



Statutory Document No. 672/00

HIGH COURT ACT 1991

HIGH COURT (COSTS) RULES 2000

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HIGH COURT ACT 1991

HIGH COURT (COSTS) RULES 2000

Approved by Tynwald: 12 December 2000

Coming into operation: 1 January 2001

In exercise of the powers conferred on the Deemsters by section 25 of the High Court Act 1991 (a) and all other powers enabling them in that behalf, the following Rules are hereby made :-

Citation, commencement and application

1. (1) These Rules may be cited as the High Court (Costs) Rules 2000 and, subject to section 25(4) of the High Court Act 1991, shall come into operation on 1 January 2001.

(2) These Rules shall apply in respect of proceedings commenced on or after the date on which these Rules come into operation.

Amendment of 1952 Rules

2. After Order 48 of the Rules of the High Court of Justice 1952 (b) insert -

"ORDER 48A COSTS - FURTHER PROVISIONS

PART 1 PRELIMINARY

Interpretation

1. (1) In this Order -

"application" includes motion;

"assessed costs" means costs assessed in accordance with this Order;

(a) 1991 c.12. (b) Made 7 January 1952.

"certificate" includes allocatur;

"Chief Registrar" includes an assistant Chief Registrar;

"contentious business" means business done in or for the purpose of proceedings begun before a court or before an arbitrator appointed under the Arbitration Acts for the time being in force but does not include the business of obtaining probate and administration where there is no contention as to the right thereto including the passing of probate and administration through the Court in contentious cases where the contest has been terminated and all business of a non-contentious nature in matters of testacy or intestacy not being proceedings in any action and also the business of lodging caveats against the grant of probate or administration;

"non contentious business" means any business done as an advocate which is not contentious business;

"party", in relation to a cause or matter, includes a party who is treated as being a party to that cause or matter by virtue of any order of joinder of action or party;

"patient" means a person who, by reason of mental disorder within the meaning of Part I of the Mental Health Act 1998, is incapable of managing and administering his property and affairs;

"the standard basis" has the meaning given in rule 12(1);

"the indemnity basis" has the meaning given in rule 12(2).

(2) References to a fund, being a fund out of which costs are to be paid or which is held by a trustee or personal representative, include references to any estate or property, whether real or personal, held for the benefit of any person or class of persons; and references to a fund held by a trustee or personal representative include references to any fund to which he is entitled (whether alone or together with any other person) in that capacity, whether the fund is for the time being in his possession or not.

(3) References to costs shall be construed as including references to fees, charges, disbursements, expenses and remuneration and, in relation to proceedings (including assessment proceedings), also include references to costs of or incidental to those proceedings.

Application

2. (1) This Order applies to all proceedings in the High Court.

(2) This Order shall have effect, with such modifications as may be necessary, where by virtue of any enactment the costs of any proceedings before any other court or any arbitrator, umpire, tribunal or other body constituted by or under any enactment are assessable by the Chief Registrar or in the High Court.

(3) The powers and discretion of the Court under section 53 of the High Court Act 1991 and under other enactments relating to the costs of any proceedings which are assessable by the Chief Registrar or in the High Court shall be exercised subject to and in accordance with this Order.

PART 2 ENTITLEMENT TO COSTS

General principles

3. (1) This rule shall have effect subject only to the following provisions of this Order.

(2) No party to any proceedings shall be entitled to recover any of the costs of those proceedings from any other party to those proceedings except under an order of the Court.

(3) If the Court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the Court shall order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.

(4) The amount of his costs which any party shall be entitled to recover is the amount allowed after assessment on the standard basis where -

- (a) an order is made that the costs of one party to proceedings be paid by another party to those proceedings; or
- (b) an order is made for the payment of costs out of any fund; or
- (c) an order is made for the payment of costs under section 6 of the Legal Aid Act 1986(c); or
- (d) no order for costs is required,

unless it appears to the Court to be appropriate to order costs to be assessed on the indemnity basis.

(5) Paragraph (3) does not apply to proceedings in the Family Division.

(6) Subject to rule 8, a term mentioned in the first column of the table below, when used in an order for costs, shall have the effect indicated in the second column of that table.

(c) 1986 c.23.

TERM	EFFECT
"Costs"	(a) Where this order is made in interlocutory proceedings, the party in whose favour it is made shall be entitled to his costs in respect of those proceedings whatever the outcome of the cause or matter in which the proceedings arise; and (b) where this order is made at the conclusion of a cause or matter, the party in whose favour it is made shall be entitled to have his costs assessed forthwith.
"Costs reserved"	Except in proceedings in the Family Division, the party in whose favour an order for costs is made at the conclusion of the cause or matter in which the proceedings arise shall be entitled to his costs of the proceedings in respect of which this order is made unless the Court orders otherwise.
"Costs in any event"	This order has the same effect as an order for "costs" made in interlocutory proceedings.
"Costs here and below"	The party in whose favour this order is made shall be entitled not only to his costs in respect of the proceedings in which it is made but also to his costs of the same proceedings in any lower court.
"Costs in the cause" or "costs in application"	The party in whose favour an order for costs is made at the conclusion of the cause or matter in which the proceedings arise shall be entitled to his costs of the proceedings in respect of which such an order is made.
"Plaintiff's costs in the cause" or "Defendant's costs in the cause"	The plaintiff or defendant, as the case may be, shall be entitled to his costs of the proceedings in respect of which such an order is made if judgment is given in his favour in the cause or matter in which the proceedings arise, but he shall not be liable to pay the costs of any other party in respect of those proceedings if judgment is given in favour of any other party or parties in the cause or matter in question.
"Costs thrown away"	Where proceedings or any part of them have been ineffective or have been subsequently set aside, the party in whose favour this order is made shall be

entitled to his costs of those proceedings or that part of the proceedings in respect of which it is made.

