

SCHEDULE 2

Rule 50(4)

CCR ORDER 1

CITATION, APPLICATION AND INTERPRETATION

**Application of RSC to county court proceedings**

**Rule 6** Where by virtue of these rules or section 76 of the Act or otherwise any provision of the RSC is applied in relation to proceedings in a county court, that provision shall have effect with the necessary modifications and in particular—

- (b) any reference in that provision to a master, district judge of the principal registry of the Family Division, the Admiralty registrar, or a district judge or taxing officer shall be construed as a reference to the district judge of the county court; and
- (d) any reference in that provision to an office of the Supreme Court having the conduct of the business of a division or court or a district registry shall be construed as a reference to the county court office.

CCR ORDER 3

COMMENCEMENT OF PROCEEDINGS

**Appeals to county court**

**Rule 6.**—(1) Where by or under any Act an appeal lies to a county court from any order, decision or award of any tribunal or person, then, subject to any special provision made by or under the Act, the provisions of this rule shall apply.

- (2) The appellant shall, within 21 days after the date of the order, decision or award, file—
  - (a) a request for the entry of the appeal, stating the names and addresses of the persons intended to be served (in this rule called “respondents”) and the appellant’s address for service, together with as many copies of the request as there are respondents; and
  - (b) a copy of the order, decision or award appealed against.
- (3) Where the provision under which the appeal lies requires the appellant to give to the other parties notice in writing of his intention to appeal and of the grounds of his appeal, the appellant shall file a copy of such notice with the request, and in any other case he shall include in his request a statement of the grounds of the appeal.
- (4) On the filing of the documents mentioned in paragraphs (2) and (3) the court officer shall—
  - (a) enter the appeal in the records of the court and fix the return day;
  - (b) prepare a notice to each respondent of the day on which the appeal will be heard and annex each copy of the request for the entry of the appeal to a copy of the notice; and
  - (c) deliver a notice of issue to the appellant.
- (5) The return day shall be a day fixed for the hearing of the appeal by the judge (or, if the district judge has jurisdiction to hear the appeal, by the district judge) or, if the court so directs, a day fixed for a pre-trial review.
- (6) The notice of the day of hearing shall be served—
  - (a) by the appellant delivering the notice to the respondent personally; or

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(b) by the court sending it by first-class post to the respondent—

(i) at his address for service; or

(ii) where CPR rule 6.5(5) applies at the place of service specified in that rule.

(7) Unless the appellant otherwise requests, service shall be effected in accordance with paragraph (6)(b).

(8) Where a notice is served in accordance with paragraph (6)(b) the date of service shall, unless the contrary is shown, be deemed to be the seventh day after the date on which the notice was sent to the respondent.

(9) Where—

(a) a notice has been sent by post in accordance with paragraph (6)(b) to the respondent's address for service; and

(b) the notice has been returned to the court office undelivered,

the court shall send notice of non-service to the appellant pursuant to CPR Rule 6.11 together with a notice informing him that he may request bailiff service at that address.

(10) If the appellant requests bailiff service under paragraph (9), it shall be effected by a bailiff of the court—

(a) inserting the notice, enclosed in an envelope addressed to the respondent, through the letter-box at the respondent's address for service;

(b) delivering the notice to some person, apparently not less than 16 years old, at the respondent's address for service; or

(c) delivering the notice to the respondent personally.

(11) Service of a notice shall be effected not less than 21 days before the hearing, but service may be effected at any time before the hearing on the appellant satisfying the court by witness statement or affidavit that the respondent is about to remove from his address for service.

## CCR ORDER 4

### VENUE FOR BRINGING PROCEEDINGS

#### **Proceedings relating to land**

##### **Rule 3** Proceedings—

(a) for the recovery of land;

(b) for the foreclosure or redemption of any mortgage or, subject to Order 31, rule 4, for enforcing any charge or lien on land; or

(c) for the recovery of moneys secured by a mortgage or charge on land,

may be commenced only in the court for the district in which the land or any part of the land is situated.

