

# **The Court of Alderney Civil Rules, 2005**

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# **The Court of Alderney Civil Rules, 2005**

**THE COURT OF ALDERNEY AND THE ROYAL COURT OF GUERNSEY**, in exercise of the powers respectively conferred on them by section 17 of the Government of Alderney Law, 2004 and all other powers enabling them in that behalf, hereby order:-

## **PART I**

### *Service of Documents*

#### **Service on an individual.**

**1.** (1) Service of a document on an individual shall be effected by the Greffier -

- (a) by personal service in Alderney (which has effect for the purposes of these Rules as A service);
- (b) by leaving the document at the individual's place of residence in Alderney (B or C service);
- (c) where, in the action to which the document relates, the individual has given an address for service in accordance with Rule 11 or 14, by leaving the document there or by sending it there by post (A service); or
- (d) where an address for service has been given 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 or by sending it there by post (B or C service).

(2) Service of a document may be effected on an individual in Guernsey by being transmitted by the Greffier to Her Majesty's Sergeant for service by him on the individual in accordance with the provisions of Rule 1 of the Royal Court Civil Rules, 1989<sup>a</sup>.

**Service on a body corporate or partnership.**

2. (1) Service of a document on a body corporate shall be effected by the Greffier -

- (a) by leaving the document at the registered office in Alderney of the body corporate (A service);
- (b) where the body corporate has no registered office in Alderney but has a registered office elsewhere in the Bailiwick, by sending the document there by post (A service);
- (c) where the body corporate has no registered office in the Bailiwick but has a place of business in Alderney, by leaving the document there (B or C service);
- (d) where the body corporate is an external company, by leaving the document at the registered address for service specified in the Register of External Companies (A service); or
- (e) in accordance with Rule 1(1)(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

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<sup>a</sup> O.R.C. No. VII of 1989.

unincorporated body shall be effected by the Greffier -

- (a) by personal service in Alderney on any partner, member, manager, director or other similar officer thereof (A service);
- (b) by leaving the document at the place of residence in Alderney of any partner, member, manager, director or other similar officer thereof (B or C service);
- (c) where the body has a place of business in Alderney, by leaving the document there (B or C service); or
- (d) in accordance with Rule 1(1)(c) or (d), as if the references therein to the individual were references to the body.

**Service on the States.**

3. Service of a document on the States of Alderney or any committee thereof shall be effected by the Greffier by personal service on the Chief Executive of the States (A service).

**Greffier to state mode of service.**

4. (1) The Greffier, having effected service of a document in accordance with Rule 1(1), 2 or 3, or having attempted so to effect service, shall record the mode of service on the document as follows -

- (a) in the case of service in accordance with Rule 1(1)(a) or (c), 2(1)(a), (b) or (d), 2(2)(a) or 3, with the letter "A";
- (b) in the case of service in accordance with Rule 1(1)(b) or (d), 2(1)(c) or 2(2)(b) or (c), where the Greffier left the document at the address in question 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".

(2) Where service of a document is effected or attempted in accordance with Rule 1(2) on an individual in Guernsey, the Greffier shall record the mode of service on the document by replicating the mode of service stated in respect of the document by Her Majesty's Sergeant in accordance with the provisions of Rule 4 of the Royal Court Civil Rules, 1989.

**Effect of Greffier's statement of service.**

**5.** A statement of service recorded under Rule 4 -

- (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, by his Advocate or (in the case of a small claim) by his lay representative; or
  - (ii) the Court is satisfied that that party has notice of the document or that service of the document was good;

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

**Substituted service within the jurisdiction.**

**6.** (1) Where service within the jurisdiction of a document in the manner required by these Rules would be impracticable or would entail undue expense, the Court may make such order -

- (a) for substituted or other service; or
- (b) for the substitution for service of 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, except where the application relates to a small claim, in which case he must file written evidence in support of his application.

**Service out of the jurisdiction.**

7. (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 return date.

(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 Greffier, by the record of the Greffier.

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



8. The provisions of Rules 1 to 7 -

- (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 II

*Commencement of Proceedings*

**Cause to be tabled.**

9. (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;
- (b) a statement of the relief sought (but where damages are claimed the amount thereof need not, subject to paragraph (4), be particularised); and
- (c) except where the summons served on the defendant is signed by an Advocate, a statement of truth signed by the plaintiff.

(3) At each successive stage in the action, the plaintiff shall add to the cause a sufficient reference to the last order or direction made by the Court in the action, including the date and brief particulars thereof.

(4) Paragraph (2)(b) is without prejudice to any rule of law which relates to the registration of acts of court against the real property of any person and which requires the amount secured to be particularised.

**Summons to be served on defendant.**

**10.** (1) A plaintiff intending to table a cause shall give notice of the fact to the defendant by serving a summons on him.