Probate cases where no order for costs is to be made

4. In a probate action where a defendant has given notice with his defence to the party setting up the will that he merely insists upon the will being proved in solemn form of law and only intends to cross-examine the witnesses produced in support of the will, no order for costs shall be made against him unless it appears to the Court that there was no reasonable ground for opposing the will.

Cases where order for costs deemed to have been made

5. (1) In each of the circumstances mentioned in this rule an order for costs shall be deemed to have been made to the effect respectively described and, for the purposes of section 9 of the Administration of Justice Act 1981(d), the order shall be deemed to have been entered up on the date on which the event which gave rise to the entitlement to costs occurred.

(2) Where an application is taken out to set aside any proceedings on the ground of irregularity and the application is dismissed, the party who issued the application shall pay the costs of every other party.

(3) Where a party by notice in writing and without leave discontinues an action or counterclaim or withdraws any particular claim made by him as against any other party, that other party shall be entitled to his costs of the action or counterclaim or his costs occasioned by the claim withdrawn, as the case may be, incurred to the time of receipt of the notice of discontinuance or withdrawal.

(4) Where a plaintiff by notice in writing in accordance with Order 16 rule 11(1) accepts money paid into court in satisfaction of the cause of action or of all the causes of action in respect of which he claims, or accepts money paid in satisfaction of one or more specified causes of action and gives notice that he abandons the others, he shall be entitled to his costs of the action incurred up to the time of giving notice of acceptance.

(5) Where in an action for libel or slander against several defendants sued jointly a plaintiff, by notice in writing in accordance with Order 16 rule 11(1), accepts money paid into court by one of the defendants he shall be entitled to his costs of the action against that defendant incurred up to the time of giving notice of acceptance.

(6) A defendant who has counterclaimed shall be entitled to the costs of the

(d) 1981 c.8.

counterclaim if -

- a) he pays money into court and his notice of payment in states that he has taken into account and satisfied the cause or causes of action in respect of which he counterclaims; and
- (b) the plaintiff accepts the money paid in,

but the costs of such counterclaim shall be limited to those incurred up to the time when the defendant receives notice of acceptance by the plaintiff of the money paid into court.

Cases where costs do not follow the event

6. (1) The provisions of this rule shall apply in the circumstances mentioned in this rule unless the Court orders otherwise.

(2) Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall be entitled to the costs of those proceedings, insofar as they are not recovered from or paid by any other person, out of the fund held by him in that capacity or out of the mortgaged property, as the case may be, and the Court may order otherwise only on the ground that he has acted unreasonably or, in the case of a trustee or personal representative, has in substance acted for his own benefit rather than for the benefit of the fund.

(3) Where any person claiming to be a creditor -

- (a) seeks to establish any claim to a debt under any judgment or order in accordance with Order 41 rule 14, or
- (b) comes to prove his title, debt or claim in relation to a company in pursuance of section 57 of the Companies Act 1931(d) (objections by creditors to a reduction in share capital),

he shall, if his claim succeeds, be entitled to his costs incurred in establishing it; and, if his claim or any part of it fails, he may be ordered to pay the costs of any person incurred in opposing it.

(4) Where a claimant (other than a person claiming to be a creditor) has established a claim to be entitled under a judgment or order in accordance with Order 41 rule 14 and has been served with notice of the judgment or order pursuant to that Order, he shall, if he acknowledges service of the notice, be entitled as part of his costs of action (if allowed) to costs

incurred in establishing his claim; and where such a claimant fails to establish his claim or any part of it he may be ordered to pay the costs of any person incurred in opposing it.

(5) The costs of any amendment made without leave in the statement of claim or any pleadings shall be borne by the party making the amendment.

(6) The costs of any application to extend the time fixed by these rules or by any direction or order thereunder shall be borne by the party making the application.

(7) If a party on whom a notice to admit facts is served under Order 24 rule 3, refuses or neglects to admit the facts within 14 days after the service on him of the notice or such longer time as may be allowed by the Court, the costs of proving the facts and the costs occasioned by and thrown away as a result of his failure to admit the fact shall be borne by him.

(8) If a party -

(a) on whom a list of documents is served in pursuance of Order 23, or

(b) on whom a notice to admit documents is served under Order 24 rule 2.

does not admit the authenticity of the documents, the costs of proving that document and the costs occasioned by and thrown away as a result of his non-admission shall be borne by him.

(9) Where an application is made in accordance with Order 38 rule 7A, for an order under section 34(1) or 35(3) of the High Court Act 1991 (inspection of property) the person against whom the order is sought shall be entitled to his costs of the application, and of complying with any order made thereon.

Special circumstances in which costs shall not or may not be assessed

7. (1) The provisions of this rule shall apply in the circumstances mentioned in this rule.

(2) Costs which by or under any direction of the Court are to be paid to a receiver appointed by the High Court under section 42 of the High Court Act 1991, in respect of his remuneration, disbursements or expenses, shall be allowed in accordance with Order 38 rule 11 and shall not be assessed.

(3) Where an action is for a debt or liquidated demand only and the statement of claim contains a statement in accordance with Form 1 of Appendix AA and judgment is entered on failure to give notice of intention to defend or in default of defence for the amount claimed for costs (whether alone or together with any other amount claimed) the plaintiff is not entitled to assessment of his costs but if the amount claimed for costs is paid in accordance with the statement (or is accepted by the plaintiff as if so paid) the defendant shall be entitled to have those costs assessed.

