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 STATUTORY INSTRUMENTS
 

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## 1979 No. 1045 (L. 14)

## COUNTY COURTS

## PROCEDURE

## The County Court (Amendment) Rules 1979

Made - - - - 27th July 1979

Coming into Operation 3rd September 1979

*Citation and interpretation*

1.—(1) These Rules may be cited as the County Court (Amendment) Rules 1979.

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

*Adoption following divorce*

2. In Order 2, after Rule 15, there shall be added the following Rule:—

“16.—(1) An “authorised court” for the purposes of section 100(2) of the Children Act 1975(b), as respects an application for an order relating to a child, shall include any divorce county court in which a declaration has been made under section 41(1)(b) or (c) of the Matrimonial Causes Act 1973(c) in respect of that child.

(2) A “divorce county court” in this Rule means any county court designated by the Lord Chancellor as a divorce county court under section 1(1) of the Matrimonial Causes Act 1967(d).”

*Proof of service by certificate*

3. In Order 6, Rule 4(2)(d), and in Order 25, Rule 81(3), for the word “note” substitute the word “certificate”.

4. Order 8 shall be amended as follows:—

(1) In Rule 2 (c)(i), for the word “indorse” substitute the words “certify the fact and mode of service by indorsing” and for the word “indorsement” substitute the word “certificate”.

(2) In Rule 6(2)(a), for the word “indorsement” substitute the word “certificate”.

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(a) S.R. & O. 1936/626; relevant amending instruments are:— S.R. & O. 1938/18; S.I. 1950/1231, 1993, 1953/1728, 1956/1851, 1957/174, 1136, 1960/1275, 1961/1526, 1965/2147, 1970/1201, 1971/781, 1974/178, 1138, 1977/1206, and 1978/1943.  
 (b) 1975 c. 72. (c) 1973 c. 18. (d) 1967 c. 56.

- (3) In Rule 9(1), for the word “indorse” substitute the words “certify the fact and mode of service by indorsing”, for the word “indorsement” substitute the word “certificate” and for the words “the indorsed copy of the summons” substitute the words “the copy”.
- (4) In Rule 9, for the existing paragraph (2) substitute the following paragraphs:—

“(2) Subject to the provisions of the next paragraph where a summons is served by post pursuant to paragraph (2) or (3) of Rule 8 of this Order, the officer of the court shall certify the fact and mode of service by indorsing on the copy of the summons retained by the court office the date of posting and the address written on the letter, and shall sign the certificate and add the name of the court of which he is an officer.

(3) Where a default summons is served by post pursuant to paragraph (2) of Rule 8 of this Order, the officer may, as an alternative to indorsing a copy of the summons in accordance with the preceding paragraph, certify the fact and mode of service by entering the date of posting on the praecipe, together with his signature.”

5. In Order 25, Rule 39(3), for the word “indorse” there shall be substituted the words “certify the fact and mode of service by indorsing”; and for the word “indorsement” there shall be substituted the word “certificate”.

#### *Postal service*

6. Order 8 shall be amended as follows:—

- (1) In Rule 8(2), and in Rule 14(2), for the word “ordinary” there shall be substituted the words “first-class”.
- (2) After Rule 8(2), there shall be inserted the following paragraph:—

“(2A) Where a summons is served in accordance with paragraph (2) the date of service shall, unless the contrary be shown, be deemed to be the seventh day after the date on which the summons was sent to the address in question.”

#### *Conduct money*

7. In Order 20, Rule 8(5), and in Order 25, Rule 39(4), the words “with a minimum of ten new pence” shall be deleted.

8. In Order 25, Rule 43(2), the words “with a minimum of one shilling” shall be deleted.

#### *Deponents' addresses*

9. Order 20, Rule 19(1), shall be amended as follows:—

- (1) After the word “residence” in sub-paragraph (c) there shall be inserted a comma followed by the words “unless the court otherwise directs,”.
- (2) After sub-paragraph (c) there shall be inserted a colon and the following paragraph:—

“Provided that a deponent who is giving evidence in a professional, business or other occupational capacity may, instead of stating his residence, state the address at which he works, the position he holds and the name of his firm or employer, if any.”

