed to accept service of proceedings on that party's behalf, the action shall be deemed to have commenced when the summons is handed to, or delivered to the place of business of, that Advocate.

**Signing of summonses etc. otherwise than by an Advocate.**

**90.** (1) A summons, signification or other document is not formally invalid by reason only of the fact that it is not signed by an Advocate, notwithstanding the provisions -

- (a) of these Rules,
- (b) of the Ordonnance relative aux Ajours et aux Causes mises devant la Cour Royale of the 27<sup>th</sup> October, 1934<sup>e</sup>, or
- (c) of any other rule of statutory or customary law imposing formal requirements as to the signing of summonses,

provided that the conditions set out in paragraph (2) are satisfied.

- (2) The conditions referred to in paragraph (1) are -
- (a) the person wishing to serve the summons ("the applicant") has lodged two copies of the summons with the Greffier,
  - (b) the Greffier, at the request of the applicant (made in such form as the Greffier may require), has fixed a date, time and place for the making of an ex parte application to the Bailiff for leave under subparagraph (c), and
  - (c) the Bailiff, on hearing the application, has given leave for the summons to be signed by the applicant himself or, where appropriate, by his tuteur or curateur or by the person appointed to act on his behalf pursuant to the provisions of Rule 32(1).

(3) The Bailiff, on an application under this rule, may give such directions as he thinks fit as to the hearing of the matter and may -

- (a) grant leave, subject to such conditions as he thinks fit,  
or
- (b) refuse leave,

and the decision of the Bailiff is final.

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<sup>e</sup> Recueil d'Ordonnances Tome VII, p. 17.

(4) For the purposes of this rule, "summons" includes a signification, petition or other document to be served by Her Majesty's Sergeant in connection with proceedings instituted, or to be instituted, before the Court.

### **Repeals.**

91. The Royal Court Civil Rules 1989<sup>f</sup>, the Royal Court (Discovery of Documents) Rules, 1998<sup>g</sup> and the Royal Court (Signing of Summonses) Order, 2003<sup>h</sup> are hereby repealed.

### **Interpretation.**

92. (1) In these Rules, unless the context otherwise requires -

"**Advocate**" means an Advocate of the Royal Court of Guernsey,

"**clear day**" means a period of 24 hours ending at midnight and does not include any non-business day as defined by the Non-Business Days Order, 1993<sup>i</sup>

"**the Court**" means the Full Court, or the Ordinary Court, as the case may require,

"**defendant**" includes any party defending any claim in any proceedings,

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<sup>f</sup> Order of the Royal Court No. VII of 1989.

<sup>g</sup> Order of the Royal Court No. I of 1998.

<sup>h</sup> Order of the Royal Court No. III of 2003.

<sup>i</sup> Guernsey Statutory Instrument No. 28 of 1993.

"**direction**" means any direction of the Court, including a practice direction,

"**élection de domicile**" means an address in the jurisdiction at which any summons, signification or other document relating to the proceedings can validly be served on the party making the election,

"**Full Court**" means the Royal Court sitting as a Full Court,

"**Greffier**" means Her Majesty's Greffier of the Royal Court and shall include any of his deputies,

"**interpleader**" means relief sought under Part V of these Rules by a person who is under a liability in respect of which two or more persons are making adverse claims,

"**jurisdiction**" means the jurisdiction of the Court,

"**leave of the Court**" means leave of the Court given by order, and "**leave**" shall be construed accordingly,

"**listing questionnaire**" means a document required to be completed in accordance with Rule 44,

"**month**" means calendar month,

"**Ordinary Court**" means the Royal Court sitting as an Ordinary Court including when exercising an appellate jurisdiction,

"**plaintiff**" includes a party bringing any claim in any proceedings,



"**pre-trial review**" means a hearing in accordance with Rule 48,

"**Sergeant**" means Her Majesty's Sergeant of the Royal Court or any of the Deputy or Assistant Sergeants,

"**trial period**" means the period fixed by the Court as the period within which a trial is to be heard.

(2) Unless the context otherwise requires, a reference in these Rules to any enactment, rule or order is a reference to that enactment, rule or order as amended, repealed and replaced, extended or applied by or under any other enactment, rule or order, including these Rules.

(3) Unless the context otherwise requires -

(a) a reference in these Rules to a numbered or lettered Part or Rule is a reference to the Part or Rule in these Rules which is so numbered or lettered;

(b) a reference in a provision of these Rules to a numbered or lettered paragraph or sub-paragraph is a reference to the paragraph or sub-paragraph of that provision which is so numbered or lettered.

(4) The Interpretation (Guernsey) Law, 1948<sup>j</sup> applies to the interpretation of these Rules as it applies to the interpretation of an enactment.

**Citation.**

93. These Rules may be cited as the Royal Court Civil Rules, 2007.

**Commencement and transitional provisions.**

94. (1) Subject to paragraph (2), these Rules shall come into force on 4<sup>th</sup> February, 2008.

(2) Unless the Court otherwise directs, these Rules shall not apply to any action which, on the commencement date, was inscribed on the Rôle des Causes en Preuve, in relation to which the Royal Court Civil Rules, 1989 shall continue to apply.

(3) Where an action was, on the commencement date, inscribed on the Rôle des Causes à Plaider but no defences have yet been tabled, Rule 16 shall not apply and Rule 15 of the Royal Court Civil Rules 1989 shall continue to apply to that action.

(4) Subject to paragraphs (2) and (3), the Court may make such orders in respect of actions commenced before the commencement date as it thinks just.

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<sup>j</sup> Ordres en Conseil Vol. XIII, p. 355