(4) In awarding costs to any person the Court may order that, instead of his assessed costs, that person shall be entitled -

- (a) to a proportion (specified in the order) of those costs from or up to a stage of the proceedings so specified; or
- (b) to a gross sum so specified in lieu of those costs,

but where the person entitled to such a gross sum is a litigant in person, rule 17 shall apply with the necessary modifications to the assessment of the gross sum as it applies to the assessment of the costs of a litigant in person.

(5) Where a plaintiff is entitled to costs under rule 6(3) the amount of the costs shall be fixed by the Court unless it thinks fit to order assessment and the amount so assessed or assessed shall be added to the debt due to the claimant.

(6) Subject to paragraph (7), where a party is entitled to costs under rule 6(7) or (8) the amount of those costs may be fixed by the Court and be ordered to be paid forthwith.

(7) No order may be made under paragraph (6) in a case where the person against whom the order is made is an assisted person within the meaning of the Legal Aid Act 1986.

Stage of proceedings at which costs to be assessed

8. (1) Subject to paragraph (2), the costs of any proceedings shall not be assessed until the conclusion of the cause or matter in which the proceedings arise.

(2) If it appears to the Court when making an order for costs that all or any part of the costs ought to be assessed at an earlier stage it may, except in a case to which paragraph (3) applies, order accordingly.

(3) No order may be made under paragraph (2) in a case where the person against whom the order for costs is made is an assisted person within the meaning of the Legal Aid Act 1986.

(4) In the case of an appeal the costs of the proceedings giving rise to the appeal, as well as the costs of the appeal, may be dealt with by the Division hearing the appeal.

(5) Notwithstanding anything in Part 3, but subject to paragraph (7), where the Court makes an order as to the costs of any proceedings before another court or Division under paragraph (4), the order shall -

- (a) specify the amount of the costs to be allowed; or
- (b) where the appeal is from a different court, direct that the costs be assessed by the court before which the proceedings took place or be assessed by an officer of that court; or

(c) direct that the costs be assessed by the Chief Registrar.

(6) In relation to an action in which provisional damages are awarded under Order 34B, the reference in paragraph (1) to the conclusion of the cause or matter shall be construed as a reference to the conclusion of the proceedings in which the provisional damages are awarded, notwithstanding the possibility that the plaintiff may claim further damages at a future date.

(7) Where it appears to the Chief Registrar on application that there is no likelihood of any further order being made in a cause or matter, he may assess forthwith the costs of any interlocutory proceedings which have taken place.

Matters to be taken into account in exercising discretion

9. (1) The Court in exercising its discretion as to costs shall take into account -

- (a) any offer of contribution brought to its attention in accordance with Order 10 rule 10;
- (b) any payment of money into court and the amount of such payment;
- (c) any written offer where the issue of liability is to be tried before any issue or question concerning the amount of damages to be awarded if liability is established; and
- (d) any written offer made which is expressed to be "without prejudice as to costs" and which relates to any issue in the proceedings, provided that, except in a case to which paragraph (2) applies, the Court shall not take such an offer into account if, at the time it is made, the party making it could have protected his position as to costs by means of a payment into court under Order 16.

(2) This paragraph applies to a case where the party making the offer has applied for, but has not yet received, a certificate of total benefit given in accordance with Schedule 4 to the Social Security Act 1989 (an Act of Parliament) as it has effect in the Island; but this paragraph shall not apply with respect to any time after 7 days after that party has received the certificate.

Misconduct or neglect in the conduct of any proceedings

10. (1) Where it appears to the Court in any proceedings that any thing has been done, or that any omission has been made, unreasonably or improperly by or on behalf of any party, the Court may order that the costs of that party in respect of the act or omission, as the case may be, shall not be allowed and that any costs occasioned by it to any other party shall be paid by him to that other party.

(2) Instead of making an order under paragraph (1) the Court may refer the matter to the Chief Registrar, in which case the Chief Registrar shall deal with the matter under rule 26(1).

Personal liability of legal representative for costs

11. (1) (a) Where the Court decides to make an order under Order 48 rule 5 disallowing wasted costs or ordering an advocate to meet such costs or part of them, it shall, subject to paragraph (4), specify in the order the costs which are to be so disallowed or met, and may make such other order as it thinks fit;

(b) before proceeding under sub-paragraph (a), the Court may direct the Chief Registrar to inquire into the matter and report to the Court.

(2) When conducting an inquiry pursuant to a direction under paragraph (1)(b), the Chief Registrar shall have all the powers and duties of the Court under paragraphs (6) and (8); and references in those paragraphs and paragraphs (4) and (5) to the Court include references to the Chief Registrar.

(3) Instead of proceeding under paragraph (1) of this rule the Court may refer the matter to the Chief Registrar, in which case the Chief Registrar shall deal with the matter under paragraphs (2) and (3) of rule 26.

(4) No order may be made under Order 48 rule 5 unless the Court has given the advocate concerned a reasonable opportunity to appear and show cause why an order should not be made.

(5) The Court shall not be obliged to give the advocate a reasonable opportunity to show cause where proceedings fail, cannot conveniently proceed or are adjourned without useful progress being made because the advocate -

(a) fails to attend in person or by a proper representative;

(b) fails to deliver any document for the use of the Court, which ought to have been delivered or to be prepared with any proper evidence or account, or

(c) otherwise fails to proceed.

(6) The Court may direct the Attorney General to attend and take such part in any proceedings or inquiry under this rule as the Court may direct and the Court shall make such order as to the payment of the costs of the Attorney General as it thinks fit.

