

1972 No. 1156 (L15)
COUNTY COURTS
PROCEDURE
The County Court (Amendment No. 2) Rules 1972

Made - - - - - 27th July 1972

Coming into Operation 1st September 1972

1.—(1) These Rules may be cited as the County Court (Amendment No. 2) Rules 1972.

(2) In these Rules an Order and Rule referred to by number means the Order and Rule so numbered in the County Court Rules 1936(a), as amended (b), and a form referred to by number means the form so numbered in Appendix A to those Rules.

(3) The Interpretation Act 1889(c) shall apply for the interpretation of these Rules as it applies for the interpretation of an Act of Parliament.

2. Order 1, Rule 2, shall be amended as follows:—

(1) For paragraph (2) there shall be substituted the following paragraph:—

“(2) Every office shall be closed on the following days—

(a) Sundays;

(b) bank holidays;

(c) the day before Good Friday (from noon) and Good Friday;

(d) the Friday before the spring holiday;

(e) Christmas Eve or—

(i) if that day is a Saturday, then 23rd December,

(ii) if that day is a Sunday or Tuesday, then 27th December;
and

(f) Christmas Day and, if that day is a Friday or Saturday, then 28th December.”

(2) The following paragraph shall be added at the end:—

“(4) In this Rule a “bank holiday” means a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(d), and “the spring holiday” means the bank holiday on the last Monday in May or any day appointed instead of that day under section 1(2) of the said Act.”

(a) S.R. & O. 1936/626 (1936 I, p. 282).

(b) The relevant amending instruments are S.I. 1958/2226, 1963/403, 1967/276, 1969/585, 1971/836 (1958 I, p. 372; 1963 I, p. 475; 1967 I, p. 990; 1969 I, p. 1551; 1971 II, p. 2393).

(c) 1889 c. 63.

(d) 1971 c. 80.

3. Order 5 shall be amended as follows:—

- (1) In the heading to Part IV, after the words “TRUSTS” there shall be added the word “ETC”.
- (2) Rules 33 and 34 shall be renumbered and shall stand as Rules 34 and 33 respectively.
- (3) In Rules 26, 29, 30, 31 and 32 and in Rule 34 as so renumbered for the word “judge” wherever it appears there shall be substituted the word “court”.
- (4) In Rules 29 and 32 for the word “he” wherever it appears there shall be substituted the word “it”
- (5) Immediately before Rule 34 as so renumbered there shall be inserted the following heading:—

“PART V—REPRESENTATION OF ESTATE”.

- (6) After Rule 34 as so renumbered there shall be inserted the following Rule:—

“34A.—(1) Where any person against whom an action would have been brought against the estate of the deceased but the cause of action survives, the action may, if no grant of probate or administration has been made, be brought against the estate of the deceased. Proceeding
against
estates

(2) Without prejudice to the generality of paragraph (1), an action brought against “the personal representatives of A.B. deceased” shall be treated, for the purposes of that paragraph, as having been brought against his estate.

(3) An action purporting to have been commenced against a defendant who has died shall, if the cause of action survives and no grant of probate or administration has been made, be treated as having been brought against his estate in accordance with paragraph (1).

- (4) In any such action as is referred to in paragraph (1) or (3)—

(a) the plaintiff shall, in the case of an ordinary action, on or before the return day, or, in the case of a default action, within the time allowed for service of the summons, apply to the court for an order appointing a person to represent the deceased’s estate for the purpose of the proceedings or, if a grant of probate or administration has been made since the commencement of the action, for an order that the personal representative of the deceased be made a party to the proceedings, and in either case for an order that the proceedings be carried on against the person so appointed or, as the case may be, against the personal representative, as if he had been substituted for the estate;

(b) the court may, at any stage of the proceedings and on such terms as it thinks just and either of its own motion or on application, make any such order as is mentioned in subparagraph (a) and allow such amendments (if any) to be made and make such other order as the court thinks necessary in order to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon.

(5) Before making an order under paragraph (4) the court may require notice to be given to any insurer of the deceased who has an interest in the proceedings and to such (if any) of the persons having an interest in the estate as it thinks fit.

(6) Where an order is made under paragraph (4), the person against whom the proceedings are to be carried on shall be served with a copy of the order, together with a copy of the summons in the action, in accordance with the rules applicable to the service of such a summons on a defendant.

(7) Where no grant of probate or administration has been made, any judgment or order given or made in the proceedings shall bind the estate to the same extent as it would have been bound if a grant had been made and a personal representative of the deceased had been a party to the proceedings."

(7) Part V shall be renumbered and shall stand as Part VI.

