

Admiralty Rules (Amendment) 2002 No. 109

EXPLANATORY STATEMENT

STATUTORY RULES 2002 No. 109

Issued by the authority of the Attorney-General

Admiralty Act 1988

Admiralty Rules (Amendment)

The purpose of the proposed amendments to the Rules is twofold: to ensure that the affidavit in support of an arrest warrant is served at the same time as the arrest warrant; and to align the wording of one of the Forms in the Schedule with the wording reflected in the relevant Rule confirming that the undertaking to pay the Marshal's fees and expenses is an undertaking *to the Court*.

Proposed Rule 2 substitutes existing subrules 43 (1) and (2) with three new subrules in order to remedy an existing inadequacy in the Rules. This amendment ensures that the affidavit in support of the application for an arrest warrant is served at the same time as an arrest warrant, so that the defendant ship has all the details available to it of the substantive legal claim when the arrest is made. Arrest of a ship may occur either at the same time or after the action is commenced, In either case, the affidavit will provide more information to the master of the ship than the writ which underlies the action.

Rule 41 makes it clear that an undertaking for an arrest warrant constitutes an undertaking *to the Court*. Proposed Rule 3 amends Form 12 of the Schedule to reflect the wording of Rule 41 and specifically, to confirm that the undertaking as to expenses payable is made *to the Court* by the applicant or by his or her solicitor. This clarification is necessary as a more general undertaking could be argued to be of less significance or to have insufficient remedies available for any breach. This amendment also clarifies that an undertaking made by a solicitor on behalf of a client is a personal undertaking.

The proposed Rules would commence on a gazettal.