



# Courts and Legal Services Act 1990

## 1990 CHAPTER 41

### PART I

#### PROCEDURE ETC. IN CIVIL COURTS

##### *Miscellaneous*

#### **11 Representation in certain county court cases**

- (1) The Lord Chancellor may by order provide that there shall be no restriction on the persons who may exercise rights of audience, or rights to conduct litigation, in relation to proceedings in a county court of such a kind as may be specified in the order.
- (2) The power to make an order may only be exercised in relation to proceedings—
  - (a) for the recovery of amounts due under contracts for the supply of goods or services;
  - (b) for the enforcement of any judgment or order of any court or the recovery of any sum due under any such judgment or order;
  - (c) on any application under the Consumer Credit Act 1974;
  - (d) in relation to domestic premises; or
  - (e) referred to arbitration in accordance with county court rules made under section 64 of the County Courts Act 1984 (small claims),or any category (determined by reference to such criteria as the Lord Chancellor considers appropriate) of such proceedings.
- (3) Where an order is made under this section, section 20 of the Solicitors Act 1974 (unqualified person not to act as solicitor) shall cease to apply in relation to proceedings of the kind specified in the order.
- (4) Where a county court is of the opinion that a person who would otherwise have a right of audience by virtue of an order under this section is behaving in an unruly manner in any proceedings, it may refuse to hear him in those proceedings.

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- (5) Where a court exercises its power under subsection (4), it shall specify the conduct which warranted its refusal.
- (6) Where, in any proceedings in a county court—
- (a) a person is exercising a right of audience or a right to conduct litigation;
  - (b) he would not be entitled to do so were it not for an order under this section; and
  - (c) the judge has reason to believe that (in those or any other proceedings in which he has exercised a right of audience or a right to conduct litigation) that person has intentionally misled the court, or otherwise demonstrated that he is unsuitable to exercise that right,
- the judge may order that person’s disqualification from exercising any right of audience or any right to conduct litigation in proceedings in any county court.
- (7) Where a judge makes an order under subsection (6) he shall give his reasons for so doing.
- (8) Any person against whom such an order is made may appeal to the Court of Appeal.
- (9) Any such order may be revoked at any time by any judge of a county court.
- (10) Before making any order under this section the Lord Chancellor shall consult the Senior Presiding Judge.
- (11) In this section “domestic premises” means any premises which are wholly or mainly used as a private dwelling.

## **12 Penalty for failure to warn that hearing will not be attended**

- (1) This section applies where an appointment has been fixed for any hearing in the High Court or in any county court, but a party to the proceedings—
- (a) has failed to appear; or
  - (b) has failed to give the court due notice of his desire to cancel the hearing or of his inability to appear at it.
- (2) The court may summon the party concerned, or the person conducting the proceedings on his behalf, to explain his failure.
- (3) Where a court—
- (a) has summoned a person under subsection (2); and
  - (b) is not satisfied that he took reasonable steps to give due notice to the court of his desire to cancel the hearing or (as the case may be) of his inability to appear at it,
- the court may declare that person to be in contravention of this section.
- (4) On declaring a person to be in contravention of this section a court may impose on him a penalty equivalent to a fine not exceeding level 3 on the standard scale.
- (5) Before deciding whether or not to impose any such penalty, the court shall consider the extent to which (if any) the person concerned will, or is likely to—
- (a) suffer any financial loss (by way of a reduction of costs or otherwise); or
  - (b) be subject to any disciplinary action,
- as a result of his failure.

- (6) Sections 129 and 130 of the County Courts Act 1984 (enforcement, payment and application of fines) shall apply with respect to any penalty imposed by a county court under this section as they apply with respect to any fine imposed by any county court under that Act.
- (7) In subsection (1) “due notice” means—
- (a) such notice as is required by rules of court; or
  - (b) where there is no such requirement applicable to the circumstances of the case, such notice as the court considers reasonable.

### **13 Administration orders**

- (1) For subsection (1) of section 112 of the County Courts Act 1984 (power to make administration orders) there shall be substituted—

“(1) Where a debtor is unable to pay forthwith the amount of any debt owed by him, a county court may make an order providing for the administration of his estate.

(1A) The order may be made—

- (a) on the application of the debtor (whether or not a judgment debt has been obtained against the debtor in respect of his debt, or any of his debts);
- (b) on the application of any creditor under a judgment obtained against the debtor; or
- (c) of the court’s own motion during the course of, or on the determination of, any enforcement or other proceedings.”

- (2) In that section the following subsection shall be inserted after subsection (4)—

“(4A) Subsection (4) is subject to section 112A.”

- (3) Subsection (5) of that section shall be omitted.

- (4) The following subsection shall be added at the end of that section—

“(9) An administration order shall cease to have effect—

- (a) at the end of the period of three years beginning with the date on which it is made; or
- (b) on such earlier date as may be specified in the order.”

- (5) After that section there shall be inserted the following sections—

#### **“112A Further powers of the court**

- (1) Where the court is satisfied—

- (a) that it has power to make an administration order with respect to the debtor concerned; but
- (b) that an order restricting enforcement would be a more satisfactory way of dealing with the case,

it may make such an order instead of making an administration order.