(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 tabling of the cause;
- (c) shall contain or have annexed to it a copy of the cause; and
- (d) shall be signed by the party in question or his Advocate.

**Plaintiff's address for service.**

**11.** (1) The cause shall state the plaintiff's address for service.

(2) If at any time the Court is satisfied that service cannot be effected at the address for service given 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 give an address for service or to amend the address for service given by him.

(4) The plaintiff may at any time change the address for service given by him; but the change will only be effective once he has given written notice of it to the Greffier and to all other parties to the action.

(5) The plaintiff's address for service, and any amendment or change made under paragraph (3) or (4), shall remain valid until the action is

terminated (whether by final execution of the judgment or otherwise).

**Failure to appear.**

**12.** If on the return date -

- (a) the plaintiff does not appear when the cause is tabled, the Court may dismiss the action;
- (b) the defendant does not appear when the cause is tabled, the Court may give judgment against him.

**Defendant's intention to defend.**

**13.** Where the cause is tabled and the defendant intimates his intention to defend the action, time starts to run accordingly for the purposes of rule 49.

**Defendant's address for service.**

**14.** (1) The defendant shall, on the first tabling of the cause, give an address for service.

(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 address for service given 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 give an address for service or to amend the address for service given by him.

(5) The defendant may at any time change his address for service; but the change will only be effective once written notice of it is given to the Greffier and to all other parties to the action.

(6) The defendant's address for service, and any amendment or change to it under paragraph (4) or (5), shall remain valid until the action is terminated (whether by execution of the judgment or otherwise).

**Defences.**

**15.** (1) The defendant shall, unless the Court orders otherwise, table his defences to the action upon being required to do so by a summons served on him in that behalf by the plaintiff.

(2) The summons for defences -

- (a) shall be served on the defendant at least 3 clear days before the return date;
- (b) shall state the return date and the time appointed for the tabling of the defences; and
- (c) shall be signed by the party in question or his Advocate.

**Judgment in default of defences**

**16.** Where the defendant does not table his defences in accordance with Rule 15(1) the Court may give judgment against him.

**PART III**

*Summary judgment*

**Applications and grounds for summary judgment.**

**17.** (1) The plaintiff may, at any time after the cause is tabled and the defendant intimates his intention to defend the action, apply to the Court for summary judgment against the defendant, unless his application relates to a small claim, in which case the provisions of Part IV apply instead of this Part III.

(2) The grounds of an application for summary judgment shall be that the defendant has no defence -

- (a) to the plaintiff's claim, or to any particular part thereof; or

- (b) to the claim or part thereof except as to the amount of damages claimed.

**Notice of application for summary judgment.**

**18.** (1) A plaintiff intending to apply for summary judgment shall give notice of the fact to the defendant by serving a summons on him.

(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 in question or his Advocate;
- (d) shall contain or have annexed to it a copy of the application and of the affidavit under Rule 19; and
- (e) shall contain a statement of the effect of the application, if successful.

**Application to be supported by affidavit.**

**19.** An application for summary judgment shall be supported by an affidavit -

- (a) verifying the facts on which the claim or part thereof is based; and
- (b) stating that, in the deponent's belief, there is no defence to the claim or part thereof, or no defence except as to the amount of damages claimed, and the reasons for such belief.

**Court may give judgment for plaintiff.**

20. Unless on the hearing of an application for summary judgment the Court dismisses the application, or the defendant satisfies the Court that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial, the Court may give such judgment against the defendant on the claim or part thereof as the Court thinks just.

**Stay of execution.**

21. The Court may by order, subject to such conditions, if any, as it thinks just, stay execution of any judgment given under Rule 20 until after the trial of any counterclaim set up by the defendant in the action or of any separate action commenced or to be commenced by the defendant against the plaintiff.

**Defendant may show cause against application.**

22. (1) A defendant may show cause against an application for summary judgment by affidavit or otherwise to the satisfaction of the Court.

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

- (a) to produce any document and, if the Court considers it appropriate, to produce an affidavit in support thereof; and/or
- (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.

**Court may give leave to defend.**

23. The Court may, by order, give the defendant against whom the application for summary judgment is made leave to defend the claim or part thereof subject to such conditions, if any, as it thinks just.

**Applications and grounds for summary judgment on counterclaim.**

24. (1) Where in any action the defendant sets up a counterclaim he

may, at any time thereafter, apply to the Court for summary judgment against the plaintiff on the counterclaim.

(2) The grounds of the application shall be that the plaintiff has no defence -

(a) to the counterclaim, or to any particular part thereof;  
or

(b) to the counterclaim or part thereof except as to the amount of damages claimed.

(3) Rules 18 to 23 apply to an application under paragraph (1) subject to the following modifications -

(a) references to the plaintiff and defendant shall be respectively construed as references to the defendant and plaintiff;

(b) references to the claim shall be construed as references to the counterclaim; and

(c) in Rule 21 the words "any counterclaim set up by the defendant in" and the words "or of any separate action commenced or to be commenced by the defendant against the plaintiff" are omitted.

