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STATUTORY INSTRUMENTS

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**1985 No. 566 (L. 4)**

**COUNTY COURTS**

**PROCEDURE**

**The County Court (Amendment) Rules 1985**

*Made* - - - - *2nd April 1985*  
*Coming into Operation* *19th May 1985*

*Citation and interpretation*

1.—(1) These Rules may be cited as the County Court (Amendment) Rules 1985.

(2) In these Rules, unless the context otherwise requires, an Order referred to by number means the Order so numbered in the County Court Rules 1981(1), and Appendix B means Appendix B to those Rules.

*Consumer Credit Act 1974(2)*

2. In the definition of “hire-purchase agreement” in Order 1, rule 3, for the words “Hire-Purchase Act 1965” there shall be substituted the words “Consumer Credit Act 1974”.

3. In Order 1, rule 11, for the words from “section 1(1)” to the end there shall be substituted the words “section 189(1) of the Consumer Credit Act 1974 with such modifications as the circumstances may require”.

4. Order 4, rule 2(3) shall be amended by substituting, for the words “when the contract was made”, the words “at the date when he last made a payment under the contract”.

5. For Order 6, rule 6 there shall be substituted the following new rule:—

**“Hire-purchase**

6.—(1) Where a plaintiff claims the delivery of goods let under a hire-purchase agreement to a person other than a body corporate, he shall in his particulars state in the order following—

- (i) the date of the agreement and the parties to it with the number of the agreement or sufficient particulars to enable the debtor to identify the agreement;

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(1) The relevant amending instruments are S.I. 1982/1140, 1794, 1983/1716, 1984/576, 878.  
(2) 1974 c. 39

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- (ii) 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;
- (iii) whether the agreement is a regulated agreement and, if it is not a regulated agreement, the reason why;
- (iv) the place where the agreement was signed by the debtor (if known);
- (v) the goods claimed;
- (vi) the total price of the goods;
- (vii) the paid-up-sum;
- (viii) the unpaid balance of the total price;
- (ix) whether a default notice or a notice under section 76(1) or section 98(1) of the Consumer Credit Act 1974 has been served on the debtor, and if it has, the date on which and the manner in which it was so served;
- (x) the date when the right to demand delivery of the goods accrued;
- (xi) the amount (if any) claimed as an alternative to the delivery of the goods; and
- (xii) the amount (if any) claimed in addition to the delivery of the goods or any claim under sub-paragraph (xi), stating the cause of action in respect of which each such claim is made.

(2) Where a plaintiff's claim arises out of a hire-purchase agreement but is not for the delivery of goods, he shall in his particulars state in the order following—

- (i) the date of the agreement and the parties to it with the number of the agreement or sufficient particulars to enable the debtor to identify the agreement;
- (ii) 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;
- (iii) whether the agreement is a regulated agreement and, if it is not a regulated agreement, the reason why;
- (iv) the place where the agreement was signed by the debtor (if known);
- (v) the goods let under the agreement;
- (vi) the amount of the total price;
- (vii) the paid-up sum;
- (viii) the amount (if any) claimed as being due and unpaid in respect of any instalment or instalments of the total price; and
- (ix) the nature and amount of any other claim and the circumstances in which it arises.

(3) Expressions used in this rule which are defined in the Consumer Credit Act 1974 have the same meanings in this rule as they have in that Act.”

6. In Order 21, rule 5(2) for the words “hire-purchase price” there shall be substituted the words “total price”.

7. For Order 49, rule 4 there shall be substituted the following new rule:—

#### “Consumer Credit Act 1974

4.—(1) In this rule “the Act” means the Consumer Credit Act 1974, 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 rule as they have in the Act.

(2) An action to recover possession of goods to which a regulated hire-purchase agreement relates shall be commenced in the court for the district in which the debtor resides or carries on business or resided or carried on business at the date when he last made a payment under the agreement.

(3) Where in any action or matter relating to a regulated agreement the debtor or any surety has not been served with the originating process, the court may, on the ex parte application of the plaintiff made at or before the hearing of the action or matter, dispense with the requirement in section 141(5) that the debtor or surety, as the case may be, shall be made a party to the proceedings.

(4) Where an action or matter relating to a regulated agreement is brought by a person to whom a former creditor's rights and duties under the agreement have passed by assignment or by operation of law, the requirement in section 141(5) that all the parties to the agreement shall be made parties to the action shall not apply to the former creditor unless the court so directs.

