

1989 No. 236 (L.3)

COUNTY COURTS

PROCEDURE

The County Court (Amendment) Rules 1989

Made - - - - - *21st February 1989*

Coming into force—

*as to all provisions except
rules 3, 4, 10 and 12*

28th March 1989

as to rules 3, 4, 10 and 12

18th July 1989

Citation and interpretation

1.—(1) These Rules may be cited as the County Court (Amendment) Rules 1989.

(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(a).

Mortgage action

2. In Order 6, rule 5(1)(d) there shall be substituted for the words “within the meaning of Part IV of the Administration of Justice Act 1970”(b) the words “within the meaning of section 21 of the Act”.

Service on limited companies

3. In Order 7 the following new rule shall be substituted for rule 14—

“Service on body corporate

14.—(1) Service of a summons on a body corporate may, in cases for which provision is not otherwise made by an enactment, be effected by serving it on the mayor, chairman or president of the body or the chief executive, clerk, secretary, treasurer or other similar officer thereof.

(2) Service of a summons on a company registered in England and Wales may be effected by serving it at the registered office or at any place of business of the company which has some real connection with the cause or matter in issue.

(3) Where a summons has been served under paragraph (2) other than at the registered office, and, after judgment has been entered or given or an order has been made, it appears to the court that the summons did not come to the knowledge of an appropriate person within the company in due time, the court may, upon application or of its own motion, set aside the judgment or order and may give such directions as it thinks fit.”

(a) S.I. 1981/1687; relevant amending instruments are S.I. 1982/436, 1140, 1794, 1983/1716, 1984/878, 1986/636, 2001, 1988/278.

(b) 1970 c.31.

Disposal hearings

4. In Order 9 the following new rule shall be substituted for rule 3—

“Admission of part or request for time in default action

3.—(1) If within the period of 14 days mentioned in rule 2 the defendant in a default action delivers at the court office—

- (a) an admission of part of the plaintiff’s claim, or
- (b) an admission of the whole or part of the plaintiff’s claim accompanied by a request for time for payment,

the plaintiff shall, within 14 days of service on him of the proper officer’s notice under rule 2(2), notify the proper officer whether he accepts the amount admitted (if it is not the whole of the plaintiff’s claim) and any proposal as to the time of payment.

(2) If the plaintiff notifies the proper officer that he accepts the amount admitted (if it is not the whole of the plaintiff’s claim) and any proposal as to the time of payment, the registrar shall as soon as practicable enter judgment accordingly.

(3) If the plaintiff notifies the proper officer that he accepts the amount admitted and that he does not accept the defendant’s proposal as to time of payment, he shall in his notice give his reasons for the non-acceptance.

(4) Upon receipt of the plaintiff’s notice under paragraph (3) the registrar shall, if he considers that he has sufficient information to do so without the attendance of the parties, determine the time of payment and enter judgment accordingly.

(5) Where the registrar does not give judgment under paragraph (4), he shall direct that a day be fixed (in these rules called a day fixed for the disposal of the action) on which the time of payment will be determined and judgment entered by the court, whereupon the proper officer shall fix such a day and shall give to the plaintiff and the defendant not less than 8 days’ notice of the day so fixed.

(6) Any party affected by a judgment given under paragraph (4) may, within 14 days of service on him of the judgment, apply for the order as to time of payment to be set aside and the proper officer shall fix a day for the hearing and give to the plaintiff and the defendant not less than 8 days’ notice of the day so fixed.

(7) On hearing an application under paragraph (6), the registrar may set the order 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) Order 37, rule 6 shall not apply to a judgment given or an order made under paragraph (4).

(9) If the defendant admits part of the plaintiff’s claim and the plaintiff notifies the proper officer that he does not accept the amount admitted, 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.

(10) The disposal of an action under paragraph (5) or (7) may be conducted by the registrar sitting either in court or in chambers.

(11) Where the action is for unliquidated damages and the defendant delivers an admission of liability for the claim but disputes 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 an interlocutory judgment for damages to be assessed and costs, or make such order on the application as it thinks just.

