
STATUTORY INSTRUMENTS

1991 No. 1126 (L.10)

COUNTY COURTS

PROCEDURE

The County Court (Amendment No. 2) Rules 1991

Made - - - - *13th May 1991*

Coming into force - - *1st July 1991*

Citation and interpretation

1.—(1) These Rules may be cited as the County Court (Amendment No. 2) Rules 1991.

(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).

Civil Justice Review: jurisdictional changes

2. Order 1, rule 3 shall be amended by inserting, after the definition of “senior master”, the following—

““value”, in relation to an action or claim, shall be construed in accordance with articles 9 and 10 of the High Court and County Courts Jurisdiction Order 1991(2).”.

3. After Order 6, rule 1(1), there shall be inserted the following new paragraph—

“(1A) In an action for an unliquidated sum the value of the plaintiff’s claim shall, for the purposes of Order 21, rule 5(1), be treated as limited to the sum for the time being specified in sub-paragraph (b) of that paragraph, unless—

(a) the plaintiff states in his particulars of claim or otherwise that the value of his claim exceeds the said sum; or

(b) the court orders otherwise;

and, where a statement is made under sub-paragraph (a), the plaintiff shall forthwith file an amended statement whenever the value of his claim falls to the said sum or less.”.

4. For Order 9, rule 14(1)(a), there shall be substituted the following—

“(a) an action which stands referred to arbitration under Order 19, rule 2(3);”.

5. For the sum “£500” in—

(1) S.I. 1981/1687; the relevant amending instruments are S.I. 1982/436, 1140, 1794, 1983/275, 1716, 1984/878, 1985/566, 1269, 1986/636, 2001, 1988/278, 1989/236, 1838, 2426 and 1990/1764.

(2) S.I. 1991/724.

- (a) Order 19, rule 2(3), and
 - (b) paragraph (8) of the terms of reference in Order 19, rule 5(2),
- there shall be substituted the sum “£1,000”.
- 6. Order 19, rule 2(2)(a) shall be amended by omitting the words “or request for the issue of a summons”.
 - 7. For Order 21, rule 5(1)(b), there shall be substituted the following—
 - “(a) any action or matter the value of which does not exceed £5,000.”.
 - 8. Nothing in rules 3 and 5 shall apply to an action commenced before 1st July 1991.

Service by post by solicitors

- 9. For Order 3, rule 3(1A), there shall be substituted the following—
 - “(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) and, where service is to be effected otherwise than by an officer of the court, a copy of the summons shall be filed for the court instead of a request.”.
- 10. After Order 7, rule 10, there shall be inserted the following new rule—

“Service by post by solicitors

- 10A.—(1) In an action for personal injuries, the summons may be served in accordance with the provisions of this rule by the plaintiff’s solicitor sending it by first-class post to the defendant at the address stated in the summons.
- (2) Service may be effected under this rule only where the summons has been prepared in accordance with Order 3, rule 3(1A).
- (3) Where a summons is served under this rule—
 - (a) rules 10(3) and (4) and 13 and Order 37, rule 3 shall apply, with the necessary modifications, as if the summons had been served by post by an officer of the court;
 - (b) rules 6(1)(b) and 10(2) shall not apply, and
 - (c) it shall be treated, for the purposes of these rules, as if it had been served by an officer of the court.
- (4) Where a summons has been served under this rule and the plaintiff applies for judgment under Order 9, rule 6(1), his request under paragraph (1A)(a) of that rule shall be accompanied by an affidavit verifying that service was effected in accordance with this rule and that the summons was not returned undelivered.”.
- 11. For Order 7, rule 12, there shall be substituted the following new rule—

“Presumed service of summons

- 12. Where a summons has not been served in accordance with these rules but the defendant delivers a defence, admission or counterclaim, the summons shall be deemed, unless the contrary is shown, to have been duly served on him on the date on which the defence, admission or counterclaim was so delivered.”.

Powers of district judges

12. For Order 13, rule 6(2), there shall be substituted the following—

“(2) Except where the district judge has power under Order 21, rule 5 or otherwise to hear and determine the proceedings in which the application is made, the application shall be made to the judge and rule 1(6) shall not apply.”.

13. After Order 21, rule 5(2A), there shall be inserted the following new paragraph—

“(2B) Without prejudice to Order 50, rule 2, a district judge may, at any stage of an action or matter which he has power to hear and determine under paragraph (1) and subject to any right of appeal to the judge, exercise the same powers under section 38 of the Act as the court; but nothing in this paragraph shall authorise the district judge to commit any person to prison.”.

14. For Order 22, rule 6(2), there shall be substituted the following—

“(2) The district judge may hear and determine an application under paragraph (1).”.

15. For Order 29, rule 3(2), there shall be substituted the following—

“(2) If the committal order—

- (a) does not direct that any application for discharge shall be made to a judge; or
 - (b) was made by the district judge under section 118 of the Act,
- any application for discharge may be made to the district judge.”.

