

Admiralty Rules (Amendment) 1993 No. 327

EXPLANATORY STATEMENT

STATUTORY RULES 1993 No. 327

Issued by the authority of the Attorney-General

Admiralty Act 1988

Admiralty Rules (Amendment)

The purpose of the proposed amendments is to make minor variations and improvements to the practice and procedure of Courts exercising jurisdiction under the Admiralty Act 1988.

First, the amendments will enable a facsimile copy of the initiating process to be served on a defendant. Secondly, they will make it clear that an application for the arrest of a vessel will also constitute an undertaking to pay the fees and expenses of the Marshal making the arrest. Thirdly, unless there are exceptional circumstances, the amendments will require that the plaintiff be given prior notice of the hearing of an application to release a vessel from arrest. Fourthly, the amendments will enable the Registrar of a Court as well as the Court itself to dispense with the requirement that there be two sureties for a bail bond.

There would also be a number of amendments to the forms set out in the existing Rules. The existing Form 1 relating to the title of documents for use in proceedings under the Act will be replaced by a new form which will make it clear that a ship, surrogate ships (that is, sister ships) and property on board ships (or a combination of these entities) may be defendants in Admiralty actions as well as natural persons. Form 6 would be amended to require more information about the persons commencing the action including their addresses. A minor change would be made to Form 16 to refer to the 'execution' of an arrest warrant rather than to the 'service' of a warrant, this term being technically more correct.

There is currently no form to accompany a payment into Court. A new Form 17A would be inserted for that purpose. A reference to that form would be inserted in Rule 51. The proposed regulations would also insert a new Form 19A relating to the giving of notice of the release of a vessel from arrest. References to this new form would be included in Rule 51.

A more detailed explanation of the changes is attached.

ATTACHMENT

DETAILS OF CHANGES TO ADMIRALTY RULES

The details of the proposed amendments to the Admiralty Rules which would be made by the Admiralty Rules (Amendment) are as follows:

Rule 2 adds subrule 30(4) to enable a facsimile of a sealed copy of the originating process to be served instead of that sealed copy. This will overcome delays which occur in sending the sealed copy of the process to a port for service on a ship in that port. It will now be possible to send a facsimile of that sealed process to that port and thus overcome the delay.

Rule 3 and **subrule 8.3** replace rule 41 and Form 12 of the existing Rules. The purpose of these changes is to make it clear that where an application for an arrest warrant is made by an applicant's legal representative, the application will constitute an undertaking by that legal representative to pay the fees and expenses of the Marshal. Where the application is made personally by the applicant, it will constitute an undertaking by the applicant to pay the fees and expenses of the Marshal. The new Form 12 contains an express undertaking to this effect.

Subrules 4.1 and 8.5 insert a new subrule 51(1A) and Form 17A. These new rules provide for a form to accompany a payment into Court under subrule 51(1) of the existing Rules.

Rule 5 and **subrules 4.2 and 8.6** amend the existing rules 51 and 52 and insert a new Form 19A. The purpose of these proposed amendments is two-fold. First, the amended Rules require that the plaintiff in an action be given prior notice of a hearing of an application for the release of a vessel from arrest. This applies to applications for release being heard by the Registrar and to applications being heard by a Court. The amended Rules also provide for this prior notification to be dispensed with in exceptional circumstances. Those exceptional circumstances might include the circumstance where a payment has been made into Court and the arrested ship is due to leave port but the plaintiff is unable to be located. The second purpose of the proposed changes is to require the Registrar or the Court, as the case may be, to give notice of the release of a vessel to the Marshal in accordance with Form 19A.

Rule 6 amends the existing subrule 54(2) to enable the Registrar of a Court as well as the Court itself to dispense with the requirement of two sureties for a bail bond.

Rule 7 amends the existing rule 75 relating to undertakings. The purpose of the amendment is to ensure that any person, including a solicitor, who fails to comply with an undertaking given to a Court under the Rules will be liable for committal. The existing Rules only provide for the committal of solicitors.

Subrule 8.1 substitutes a new form for the existing Form 1 relating to the title of documents for use in proceedings under the *Admiralty Act* 1988. The new form covers most of the possible combinations of defendants. That is, a defendant in person, the ship, surrogate ship(s), property and any combination of those possibilities. Secondly, in the case of an *in rem* action, the new form makes it clear that it is the ship(s) or goods which are the defendants and not the owners of the ship(s) or goods. Thirdly, it removes the implication in Note 6 of the existing form that there can be more than one wrong-doing ship. Finally, it specifically includes a reference to property other than ships.

Subrule 8.2 substitutes a new Form 6 for the existing Form 6 which was inserted in Statutory Rules 1990 No. 392. The new form requires the plaintiff to insert the date of issue, the actual address of the plaintiff and an address for service of the plaintiff. It also requires the name of the 'relevant person' referred to in rule 15 to be identified.