(12) Where it appears that the proper officer’s notice under rule 2(2) or the judgment under paragraph (4) did not come to the knowledge of the party to be served in due time, the court may of its own motion or upon application set aside the judgment and may give such directions as it thinks fit.”.

Payment into and out of court

5. Order 11 shall be amended as follows—

(1) in rule 3(5)(a) for the words “before receipt of the notice of payment into court” there shall be substituted the words “up to the time of giving notice of acceptance”;

(2) in rule 5(2) for the words “before the receipt of the notice of payment into court” there shall be substituted the words “up to the time of giving notice of acceptance”;

(3) in rule 10(2) after the words “A party who makes such an offer shall file a copy” there shall be added the words “in a sealed envelope”.

Striking out after 12 months’ general adjournment

6. To Order 13, rule 3 the following paragraphs shall be added—

“(5) An application under paragraph (4) stating the grounds upon which it is made shall be sent in writing to the proper officer.

(6) The registrar may determine an application under paragraph (4) without the attendance of either party or direct the proper officer to fix a day for the hearing of the application.”.

Amendment of pleadings without order

7. Order 15 shall be amended as follows—

(1) in rule 2(1) the words “in which a return day has been fixed or a defence has been filed,” shall be omitted;

(2) the following paragraph shall be added after rule 2(3)—

“(4) Where the plaintiff amends any pleading under paragraph (1)(a) he shall not apply for judgment under Order 9, rule 6 until 14 days after service of the amendment on the defendant.”.

Transfer from High Court

8. Order 16, rule 6(1) shall be amended as follows—

(1) after the words “as the case may be,” there shall be added the words “shall either refer them to the registrar for directions or”;

(2) in the phrase “and shall fix a day for the hearing of the proceedings or issue” the word “shall” shall be omitted.

Witness summons

9. Order 20, rule 12 shall be amended as follows—

(1) the following paragraph shall be substituted for paragraph (4)—

“(4)(a) The summons shall be issued not less than 7 days before the date upon which attendance before the court is required unless the judge or registrar otherwise directs and shall be served on the witness not less than 4 days before the date upon which attendance before the court is required unless the judge or registrar otherwise directs.

(b) Service under this paragraph shall, subject to paragraph (5), be effected by delivering the summons to the witness personally.”;

(2) the following new paragraph shall be added after paragraph (7)—

“(8) No summons shall be issued to require a witness to give evidence at a hearing in chambers for directions without leave of the judge or registrar, the application for which shall be made ex parte.”.

Variation of payment

10. In Order 22, for rule 10(4), (5) and (6) there shall be substituted the following paragraphs—

“(4) The debtor may apply to the court for an order that the money, if payable in

one sum, be paid at a later date than that on which it is due or by instalments or, if the money is already payable by instalments, that it be paid by smaller instalments.

(5) An application under paragraph (4) shall be sent in writing to the proper officer who shall notify the judgment creditor of the application and its terms, and require him to notify the court in writing, within 14 days of service of notification upon him, of any objection he may have to the granting of the application.

(6) If the judgment creditor does not notify the court of any objection within the time stated the judge or registrar shall grant the application without the attendance of the parties or fix a date under paragraph (7).

(7) Where the judgment creditor does notify the court of an objection within the time stated, or where the judge or registrar does not determine the application under paragraph (6), the proper officer shall fix a day for the hearing of the application and shall give to the judgment creditor and to the debtor not less than 8 days' notice of the day so fixed.

(8) An application under paragraph (3) or (6) may be made to the registrar unless the original judgment or order was given or made by the judge and the judge has directed that any application to vary it be made to the judge.

(9) Any order made under this rule shall be entered in the records of the court and may be varied from time to time by a subsequent order made under this rule."

Summary proceedings for the recovery of land: service

11. Order 24, rule 2 shall be amended as follows—

(1) rule 2 shall become paragraph (1) of rule 2;

(2) the following paragraph shall be added after the new paragraph (1)—

"(2) Where the applicant considers that service in accordance with rule 3(2)(b) may be necessary, he shall provide, together with the originating application, sufficient stakes and sealable transparent envelopes for such service."