16. After Order 34, rule 1, there shall be inserted the following new rule—

“Committal under section 14, 92 or 118 of the Act

1A. Rule 1(5) of Order 29 shall apply, with the necessary modifications, where an order is made under section 14, 92 or 118 of the Act committing a person to prison.”.

17. After Order 34, rule 4, there shall be inserted the following new rule—

“Exercise of powers by district judges

5. In relation to proceedings under section 14 or 55 of the Act, references in rules 1, 2 and 4 to the judge shall include references to the district judge.”.

Transfer between High Court and county court

18. Order 16, rule 6(1) shall be amended by substituting, for the words “the documents mentioned in section 40(7) or 105(3) of the Act, as the case may be”, the words “the relevant documents”.

19. At the end of Order 16, rule 6(1), there shall be added (on a new line) the following—

“In this paragraph “the relevant documents” means—

- (a) the writ (or a copy thereof),
- (b) the order transferring the proceedings to the county court (or a copy thereof),
- (c) all pleadings and affidavits filed in the High Court, and
- (d) any documents required by the order for transfer to be filed in the county court.”.

20. Order 16, rule 9 shall stand as paragraph (1) of that rule and after it there shall be inserted the following new paragraph—

“(2) In a case to which article 7(1) of the High Court and County Courts Jurisdiction Order 1991 applies—

- (a) the grounds of the application shall be stated by reference to the criteria mentioned in article 7(5) of that Order; and
- (b) the application shall be supported by a statement showing whether or not the value of the action exceeds the sum for the time being specified in article 7(3) of the Order.”.

21. For Order 25, rule 13(1), there shall be substituted the following—

“(1) Where a judgment or order is to be enforced in the High Court, the judgment creditor shall make a request to the proper officer for a certificate of judgment under Order 22, rule 8(1) and the transfer shall have effect on the grant of that certificate.”.

Miscellaneous amendments

22. After Order 1, rule 11, there shall be inserted the following new rule—

“Notices about hearings

12. References in these rules to giving notice of a day fixed for a hearing shall include notice of the time of the hearing.”.

23. For Order 17, rule 11(2), there shall be substituted the following—

“(2) In an action to which this rule applies—

- (a) except where a pre-trial review is ordered pursuant to a direction given under paragraph (4)(a), the foregoing provisions of this Order shall not apply and directions shall take effect automatically in accordance with the following paragraphs of this rule;
- (b) where the court gives directions with regard to any matter arising in the course of proceedings, directions taking effect automatically under this rule shall have effect subject to any directions given by the court.”.

24. For Order 17, rule 11(4), there shall be substituted the following—

“(4) Nothing in paragraph (3) shall—

- (a) prevent the court from giving, of its own motion or on the application of any party, such further or different directions or orders as may in the circumstances be appropriate (including an order that a pre-trial review be held or fixing a date for the hearing or dismissing the proceedings or striking out any claim made therein); or
- (b) prevent the making of an order for the transfer of the proceedings to the High Court or another county court;

and rule 3 shall apply where an application is made under this paragraph as it applies to applications made on a pre-trial review.”.

25. For Order 22, rule 1(3), there shall be substituted the following—

“(3) Where judgment is entered in a default action under Order 9, rule 6(1) for payment forthwith, it shall not be necessary to draw up and serve the judgment where a request for the issue of a warrant of execution has been made.”.

26. Order 26, rule 9 (costs of warrant) shall be omitted.

27. After Order 50, rule 4, there shall be inserted the following new rule—

“Preparation of documents

4A.—(1) Without prejudice to Order 3, rule 3(1A), where by or under these rules a document is to be prepared by the court, that document may, if the proper officer so allows, be prepared by the plaintiff and, where a document is so produced—

- (a) the plaintiff shall not be required also to file a request (provided that where by or under these rules a certificate as to any particular matter is to be given in the request the relevant information shall be given in the document produced to the court);
- (b) the plaintiff shall provide a sufficient number of copies of the document for the court’s use.

(2) Nothing in this rule shall—

- (a) require the proper officer to accept a document which is illegible, has not been duly authorised or is for some other reason unsatisfactory;
- (b) apply to documents to which Order 25, rule 5(3) (re issue of enforcement proceedings), Order 25, rule 8(5)(b) (re issue of warrant where condition upon which warrant was suspended not complied with) or Order 28, rule 11(1) (issue of warrant of committal) apply.

(3) In this rule “plaintiff” includes an applicant and a judgment creditor (within the meaning of Order 25, rule 1).”.

Devolution: admissions direct and disposals

28. Order 1, rule 3 shall be amended by substituting for the definition of “proper officer” the following—

““proper officer” means the district judge or—

- (a) in relation to any act of a formal or administrative character which is not by statute the responsibility of the district judge, and
- (b) in Order 9, rule 3, Order 22, rules 7A and 10, Order 25, rule 8 and Order 27, rules 7, 7A, 8(1B) and 19(3C),

the chief clerk or any other officer of the court acting on his behalf in accordance with directions given by the Lord Chancellor;”.