(7) If in any proceedings a party who is represented by a legal representative fails to pay the fees or any part of the fees prescribed by the orders as to court fees the Court may order

the legal representative personally to pay that amount in the manner so prescribed. The power of the Court under this paragraph may be exercised by the Chief Registrar

(8) The Court may direct that notice of any proceedings or order against an advocate under this rule be given to his client in such manner as may be specified in the direction.

PART 3 ASSESSMENT OF COSTS

Basis of assessment

12. (1) On an assessment of costs on the standard basis there shall be allowed a reasonable amount in respect of all costs reasonably incurred and any doubts which the Chief Registrar may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party; and in these rules the term "the standard basis" in relation to the assessment of costs shall be construed accordingly.

(2) On an assessment on the indemnity basis all costs shall be allowed except insofar as they are of an unreasonable amount or have been unreasonably incurred and any doubts which the Chief Registrar may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party; and in these rules the term "the indemnity basis" in relation to the assessment of costs shall be construed accordingly.

(3) Where the Court makes an order for costs without indicating the basis of assessment or an order that costs be assessed on any basis other than the standard basis or the indemnity basis, the costs shall be assessed on the standard basis.

(4) A reference in any other enactment to costs as between party and party or to costs as between attorney and client shall, in relation to costs to which this Order applies, be construed as a reference to the standard basis and the indemnity basis respectively.

Costs payable to a trustee or personal representative out of any fund

13. (1) This rule applies to every assessment of a trustee's or personal representative's costs where -

(a) he is or has been a party to any proceedings in that capacity, and

- (b) he is entitled to be paid his costs out of any fund which he holds in that capacity.

(2) On an assessment to which this rule applies, costs shall be assessed on the indemnity basis but shall be presumed to have been unreasonably incurred if they were incurred contrary to the duty of the trustee or personal representative as such.

Costs payable to an advocate by his own client

14. (1) This rule applies to every assessment of an advocate's bill to his own client except a bill which is to be paid under the Legal Aid Act 1986.

(2) On an assessment to which this rule applies costs shall be assessed on the indemnity basis but shall be presumed -

- (a) to have been reasonably incurred if they were incurred with the express or implied approval of the client, and
- (b) to have been reasonable in amount if their amount was expressly or impliedly approved by the client, and
- (c) to have been unreasonably incurred if in the circumstances of the case they are of an unusual nature unless the advocate satisfies the Chief Registrar that prior to their being incurred he informed his client that they might not be allowed on an assessment of costs .

Costs payable to advocate where money claimed by or on behalf of a minor or a patient

15. (1) This rule applies to any proceedings in which -

- (a) money is claimed or recovered by or on behalf of, or adjudged, or ordered, or agreed to be paid to, or for the benefit of, a minor or a patient; or
- (b) money paid into court is accepted by or on behalf of a minor or patient.

(2) The costs of proceedings to which this rule applies which are payable by any plaintiff to his advocate shall, unless the Court otherwise orders, be assessed under rule 14(1) and (2).

(3) On an assessment under paragraph (2), the Chief Registrar shall also assess any costs payable to that plaintiff in those proceedings and shall certify -

- (a) the amount allowed on the assessment of the advocate's bill to his own client, and

- (b) the amount allowed on the assessment of any costs payable to that plaintiff in those proceedings, and
- (c) the amount (if any) by which the amount mentioned in sub-paragraph (a) exceeds the amount mentioned in sub-paragraph (b), and
- (d) where necessary, the proportion of the amount of such excess payable by, or out of money belonging to, respectively any claimant who is a minor or patient and any other party.

(4) Paragraphs (2) and (3) shall apply in relation to any proceedings in the Staff of Government Division as if for references to the plaintiff there were substituted references to the party, whether appellant or respondent, who was the plaintiff in the proceedings which gave rise to the appeal proceedings.

(5) Nothing in the foregoing provisions of this rule shall prejudice an advocate's lien for costs.

(6) The foregoing provisions of this rule shall apply in relation to -

- (a) a counterclaim by or on behalf of a person who is a minor or a patient, and
- (b) a claim made by or on behalf of a person who is a minor or a patient in an action by any other person for relief where the Court has power to consolidate claims against owners of vessels,

as if for the references to a plaintiff there were substituted references to a defendant.

Provisions for ascertaining costs on an assessment

16. (1) Subject to the following provisions of this rule, the provisions contained in Appendix 2 for ascertaining the amount of costs to be allowed on an assessment of costs shall apply to the assessment of all costs with respect to contentious business.

(2) Where the amount of an advocate's remuneration in respect of non-contentious business is regulated (in the absence of agreement to the contrary) by any regulations for the time being in force under the Advocates Act 1995(f), the amount of the costs to be allowed on assessment in respect of the like contentious business shall be the same notwithstanding anything contained in Appendix 2.

(3) Notwithstanding paragraph (1), costs shall be allowed in the cases to which this paragraph applies in accordance with High Court Directives in respect of summary costs unless

the Court otherwise orders.

(4) Paragraph (3) applies to summary business which is a default action, a default action with service out of the jurisdiction or a liquidated demand to which Order 2A does not apply.

(5) This rule and the provisions contained in Appendix 2 shall not apply to the extent that regulations made under the Legal Aid Act 1986 determine the amount of costs payable to legal representatives in relation to proceedings to which this Order applies.

Litigants in person

17. (1) Subject to the provisions of this rule, on any assessment of the costs of a litigant in person there may be allowed such costs as would have been allowed if the work and disbursements to which the costs relate had been done or made by an advocate on the litigant's behalf together with any payments reasonably made by him for legal advice relating to the conduct of or the issues raised by the proceedings.

(2) The amount allowed in respect of any item shall be such sum as the Chief Registrar thinks fit but not exceeding, except in the case of a disbursement, two-thirds of the sum which in the opinion of the Chief Registrar would have been allowed in respect of that item if the litigant had been represented by an advocate.

