

SCHEDULE 1

Rule 3

“Order 83

**The Consumer Credit Act 1974**

**Interpretation**

1. In this Order—

“the Act” means The Consumer Credit Act 1974(1) and a section referred to by number means the section so numbered in the Act and expressions which are defined in the Act have the same meaning in this Order as they have in the Act; and

a reference to proceedings or claims which relate to a regulated agreement shall be deemed to include a reference to proceedings or claims which relate to a security for a regulated agreement or to a debt or other liability arising under a regulated agreement.

**Assignment of business**

2. Proceedings under the Act shall be assigned to the Queen’s Bench Division, with the exception of proceedings relating to an agreement secured by a mortgage which shall be assigned to the Chancery Division.

**Commencement of proceedings**

3.—(1) Save as otherwise provided in these Rules, proceedings under the Act may be commenced by writ or originating summons.

(2) Where proceedings brought by the creditor relate to a regulated agreement the originating process shall contain a statement clarifying which claim or claims relate to a regulated agreement.

**Default of appearance or defence**

4.—(1) Notwithstanding Order 13 or Order 19, no judgment in default of appearance or in default of defence in respect of claims which relate to a regulated agreement may be entered without the leave of the court unless the writ of summons contains a statement as required by rule 3(2) and there is produced a certificate by the plaintiff’s solicitors or (if he sues in person) an affidavit stating that—

- (a) the regulated agreement is not secured by a mortgage;
- (b) a default notice in proper form as required by sections 87 and 88 was duly served in sufficient time before the commencement of proceedings and has not been complied with by the debtor or surety;
- (c) it is not necessary to apply for an enforcement order granting leave to enforce (the creditor having complied with the relevant requirements of the Act and regulations made thereunder);
- (d) there has been no breach of the requirement in section 141(5) as to the joinder of parties to the proceedings; and
- (e) no notice of intention to apply for a time order or notice of intention to have a credit agreement reopened as extortionate has been filed in the Central Office or the Chancery Office (as the case may be) or received by the plaintiff.

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(1) 1974 c. 39

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(2) Notwithstanding Order 65 rule 9, where the leave of the Court is required for judgment in default of appearance or defence, the summons and a copy of the affidavit must be served on every other party to the proceedings.

### **Joinder of parties**

5.—(1) Where the debtor or any surety has not been served with a writ or originating summons commencing proceedings relating to a regulated agreement, the Court may, on an application which may be made ex parte and shall be grounded upon an affidavit, dispense with the requirement in section 141(5) (all parties to a regulated agreement and any surety to be parties to any proceedings).

(2) In proceedings relating to a regulated agreement where—

- (a) the plaintiff was not one of the original parties to the agreement, and
- (b) the former creditor's rights and duties under the agreement have passed to the plaintiff by operation of law or assignment,

the requirement in section 141(5) shall not apply to the former creditor, unless the Court shall otherwise direct.

(3) Notice of an application under paragraph (1) shall be served on such person as the Court may direct.

(4) This rule shall apply without prejudice to Order 15.

### **Action to recover possession of goods under a regulated hire-purchase agreement**

6. In an action to recover possession of goods under a regulated hire-purchase agreement the statement of claim or (as the case may be) the affidavit filed in support of the originating summons shall include the following particulars—

- (a) the date of the agreement and the parties thereto, with sufficient particulars to enable the debtor to identify the agreement, and details of any sureties;
- (b) where the plaintiff was not one of the original parties to the agreement, the means by which the rights and duties of the creditor under the agreement passed to him;
- (c) a statement that the agreement is a regulated agreement;
- (d) the place where the agreement was signed by the debtor (if known);
- (e) whether a default notice or a notice under section 76(1) has been served on the debtor, and the date and method of service;
- (f) the goods claimed;
- (g) the total price;
- (h) the amount paid by or on behalf of the debtor;
- (i) the date when the right to demand recovery of the goods accrued;
- (j) the amount of arrears accrued at the date when the right to demand recovery of the goods accrued;
- (k) the amount of any further balance under the agreement being the total price less—
  - (a) the amount paid; and
  - (b) any arrears; and
- (l) the amount (if any) claimed in addition to the delivery of the goods, stating the cause of action in respect of which each such claim is made.

### **Particulars to be given in other claims arising out of a regulated hire-purchase agreement**

7. Where a plaintiff's claim arises out of a regulated hire-purchase agreement but is not brought to recover possession of goods, the statement of claim or (as the case may be) the affidavit filed in support of the originating summons shall include the following particulars—

- (a) the date of agreement and the parties thereto, with sufficient particulars to enable the debtor to identify the agreement, and details of any sureties;
- (b) where the plaintiff was not one of the original parties to the agreement, the means by which the rights and duties of the creditor under the agreement passed to him;
- (c) a statement that the agreement is a regulated agreement;
- (d) the place where the agreement was signed by the debtor (if known);
- (e) whether a default notice or a notice under section 76(1) has been served on the debtor, and the date and method of service;
- (f) the goods let under the agreement;
- (g) the total price;
- (h) the amount paid by or on behalf of the debtor;
- (i) the amount (if any) claimed as being due and unpaid in respect of any instalment or instalments of the total price; and
- (j) particulars of any other claim and the circumstances in which it arises.