(5) An application under section 129(1)(b) may be made by originating application and the application—

- (a) shall be filed in the court for the district in which the applicant resides or carries on business; and
- (b) shall state—
  - (i) the date of the agreement and the parties to it with the number of the agreement or sufficient particulars to enable the respondent to identify the agreement and details of any sureties;
  - (ii) if the respondent was not one of the original parties to the agreement, the name of the original party to the agreement;
  - (iii) the names and addresses of the persons intended to be served with the application;
  - (iv) the place where the agreement was signed by the applicant;
  - (v) details of the notice served by the respondent giving rise to the application;
  - (vi) 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;
  - (vii) the applicant's proposals as to payment of any arrears and of future instalments together with details of his means;
  - (viii) where the application relates to a breach of the agreement other than the non-payment of money, the applicant's proposals for remedying it.

(6) Any application under section 131 may be heard and determined by the judge or by the registrar.

(7) In an action brought by the creditor to recover possession of goods comprised in an agreement to which section 90(1) applies, Order 9 shall have effect with the following modifications:—

- (a) subject to sub-paragraph (b), rules 2 and 3(1) and 3(2) of the said Order shall apply, with the necessary modifications, in relation to a debtor who makes an offer as to conditions for the suspension of a return order under section 135(1)(b) as

they apply in relation to a defendant in a default action who admits the whole or part of the plaintiff's claim and desires time for payment;

- (b) where the plaintiff elects to accept such an offer as is mentioned in sub-paragraph (a) and a surety is a party to the action, Judgment shall not be entered before the return day save with the consent of the surety;
- (c) rule 4 of the said Order shall not apply where judgment is entered under rule 3(2) thereof;
- (d) where such an offer as is mentioned in sub-paragraph (a) is made on the form appended to the summons but the plaintiff elects not to accept it, the court may, if the debtor does not attend on the return day, treat the form as evidence of the facts stated therein for the purposes of sections 129(2)(a) and 135(2).

(8) Where in relation to a regulated hire-purchase agreement the registrar has made a time order or an order for the return to the creditor of the goods suspended under section 135(1)(b), any application under section 130(6), 133(6), or 135(4) may be heard and determined by the registrar.

(9) An application for an enforcement order may be made—

- (a) by originating application asking for leave to enforce the agreement in respect of which the order is sought, or
- (b) if, apart from the need to obtain an enforcement order, the creditor is entitled to payment of the money or possession of the goods or land to which the agreement relates, by fixed date action to recover the money, goods or land.

(10) An originating application under paragraph (9)(a) and the particulars of claim in an action brought pursuant to paragraph (9)(b) shall state the circumstances rendering an enforcement order necessary.

(11) Paragraph (9) shall apply to an order under section 86(2), 92(2) or 126 as it applies to an enforcement order, so however that in the case of an order under section 86(2) the personal representatives of the deceased debtor or hirer shall be made parties to the proceedings in which the order is sought, or, if no grant of representation has been made to his estate, the applicant shall, forthwith after commencing the proceedings, apply to the court for directions as to what persons, if any, shall be made parties to the proceedings as being affected or likely to be affected by the enforcement of the agreement.

(12) Where by virtue of section 90(1) the creditor is not entitled to recover possession of the goods comprised in an agreement except on an order of the court, an application for such an order may be made only by action claiming possession of the goods.

(13) An application for an order under section 92(1) entitling a creditor or owner to enter any premises to take possession of goods shall be made by originating application.

(14) An application to a county court under section 139(1)(a) for a credit agreement to be reopened shall be made by originating application.

(15) Where in any such proceedings in a county court as are mentioned in section 139(1)(b) or (c), the debtor or a surety desires to have a credit agreement reopened, he shall, within 14 days after the service of the originating process on him, give notice to that effect to the proper officer and to every other party to the proceedings and thereafter the debtor or surety, as the case may be, shall be treated as having delivered a defence or answer and accordingly, if the proceedings are a default action, no judgment shall be entered under Order 9, rule 6(1).”

8. Order 49, rule 6 shall be revoked.

9. Paragraph 3(c) of Part I of Appendix B (Fixed Costs) and the second paragraph of Part II of the same Appendix (Directions) shall be amended by substituting, for the words “hire-purchase price”, the words “total price”.

10. Except in relation to any provision of the Consumer Credit Act 1974 which applies to agreements entered into before 19th May 1985, nothing in Rules 2 to 9 shall apply to agreements entered into before that date and the Rules in force immediately before 19th May 1985 shall continue to apply to those agreements.