## CCR ORDER 5

### CAUSES OF ACTION AND PARTIES

#### **Representative proceedings**

**Rule 5.**—(1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 6, the proceedings may be begun and, unless the court otherwise orders, continued, by or against any one or more of them as representing all or all except one or more of them.

- (2) At any stage of proceedings under this rule the court may—
- (a) on the application of a claimant who is suing in a representative capacity, appoint him to represent all, or all except one or more, of the persons on whose behalf he sues;
  - (b) on the application of the claimant or of a defendant who is sued in a representative capacity, appoint any one or more of the defendants or other persons on whose behalf the defendants are sued to represent all, or all except one or more, of those persons.

Where in the exercise of the power conferred by sub-paragraph (b) the court appoints a person not named as a defendant, it shall make an order under CPR rule 19.1 adding that person as a defendant.

- (3) An application under paragraph (2)—
- (a) if made under sub-paragraph (a), may be made without notice being served on any other party;
  - (b) if made under sub-paragraph (b), shall be made on notice—
    - (i) where the applicant is the claimant, to the person sought to be appointed, or
    - (ii) where the applicant is a defendant, to the claimant and to any person, other than the applicant, sought to be appointed;

and in each case the notice shall state the facts on which the applicant relies and the names and addresses or, where appropriate a collective description, of the persons to be represented.

(4) Where an order is made granting an application under paragraph (2)(b), the court shall send a notice of the order to the person to whom notice of the application was given and shall notify other persons affected by the order in such manner as the court may direct.

(5) A judgment or order given or made in proceedings under this rule shall be binding on all persons on whose behalf the claimant sues or, as the case may be, the defendant is sued but shall not be enforced against any person not a party to the proceedings except with the permission of the court.

(6) An application for permission under paragraph (5) shall be made on notice to the person against whom it is sought to enforce the judgment or order and, notwithstanding that the judgment or order is binding on him, he may dispute liability to have it enforced against him on the ground that by reason of facts and matters particular to his case he is entitled to be exempted from such liability.

#### **Representation of person or class**

**Rule 6.**—(1) In any proceedings concerning—

- (a) the estate of a deceased person,
- (b) property subject to a trust, or
- (c) the construction of a written statement, including a statute,

the court may appoint one or more persons to represent any person (including an unborn person) or class who is or may be interested in or affected by the proceedings, if the person, the class or some

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member of the class cannot readily be ascertained or cannot be found or if it otherwise appears to the court expedient to exercise this power for the purpose of saving expense.

(2) A judgment or order given or made when a person or persons appointed under paragraph (1) is or are before the court shall be binding on the person or class so represented.

(3) Where, in proceedings to which paragraph (1) applies, a compromise is proposed and some of the persons who are interested in or who may be affected by the compromise (including unborn or unascertained persons) are not parties to the proceedings but—

- (a) there is some person in the same interest before the court who assents to the compromise or on whose behalf the court sanctions the compromise, or
- (b) the absent persons are represented by a person appointed under paragraph (1) who so assents,

the court, if satisfied that the compromise will be for the benefit of the absent persons and that it is expedient to exercise this power, may approve the compromise and order that it shall be binding on the absent persons, and they shall be bound accordingly except where the order has been obtained by fraud or non-disclosure of material facts.

### **Representation of estate where no personal representative**

**Rule 7.**—(1) Where in any proceedings it appears to the court that a deceased person who was interested in the matter in question in the proceedings has no personal representative, the court may, on the application of any party to the proceedings—

- (a) proceed in the absence of a person representing the estate of the deceased person or
- (b) by order appoint a person to represent the estate for the purpose of the proceedings.

(2) Any such order, and any judgment or order subsequently given or made in the proceedings, shall bind the estate of the deceased person to the same extent as if a personal representative of that person had been a party to the proceedings.

(3) Before making an order under this rule, the court may require notice of the application for the order to be given to such of the persons having an interest in the estate as it thinks fit.

### **Proceedings against estates**

**Rule 8.**—(1) Where any person against whom a claim would have laid has died but the cause of action survives, the claim may, if no grant of probate or administration has been made, be brought against the estate of the deceased.