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- (2) Where an order restricting enforcement is made, no creditor specified in the order shall have any remedy against the person or property of the debtor in respect of any debt so specified, without the leave of the court.
- (3) Subsection (4) applies to any creditor—
  - (a) who is named in the schedule to an administration order or in an order restricting enforcement; and
  - (b) who provides the debtor with mains gas, electricity or water for the debtor’s own domestic purposes.
- (4) While the order has effect, the creditor may not stop providing the debtor with—
  - (a) mains gas, electricity or (as the case may be) water for the debtor’s own domestic purposes; or
  - (b) any associated service which it provides for its customers, without leave of the court unless the reason for doing so relates to the non-payment of charges incurred by the debtor after the making of the order or is unconnected with non-payment by him of any charges.
- (5) In this section “mains gas” means a supply of gas by a public gas supplier within the meaning of Part I of the Gas Act 1986.
- (6) Rules of court may make provision with respect to the period for which any order restricting enforcement is to have effect and for the circumstances in which any such order may be revoked.

### **112B Administration orders with composition provisions**

- (1) Where the court is satisfied—
  - (a) that it has power to make an administration order with respect to the debtor concerned; and
  - (b) that the addition of a composition provision would be a more satisfactory way of dealing with the case,it may make an administration order subject to such a provision.
- (2) Where, at any time while an administration order is in force—
  - (a) the debtor has not discharged the debts to which that order relates; and
  - (b) the court considers that he is unlikely to be able to discharge them,the court may add a composition provision to that order.
- (3) A composition provision shall specify an amount to which the debtor’s total indebtedness in respect of debts owed to creditors scheduled to the administration order is to be reduced.
- (4) The amount of the debt owed to each of the creditors so scheduled shall be reduced in proportion to the reduction in his total indebtedness specified by the composition provision.
- (5) Where a composition provision is added to an administration order after the order is made, section 113(a) shall apply as if the addition of the composition provision amounted to the making of a new administration order.”

## 14 Assessors

- (1) Section 63 of the County Courts Act 1984 (assessors) shall be amended as follows.
- (2) The following subsections shall be substituted for subsections (1) and (2)—
- “(1) In any proceedings a judge may, on the application of a party to the proceedings, summon to his assistance one or more persons—
    - (a) of skill and experience in the matter to which the proceedings relate; and
    - (b) who may be willing to sit with him and act as assessors.
  - (2) In any proceedings prescribed for the purposes of this subsection a judge may summon to his assistance one or more such persons even though no application has been made for him to do so.
  - (2A) In any proceedings prescribed for the purposes of this subsection a district judge may, on the application of a party to the proceedings, summon to his assistance one or more such persons.
  - (2B) In any proceedings prescribed for the purposes of this subsection a district judge may summon to his assistance one or more such persons even though no application has been made for him to do so.
  - (2C) The summons shall be made in such manner as may be prescribed.”
- (3) For subsection (4) there shall be substituted—
- “(4) In such cases as may be specified by order made by the Lord Chancellor with the consent of the Treasury, the remuneration of any assessor summoned under this section shall be paid, at such rate as may be so specified, out of money provided by Parliament.
  - (4A) Any power to make an order under subsection (4) shall be exercisable by statutory instrument subject to annulment by resolution of either House of Parliament.”

## 15 Enforcement

- (1) In section 138 of the Supreme Court Act 1981 (effect of writs of execution against goods), the following subsection shall be inserted after subsection (3)—
- “(3A) Every sheriff or officer executing any writ of execution issued from the High Court against the goods of any person may by virtue of it seize—
    - (a) any of that person’s goods except—
      - (i) such tools, books, vehicles and other items of equipment as are necessary to that person for use personally by him in his employment, business or vocation;
      - (ii) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of that person and his family; and
    - (b) any money, banknotes, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to that person.”
- (2) In section 89(1) of the County Courts Act 1984 (goods which may be seized under any warrant of execution), the following paragraph shall be substituted for paragraph (a)—

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- “(a) any of that person’s goods except—
  - (i) such tools, books, vehicles and other items of equipment as are necessary to that person for use personally by him in his employment, business or vocation;
  - (ii) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of that person and his family;”.
- (3) Where a person takes steps to enforce a judgment or order of the High Court or a county court for the payment of any sum due, the costs of any previous attempt to enforce that judgment shall be recoverable to the same extent as if they had been incurred in the taking of those steps.
- (4) Subsection (3) shall not apply in respect of any costs which the court considers were unreasonably incurred (whether because the earlier attempt was unreasonable in all the circumstances of the case or for any other reason).

## **16 County court rules**

- (1) Section 75 of the County Courts Act 1984 (county court rules) is amended as follows.
- (2) In subsection (3), the following paragraph shall be substituted for paragraph (d)—
  - “(d) prescribing cases in which—
    - (i) any jurisdiction of a county court is to be exercised by a district judge of a county court or by some other officer of the court;
    - (ii) any functions of a judge of a county court are to be discharged by a district judge of a county court or some other officer of the court;
    - (iii) any functions of a district judge of a county court are to be discharged by some other officer of the court;
    - (iv) any such jurisdiction may be so exercised or any such functions may be so discharged; or”.
- (3) The following subsection shall be inserted after subsection (6)—
  - “(6A) County court rules may—
    - (a) to any extent (and with or without modification) apply any rules of court, or other provision—
      - (i) made by or under any enactment; and
      - (ii) relating to the practice or procedure of any other court, to the practice or procedure of county courts; and
    - (b) amend or repeal any statutory provision relating to the practice or procedure of county courts so far as may be necessary in consequence of any provision made by the rules.

Rules made by virtue of this subsection applying any provisions may apply them as amended from time to time.”