*Plaintiffs preparing their own summonses*

11. For Order 3, rule 3, there shall be substituted the following new rule—

**“Commencement of action**

3.—(1) Subject to paragraph (1A), a plaintiff desiring to commence a default or fixed date action shall file a request for the issue of a summons, together with the particulars of claim and copies required by Order 6.

(1A) If the plaintiff so desires and the proper officer so allows, the summons may be prepared by the plaintiff and in that event the summons with a copy for each defendant shall be filed by the plaintiff with the documents mentioned in paragraph (1).

(2) On the filing of the documents mentioned in paragraph (1) or paragraph (1A) the proper officer shall—

- (a) enter a plaint in the records of the court and in the case of a fixed date action fix the return day;
- (b) if necessary, prepare a summons;
- (bb) issue the summons and make any necessary copies;
- (c) annex to, or incorporate in, the summons and every copy so made a copy of the particulars of claim and also annex to every copy of the summons for service a form of admission, defence and counterclaim, and,
- (d) deliver to the plaintiff—
  - (i) a plaint note and
  - (ii) if the summons is to be served otherwise than by an officer of the court, the summons and all necessary copies, with any documents required to be annexed thereto, for service in accordance with Order 7.

(3) In the case of a fixed date action the return day shall, unless the court otherwise directs, be a day fixed for a pre-trial review.

(4) Paragraph (3) shall not apply to an action for the recovery of land unless a claim is joined for some relief other than the payment of mesne profits or arrears of rent or for moneys secured by a mortgage or charge.”

*Local Government Finance Act 1982(3)*

12. Order 49, rule 10 shall be amended as follows.

(1) For the title to the rule there shall be substituted the title “ Local Government Finance Act 1982 ” and in paragraph (1) for the words. “Local Government Act 1972 ” there shall be substituted the words “Local Government Finance Act 1982”.

(2) In paragraphs (2) and (7) for the words “under section 161” there shall be substituted the words “under section 19 or section 20”.

(3) In paragraph (3) for the words “section 161(1)” and “section 161(2)” there shall be substituted the words “section 19(1)” and “section 19(2)” respectively.

(4) In paragraph (4) for the words “section 161(6)”, “a district auditor” and “district auditor's” there shall be substituted the words “section 19(4) or section 20(3)”, “an auditor” and “auditor's” respectively.

(5) In paragraph (5) for the words “district auditor”, “district auditor's” and “section 161(2)” there shall be substituted the words “auditor”, “auditor's” and “section 19(2)” respectively.

(6) In paragraph (6) for the words “district auditor” and “section 161(4)” there shall be substituted the words “auditor” and “section 20(1)” respectively.

13. Nothing in Rule 12 shall apply to accounts for any period beginning before 1st April 1983.

*Telecommunications Act 1984(4)*

14. After Order 49, rule 18 there shall be inserted the following new rule:—

**“Telecommunications Act 1984**

**18A.**—(1) Order 13, rule 11, shall have effect in relation to an assessor who is to be summoned in proceedings under paragraph 5 of Schedule 2 to the Telecommunications Act 1984 as if the judge had granted an application by the operator for the assessor to be summoned.

(2) Any report made by the assessor pursuant to sub-paragraph (6)(a) of the said paragraph 5 shall be filed by the assessor, together with a copy for each party to the proceedings, and thereupon the proper officer shall send a copy to each party and shall, if the proceedings have not been adjourned to a day named, fix a day for the hearing and give notice thereof to all parties.”

We, the undersigned members of the Rule Committee appointed by the Lord Chancellor under section 75 of the County Courts Act 1984, 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.

*C R Oddie  
J B Taylor  
C S Stuart-White  
P G Hebbert  
Peter Crane  
Anthony Girling  
Norman Francis  
D McKinney  
A W Donaldson  
J F Holt  
Alan K Griesbach*

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I allow these Rules, which shall come into operation on 19th May 1985.

Dated 2nd April 1985

*Hailsham of St. Marylebone, C*

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## EXPLANATORY NOTE

These Rules amend the County Court Rules 1981 so as—

- (a) to give effect to those provisions of the Consumer Credit Act 1974 which are to come into operation on 19th May 1985 (Rules 2 to 10);
- (b) to enable plaintiffs to prepare their own summonses where the proper officer so allows (Rule 11);
- (c) to effect minor amendments to Order 49, rule 10 in the light of the provisions of the Local Government Finance Act 1982 (Rules 12 and 13);
- (d) to make provision for cases in which assessors are summoned in proceedings under paragraph 5 of Schedule 2 to the Telecommunications Act 1984 (Rule 14).