(2) Without prejudice to the generality of paragraph (1), a claim brought against “the personal representatives of A.B. deceased” shall be treated, for the purposes of that paragraph, as having been brought against his estate.

(3) A claim purporting to have been commenced against a person shall be treated, if he was dead at its commencement, as having been commenced against his estate in accordance with paragraph (1), whether or not a grant of probate or administration was made before its commencement.

(4) In any such claim as is referred to in paragraph (1) or (3)—

- (a) the claimant shall, where the court fixed a date for the hearing when it issued the claim, on or before that date, or, in any other case within the time allowed for service of the claim form, apply to the court for an order appointing a person to represent the deceased’s estate for the purpose of the proceedings or, if a grant of probate or administration has been made, for an order that the personal representative of the deceased be made a party to the proceedings, and in either case for an order that the proceedings be carried on against the person so appointed or, as the case may be, against the personal representative, as if he had been substituted for the estate;

(b) the court may, at any stage of the proceedings and on such terms as it thinks just and either of its own motion or on application, make any such order as is mentioned in subparagraph (a) and allow such amendments (if any) to be made and make such other order as the court thinks necessary in order to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon.

(5) Before making an order under paragraph (4) the court may require notice to be given to any insurer of the deceased who has an interest in the proceedings and to such (if any) of the persons having an interest in the estate as it thinks fit.

(6) Where an order is made under paragraph (4), the person against whom the proceedings are to be carried on shall be served with a copy of the order, together with a copy of the application notice if any.

(7) Where no grant of probate or administration has been made, any judgment or order given or made in the proceedings shall bind the estate to the same extent as it would have been bound if a grant had been made and a personal representative of the deceased had been a party to the proceedings.

### **Partners may sue and be sued in firm name**

**Rule 9.**—(1) Subject to the provisions of any enactment, any two or more persons claiming to be entitled, or alleged to be liable, as partners in respect of a cause of action and carrying on business within England or Wales may sue or be sued in the name of the firm of which they were partners when the cause of action arose.

(2) Where partners sue or are sued in the name of the firm, the partners shall, on demand made in writing by any other party, forthwith deliver to the party making the demand and file a statement of the names and places of residence of all the persons who were partners in the firm when the cause of action arose.

(3) If the partners fail to comply with such a demand, the court, on application by any other party, may order the partners to furnish him with such a statement and to verify it on oath and may direct that in default—

(a) if the partners are claimants, the proceedings be stayed on such terms as the court thinks fit, or

(b) if the partners are defendants, they be debarred from defending the claim.

(4) When the names and places of residence of the partners have been stated in compliance with a demand or order under this rule, the proceedings shall continue in the name of the firm.

### **Defendant carrying on business in another name**

**Rule 10.**—(1) A person carrying on business in England or Wales in a name other than his own name may, whether or not he is within the jurisdiction, be sued—

(a) in his own name, followed by the words “trading as A.B.”, or

(b) in his business name, followed by the words “(a trading name)”.

(2) Where a person is sued in his business name in accordance with paragraph (1)(b), the provisions of these rules relating to claims against firms shall, subject to the provisions of any enactment, apply as if he were a partner and the name in which he carried on business were the name of his firm.

### **Failure to proceed after death of party**

**Rule 12.**—(1) If, after the death of a claimant or defendant in any claim or matter, the cause of action survives but no order is made substituting any person in whom the cause of action vests or, as the case may be, the personal representatives of the deceased defendant, the defendant or, as

the case may be, those representatives may apply to the court for an order that unless the claim is proceeded with within such time as may be specified in the order the claim shall be struck out as against the claimant or defendant who has died; but where it is the claimant who has died, the court shall not make an order unless satisfied that notice of the application has been given to the personal representatives (if any) of the deceased claimant and to any other interested person who the court considers should be notified.

(2) Where a counterclaim is made by a defendant to any claim this rule shall apply in relation to the counterclaim as if the counterclaim were a separate claim and as if the defendant making a counterclaim were a claimant and the person against whom it is made a defendant.