29. For Order 9, rule 2, there shall be substituted the following new rule—

“Admission, defence or counterclaim to be delivered

2.—(1) This rule applies where a defendant in any action—

- (a) admits his liability for the whole or part of the plaintiff’s claim;
- (b) desires time for payment of any sum admitted by him;
- (c) disputes his liability for the whole or part of the plaintiff’s claim, or
- (d) desires to set up a counterclaim.

(2) In this rule and rules 3 and 6—

“a request for time for payment” means a request containing a proposal as to the date of payment or, if it is proposed to pay by instalments, the frequency and amount of the instalments;

“admission” and “a statement of means” means the relevant form appended to the summons completed according to the circumstances of the case;

“defence” includes a counterclaim and means the relevant form appended to the summons completed according to the circumstances of the case or a defence otherwise than on that form;

“proper officer” does not include the district judge;

and paragraph (1A) of Order 6, rule 1 shall apply, with the necessary modifications, to a defendant making a counterclaim as it applies to a plaintiff.

(3) Except where paragraph (5)(a) applies, a defendant in an action for a liquidated sum who—

- (a) admits his liability for the whole of the plaintiff’s claim, and
- (b) desires time for payment of the sum admitted by him,

shall, within 14 days after the service of the summons on him, deliver to the plaintiff a form of admission together with a statement of his means and a request for time for payment.

(4) The court may at any time allow a defendant to amend or withdraw an admission made by him under this rule on such terms as may be just.

(5) A defendant who admits liability—

- (a) in an action brought by a plaintiff under disability,
- (b) in an action for an unliquidated sum, or
- (c) in an action for a liquidated sum, for part of the plaintiff’s claim

shall, within 14 days after the service of the summons on him,—

- (i) deliver at the court office an admission of liability together with, if he so wishes, a request for time for payment and, where such a request is made, a statement of means, and
- (ii) if he wishes to defend part of the plaintiff’s claim or to make a counterclaim, comply with the requirements of paragraph (6).

(6) A defendant who either—

- (a) disputes his liability for the whole or part of the plaintiff’s claim; or
- (b) desires to set up a counterclaim,

shall, within 14 days after the service of the summons on him, and in addition to any documents he may provide pursuant to paragraph (5), deliver at the court office a defence—

- (i) defending the whole or part of the claim, or, as the case may be,
- (ii) making a counterclaim.”.

30. For Order 9, rule 3, there shall be substituted the following new rule—

“Admission of part or request for time in default action

3.—(1) Where the defendant admits part of the plaintiff’s claim or admits the whole or part of the plaintiff’s claim and makes a request for time for payment, the plaintiff may, if he accepts the amount admitted,—

- (a) in an action to which rule 2(3) applies, on filing a request in the appropriate form and certifying the terms of the defendant’s admission, have judgment entered for the amount so admitted and costs (less any payments made);
- (b) where the amount admitted is less than the amount claimed and the plaintiff accepts any proposal as to the time of payment, on filing a request in the appropriate form, stating what (if any) payment has been made, have judgment entered for the amount so admitted and costs (less any payments made); or

(c) give notice that he accepts the amount so admitted but not the proposal as to time of payment.

(2) A plaintiff's notice under paragraph (1)(c) shall be given in the appropriate form and shall—

- (a) give his reasons for the non-acceptance;
- (b) state what (if any) payments have been made; and
- (c) where the defendant sent his admission direct to the plaintiff pursuant to rule 2(3), be accompanied by a copy of the defendant's admission.

(3) Upon receipt of the plaintiff's notice under paragraph (1)(c), the proper officer shall determine the time of payment and enter judgment accordingly.

(4) Any party affected by a judgment entered under paragraph (3) may, within 14 days of service of the judgment on him and giving his reasons, apply on notice for the order as to time of payment to be re-considered and, where such an application is made—

- (a) the proceedings shall be automatically transferred to the defendant's home court if the judgment or order was not given or made in that court;
- (b) the proper officer shall fix a day for the hearing of the application before the district judge and give to the plaintiff and the defendant not less than 8 days' notice of the day so fixed.

(5) On hearing an application under paragraph (4), the district judge may confirm the order or set it aside and make such new order as he thinks fit, and the order so made shall be entered in the records of the court.

(6) Where the defendant admits part of the plaintiff's claim and the plaintiff notifies the proper officer that he does not accept the amount admitted,

- (a) the proceedings shall be automatically transferred to the defendant's home court if the action was not commenced in that court;
- (b) the proper officer shall fix a day for a pre-trial review or, if he thinks fit, a day for the hearing of the action and give to the plaintiff and defendant not less than 8 days' notice of the day so fixed.