**Further conduct of action.**

**25.** (1) Where an application for summary judgment (whether or not successful) has been made under Rule 17 or 24, the Court may make such order as to the further conduct of the action as it thinks just.

(2) Where an application for summary judgment under Rule 17 or 24 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.

**Costs.**

26. On an application for summary judgment under Rule 17 or 24 -
- (a) where it appears to the Court that the applicant knew that the defendant or plaintiff (as the case may be) was relying on a contention which would entitle him to unconditional leave to defend, the Court may dismiss the application with costs;
  - (b) in any other case, the Court may make such order as to the costs of the application as it thinks just.

**PART IV**

*Small Claims*

**Small Claims.**

27. (1) An action solely for the recovery of a fixed sum not exceeding £2,500 shall be known as a small claim and shall be commenced by summons.

(2) Actions for small claims may be heard by the Court constituted by a single Jurat.

(3) In an action for a small claim, if a party requests a preliminary point at issue to be determined in accordance with rule 58, the Court must, when considering whether to grant any preliminary hearing, have regard to the desirability of limiting the expense to the parties and costs.

(4) The Court may treat any preliminary hearing as the final hearing of the claim if all the parties agree.

(5) Notwithstanding the provisions of paragraph (1), an action solely for the recovery of a fixed sum exceeding £2,500 may, with the consent of all parties and with leave of the Court, be treated as a small claim for the purposes of these Rules and may be disposed of accordingly.



(6) The consent of a party given for the purposes of paragraph (5) is irrevocable.

**Procedure for small claims.**

28. (1) The Court may adopt any method of proceeding at a hearing of a small claim that it considers to be fair.

(2) The Court may, if it considers it appropriate to do so in the interests of justice, dispense with the strict rules of evidence (whether relating to written or oral evidence, or to hearsay, or otherwise).

(3) No expert may give evidence, whether written or oral, at a hearing without the permission of the Court.

(4) The Court need not take evidence on oath.

(5) The Court may limit cross-examination.

(6) Hearings will be in open court unless the Court directs otherwise (having regard to any agreement between the parties or any application by either party for the matter to be heard in private).

(7) The Court may in particular -

- (a) ask questions of any witness itself (whether on examination in chief or on cross-examination) before allowing any other person to do so,
- (b) refuse to allow cross-examination of any witness until all the witnesses have given evidence in chief,
- (c) limit cross-examination of a witness to a fixed time or to a particular subject or issue, or both.

**Attendance of parties at small claims hearings.**

29. (1) If a party who does not attend a final hearing -

- (a) has given the Court written notice at least 7 clear days before the date of the hearing that he will not attend; and
- (b) has, in that notice, requested the Court to decide the claim in his absence,

the Court will take into account that party's statement of case and any other documents he has filed and may decide the claim on that basis.

(2) If a claimant does not -

- (a) attend the hearing; or
- (b) give written notice of his intention to otherwise proceed with the claim,

the Court may strike out the claim.

(3) If -

- (a) a defendant does not -
  - (i) attend the hearing; or
  - (ii) give any written notice of his intention to defend the claim; and
- (b) the claimant either -
  - (i) does attend the hearing; or
  - (ii) gives the Court written notice of his intention to proceed;

the Court may decide the claim on the basis of the evidence of the claimant alone.

(4) If neither party attends or gives any written notice of his intentions, the Court may strike out the claim and any defence and counterclaim.

(5) The Court may, if all parties agree, deal with the claim without a hearing.

**Setting aside of small claims judgments.**

**30.** (1) A party -

- (a) who was neither present nor represented at the hearing of the claim; and
- (b) who has not given written notice of his intentions to the Court;

may apply to the Court (sitting fully constituted) for an order that a judgment under this Part shall be set aside and the claim re-heard.

(2) A party who applies for an order setting aside a judgment under this rule must make the application within a period of 14 days after the day on which notice of the judgment was served on him.

(3) The Court may grant an application to set aside if, in the Court's opinion, the applicant -

- (a) had a good reason for not attending or being represented at the hearing or giving written notice of his intentions; and
- (b) has a reasonable prospect of success at the hearing.

(4) If a judgment is set aside -

- (a) the Court must fix a new hearing for the claim; and

- (b) the hearing may take place immediately after the hearing of the application to set the judgment aside; and
- (c) the hearing may be dealt with by one of the members of the Court who set aside the judgment.

(5) A party may not apply to set aside a judgment under this rule if the Court dealt with the claim without a hearing, by agreement of both parties under Rule 29(5).