*Contribution*

**10.** In Order 12, Rule 3(2), the words from “Provided that” to the end of the Rule shall be deleted.

**11.** In Order 25, Rule 6, the following paragraphs shall be added after paragraph (4):—

“(5) Where judgment is given for the payment of any contribution or indemnity to a person who is under a liability to make a payment in respect of the same debt or damage, execution shall not issue on the judgment without the leave of the court until that liability has been discharged.

(6) For the purpose of paragraph (5), “liability” includes liability under a judgment in the same or other proceedings and liability under an agreement to which section 1(4) of the Civil Liability (Contribution) Act 1978(a) applies.”

*Summary proceedings for possession of land*

**12.** Order 26 shall be amended as follows:—

- (1) In paragraph (3) of Rule 1, the words starting “Where the applicant” and ending “a respondent,” shall be omitted.
- (2) In paragraph (c) of Rule 2, and in paragraph 2 of Rule 3, the words “In a case to which Rule 1(3) relates” shall be omitted.
- (3) In sub-paragraphs (a) and (b) of Rule 3(2), after the words “the originating application” there shall be inserted “and a copy of the affidavit”.

*Interest in equity proceedings*

**13.** Order 29 shall be amended as follows:—

- (1) In Rules 13 and 14, for the words “at the rate of 4 per centum per annum” there shall be substituted the words “at the rate then payable on judgment debts in the High Court”.
- (2) In Rule 15, for the words “4 per centum” there shall be substituted the words “5 per centum”.

*Proceedings under the Landlord and Tenant Act 1954(b)*

**14.** In Order 40, Rule 8(1A), for “Rule 38” there shall be substituted “Rule 35” and for the words “one month” there shall be substituted the words “two months”.

*Guardianship of minors*

**15.** In Order 46, Rule 1, for the existing paragraph (2) there shall be substituted the following paragraph:—

“(2) In any proceedings under the Guardianship of Minors Acts 1971(c) and 1973(d) all persons appearing to be interested in, or affected by, the application (except the minor with respect to whom the application is

(a) 1978 c. 47.

(b) 1954 c. 56.

(c) 1971 c. 3.

(d) 1973 c. 29.

made) shall be made respondents to the application, including, where the application is made under section 5 of the Guardianship of Minors Act 1971, with respect to a minor who has been received into the care of a local authority under section 1 of the Children Act 1948(a), that authority.”.

*Determination of solicitor’s retainer*

**16.** Order 48, Rule 11(1), shall be amended by the addition of the following words:—

“or the solicitor’s retainer is determined under regulation 13(2) of the Legal Aid (General) Regulations 1971(b), (which deals with the discharge or revocation of an assisted person’s certificate).”

*Suspended order for the recovery of land*

**17.** For the existing title to Form 138 there shall be substituted “Suspended Order for the Recovery of Land”.

*Restitution*

**18.** Order 25, Rule 71, shall be amended by the addition of the following paragraphs:—

“(3) With the leave of the court a warrant of restitution in Form 201 may be issued in aid of a warrant of possession in Form 200.

(4) An application for such leave may be made *ex parte* and shall be supported by evidence of wrongful re-entry into possession following the issue and execution of the warrant of possession and of such further facts as would, in the High Court, entitle the plaintiff to the issue of a writ of restitution.”

**19.** Order 26, Rule 6, shall be amended as follows:—

(1) In paragraph (1) there shall be added the following words:—

“and subject to the provisions of Order 25, Rule 71, a warrant of restitution may be issued in aid of the warrant of possession.”

(2) In paragraph (2) there shall be added the following words:—

“and the warrant of restitution shall be in Form 202.”

**20.** The following two forms shall be inserted in Appendix A as Forms 201 and 202 respectively:—

Form 201

WARRANT OF RESTITUTION

[*Title as in Form 1*]

WHEREAS on the        day of        19    , it was adjudged that the Plaintiff was entitled to possession of [*describe the land as set out in the judgment*].