(7) Where the action is for unliquidated damages and the defendant delivers an admission of liability for the claim but disputes or does not admit the amount of the plaintiff's damages, then—

- (a) if the defendant offers to pay in satisfaction of the claim a specific sum which the plaintiff accepts, the provisions of this rule shall apply as if the defendant had admitted part of the plaintiff's claim; and
- (b) in any other case, the plaintiff may apply to the court for such judgment as he may be entitled to upon the admission, and the court may give such judgment, including interlocutory judgment for damages to be assessed and costs, or make such other order on the application as it thinks just.

(8) Where it appears that the proper officer's notice under rule 2(7) or the judgment under paragraph (3) above did not come to the knowledge of the party to be served in due time, the district judge may of his own motion or on application set aside the judgment and may give such directions as he thinks fit.”.

31. For Order 9, rule 6(1), there shall be substituted the following new paragraphs—

“(1) Subject to paragraphs (2), (3) and (4) and rule 7, if the defendant in a default action—

- (a) does not within 14 days after service of the summons on him pay to the plaintiff the total amount of the claim and costs on the summons,

- (b) delivers an admission of the whole of the plaintiff's claim accompanied by a counterclaim or a request for time for payment, or
- (c) does not deliver an admission of part of the plaintiff's claim, a defence or counterclaim,

the plaintiff may upon fulfilling the requirements of paragraph (1A) have judgment entered against the defendant for the amount of the claim and costs (less any payments made); and the order shall be for payment forthwith or at such time or times as the plaintiff may specify.

(1A) The requirements are that the plaintiff shall—

- (a) file a request for judgment,
- (b) where the action is for a liquidated sum, certify that the defendant has not sent to him any reply to the summons, and
- (c) state what (if any) payment has been made.

In this paragraph, "reply to the summons" means—

- (i) a defence,
 - (ii) a counterclaim,
 - (iii) an admission of the whole of the plaintiff's claim accompanied by a counterclaim or a request for time for payment,
 - (iv) an admission of part of the plaintiff's claim,
- or any other written reply of a similar kind."

32. For the words "under paragraph (1)(a)" in Order 9, rule 6(2), (3)(a) and (4) there shall be substituted the words "under paragraph (1)".

33. For the words "under rule 6(1)(a)" in Order 9, rule 7(1) there shall be substituted the words "under rule 6(1)".

34. For the words "under rule 3(2)" in Order 9, rule 8(1) and (3) there shall be substituted the words "under rule 3(3)".

35. Order 16 shall be amended as follows—

- (a) rule 1(b) shall be omitted;
- (b) for the words "rule 1(a), (b) or (c)" in rule 4(4) and (5) there shall be substituted the words "rule 1(a) or (c)".

36. Order 17, rule 11(1)(o) shall be amended by substituting for the words "Order 9, rule 3(9)" the words "Order 9, rule 3(6)".

37. After Order 50, rule 9, there shall be inserted the following new rule—

"Misdirected documents"

9A. Where the defendant delivers to the plaintiff any document which by or under these rules is to be delivered to the court, the plaintiff shall forthwith file the document in the court office."

38. Nothing in rules 29 to 36 shall apply to an action commenced before 1st July 1991.

Venue

39. After Order 1, rule 12, there shall be inserted the following new rule—

“Automatic transfer

13. Where under these rules provision is made for automatic transfer to the defendant’s or debtor’s home court—

- (a) “defendant’s home court” means the county court for the district in which is situated the defendant’s address as shown on the summons (or, where there are two or more defendants, the first defendant’s address);
- (b) “debtor’s home court” means the county court for the district in which is situated the debtor’s address as shown on the application to which the provision relates;
- (c) automatic transfer will not take place if the defendant’s or debtor’s address is not situated within England and Wales,

and, where proceedings are transferred automatically, “the proper officer” means the proper officer of the defendant’s or debtor’s home court.”.

40. In Order 4, rule 2(1), the word “or” at the end of sub-paragraph (a) shall be omitted and, after sub-paragraph (b), there shall be inserted the following new sub-paragraph—

“or

- (c) in the case of a default action, in any county court.”.

41. Order 4, rule 2(3) and (4) shall be omitted.

42. After Order 9, rule 2(6) (as inserted by rule 29), there shall be inserted the following paragraphs—

“(7) On receipt of the admission or defence, the proper officer shall—

- (a) send a copy to the plaintiff together, in a case to which paragraph (1) of rule 3 relates, with a notice of the requirements of that paragraph; and
- (b) where the defendant states in his defence that he has paid the amount claimed, request the plaintiff to confirm in writing that he wishes the proceedings to continue.

(8) In an action for a liquidated sum, the proceedings shall be automatically transferred to the defendant’s home court if the action was not commenced in that court—

- (a) on the filing of a defence, or
- (b) in a case to which paragraph (7)(b) applies, where the plaintiff confirms in writing under that paragraph that he wishes the proceedings to continue.”.