**Costs in small claims.**

**31.** (1) In a small claim the Court may not order a party to pay a sum to another party in respect of that other party's costs except -

- (a) any fixed administrative costs reasonably attributable to issuing the claim;
- (b) such further costs as the Court may otherwise order to be paid by a party who has behaved unreasonably, frivolously or vexatiously or who has otherwise abused the process of the Court.

(2) The Court may also order a party to pay all or part of -

- (a) any court fees paid by another party;
- (b) expenses which a party or witness has reasonably incurred in travelling to and from a hearing or in staying away from home for the purposes of attending a hearing;
- (c) a sum not exceeding any amount which may be specified by the Court in a practice direction for any loss of earnings by a party or witness due to attending

a hearing or to staying away from work for the purpose of attending a hearing;

- (d) the reasonable costs of an expert witness where the Court has given leave for that witness to give evidence;

and the provisions of this paragraph apply in respect of a small claim in substitution for the corresponding provisions of any rules of Court as to costs and fees.

(3) The provisions of paragraph (1) also apply to any fee or reward for acting on behalf of a party to the proceedings charged by an Advocate or lay representative.

(4) Notwithstanding the preceding provisions of this Rule, the Court may not order a party to pay costs in a small claim which would exceed the costs which the Court could order that party to pay had the claim been heard before the Court sitting fully constituted.

**Representation of parties in small claims.**

32. (1) A party may present his own case at a hearing of a small claim or an Advocate or lay representative may present it for him.

(2) A lay representative may not exercise any right of audience -

- (a) where his client does not attend the hearing;
- (b) at any stage after judgment;
- (c) on any appeal brought against any decision to the Royal Court in Guernsey; or
- (d) on any action for set aside under Rule 30.

(3) However the Court, exercising its general discretion to hear anybody, may hear a lay representative even in circumstances excluded by these

Rules.

(4) The Court may refuse to hear a lay representative, and may terminate his rights of audience arising under this Part, if in the opinion of the Court he is acting unreasonably, frivolously or vexatiously or otherwise in a manner which constitutes an abuse of the court process.

**Reference of small claims to full Court.**

33. Where the Court, sitting with a single Jurat, decides, having regard to the complexity of the issues and notwithstanding the size of the claim, that the matter should be referred to the Court sitting fully constituted, it may at any time before final judgment refer the matter accordingly.

PART V  
*Interpleader*

**Interpleader relief.**

34. 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.**

35. (1) An interpleader application shall be commenced by summons and is without prejudice to the Court's powers under Rules 45 and 46.

(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 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.**

36. (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.**

37. 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.**

38. (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.**

**39.** (1) A defendant may, by his defences in any action, and instead of bringing a separate action, make 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 on the plaintiff's claim and on the counterclaim.

(3) The counterclaim must, unless prepared by an Advocate, contain a statement of truth signed by the counterclaimant.

(4) The Court may order that a counterclaim be struck out or tried separately if satisfied that its subject-matter ought not to be disposed of by way of counterclaim, but in an independent action.

(5) A counterclaim may be proceeded with notwithstanding that the plaintiff's claim is stayed, discontinued or dismissed, or that judgment is given for the plaintiff on his claim.

(6) The plaintiff shall, unless the Court orders otherwise, table his defences to the counterclaim upon being required to do so by a summons served on him in that behalf by the defendant.

(7) The summons for defences to the counterclaim -

- (a) shall be served on the plaintiff at least 3 clear days before the return date;
- (b) shall state the return date and the time appointed for the tabling of the defences; and
- (c) shall be signed by the party in question or his Advocate.

(8) Where the plaintiff does not table his defences in accordance

with paragraph (6), the Court may give judgment against him on the counterclaim.

**Consolidation or severance of actions.**

**40.** (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 being claimed are in respect of or arise out of the same transaction or arrangement or the same series of transactions or arrangements; 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 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 minors, etc.**

**41.** (1) A minor 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 representation of his guardian.

(2) Anything to be done under these Rules in the ordinary conduct of any proceedings shall be done by a guardian or other representative appointed by the Court, where the party is a minor or person under legal disability.

(3) For the purposes of this Rule, the Court may appoint a guardian ad litem or other representative to represent the relevant minor or person under a legal disability.

**Representative proceedings.**

**42.** (1) Where numerous persons have the same interest in any proceedings, one or more of them -

- (a) may sue or be sued; or
- (b) may be appointed by order of the Court to defend;

for, or on behalf of, all or any of them.

(2) A judgment or order given in proceedings under this Rule -

- (a) shall be binding on all persons represented; but
- (b) shall not be enforced against a person not a party to the proceedings without leave of the Court.

(3) On an application for leave under paragraph (2)(b), the person against whom enforcement is sought may dispute the application on the grounds that, by reason of facts and matters peculiar to his case, the judgment or order

should not be enforced against him.