AND WHEREAS on the        day of        19    , a warrant of possession was issued, pursuant to the said judgment, requiring you to give possession of the said land to the Plaintiff and possession of the said land was given by you to the Plaintiff under the said warrant on the day of        19    .

(a) 1948 c. 43.

(b) S.I. 1971/62.

AND the Plaintiff having satisfied the Court that the said land has been re-entered wrongfully and the Court having ordered, on the day of 19 , that a warrant of restitution should issue in respect of the land [and that the Defendant should pay the Plaintiff the sum of £ for costs].

YOU ARE THEREFORE REQUIRED FORTHWITH to enter the said land and to cause the Plaintiff to have restitution thereof, and forthwith to levy [the amount due to the Plaintiff under the said order together with] the costs of this warrant and the costs of executing the same [*continue as in Form 200*].

## Form 202

## WARRANT OF RESTITUTION

[Title as in Form 398]

WHEREAS on the day of 19 , it was ordered that the Applicant should recover possession of [*describe the land as set out in the order*].

AND WHEREAS on the day of 19 , a warrant of possession was issued, pursuant to the said order, requiring you to give possession of the said land to the Applicant and possession of the said land was given to the Applicant under the said warrant on the day of 19 .

AND the Applicant having satisfied the Court that the said land has been re-entered wrongfully and the court having ordered, on the day of 19 , that a warrant of restitution should issue in respect of the land [and that the Respondent should pay the Applicant the sum of £ for costs.]

YOU ARE THEREFORE REQUIRED FORTHWITH to enter the said land and to cause the Applicant to have restitution thereof, and forthwith to levy [the amount to the Applicant under the said order together with] the costs of this warrant and the costs of executing the same [*continue as in Form 200, substituting "Respondent" for "defendant"*].

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.

*Henry Ruttle.**W. Granville Wingate.**T. Richard Nevin.**A. C. Goodall.**David Peck.**E. A. Everett.**M. A. W. Grundy.**Arnold Russell Vick.**Fielding Hatton.**Norman Cooper.*

I allow these Rules, which shall come into operation on 3rd September 1979.

Dated 27th July 1979.

*Hailsham of St. Marylebone, C.*

## EXPLANATORY NOTE

*(This Note is not part of the Rules.)*

These Rules amend the County Court Rules so as—

- (a) to allow an adoption order following divorce to be made by the relevant divorce county court (Rule 2);
- (b) to allow service of documents to be proved by certificate and to allow a certificate of postal service to be entered on the praecipe rather than on a copy of the summons (Rules 3, 4 and 5);
- (c) to require summonses sent by post to go first-class and to provide a presumption of service on the seventh day after posting (Rule 6);
- (d) to abolish the requirement that conduct money should not be less than a prescribed minimum (Rules 7 and 8);
- (e) to allow a person making an affidavit to give a “work address” instead of a “home address” in certain circumstances and also to apply for permission to omit the address altogether (Rule 9);
- (f) to prevent the enforcement of contribution orders (except with the leave of the court) where the claim in the main proceeding remains unsatisfied (Rules 10 and 11);
- (g) to amend the Rules applicable to summary proceedings for possession of land so that unnamed respondents are given notice in Form 399, in all cases, of their right to be heard in the proceedings (Rule 12);
- (h) to bring the interest rates in equity proceedings into line with those applicable in the High Court (Rule 13);
- (i) to allow two months for the service of an application for a new tenancy under Part II of the Landlord and Tenant Act 1954 instead of one month, as at present (Rule 14);
- (j) to give general directions as to who should be made respondents in guardianship proceedings (Rule 15);
- (k) to relieve the solicitor whose client’s legal aid certificate has been discharged, or revoked, of the duty to apply to be taken off the court record, (although the duty to notify the court of the discharge or revocation remains) (Rule 16);
- (l) to reword the title of Form 138, which is the form used in Rent Act cases (Rule 17); and
- (m) to enable a plaintiff to obtain restitution of premises that have been re-entered wrongfully after the execution of a warrant of possession (Rules 18-20).



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