(3) Where it appears to the Chief Registrar that the litigant has not suffered any pecuniary loss in doing any item of work to which the costs relate, he shall be allowed in respect of the time reasonably spent by him on that item not more than £10 an hour.

(4) A litigant who is allowed costs in respect of attending court to conduct his case shall not be entitled to a witness allowance in addition.

(5) Nothing in rule 16(3) shall apply to the costs of a litigant in person.

(6) For the purposes of this rule a litigant in person does not include a litigant who is a practising advocate.

PART 4 POWERS OF THE CHIEF REGISTRAR

Chief Registrar to assess costs

18. The Chief Registrar shall assess -

- (a) the costs of or arising out of any proceedings to which this Order applies,

- (b) the costs ordered by an award made on a reference to arbitration under any Act or payable pursuant to an arbitration agreement, and
- (c) any other costs the assessment of which is ordered by the Court.

Supplementary powers of the Chief Registrar

19. The Chief Registrar may, in the discharge of his functions with respect to the assessment of costs, -

- (a) take an account of any dealings in money made in connection with the payment of the costs being assessed, if the Court so orders;
- (b) require any party represented jointly with any other party in any proceedings before him to be separately represented;
- (c) examine any witness in those proceedings; and
- (d) order the production of any document which may be relevant in connection with those proceedings.

Extension of time

20. (1) The Chief Registrar may -

- (a) extend the period within which a party is required by or under this Order or by the Court to begin proceedings for assessment or to do any thing in or in connection with those proceedings on such terms (if any) as he thinks just; or
- (b) where no period is specified by or under this Order or by the Court for the doing of any thing in or in connection with such proceedings, specify the period within which the thing is to be done.

(2) The Chief Registrar may extend any such period as is referred to in paragraph (1) of this rule although the application for extension is not made until after the expiration of that period.

Certificates

21. (1) The Chief Registrar -

- (a) shall, at the conclusion of assessment proceedings before him, issue a certificate for the costs allowed by him;

- (b) may from time to time in the course of the assessment issue an interim certificate for any part of the costs which have been assessed or for any part the amount of which is not in dispute;
- (c) may amend or cancel an interim certificate issued by him;
- (d) may correct any clerical mistake in any certificate issued by him or any error arising therein from any accidental slip or omission, and
- (e) may set aside a certificate issued by him in order to enable him to extend the period provided by rule 29(2).

(2) If, in the course of the assessment of an advocate's bill to his own client, it appears to the Chief Registrar that in any event the advocate will be liable in connection with that bill to pay money to the client, he may from time to time issue an interim certificate specifying an amount which in his opinion is payable by the advocate to his client.

(3) On the filing of a certificate issued under paragraph (2) the Court may order the amount specified in it to be paid forthwith to the client or into court.

Power of Chief Registrar where party liable to be paid and to pay costs

22. Where a party entitled to be paid costs is also liable to pay costs, the Chief Registrar may -

- (a) assess the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance; or
- (b) delay the issue of a certificate for the costs the party is entitled to be paid until he has paid or tendered the amount he is liable to pay.

Assessment of bill of costs comprised in an account

23. (1) Where the Court orders an account to be taken and the account consists in part of a bill of costs, the Court may direct the Chief Registrar to assess those costs and the Chief Registrar shall after assessment of the bill of costs return it, together with his report on it, to the Court.

(2) The Chief Registrar assessing a bill of costs in accordance with a direction under paragraph (1) shall have the same powers, and the same fee shall be payable in connection with the assessment, as if an order for assessment of the costs had been made by the Court.

Powers of Chief Registrar on assessment of costs out of a fund

24. (1) Where any costs are to be paid out of a fund the Chief Registrar may give directions as to the parties who are entitled to attend on the assessment of those costs and may disallow the costs of attendance of any party not entitled to attend by virtue of the directions and whose attendance he considers unnecessary.

(2) Where the Court has directed that a bill of costs be assessed for the purpose of being paid out of a fund, the Chief Registrar may direct the party whose bill it is to send to any person having an interest in the fund a copy of the bill, or of any part thereof, free of charge together with a letter containing the following information -

- (a) that the bill of costs, a copy of which or of part of which is sent with the letter, has been referred to the Chief Registrar for assessment;
- (b) the time and place appointed by the Chief Registrar at which the assessment will be continued, and
- (c) such other information, if any, as the Chief Registrar may direct.

Powers of Chief Registrar in relation to costs of assessment proceedings

25. (1) Subject to the provisions of any Act and Rules of Court, the party whose bill is being assessed shall be entitled to his costs of the assessment proceedings.

(2) Where it appears to the Chief Registrar that in the circumstances of the case some other order should be made as to the whole or any part of the costs, the Chief Registrar shall have, in relation to the costs of assessment proceedings, the same powers as the Court has in relation to the costs of proceedings.

(3) Subject to paragraph (5), the party liable to pay the costs of the proceedings which gave rise to the assessment proceedings may make a written offer to pay a specific sum in satisfaction of those costs which is expressed to be "without prejudice save as to the costs of assessment" at any time before the expiration of 28 days after the delivery to him of a copy of the bill of costs under rule 28(3) and, where such an offer is made, the fact that it has been made shall not be communicated to the Chief Registrar until the question of the costs of the assessment proceedings falls to be decided.

(4) The Chief Registrar may take into account any offer made under paragraph (3) which has been brought to his attention.

(5) No offer to pay a specific sum in satisfaction of costs may be made in a case where the person entitled to recover his costs is an assisted person within the meaning of the Legal Aid Act 1986.