43. For Order 9, rule 5, there shall be substituted the following new rule—

“Defence or counterclaim in default action

5.—(1) Subject to paragraph (2), if—

- (a) within 14 days after service of the summons upon him, the defendant in a default action delivers at the court office either a defence not accompanied by an admission of any part of the plaintiff’s claim or a counterclaim; or
- (b) in a case to which rule 2(7)(b) applies, after the plaintiff has confirmed that he wishes the proceedings to continue,

the proper officer shall—

- (i) fix a day for a pre-trial review or, if he thinks fit, a day for the hearing of the action, and

- (ii) give to all parties not less than 14 days' notice of the day so fixed for the pre-trial review or, in the case of a day for the hearing of the action, not less than 21 days' notice.

(2) Nothing in paragraph (1) shall require the proper officer to fix a day in a case to which Order 17, rule 11 applies.”.

44. For Order 16, rule 4(2), there shall be substituted the following—

- (a) “(2) A defendant who does not reside or carry on business within the district of the court in which an action has been commenced and who has delivered a defence; or
- (b) a plaintiff who does not reside or carry on business within the district of the court to which an action has been automatically transferred under Order 9, rule 2(8), may apply ex parte in writing to that court for an order under rule 1(a) or (c) transferring the action to another county court; and the judge or district judge of the first-mentioned court may, if he thinks fit, grant the application after considering any representations which he may give the other party to the application an opportunity of making.

In this paragraph “defence” includes a counterclaim.”.

45. Order 37, rule 4(1) shall be amended by substituting, for the words “set aside or vary”, the words “set aside, vary or confirm”.

46. For Order 37, rule 4(2), there shall be substituted the following—

- “(2) An application under paragraph (1) shall be made on notice and, where such an application is made in a default action for a liquidated sum, the proceedings shall be automatically transferred to the defendant’s home court if the judgment or order was not given or made in that court.”.

47. Nothing in rules 40 to 44 or 46 shall apply to an action commenced before 1st July 1991.

Devolution: consent orders

48. After Order 22, rule 7, there shall be inserted the following new rule—

“Consent judgments and orders

7A.—(1) Where all the parties to an action or matter are agreed upon the terms in which a judgment or order to which this rule applies should be given or made, a judgment or order in such terms may be entered as a judgment or order of the court by the procedure provided in this rule.

(2) This rule applies to any judgment or order which consists of one or more of the following—

- (a) any judgment or order for—
 - (i) the payment of a liquidated sum or damages to be assessed;
 - (ii) the delivery up of goods with or without the option of paying their value whether suspended or not;
 - (iii) the possession of land other than land which includes any residential premises or where the order is suspended;
- (b) any order for—
 - (i) the stay of proceedings, either unconditionally or upon conditions as to the payment of money or upon terms which are scheduled to the order but which are not otherwise part of it (a “Tomlin order”);

- (ii) the dismissal of any proceedings, whether wholly or in part;
- (iii) the setting aside of a judgment entered in default;
- (iv) the transfer of proceedings to another county court;
- (v) the payment out of money in court;
- (vi) the discharge from liability of any party;
- (vii) the payment or waiver of costs, or such other provision for costs as may be agreed;
- (c) any order, to be included in a judgment or order to which the preceding subparagraphs apply, for—
 - (i) the extension of the period required for doing any act;
 - (ii) liberty to apply, or to restore.
- (3) This rule shall not apply to any judgment or order—
 - (a) in Admiralty proceedings;
 - (b) in proceedings in which one of the parties is a litigant in person;
 - (c) in proceedings in which one of the parties is a person under disability;
 - (d) relating to custody of or access to a child;
 - (e) relating to the maintenance of or financial provision for a spouse or a child.
- (4) Before any judgment or order to which this rule applies may be entered in the records of the court, it must be—
 - (a) drawn up in the terms agreed and expressed as being “By Consent”;
 - (b) signed by the solicitors acting for each of the parties;and the solicitor filing the judgment or order shall supply the necessary copies for service under paragraph (5).
- (5) A copy of a judgment or order entered under paragraph (4) shall be sealed and served by the proper officer on every party to the proceedings.
- (6) The proper officer shall refer to the district judge any judgment or order presented for entry in the records of the court which is contradictory or unclear in its terms, appears to fail to give effect to the intention of the parties or is otherwise unsatisfactory.”

Variation of orders

- 49.** For Order 22, rule 10, there shall be substituted the following—

“Variation of payment

10.—(1) Where a judgment or order has been given or made for the payment of money, the person entitled to the benefit of the judgment or order or, as the case may be, the person liable to make the payment (in this rule referred to as “the judgment creditor” and “the debtor” respectively) may apply in accordance with the provisions of this rule for a variation in the date or rate of payment.

(2) The judgment creditor may apply ex parte in writing for an order that the money, if payable in one sum, be paid at a later date than that by which it is due or by instalments or, if the money is already payable by instalments, that it be paid by the same or smaller instalments, and the proper officer may make an order accordingly unless no payment has been made under the judgment or order for 6 years before the date of the application in which case he shall refer the application to the district judge.

(3) The judgment creditor may apply to the district judge on notice for an order that the money, if payable in one sum, be paid at an earlier date than that by which it is due or, if the money is payable by instalments, that it be paid in one sum or by larger instalments, and any such application shall be made in writing stating the proposed terms and the grounds on which it is made.