**Class members.**

**43.** (1) Where -

- (a) the rights or obligations (whether present, future, contingent or unascertained) of any members of a class (including any persons unborn) depend on the construction which the Court may put on a document;
- (b) the identity of any of the members is unknown or difficult to ascertain; and
- (c) the Court considers that in order to save expense or for some other reason it is convenient to have the question of construction determined before the identity of the members is ascertained;

the Court may by order appoint one or more persons to represent the members or any of them, and the persons represented shall be bound by any order or judgment of the Court given in the proceedings.

(2) Where in any other case any members of a class have an interest in any proceedings, the Court may by order, whether or not the identity of any of the members is unknown or difficult to ascertain, if it appears expedient to do so having regard to the nature and extent of their interest, appoint one or more persons to represent them or any of them, and the persons represented shall be bound by any order or judgment of the Court given in the proceedings.

**Costs in representative proceedings.**

**44.** The Court may, in any proceedings in which, or in respect of which an appointment has been made under Rule 42 or 43, make such order as to the costs of the proceedings as it thinks just.

**Third parties.**

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

- (a) any contribution or indemnity against a person whether or not that person is already a party to the action; or
- (b) against such a person any relief or remedy relating to or connected with the original subject-matter of the action which is 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 such a person;

the defendant may join that person as a third party by serving upon him a summons in that behalf, which may be signed by the party in question or his Advocate.

(2) The Court may make such order as it thinks just in relation to the joining 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 joined, he shall from that time be a party to the action as if he were a defendant sued in the ordinary way under these Rules by the party who joined him.

(4) Where judgment (by default or otherwise) is pronounced against the 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 joined, 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 summons), 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) for a plaintiff 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 a third party is joined, and he makes such a claim as is mentioned in paragraph (1) , this Rule shall apply as if the third party were a defendant.

**Removal or joining of parties.**

**46.** (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 joined 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 joined as a party.

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

**Ex parte applications.**

**47.** (1) An ex parte application may be heard before a single Jurat who may sit in Chambers.

(2) At any time before or during the hearing of an ex parte application the Jurat may, if he considers it necessary or expedient to do so -

- (a) adjourn the application or hearing;
- (b) order the matter to be heard inter partes; or
- (c) transfer it to be heard before the Court sitting fully constituted.

(3) Unless the Court directs otherwise, only the applicant and his Advocate may appear in the hearing of an ex parte application.

(4) An ex parte application shall, unless the Court directs otherwise, be subject to the conditions specified in paragraph (5) and shall be -

- (a) in writing and signed by an Advocate or by the applicant himself;
- (b) supported by an affidavit which contains full disclosure of all material facts to support the application;
- (c) lodged with a draft of the order sought; and

- (d) lodged with the Greffier at least one clear day before the date for hearing the application, unless the Court directs otherwise.
- (5) The conditions referred to in paragraph (4) are that -
  - (a) the Court, after hearing the applicant give oral evidence, directs that the application is of such an urgent nature that immediate action is required to protect or preserve property, real or personal;
  - (b) that delay creates a substantial and real risk that property affected by the application will be transferred beyond the jurisdiction of the Court; or
  - (c) the Court is satisfied that refusal would unfairly and substantially prejudice the applicant.

## PART VIII

### *General Conduct of Proceedings*

#### **General conduct.**

**48.** (1) Nothing in these Rules shall detract from, restrict or interfere with the discretion of the Court to give directions and make any order governing the conduct of proceedings as it thinks fit.

(2) All pleadings before the Court must be in the English language and all documents, legal sources and authorities, the originals of which are not in English and upon which a party intends to rely, must be accompanied by a translation authenticated as true and complete by such source as the Greffier or, in the event of any disagreement, the Court, may accept.

(3) All the documents provided by a party pursuant to these Rules shall be sufficiently secure, indexed and annotated.



**Setting down.**

**49.** (1) In all actions before the Court, an application for trial, or request for extension of time for setting a trial date, must be made within one year of the tabling date noted in Rule 13, failing which the defendant may apply for the matter to be struck out, without prejudice to Rules 51 and 65.

(2) In making an application for a matter to be set down for trial, the plaintiff must give written confirmation, countersigned (unless the Court directs otherwise) by the defendant -

- (a) that all requests or directions have been complied with, and
- (b) containing an estimate of the time required for the hearing, and
- (c) indicating dates when a hearing would be impossible or impracticable;

and where the plaintiff and defendant are unable to reach agreement on any of the matters described in paragraphs (a), (b) and (c), either party may apply to the Court for directions.

(3) On an application for a matter to be set down for trial, the Court may make such order for setting down and give such ancillary directions as it thinks necessary.

(4) At least 7 clear days before the day of the hearing the plaintiff must lodge with the Greffier -

- (a) a complete set of the pleadings;
- (b) a bundle of agreed trial documents;
- (c) a set of authorities to be cited;

- (d) sufficient copies of both for the Court, to be agreed with the Greffier.