(6) In this rule any reference to the costs of assessment proceedings shall be construed as including a reference to any fee which is prescribed by Rules of Court or under the Fees and Duties Act 1989(g) as to Court fees for the assessment of a bill of costs.

Powers of Chief Registrar in relation to misconduct, neglect, etc

26. (1) Where, whether or not on a reference by the Court under rule 10(2), it appears to the Chief Registrar that any thing has been done, or that any omission has been made, unreasonably or improperly by or on behalf of any party in the assessment proceedings or in the proceedings which gave rise to the assessment proceedings, he may exercise the powers conferred on the Court by rule 10(1).

(2) Where, whether or not on a reference by the Court under rule 11(3), it appears to the Chief Registrar that costs have been wasted in the assessment proceedings or in the proceedings which gave rise to the assessment proceedings, he may, subject to paragraph (3) of this rule, exercise the powers conferred on the Court by Order 48 rule 5.

(3) In relation to the exercise by the Chief Registrar of the powers of the Court under Order 48 rule 5, paragraphs (4) to (6) and (8) of rule 11 shall apply as if for references to the Court there were substituted references to the Chief Registrar.

(4) Where a party entitled to costs -

- (a) fails without good reason to commence or conduct proceedings for the assessment of those costs in accordance with this Order or any direction, or
- (b) delays lodging a bill of costs for assessment,

the Chief Registrar may -

- (i) disallow all or part of the costs of assessment that he would otherwise have awarded that party; and
- (ii) after taking into account all the circumstances (including any prejudice suffered by any other party as a result of such failure or delay, as the case may be, and any additional interest payable under section 9 of the Administration of Justice Act 1981 because of the failure or delay), allow the party so entitled less than the amount he would otherwise have allowed on assessment of the bill or wholly disallow the costs.

(5) An appeal shall lie to a Deemster in private from the exercise by the Chief Registrar of the powers conferred by this rule.

(6) In exercising his powers under this rule the Chief Registrar shall have all the powers available to the Court in the exercise of its discretion under rules 10 and 11.

PART 5

PROCEDURE ON ASSESSMENT

Commencement of proceedings

27. (1) Where a party is entitled to recover assessed costs or to require any costs to be assessed by the Chief Registrar by virtue of -

- (a) a judgment, direction or order given or made in proceedings in the Civil Divisions or in the Staff of Government Division when exercising its civil jurisdiction; or
- (b) rule 5(3), (4) or (5); or
- (c) an award made on an arbitration under any enactment or pursuant to an arbitration agreement; or
- (d) an order, award or other determination of a tribunal or other body constituted by or under any Act,

he must begin proceedings for the assessment of those costs either within 3 months after the judgment, direction, order, award or other determination was entered, signed or otherwise perfected or, in cases to which sub-paragraph (b) applies, within 3 months after service of the notice given to him under Order 20 or Order 16 rule 11(1).

(2) Where a party entitled to costs fails to begin proceedings for assessment within the time limit specified in paragraph (1), any other party to the proceedings which gave rise to the assessment proceedings may with the leave of the Chief Registrar begin assessment proceedings.

(3) Where leave has been granted under paragraph (2), the party to whom it has been granted shall proceed as if he were the person entitled to begin assessment proceedings.

(4) Proceedings for the assessment of costs shall be begun by producing the requisite document to the Chief Registrar at the Isle of Man Courts of Justice.

(5) For the purposes of this rule the requisite document shall be ascertained by reference to Appendix 1 to this Order.

(6) A party who begins proceedings for assessment must, at the same time, lodge with the Chief Registrar -

- (a) a statement containing the following particulars -

- (i) the name of every party, and the capacity in which he is a party to the proceedings, his position on the record of the proceedings which gave rise to the assessment proceedings and, if any costs to which assessment proceedings relate are to be paid out of a fund, the nature of his interest in the fund; and
 - (ii) the address of any party to the proceedings who acknowledged service in person or who at the conclusion of the proceedings which gave rise to the assessment proceedings was acting in person and the name or firm and business address, telephone number and office reference of the advocate of any party who did not so acknowledge service or was not so acting in person and also (if the advocate is the agent of another) the name or firm and business address of his principal; and
- (b) unless the Chief Registrar otherwise orders, a bill of costs -
 - (i) in which the professional charges and the disbursements are set out in separate columns and each column is cast, and
 - (ii) which is endorsed with the name, or firm and business address of the advocate whose bill it is, and
 - (iii) which is signed by that advocate or, if the costs are due to a firm, by a partner of that firm; and
- (c) unless the Chief Registrar otherwise orders, the papers and vouchers specified below in the order mentioned -
 - (i) a bundle comprising all civil legal aid certificates and amendments thereto, notices of discharge or revocation thereof and specific legal aid authorities;
 - (ii) unless the relevant information is included in the judgment or order or the parties have agreed the times of the hearings, a copy of a certificate issued by the Court of the times;
 - (iii) a bundle comprising fee notes of counsel and accounts for other disbursements;
 - (iv) one complete set of pleadings arranged in chronological order, with any interlocutory application and lists of documents annexed to it;
 - (v) cases to counsel to advise with his advice and opinions, and instructions to counsel to settle documents and briefs to counsel with enclosures, arranged in chronological order;

- (vi) reports and opinions of medical and other experts arranged in chronological order;
- (vii) the advocate's correspondence and attendance notes;
- (viii) any relevant terms of business agreement between the advocate and his client; and
- (ix) any other relevant papers duly bundled and labelled.

Subsequent procedure

28. (1) Subject to rules 29 and 30, the Chief Registrar shall assess the costs without a hearing.