(4) Where an application is made under paragraph (3)—

- (a) the proceedings shall be automatically transferred to the debtor's home court if the judgment or order was not given or made in that court;
- (b) the proper officer shall fix a day for the hearing of the application before the district judge and give to the judgment creditor and the debtor not less than 8 days' notice of the day so fixed

and at the hearing the district judge may make such order as seems just.

(5) The debtor may apply for an order that the money, if payable in one sum, be paid at a later date than that by which it is due or by instalments or, if the money is already payable by instalments, that it be paid by smaller instalments, and any such application shall be in the appropriate form stating the proposed terms, the grounds on which it is made and including a signed statement of the debtor's means.

(6) Where an application is made under paragraph (5), the proper officer shall—

- (a) send the judgment creditor a copy of the debtor's application (and statement of means); and
- (b) require the judgment creditor to notify the court in writing, within 14 days of service of notification upon him, giving his reasons for any objection he may have to the granting of the application.

(7) If the judgment creditor does not notify the court of any objection within the time stated, the proper officer shall make an order in the terms applied for.

(8) Upon receipt of a notice from the judgment creditor under paragraph (6), the proper officer may determine the date and rate of payment and make an order accordingly.

(9) Any party affected by an order made under paragraph (8) may, within 14 days of service of the order on him and giving his reasons, apply on notice for the order to be reconsidered and, where such an application is made—

- (a) the proceedings shall be automatically transferred to the debtor's home court if the judgment or order was not given or made in that court;
- (b) the proper officer shall fix a day for the hearing of the application before the district judge and give to the judgment creditor and the debtor not less than 8 days' notice of the day so fixed.

(10) On hearing an application under paragraph (9), the district judge may confirm the order or set it aside and make such new order as he thinks fit and the order so made shall be entered in the records of the court.

(11) Any order made under any of the foregoing paragraphs may be varied from time to time by a subsequent order made under any of those paragraphs.

(12) In this rule "proper officer" does not include the district judge."

Suspension of warrants

50. For Order 25, rule 8, there shall be substituted the following—

“Suspension of judgment or execution

8.—(1) The power of the court to suspend or stay a judgment or order or to stay execution of any warrant may be exercised by the district judge or, in the case of the power to stay execution of a warrant of execution and in accordance with the provisions of this rule, by the proper officer.

(2) An application by the debtor to stay execution of a warrant of execution shall be in the appropriate form stating the proposed terms, the grounds on which it is made and including a signed statement of the debtor's means.

(3) Where the debtor makes an application under paragraph (2), the proper officer shall—

- (a) send the judgment creditor a copy of the debtor's application (and statement of means); and
- (b) require the creditor to notify the court in writing, within 14 days of service of notification upon him, giving his reasons for any objection he may have to the granting of the application.

(4) If the judgment creditor does not notify the court of any objection within the time stated, the proper officer may make an order suspending the warrant on terms of payment.

(5) Upon receipt of a notice by the judgment creditor under paragraph (3)(b), the proper officer may, if the judgment creditor objects only to the terms offered, determine the date and rate of payment and make an order suspending the warrant on terms of payment.

(6) Any party affected by an order made under paragraph (5) may, within 14 days of service of the order on him and giving his reasons, apply on notice for the order to be reconsidered and the proper officer shall fix a day for the hearing of the application before the district judge and give to the judgment creditor and the debtor not less than 8 days' notice of the day so fixed.

(7) On hearing an application under paragraph (6), the district judge may confirm the order or set it aside and make such new order as he thinks fit and the order so made shall be entered in the records of the court.

(8) Where the judgment creditor states in his notice under paragraph (3)(b) that he wishes the bailiff to proceed to execute the warrant, the proper officer shall fix a day for a hearing before the district judge of the debtor's application and give to the judgment creditor and to the debtor not less than 2 days' notice of the day so fixed.

(9) Subject to any directions given by the district judge, where a warrant of execution has been suspended, it may be re-issued on the judgment creditor's filing a request pursuant to rule 5(3) showing that any condition subject to which the warrant was suspended has not been complied with.

(10) Where an order is made by the district judge suspending a warrant of execution, the debtor may be ordered to pay the costs of the warrant and any fees or expenses incurred before its suspension and the order may authorise the sale of a sufficient portion of any goods seized to cover such costs, fees and expenses and the expenses of sale.

(11) In this rule “proper officer” does not include the district judge.”

Attachment of earnings

51. For Order 27, rule 1, there shall be substituted the following—

“Interpretation

1.—(1) In this Order—

“the Act of 1971” means the Attachment of Earnings Act 1971⁽³⁾ and, unless the context otherwise requires, expressions used in that Act have the same meanings as in that Act;

“proper officer” does not include the district judge.

(2) Order 1, rule 8 shall apply in relation to any power conferred by the Act of 1971 as it applies in relation to any power conferred by these rules.”.