### **Conditional sale agreements**

8. The provisions of rules 6 and 7 shall apply to conditional sale agreements as they apply to hire-purchase agreements subject to the following modifications—

- (a) for any reference to the debtor there shall be substituted a reference to the buyer; and
- (b) for any reference to a hire-purchase agreement or to goods let under the agreement, there shall be substituted a reference to the conditional sale agreement, or to goods to be sold under the agreement, as the case may be.

### **Enforcement Orders**

9.—(1) Subject to paragraph (2), an application for an enforcement order shall be made by originating summons.

(2) If, apart from the need to obtain an enforcement order, a creditor is entitled to payment of the money or to possession of the goods or land to which the regulated agreement relates, an application for an enforcement order shall be made in the course of an action to enforce the agreement.

(3) The writ or originating summons commencing proceedings in which an enforcement order is sought shall be endorsed with or contain a statement of the circumstances rendering such an order necessary.

### **Orders under section 86(2), 92(1) or 92(2)**

10. Rule 9 shall apply to an application for an order under section 86(2) (enforcement of a partly secured or unsecured regulated agreement on the death of the debtor or hirer), 92(1) (entry into premises to take possession of goods), or 92(2) (recovery of possession of land where debtor is in breach of a regulated conditional sale agreement) as it applies to an enforcement order.

## **Time Orders**

11.—(1) An application under section 129(1)(b) for a time order shall be made by originating summons supported by an affidavit which shall include the following particulars—

- (a) the date of the agreement and the parties to it, with sufficient particulars to enable the creditor to identify the agreement, and details of any sureties;
- (b) if the creditor was not one of the original parties to the agreement, the name of the original party to the agreement;
- (c) the place where the agreement was signed by the debtor;
- (d) details of the notice served by the creditor giving rise to the application;
- (e) the total unpaid balance admitted to be due under the agreement and the amount of any arrears (if known) together with the amount and frequency of the payments specified by the agreement;
- (f) the debtor's proposals as to payment of any arrears and of future instalments together with the reasons for the relevant breach of the agreement and details of his means; and
- (g) where the application relates to a breach of the agreement other than the non-payment of money, the reasons for that breach and the debtor's proposals for remedying the breach.

(2) Where in proceedings (other than mortgage actions to which Order 88 rule 4A applies) commenced by a creditor, a debtor or surety wishes to apply for a time order under section 129(1)(a) or section 129(1)(c), he shall forthwith file and serve on the other party or parties to the proceedings a notice of his intention so to apply.

(3) If at the time of serving a notice under paragraph (2) the debtor or surety has not entered an appearance in the proceedings the notice must specify an address for service as if it were a memorandum of appearance.

(4) After a notice under paragraph (2) has been served in an action begun by writ, judgment in default of appearance or in default of defence shall not be entered without the leave of the Court.

(5) An application for leave under paragraph (4) must be made by summons supported by affidavit and, notwithstanding anything in Order 65 rule 9, the summons and a copy of the affidavit must be served on every other party to the proceedings.

## **Powers of Court: regulated agreements**

12.—(1) On the hearing of any application in proceedings which relate to a regulated agreement and, without prejudice to any of the Court's other powers under the Act or otherwise, the Court may, whether or not the debtor or surety has entered an appearance, served any pleading or filed or served a notice under rule 11 or appears at the hearing, exercise the powers of the Court under sections 129 to 136.

(2) Where, on an application for leave to enter judgment in default of appearance or defence the Court refuses such leave in respect of a claim or any part of a claim, it may make or give any such order or direction as it might have made or given if the application had been an application under Order 14 rule 1 or Order 86 rule 1 (as the case may be).

## **Application for variation, revocation etc of orders**

13. An application for an order under section 130(6) (variation or revocation of time orders), 133(6) (revocation and payment after breach of return orders or transfer orders) or 135(4) (variation of conditional or suspended orders) may be made by summons issued in the same action or proceedings in which the order to be varied or revoked was made.

### **Re-opening of extortionate agreements**

14.—(1) Where a defendant desires to have a credit agreement reopened in accordance with section 139(1)(b) or (c) he shall forthwith file and serve on the other party or parties to the proceedings a notice to that effect.

(2) If at the time of serving a notice under paragraph (1) the debtor or surety has not entered an appearance in the proceedings, the notice must specify an address for service as if it were a memorandum of appearance.

(3) After a notice under paragraph (1) has been served in an action begun by writ, judgment in default of appearance or in default of defence shall not be entered except with the leave of the Court.

(4) An application for leave under paragraph (3) must be made by summons supported by affidavit, and notwithstanding anything in Order 65 rule 9, the summons and a copy of the affidavit must be served on every other party to the proceedings.

(5) On the hearing of an application for leave under paragraph (3) or of any proceedings in which a notice under paragraph (1) has been filed, the Court may, whether or not the debtor or surety has entered an appearance or appears at the hearing, exercise the powers of the Court under sections 137 to 140.

(6) Where, on an application under paragraph (3), the Court refuses leave to enter judgment on a claim or any part of a claim, it may make or give any such order or direction as it might have made or given if the application had been an application under Order 14 rule 1 or Order 86 rule 1 (as the case may be) for judgment on the claim.

### **References to the Act and regulations**

15. Every process issued under the Act shall be endorsed with a statement identifying the particular provision of the Act and any regulation made thereunder pursuant to which relief is sought.