(2) Subject to rule 30, where a party has begun proceedings for assessment in accordance with rule 27, the Chief Registrar shall as soon as practicable give notice to any other party whose costs are to be assessed in the proceedings of the period within which his bill of costs (together with all necessary papers and vouchers) are to be sent to the Chief Registrar.

(3) A party whose costs are to be assessed must within 7 days after beginning the proceedings for assessment or, as the case may be, receiving notice under paragraph (2), -

- (a) send a copy of his bill of costs to every other party entitled to be heard on the assessment, and
- (b) notify the Chief Registrar that he has done so.

(4) Where, in beginning or purporting to begin any assessment proceedings or at any stage in the course of or in connection with those proceedings, there has been a failure to comply with the requirements of this Order, whether in respect of time or in any other respect, the failure shall be treated as an irregularity and shall not nullify the assessment proceedings or any step taken in those proceedings.

(5) The Chief Registrar may, on the ground that there has been such a failure as is mentioned in paragraph (4), and on such terms as he thinks just, set aside either wholly or in part the assessment proceedings or exercise his powers under this Order to make such order (if any) dealing with the assessment proceedings generally as he thinks fit.

PART 6 REVIEW OF ASSESSMENT

Application to Chief Registrar for review

29. (1) Any party to any assessment proceedings who is dissatisfied with any decision of the Chief Registrar may apply to the Chief Registrar to review his decision.

(2) An application under this rule for review of the Chief Registrar's decision must be made within 21 days after that decision or within such other period as may be fixed by the Chief Registrar.

(3) Every applicant for review under this rule must at the time of making his application deliver to the Chief Registrar his objections in writing specifying what is objected to and stating concisely the nature and grounds of the objection in each case, and must at the same time deliver a copy of the objections to any other party who was entitled to receive notice of the appointment for the assessment pursuant to rule 28.

(4) Any party to whom a copy of the objections is delivered under this rule may, within 21 days after delivery of the copy to him or such other period as may be fixed by the Chief Registrar, deliver to the Chief Registrar answers in writing to the objections stating concisely the grounds on which he will oppose the objections, and must at the same time deliver a copy of the answers to the party applying for review and to any other party who was entitled to receive notice of the appointment for the assessment pursuant to rule 28.

Review by Chief Registrar

30. (1) A review under rule 29 shall be carried out by the Chief Registrar.

(2) On a review under rule 29, the Chief Registrar may receive further evidence and may exercise all the powers which he might exercise on an original assessment, including the power to award costs of the proceedings before him, and any costs awarded by him to any party may be assessed by him and may be added to or deducted from any other sum payable to or by that party in respect of costs.

(3) On a hearing of a review under rule 29 a party to whom a copy of objections was delivered under paragraph (3) of that rule shall be entitled to be heard in respect of all or any of the objections notwithstanding that he did not deliver written answers to the objections under paragraph (4) of that rule.

(4) The Chief Registrar who issues his certificate pursuant to rule 21(1)(a) or (b) after he has conducted a review under this rule, if requested to do so by any party to the proceedings before him, shall state in the certificate or otherwise in writing by reference to the objections the reasons for his decision on the review, and any special facts or circumstances relevant to it.

(5) A request under paragraph (4) must be made within 14 days after the review or such other period as may be fixed by the Chief Registrar.

Review by a Deemster

31. (1) Any party who is dissatisfied with the decision of the Chief Registrar on a review under rule 29 may apply to a Deemster for an order to review that decision either in whole or in part, provided that one of the parties to the assessment proceedings has requested the Chief Registrar to state the reasons for his decision in accordance with rule 30(4).

(2) An application under this rule may be made at any time within 14 days after the Chief Registrar has issued a certificate in accordance with rule 30(4).

(3) An application under this rule shall be made by application and shall, unless the Deemster thinks fit to adjourn it into a public sitting of the Court, be heard in private.

(4) Unless the Deemster otherwise directs, no further evidence shall be received on the hearing of an application under this rule, and no ground of objection shall be raised which was not raised on the review by the Chief Registrar but, save as aforesaid, on the hearing of any such application the Deemster may exercise all such powers and discretion as are vested in the Chief Registrar in relation to the subject matter of the application.

(5) On an application under this rule the Deemster may make such order as the circumstances may require and in particular may order the Chief Registrar's certificate to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the Chief Registrar for assessment.

REQUISITE DOCUMENTS FOR THE PURPOSES OF RULE 27

1. (1) Where a party is entitled to require any costs to be assessed by virtue of a judgment or order given or made in any proceedings in the Civil Divisions of the High Court or in the Staff of Government Division when exercising its civil jurisdiction, the requisite document for the purposes of rule 27 is the judgment or order as the case may be.

(2) Where the entitlement arises by virtue of a direction of the Court given under these rules, the requisite document is that direction.

2. Where a party is entitled by virtue of rule 5(3), (4) or (5) to require any costs to be assessed, the requisite document for the purposes of rule 27 is: -

(a) where he is entitled by virtue of rule 5(3), the notice given to him under Order 20;

(b) where he is so entitled by virtue of rule 5(4) or (5), a certified copy of the notice given by him under Order 16.

3. Where a party is entitled to require assessment by the Chief Registrar of the costs directed to be paid by an award made on the arbitration under any Act or pursuant to an arbitration agreement and no order of the Court for the enforcement of the award has been made, the requisite document for the purposes of rule 27 is the award.

4. Where apart from any order of the Court a party is entitled to require assessment by the Chief Registrar of the fees and charges payable to a Coroner, the requisite document for the purposes of rule 27 is the Coroner's bill of fees and charges.