52. Order 27, rule 4(2) shall be amended by inserting, after the words “the proper officer shall”, the words “, where the order to be enforced is a maintenance order,”.

53. Order 27, rule 5(1) shall be amended as follows—

- (a) after the words “form of reply” there shall be inserted the words “in the appropriate form”;
- (b) for the words “fixed date summons” there shall be substituted the words “default summons”.

54. After Order 27, rule 5(2), there shall be inserted the following new paragraph—

“(2A) Nothing in paragraph (2) shall require a defendant to file a reply if, within the period of time mentioned in that paragraph, he pays to the judgment creditor the money remaining due under the judgment order and, where such payment is made, the judgment creditor shall so inform the proper officer.”.

55. In Order 27, rule 6, for the words “the registrar” there shall be substituted the words “the court”.

56. For Order 27, rule 7, there shall be substituted the following—

“Attachment of earnings order

7.—(1) On receipt of the debtor’s reply, the proper officer may, if he has sufficient information to do so, make an attachment of earnings order and a copy of the order shall be sent to the parties and to the debtor’s employer.

(2) Where an order is made under paragraph (1), the judgment creditor or the debtor may, within 14 days of service of the order on him and giving his reasons, apply on notice for the order to be re-considered and the proper officer shall fix a day for the hearing of the application and give to the judgment creditor and the debtor not less than 2 days’ notice of the day so fixed.

(3) On hearing an application under paragraph (2), the district judge may confirm the order or set it aside and make such new order as he thinks fit and the order so made shall be entered in the records of the court.

(4) Where an order is not made under paragraph (1), the proper officer shall refer the application to the district judge who shall, if he considers that he has sufficient information to do so without the attendance of the parties, determine the application.

(5) Where the district judge does not determine the application under paragraph (4), he shall direct that a day be fixed for the hearing of the application whereupon the proper officer shall fix such a day and give to the judgment creditor and the debtor not less than 8 days’ notice of the day so fixed.

(6) Where an order is made under paragraph (4), the judgment creditor or the debtor may, within 14 days of service of the order on him and giving his reasons, apply on notice for the order to be re-considered; and the proper officer shall fix a day for the hearing of the

application and give to the judgment creditor and the debtor not less than 2 days' notice of the day so fixed.

(7) On hearing an application under paragraph (6), the district judge may confirm the order or set it aside and make such new order as he thinks fit and the order so made shall be entered in the records of the court.

(8) If the creditor does not appear at the hearing of the application under paragraph (5) but—

- (a) the court has received an affidavit of evidence from him, or
- (b) the creditor requests the court in writing to proceed in his absence,

the court may, notwithstanding anything in Order 21, rule 1, proceed to hear the application and to make an order thereon.

(9) 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 £50, or
- (b) for the amount remaining payable under a judgment for a sum of not less than £50.”.

57. After Order 27, rule 7 there shall be inserted the following new rule—

“Failure by debtor

7A.—(1) If the debtor has failed to comply with rule 5(2) or to make payment to the judgment creditor, the proper officer may issue an order under section 14(1) of the Act of 1971 which shall—

- (a) be indorsed with or incorporate a notice warning the debtor of the consequences of disobedience to the order,
- (b) be served on the debtor personally, and
- (c) direct that any payments made thereafter shall be paid into the court and not direct to the judgment creditor.

(2) Without prejudice to rule 16, if the person served with an order made pursuant to paragraph (1) fails to obey it or to file a statement of his means or to make payment, the proper officer shall issue a notice calling on that person to show good reason why he should not be imprisoned and any such notice shall be served on the debtor personally not less than 5 days before the hearing.

(3) Order 29, rule 1 shall apply, with the necessary modifications and with the substitution of references to the district judge for references to the judge, where a notice is issued under paragraph (2) as it applies where a notice is issued under paragraph (4) of that rule.

(4) In this rule “statement of means” means a statement given under section 14(1) of the Act of 1971.”.

58. For the title to Order 27, rule 8 there shall be substituted the title “Failure by debtor — maintenance orders”.

59. After the words “attachment of earnings order” in Order 27, rule 8(1) there shall be inserted the words “to secure payments under a maintenance order”.

60. After Order 27, rule 8(1) there shall be inserted the following new paragraphs—

“(1A) If the debtor fails to attend at an adjourned hearing of an application for an attachment of earnings order and a committal order is made, the district judge may direct that the order shall not be enforced so long as the debtor attends at the time and place specified in

the order and paragraphs (2), (4) and (5) of Order 28, rule 7 shall apply where such a direction is given as they apply where a direction is given under paragraph (1) of that rule.

(1B) Where a committal order is suspended under paragraph (1A) and the debtor fails to attend at the time and place so specified, a certificate to that effect given by the proper officer shall be sufficient authority for the issue of a warrant of committal.”.