**Amendment of pleadings.**

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

**Striking out.**

**51.** (1) The Court may order any cause, counterclaim or other pleading, or anything therein, to be struck out or amended on the grounds that -

- (a) it discloses no reasonable cause of action or defence, as the case may be;
- (b) it is scandalous, frivolous or vexatious;
- (c) it may prejudice, embarrass or delay the fair trial of the action or any other proceedings; or
- (d) it is otherwise an abuse of the process of the Court;

and the Court may order the claim or counterclaim to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) The Court may also order a cause or counterclaim to be struck out for want of prosecution.

**Further and better particulars.**

**52.** (1) The Court may order any party to an action to furnish another party -

- (a) with further and better particulars of any claim, defence or other matter stated in his pleadings;
- (b) with a further and better statement of the nature of the case on which he relies.

- (2) An order under paragraph (1) shall only be made -
- (a) if in the opinion of the Court the order is necessary or desirable to enable the applicant to plead or for some other special reason; and
  - (b) if the applicant has previously served notice on the party against whom the order is sought requiring him to furnish the particulars or statement concerned and that party has not within a period of 14 days after the date of service -
    - (i) furnished the particulars or statement; or
    - (ii) shown cause why the notice cannot be complied with.

(3) All further and better particulars and statements, whether or not given in pursuance of an order under paragraph (1), shall be filed by the party furnishing them with the Greffier, within a period of 2 days after the day on which they were furnished to the requesting party.

**Interrogatories.**

**53.** (1) The Court may, on the application of any party to the proceedings, give leave to serve, upon any other party, interrogatories relating to any matter in question between them in the proceedings.

(2) A copy of the proposed interrogatories shall be annexed to the summons by which notice of the intended application under paragraph (1) is given.

(3) Interrogatories shall, unless the Court orders otherwise, be answered by affidavit within a period of 14 days after the day of service.

(4) If the person upon whom the interrogatories are served answers any of them insufficiently, the Court may order him to make a further

answer by affidavit or on oral examination.

(5) The interrogatories and affidavit answers shall be annexed to the pleadings.

**Discovery of documents.**

**54.** (1) The Court may, on the application of any party to the proceedings, order any other party -

- (a) to furnish the applicant with a list of the documents which are or have been in his possession, custody or power relating to any matter in question between them in the proceedings;
- (b) to verify the list by affidavit.

(2) An order for discovery under paragraph (1) may be limited to such documents or classes thereof, or to such only of the matters in question, as may be specified or described in the order.

(3) If it is desired to claim that any documents are privileged from production, the claim must be made in the list of documents with a sufficient statement of the grounds of privilege.

**Inspection of documents.**

**55.** A party who furnishes another party with a list of documents under Rule 54(1) must -

- (a) allow the other party to inspect the listed documents (other than those which are claimed to be privileged from production) and to take copies of them; and
- (b) when furnishing the list, give the other party written notice specifying -
  - (i) a date (which shall be within a period of 14

days after the day of furnishing the list);

(ii) a time within normal office hours; and

(iii) a place within the Bailiwick;

at which the documents may be inspected; and

(c) grant the other party a reasonable period and reasonable facilities to carry out the inspection.

**Orders for inspection.**

**56.** (1) Where a party who furnishes a list of documents under Rule 54(1) -

(a) fails to give written notice in accordance with Rule 55(b);

(b) claims that any of the listed documents are privileged from production;

(c) offers inspection at a time or place which in the opinion of the Court is unreasonable; or

(d) fails to grant a reasonable period and reasonable facilities to carry out the inspection;

the Court may, on the application of the party entitled to inspection, make an order for the inspection and copying of the documents in question at such time and place and in such manner as it thinks just.

(2) Where a party to the proceedings makes reference to a document in his pleadings or affidavits, the Court may, on the application of any other party, make an order for the inspection and copying of the document at such time and place and in such manner as it thinks just.

**Order for directions.**

**57.** The Court may by order, give directions as to the hearing of any action or any question raised by the pleadings, including any preliminary point in issue, and may (without limitation) -

- (a) order that any facts specified or described in the order shall be proved by affidavit;
- (b) order that only a specified number of expert witnesses may be called;
- (c) order that the evidence of a particular witness shall be taken by commission; and
- (d) order the manner in which such evidence is to be taken.

**Hearing of preliminary issues and questions of procedure.**

**58.** (1) Where the Court orders the hearing of any preliminary point at issue or hears any question of procedure, the hearing may be before a single Jurat who may sit in Chambers.