4. The following Rule shall be added at the end of Order 13:—

Application
under s.21 of
Administra-
tion of
Justice Act
1969 or s.31
or 32 of Ad-
ministration
of Justice
Act 1970
1969 c. 58
1970 c. 31

"15.—(1) Subject to the following paragraphs of this Rule, the provisions of the Rules of the Supreme Court relating to applications under section 21 of the Administration of Justice Act 1969 or section 31 or 32 of the Administration of Justice Act 1970 shall apply with the necessary modifications in relation to proceedings or subsequent proceedings in a county court as they apply to proceedings or subsequent proceedings in the High Court.

(2) For the references in the said provisions to a summons there shall be substituted, in the case of an originating summons, a reference to an originating application or, in the case of any other summons, a reference to notice under Rule 1 of this Order, and notice of an application made after the commencement of proceedings shall be served on the person against whom the order is sought, in accordance with the rules applicable to service of the process by which the proceedings were commenced.

(3) The affidavit in support of an application made before the commencement of proceedings shall show that the proceedings are such that the court to which the application is made has jurisdiction to hear and determine."

5. Order 25 shall be amended as follows:—

(1) In Rule 79(2) after the word "Wales" there shall be inserted the words "or the creditor does not know where he resides".

(2) The following paragraph shall be added to Rule 83:—

"(4) An attachment of earnings order may be made to secure the payment of a judgment debt if the debt is—

(a) of not less than £5, or

(b) for the amount remaining payable under a judgment for a sum of not less than £5."

(3) In Rule 94(9) the words "or an attachment of earnings order made by the High Court designates the registrar of a county court as the collecting officer," shall be omitted.

(4) In Rule 94(11) for the word “Rule” there shall be substituted the words “Rules 83(4) and”.

6. Order 46 shall be amended as follows:—

(1) In Rule 7(2), for the words from “paragraphs (3) to (8)” to the end there shall be substituted the words “for the purpose of such consideration the registrar shall, if he has not already done so, fix a day for the preliminary consideration of the action under Order 21.”.

(2) Rule 17 shall be amended as follows:—

(a) In paragraph (1A) the words “or for an attachment of earnings order” shall be omitted.

(b) In paragraph (2)(b)(iv) after the word “order” there shall be inserted the words “the date to which those arrears have been calculated and the date on which the next payment under the order falls due.”

(c) In paragraph (3) after the words “application is granted” there shall be inserted the following sub-paragraph:—

“(a) the applicant shall, if the application is granted on the making of the maintenance order or an order varying the maintenance order, lodge in the court office a statement signed by the applicant or his solicitor, and a copy thereof, giving the address of the person entitled to receive payments under the maintenance order and the particulars mentioned in paragraph (2)(b)(ii), (iv) and (vii)”.

(d) Sub-paragraphs (a), (b) and (c) of paragraph (3) shall be re-lettered as (b), (c) and (d) respectively.

(e) In sub-paragraph (3)(c), as so re-lettered, for the words “if any” there shall be substituted the words “or statement”.

7. Form 402 shall be amended by substituting for the words “Balance of judgment debt” to the end the words—

“To be completed by the court

Balance of judgment debt and costs	£
Court fee on application	£

Sum on payment of which this matter will be satisfied			£

[Unsatisfied costs of execution not included in above		£] ”.

8. In Form 404 after the words “Do not leave blanks.” there shall be inserted the words “The answers you give may be checked with your employer.”.

9. Notwithstanding anything in Rules 7 and 8 of these Rules, Forms 402 and 404 may continue to be used in the form hitherto prescribed until the Lord Chancellor otherwise directs.

We, the undersigned members of the Rule Committee appointed by the Lord Chancellor under section 102 of the County Courts Act 1959(a) having by virtue of the powers vested in us in this behalf made the foregoing Rules, do hereby certify the same under our hands and submit them to the Lord Chancellor accordingly.

D. O. McKee.
Conolly H. Gage.
H. S. Ruttle.
David Pennant.
W. Granville Wingate.
W. Ralph Davies.
E. A. Everett.
K. W. Mellor.
Arnold Russell Vick.
D. A. Marshall.
E. W. Sankey.

I allow these Rules, which shall come into operation on 1st September 1972.

Dated 27th July 1972.

Hailsham of St. Marylebone, C.

EXPLANATORY NOTE

(This Note is not Part of the Rules.)

These Rules amend the County Court Rules so as to make provision for the matters mentioned in section 2 of the Proceedings Against Estates Act 1970(c.17) (Rule 3) and for the disclosure of documents and the inspection etc. of property under section 21 of the Administration of Justice Act 1969 and sections 31 and 32 of the Administration of Justice Act 1970 (Rule 4). The days on which county court offices are to be closed are redefined in view of the Banking and Financial Dealings Act 1971 (Rule 2). A number of minor amendments are made in relation to attachment of earnings (Rules 5, 7 and 8) and other matters.

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