5. Where a party is entitled to require assessment by the Chief Registrar of any costs directed to be assessed or paid by an order, award or other determination of a tribunal or other body constituted by or under any Act, the requisite document for the purposes of rule 27 is the order, award or other determination, as the case may be.

6. Where a party is entitled to costs under rule 6(9) and requires those costs to be assessed, the requisite document for the purposes of rule 27 is the order made under section 34(1) or 35(3) of the High Court Act 1991, as the case may be.

RULES FOR THE ASSESSMENT OF COSTS AND ITEMS TO BE INCLUDED IN BILLS FOR ASSESSMENT, etc.

PART I

Assessment of costs

1. (1) The amount of costs to be allowed shall (subject to rule 17 and to any order of the Court fixing the costs to be allowed) be in the discretion of the Chief Registrar.

(2) In exercising his discretion the Chief Registrar shall have regard to all the relevant circumstances, and in particular to -

- (a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;
- (b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the advocate;
- (c) the number and importance of the documents (however brief) prepared or perused;
- (d) the place and circumstances in which the business involved is transacted;
- (e) the importance of the cause or matter to the client;
- (f) where money or property is involved, its amount or value;
- (g) any other fees and allowances payable to the advocate in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.

(3) The bill of costs shall consist of such of the items specified in Part II as may be appropriate, set out, except for item 3, in chronological order; each such item (other than an item relating only to time spent in travelling or waiting) may include an allowance for general care and conduct having regard to such of the circumstances referred to in paragraph (2) above as may be relevant to that item.

Items to be authorised, certified, etc.

2. (1) In an action arising out of an accident on land due to a collision or apprehended collision, the costs of preparing a plan (other than a sketch plan) of the place where the accident happened shall not be allowed unless -

- (a) before the trial the Court authorised the preparation of the plan, or
- (b) notwithstanding the absence of an authorisation under sub-paragraph (a), the Chief Registrar is satisfied that it was reasonable to prepare the plan for use at the trial.

(2) The costs of calling an expert witness with regard to any question as to which a court expert is appointed under Order 29 shall not be allowed on an assessment of costs on the standard basis, unless the Court at the trial has certified that the calling of the witness was reasonable.

PART II

Interlocutory attendance

1. (a) (i) Attending the hearing of any application or other application at Court or appointment in chambers or elsewhere.
- (ii) Care and conduct.
- (b) Travelling and waiting.

Attendance at Trial or Hearing

2. (a) Attending the trial or hearing of a cause or matter, or an appeal or to hear a deferred judgment.
- (b) Care and conduct.
- (c) Travelling and waiting.

Preparation

3. **Part A:**
The doing of any work which was reasonably done arising out of or incidental to the proceedings, including: -
 - (i) The Client: taking instructions to sue, defend, counterclaim, appeal or oppose etc, attending upon and corresponding with client; taking and preparing proofs of evidence;
 - (ii) Witnesses: interviewing and corresponding with witnesses and potential witnesses, taking and preparing proofs of evidence and, where appropriate, arranging attendance at Court, including issue of subpoena;

- (iii) Expert Evidence: obtaining and considering reports or advice from experts and plans, photographs and models: where appropriate arranging their attendance at Court, including issue of subpoena;
- (iv) Inspections: inspecting any property or place material to the proceedings;
- (v) Searches and Enquiries: making searches at offices of public records and elsewhere for relevant documents: searches in the Companies' Registry and similar matters;
- (vi) Special Damages: obtaining details of special damages and making or obtaining any relevant calculations;
- (vii) Other Parties: attending upon and corresponding with other parties or their advocates;
- (viii) Discovery: perusing, considering or collating documents for affidavit or list of documents: attending to inspect or produce for inspection any documents required to be produced or inspected by order of the Court or by virtue of Order 23;
- (ix) Documents: preparation and consideration of pleadings and affidavits, cases and instructions to and advice from counsel, any law involved and any other relevant documents including collating and service;
- (x) Negotiations: work done in connection with negotiations with a view to settlement;
- (xi) Agency: correspondence with and attendances upon agents and work done by them;
- (xii) Interest: where relevant, the calculation of interest;
- (xiii) Notices: preparation and service of miscellaneous notices, including notices to witnesses to attend court.

Part B:

The general care and conduct of the proceedings.

Part C:

Travelling and waiting time in connection with the above matters.

NOTE: the sums sought under each sub-paragraph (i) to (xiii) of Part A should be shown separately against each item followed by the total of all items under Part A; the sums charged

under Parts B and C should each be shown separately, and the total of the items under Parts A, B and C should then follow.

Assessment

4. (a) Assessment of Costs

- (i) Preparing the bill (where allowable) and preparing for and attending the assessment;
- (ii) Care and conduct;
- (iii) Travelling and waiting.

(b) Review

- (i) preparing and delivering objections to decision of Chief Registrar on assessment or answers to objections, and considering opponent's answers or objections, as the case may be; attending hearing of review.
- (ii) Care and Conduct.
- (iii) Travelling and waiting.”.

Revocation

3. In Order 48 of the Rules of the High Court of Justice 1952 -

- (a) in rule 5, the words from “may call on the advocate” to “thereupon”; and
- (b) rule 14,

are revoked.

Made this 2nd October 2000

M. J. M. M.

First Deemster and Clerk of the Rolls

[Signature]

Second Deemster

EXPLANATORY NOTE
(this Note is not part of the Rules)

These Rules are made under the High Court Act 1991 and insert a new Order into the Rules of the High Court of Justice 1952. The new Order makes new provisions to take account of the changes to the system for the assessment of advocates' bills of costs introduced by the Advocates Act 1995. In addition the Order will modernise the practice and procedures adopted for the assessment of advocates' bills of costs.