Suspension of execution

12. Order 25, rule 8 shall be amended as follows—

(1) after paragraph (1) the following paragraphs shall be inserted—

"(2) An application by the debtor to stay execution of any warrant of execution stating the proposed terms and the grounds upon which it is made may be sent in writing to the proper officer, who shall notify the judgment creditor of the application and its terms, and require him to notify the court in writing, within 14 days of service of notification upon him, of any objection he may have to the granting of the application.

(3) If the judgment creditor does not notify the court of any objection within the time stated, the proper officer shall place the application, together with the court records of the case, before the registrar, or judge if appropriate, who shall grant the application or fix a day under paragraph (4).

(4) Where the judgment creditor does notify the court of an objection within the time stated, or where the registrar or judge does not determine the application under paragraph (3), the proper officer shall fix a day for the hearing of the application and shall give to the judgment creditor and to the debtor not less than 8 days' notice of the day so fixed."

(2) paragraph (2) shall be renumbered as paragraph (5).

Bankruptcy or winding up of debtor

13. In Order 26, rule 8 there shall be substituted for the words "section 346(3) and (4) of the Insolvency Act 1986(a) or section 326(2) of the Companies Act 1948(b)" the words "any provision of the Insolvency Act 1986 or any other enactment relating to insolvency".

Charging orders : service of order nisi

14. Order 31, rule 1 shall be amended as follows—

(1) in paragraph (6) for the words "by the proper officer" there shall be substituted the words "by the judgment creditor".

(2) in paragraph (7) for the words "by the proper officer" there shall be substituted the words "by the judgment creditor".

(3) the following paragraph shall be added after paragraph (8)—

"(9) Upon further consideration of the matter service required under paragraph (6) or (7) shall be proved by affidavit."

Costs

15. In Order 38, rule 17(1) after the words "by a solicitor on his behalf" there shall be added the words "together with any payments reasonably made by him for legal advice relating to the conduct of or the issues raised by the proceedings,".

Pilotage Act 1987(c)

16. Order 49, rule 14 shall be omitted.

We, the undersigned members of the Rule Committee appointed by the Lord Chancellor under section 75 of the County Courts Act 1984(d) 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 S Stuart-White,
R Lockett,
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Gillian Stuart-Brown*

*Deirdre McKinney,
R E Hammerton,
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Timothy Stow,
R C Newport.*

I allow these Rules, which shall come into force on 28th March 1989, except for rules 3, 4, 10 and 12 which shall come into force on 18th July 1989.

Dated 21st February 1989

Mackay of Clashfern, C.

(a) 1986 c.45.

(b) 1948 c.38.

(c) 1987 c.21.

(d) 1984 c.28.

EXPLANATORY NOTE

(This note is not part of the Rules)

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

- (a) permit a plaintiff to serve a summons on a company registered in England and Wales at a place of business other than its registered office (rule 3);
- (b) enable a registrar, in a default action, to dispose of requests for time to pay without a hearing (rule 4);
- (c) enable a plaintiff, on acceptance of a payment into court which is less than the amount claimed, to lodge for taxation a bill of costs incurred by him up to the time of giving notice of acceptance (rule 5);
- (d) require a party filing a copy of a written offer with the court to do so in a sealed envelope (rule 5);
- (e) enable applications for a hearing date or further adjournment of an action or matter adjourned generally for 12 months to be determined without a hearing (rule 6);
- (f) extend the rule permitting the amendment of pleadings without an order (rule 7);
- (g) allow the proper officer, upon receipt of a case transferred from the High Court, to seek directions from the registrar as to its further treatment (rule 8);
- (h) introduce a timetable for the issue and service of witness summonses and a leave requirement for issue of a witness summons in respect of a hearing for directions (rule 9);
- (i) enable unopposed applications for variation of payments ordered under a judgment to be determined without a hearing (rule 10);
- (j) require the applicant to provide the materials necessary for service of summary proceedings for recovery of open land (rule 11);
- (k) enable unopposed applications to suspend a warrant of execution to be determined without a hearing (rule 12);
- (l) require service of copies of a charging order nisi to be effected by the judgment creditor (rule 14);
- (m) enable a litigant in person to claim as costs the cost of receiving legal advice (rule 15);
- (n) to effect amendments of a minor and consequential nature (rules 2, 13 and 16).

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