(2) Any appeal from the hearing of any preliminary point at issue or any question of procedure shall lie to the Court sitting fully constituted and -

- (a) must be signed by the applicant or his Advocate; and
  - (b) must be lodged with the Greffier within a period of 7 days after the day of the hearing unless the Court is satisfied such appeal could not reasonably have been lodged within this time limit and grants leave to extend it.
- (3) Upon hearing the appeal, the Court may -
- (a) allow the appeal in whole or in part;

- (b) impose terms and conditions in allowing the appeal in whole or in part;
- (c) dismiss the appeal;
- (d) make such order as to costs and as to the further conduct of the matter as the Court thinks appropriate.

**Discontinuance and withdrawal of actions.**

**59.** (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) 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.**

**60.** (1) A party to an action may at any time pay into Court a sum of money in satisfaction of any claim made against him in the action.

(2) The payment into Court shall be made by lodging the sum of money with the Greffier.

(3) The Greffier shall -

(a) deposit the money with an institution holding a banking licence under the Banking Supervision (Bailiwick of Guernsey) Law, 1994<sup>b</sup>; and

(b) within a period of 7 days after the day of the making of the payment, give notice of the payment to the other parties to the action.

(4) No payment into Court may be withdrawn except with the consent of all other parties to the action, or by leave of the Court.

(5) Unless the payment into Court is disclosed to the Court by the party who made payment, the fact of payment shall not be disclosed to the Court until all questions of liability and of the amount of damages or indebtedness have been determined.

(6) Without prejudice to the Court's complete discretion to make such order as to costs as it thinks just, the Court, when awarding costs, may take the fact and date of payment into Court into account.

**Court to give reasons for its decisions.**

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<sup>b</sup> Order in Council No. XIII of 1994.



**61.** The Court must give reasons for its decisions in all cases, including those made pursuant to deciding preliminary points at issue, or otherwise in determining any directions it has given.

PART IX  
*General Provisions*

**Mode of making application to Court.**

**62.** (1) Where the Court has power to make an order under these Rules, the order may be made -

- (a) at any stage of the proceedings;
- (b) of the Court's own motion or on the application of any party to the proceedings;
- (c) on such terms (including terms as to costs and security therefor) as the Court thinks just.

(2) A person intending to apply to the Court for an order under these Rules shall serve notice of the fact on the opposite party to the application.

(3) The notice -

- (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 of the application;
- (c) shall contain or have annexed to it a copy of the application; and
- (d) shall be signed by the party in question or his Advocate.

(4) The provisions of this Rule do not apply to the extent that contrary provision is made elsewhere in these Rules.

**Costs and security therefor.**

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

- (a) make such order as to the cost of the proceedings, or of any stage of, or application in, the proceedings;
- (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;
- (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.

(3) Notwithstanding the provisions of any rules of Court as to costs and fees, or any other rule of Court or enactment, the Court may, in the circumstances mentioned in paragraph (4), order that costs or security for costs shall be paid on a full or partial indemnity basis.

(4) The circumstances referred to in paragraph (3) are as follows-

- (a) where, in the special circumstances of the case, the Court is of the opinion that costs should be ordered otherwise than on the basis provided by any rules of Court as to costs and fees; 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.

**Witness summons.**

**64.** Every summons to a witness shall, unless the Court orders otherwise, be served on the witness by the Greffier personally at least 3 clear days before the day of the hearing.

**Peremption.**

**65.** Where an action becomes périmé -

- (a) the Court's powers under Rule 48 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.**

**66.** Notwithstanding the provisions of any enactment or rule of law, Rule 12(b) (*judgment in default of appearance*) shall apply in relation to an action for the recovery, forfeiture or enforcement of a penalty.

**Computation of time limits.**

**67.** In calculating any time limit set by these Rules, no account shall be taken of a non-business day.

**Extension or abridgement of time.**

**68.** (1) The Court may, on such terms as it thinks just, by order extend or abridge -

- (a) any time limit set by these Rules; or
- (b) any time limit within which a person is required or

authorised by any order or direction of the Court to do any act;

and may (subject to paragraph (3)) extend any such time limit notwithstanding that the application for extension is made after the expiration of time.

(2) Any such time limit may be extended by consent in writing without an order of the Court in that behalf.

(3) The Court may not extend any such time limit upon an application made after the expiration of time if the failure to act within the time limit has resulted in judgment being given.

**Affidavits and other documents to be executed or sworn.**

**69.** (1) Any affidavit or other document to be executed or sworn for the purposes of proceedings before the Court shall, unless the Court orders otherwise, be executed or sworn in accordance with the provisions of the Powers of Attorney and Affidavits (Bailiwick of Guernsey) Law, 1995<sup>c</sup>.

(2) Nothing in paragraph (1) affects the validity of an affidavit or other document executed or sworn -

(a) before the commencement of these Rules; or

(b) in accordance with some other rule of law, statutory provision or rule of court.