### **Claim to money in court where change in parties after judgment**

**Rule 13.**—(1) Where any change had taken place after judgment, by death, assignment or otherwise, in the parties to any claim and there is money standing in court to the credit of the claim, any person claiming to be entitled to the money may give to the court notice of his claim, accompanied by a witness statement or affidavit verifying the facts stated in the notice.

(2) The district judge may, if satisfied as to the entitlement of the person giving notice, cause the money to be paid to him or may refer the claim to the judge and may require the claimant to give notice of the claim to any other person.

(3) It shall not be necessary for notice to be given under this rule where the person claiming to be entitled to the money in court has obtained permission under Order 26, rule 5, to issue a warrant of execution.

### **Bankruptcy of claimant**

**Rule 14** Rules 11 and 13 shall not apply to any case for which provision is made by section 49 of the Act.

## **CCR ORDER 6**

### **PARTICULARS OF CLAIM**

#### **Recovery of land**

**Rule 3.**—(1) In a claim for recovery of land the particulars of claim shall—

- (a) identify the land sought to be recovered;
- (b) state whether the land consists of or includes a dwelling-house;
- (c) give details about the agreement or tenancy, if any, under which the land is held, stating when it commenced and the amount of money payable by way of rent or licence fee;
- (d) in a case to which section 138 of the Act applies (forfeiture for non-payment of rent), state the daily rate at which the rent in arrear is to be calculated; and
- (e) state the ground on which possession is claimed, whether statutory or otherwise.

(2) In proceedings for forfeiture where the claimant knows of any person entitled to claim relief against forfeiture as underlessee (including a mortgagee) under section 146 (4) of the Law of Property Act 1925(1) or under section 138 (9C) of the County Courts Act 1984(2), the particulars

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(1) 1925 c. 20.

(2) 1984 c. 28; section 138 was amended by the Administration of Justice Act 1985 (c. 61), sections 55 and 67(2), schedule 8; and by the Courts and Legal Services Act 1990 (c. 41), section 125(2), schedule 17, paragraph 17.

of claim shall give the name and address of that person and the claimant shall file a copy of the particulars of claim for service on him.

(3) Where possession of land which consists of or includes a dwelling-house is claimed because of non-payment of rent, the particulars of claim shall be in the prescribed form and shall also—

- (a) state the amount due at the commencement of the proceedings;
- (b) give—
  - (i) (whether by means of a schedule or otherwise) particulars of all the payments which have been missed altogether; and
  - (ii) where a history of late or under-payments is relied upon, sufficient details to establish the claimant's case;
- (c) state any previous steps which the claimant has taken to recover arrears of rent and, in the case of court proceedings, state—
  - (i) the dates when proceedings were commenced and concluded; and
  - (ii) the dates and terms of any orders made;
- (d) give such relevant information as is known by the claimant about the defendant's circumstances and, in particular, whether (and, if so, what) payments on his behalf are made direct to the claimant by or under the Social Security Contributions and Benefits Act 1992<sup>(3)</sup>; and
- (e) if the claimant intends as part of his case to rely on his own financial or other circumstances, give details of all relevant facts or matters.

### **Mortgage claim**

**Rule 5.**—(1) Where a claimant claims as mortgagee payment of moneys secured by a mortgage of real or leasehold property or possession of such property, the particulars of claim shall contain the information required under this rule and, as the case may be, by rule 5A.

(2) Where there is more than one loan secured by the mortgage, the information required under the following paragraphs of this rule and under rule 5A shall be provided in respect of each loan agreement.

(3) The particulars shall state the date of the mortgage and identify the land sought to be recovered.

(4) Where possession of the property is claimed, the particulars of claim shall state whether or not the property consists of or includes a dwelling-house within the meaning of section 21 of the Act.

(5) The particulars shall state whether or not the loan which is secured by the mortgage is a regulated consumer credit agreement and, if so, specify the date on which any notice required by section 76 or section 87 of the Consumer Credit Act 1974<sup>(4)</sup> was given.

(6) The particulars shall show the state of account between the claimant and the defendant by including—

- (a) the amount of the advance and of any periodic repayment and any payment of interest required to be made;
- (b) the amount which would have to be paid (after taking into account any adjustment for early settlement) in order to redeem the mortgage at a stated date not more than 14 days after the commencement of proceedings specifying the amount of solicitor's costs and administrative charges which would be payable;

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<sup>(3)</sup> 1992 c. 4.