61. After the word “judge” in Order 27, rule 8(2) and (4) there shall be substituted the words “or district judge”.

62. After Order 27, rule 17(3) there shall be inserted the following new paragraph—

“(3A) Rule 5(1) shall apply as if for the reference to a default summons there were substituted a reference to a fixed date summons and rule 5(2A) shall not apply.”.

63. For Order 27, rule 17(5), there shall be substituted the following paragraph—

“(5) Rule 7 shall have effect as if for paragraphs (1) to (8) there were substituted the following paragraph—

“(1) An application for an attachment of earnings order may be heard and determined by the district judge, who shall hear the application in chambers.”.

64. Order 27, rule 17(11) shall be omitted.

65. For Order 27, rule 19(2) and (3) there shall be substituted the following paragraphs—

“(2) An application under paragraph (1) may be made in the proceedings in which any attachment of earnings order (other than a priority order) is in force and rules 3, 4 and 5 of this Order shall not apply.

(3) Where the judgment which it is sought to enforce was not given by the court which made the attachment of earnings order, the judgment shall be automatically transferred to the court which made the attachment of earnings order.

(3A) An application under paragraph (1)(b) shall certify the amount of money remaining due under the judgment or order and that the whole or part of any instalment due remains unpaid.

(3B) Where an application for a consolidated attachment of earnings order is made, the proper officer shall—

- (a) notify any party who may be affected by the application of its terms; and
- (b) require him to notify the court in writing, within 14 days of service of notification upon him, giving his reasons for any objection he may have to the granting of the application.

(3C) If notice of any objection is not given within the time stated, the proper officer shall make a consolidated attachment of earnings order.

(3D) If any party objects to the making of a consolidated attachment of earnings order, the proper officer shall refer the application to the district judge who may grant the application after considering the objection made and the reasons given.

(3E) In the foregoing paragraphs of this rule, a party affected by the application means—

- (a) where the application is made by the debtor, the creditor in the proceedings in which the application is made and any other creditor who has obtained an attachment of earnings order which is in force to secure the payment of a judgment debt by the debtor;
- (b) where the application is made by the judgment creditor, the debtor and every person who, to the knowledge of the applicant, has obtained an attachment of

earnings order which is in force to secure the payment of a judgment debt by the debtor.”.

66. Order 27, rule 19(4) shall be amended by substituting, for the words “the proper officer shall” to the end, the words “paragraphs (3B) to (3E) shall apply, with the necessary modifications, as if the request were an application by the judgment creditor.”.

67. In Order 27, rule 20, for the words “of being heard”, there shall be substituted the words “of submitting written objections”.

We, the undersigned members of the Rule Committee appointed by the Lord Chancellor under section 75 of the County Courts Act 1984(4), having by virtue of the powers vested in us in that behalf made the foregoing Rules, do hereby certify the same under our hands and submit them to the Lord Chancellor accordingly.

C. S. Stuart-White
A. N. Fricker
R. H. Hutchinson
Eiifion Roberts
Frank J. White
R. Greenslade
K. H. P. Wilkinson
Tim Stow
R. C. Newport
P. R. Bazley White

I allow these Rules, which shall come into force on 1st July 1991.

Dated 13th May 1991

Mackay of Clashfern, C.

(4) 1984 c. 28; section 75 was amended by the Courts and Legal Services Act 1990 (c. 41), sections 2(4), 16, Schedule 18, paragraph 47.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the County Court Rules 1981 so as to—

- (a) require “statements of value” to be given in respect of actions for unliquidated sums over £5,000 (rules 2 and 3);
- (b) increase the limit of the small claims procedure (under which claims are dealt with by arbitration) to £1,000 and the trial jurisdiction of district judges to £5,000, and make minor and consequential amendments (rules 4 to 8);
- (c) allow a solicitor to serve by post a summons in an action for personal injuries (rules 9 to 11);
- (d) enlarge the powers of district judges and clarify the procedure for committal under certain sections of the County Courts Act 1984 (rules 12 to 17);
- (e) following the changes made by the Courts and Legal Services Act 1990 and by the High Court and County Courts Jurisdiction Order, amend the provisions for transfer between the High Court and the county courts and require all applications for transfer to the High Court to be supported by a statement of value (rules 18 to 21);
- (f) allow a plaintiff to prepare certain court documents and make other miscellaneous amendments (rules 22 to 27);
- (g) provide for full admissions to be sent direct to the plaintiff (instead of through the court) in actions for liquidated sums and devolve to court staff the making of judgments as to the date of, and instalments for, payment where there is no dispute as to the amount to be paid (rules 28 to 38);
- (h) relax the provisions as to venue to enable a plaintiff to commence a default action in any county court (subject to automatic transfer in an action for a liquidated sum to the defendant’s local court where a hearing is to take place) (rules 39 to 47);
- (i) devolve to court staff the making of certain consent orders, variation orders and orders suspending a warrant on terms as to payment (rules 48 to 50); and
- (j) increase to £50 the minimum debt in respect of which an attachment of earnings order may be made and devolve to court staff certain functions in relation to such orders (rules 51 to 67).