**Court may direct summary procedure.**

**70.** Notwithstanding the provisions of these Rules or of any other rule of Court or enactment, but without prejudice to the provisions of Part IV relating to small claims, the Court may order that any proceedings or any stage of them shall be dealt with summarily.

**Commencement of actions.**

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<sup>c</sup> Order in Council No. V of 1995.

71. For the purposes of these Rules an action commences when the summons is handed by the plaintiff or his representative to the Greffier.

**Notice to Greffier to serve summons.**

72. A person requiring the Greffier to serve a summons or other document -

- (a) shall comply with such administrative formalities (whether as to the payment of fees, the period of notice to be given, the information or documents to be furnished, or otherwise) as the Greffier may require; and
- (b) shall, subject to any directions as to notice given under subparagraph (a), lodge the summons or other document with the Greffier at least 4 clear days before the return date.

**Power of Court to direct manner of hearing.**

73. Where under these Rules the Court is empowered to hear a matter before a single Jurat or in Chambers, the decision as to whether the matter should be so heard shall be taken -

- (a) by the Court; or
- (b) if the matter is urgent and it is not practicable to convene the Court, by the Chairman of the Court or, if he is unavailable, by a Jurat.

**Interpretation.**

74. (1) In these Rules, except where the context requires otherwise -

**"address for service"** means an address for service -

- (a) in Alderney; or

(b) at the office in the Bailiwick of an Advocate;

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

"**Bailiwick**" means the Bailiwick of Guernsey;

"**by post**" means by registered post, recorded delivery service or ordinary letter post (and, in relation to service by post, the provisions of subsections (4) and (5) shall have effect);

"**Chambers**", in the expression "in Chambers", means otherwise than in open court and whether or not in the presence of the Greffier or any other officer of the Court;

"**Chief Executive of the States**" means the Chief Executive of the States appointed under section 52 of the Government of Alderney Law, 2004 and includes the Deputy Chief Executive of the States and any temporary Chief Executive of the States;

"**clear day**" means a period of 24 hours ending at midnight;

"**Court**" means the Court of Alderney whether sitting -

(a) fully constituted; or

(b) constituted by a single Jurat in accordance with the provisions of these Rules;

"**deponent**" means the person swearing an affidavit or making a witness statement;

"**Greffier**" means the Greffier appointed under section 20 of the Government of Alderney Law, 2004 and includes any deputy Greffier so appointed and any other person appointed by the Greffier to act on his behalf;

**"Her Majesty's Sergeant"** means Her Majesty's Sergeant in Guernsey;

**"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;

**"Jurat"** means a Jurat of the Court;

**"jurisdiction"** means the jurisdiction of the Court;

**"lay representative"** means a person who represents a party to proceedings before the Court and who is not an Advocate;

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

**"non-business day"** means a Saturday, a Sunday, Christmas Day and Good Friday, and any day appointed as a public holiday by Ordinance of the States of Alderney under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>d</sup> or under paragraph (o) of Schedule 2 to the Government of Alderney Law, 1987<sup>e</sup>;

**"Register of External Companies"** means the register under the Companies (Alderney) Law (External Companies) Ordinance, 1998;

**"return date"** means the date specified in a summons or other document served on a party under these Rules -

- (a) on which the party is required to appear before the Court; or, as the case may be,

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<sup>d</sup> Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; and No. XIV of 1994.

<sup>e</sup> Ordres en Conseil Vol. XXX, p. 37.

- (b) on which the Court will deal with the application or other matter specified in the document;

"**small claim**" has the meaning given by Rule 27(1);

"**statement of truth**" is a statement that -

- (a) the party putting forward the document; or
- (b) in the case of a witness statement, the deponent;

believes the facts stated in the document are true.

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

(3) Any reference in these Rules to an enactment, rule or order is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(4) A document sent by post shall (unless the Court directs otherwise) be deemed for the purposes of these Rules to have been received -

- (a) in the case of a document sent to an address in Alderney, on the second day after the day of posting;
- (b) in the case of a document sent to an address in the United Kingdom, elsewhere in the Channel Islands or Isle of Man, on the 7<sup>th</sup> day after the day of posting;
- (c) in the case of a document sent elsewhere, on the 21<sup>st</sup> day after the day of posting;

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



excluding in each case any non-business day.

(5) Service of any document sent by post shall (unless the Court directs otherwise) be proved by showing the date of posting, the address thereon and the fact of prepayment.

**Disapplication of Ordinances of Royal Court.**

**75.** The provisions of these Rules have effect notwithstanding any conflicting provision of any Ordinance of the Royal Court which is still in force.

**Citation.**

**76.** These Rules may be cited as the Court of Alderney Civil Rules, 2005.

**Commencement and transitional.**

**77.** (1) These Rules shall come into force on the 1<sup>st</sup> May, 2005.

(2) The Court may make such orders in respect of actions commenced before the 1<sup>st</sup> May, 2005 as it thinks just.