<sup>(4)</sup> 1974 c. 39.

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- (c) where the loan which is secured by the mortgage is a regulated consumer credit agreement, the total amount outstanding under the terms of the mortgage;
- (d) the rate of interest payable—
  - (i) at the commencement of the mortgage;
  - (ii) immediately before any arrears referred to in sub-paragraph (e) accrued; and
  - (iii) where it differs from that provided under (ii) above, at the commencement of the proceedings; and
- (e) the amount of any interest or instalments in arrear at the commencement of the proceedings.

(7) The particulars of claim shall state any previous steps which the claimant has taken to recover the moneys secured by the mortgage or the mortgaged property and, in the case of court proceedings, state—

- (a) the dates when proceedings were commenced and concluded, and
- (b) the dates and terms of any orders made.

(8) In this rule “mortgage” includes a legal or equitable mortgage and a legal or equitable charge, and references to the mortgaged property and mortgagee shall be construed accordingly.

#### **Mortgage claim—dwelling-house**

**Rule 5A.**—(1) This rule applies where a claimant claims as mortgagee possession of land which consists of or includes a dwelling-house and in such a case the particulars of claim shall be in the prescribed form.

(2) Where the claimant’s claim is brought because of failure to make the periodic payments due, the particulars of claim shall—

- (a) give details (whether by means of a schedule or otherwise) of all the payments which have been missed altogether;
- (b) where a history of late or under-payments is relied upon, provide sufficient details to establish the claimant’s case;
- (c) give details of any other payments required to be made as a term of the mortgage (such as for insurance premiums, legal costs, default interest, penalties, administrative or other charges) together with any other sums claimed stating the nature and amount of each such charge, whether any payment is in arrear and whether or not it is included in the amount of any periodic payment;
- (d) give such relevant information as is known by the claimant about the defendant’s circumstances and, in particular, whether (and, if so, what) payments on his behalf are made direct to the claimant by or under the Social Security Contributions and Benefits Act 1992<sup>(5)</sup>.

(3) In a claim to which this rule applies, the claimant shall state in his particulars of claim whether there is any person on whom notice of the claim is required to be served in accordance with section 8 (3) of the Matrimonial Homes Act 1983<sup>(6)</sup> and, if so, he shall state the name and address of that person and shall file a copy of the particulars of claim for service on that person.

(4) In this rule “mortgage” has the same meaning as in rule 5 (8).

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(5) 1992 c. 4.  
(6) 1983 c. 19.



## **Hire-purchase**

**Rule 6.**—(1) Where a claimant 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—

- (a) 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;
- (b) where the claimant 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;
- (c) whether the agreement is a regulated agreement and, if it is not a regulated agreement, the reason why;
- (d) the place where the agreement was signed by the debtor (if known);
- (e) the goods claimed;
- (f) the total price of the goods;
- (g) the paid-up sum;
- (h) the unpaid balance of the total price;
- (i) 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;
- (j) the date when the right to demand delivery of the goods accrued;
- (k) the amount (if any) claimed as an alternative to the delivery of the goods; and
- (l) the amount (if any) claimed in addition to the delivery of the goods or any claim under sub-paragraph (k), stating the cause of action in respect of which each such claim is made.

(2) Where a claimant'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—

- (a) 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;
- (b) where the claimant 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;
- (c) whether the agreement is a regulated agreement and, if it is not a regulated agreement, the reason why;
- (d) the place where the agreement was signed by the debtor (if known);
- (e) the goods let under the agreement;
- (f) the amount of the total price;
- (g) the paid-up sum;
- (h) the amount (if any) claimed as being due and unpaid in respect of any instalment or instalments of the total price; and
- (i) the nature and amount of any other claim and the circumstances in which it arises.

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

## CCR ORDER 7

### SERVICE OF DOCUMENTS

#### **Recovery of land**

**Rule 15.**—(1) Where, in the case of a claim form for the recovery of land which is to be served by bailiff, the court is of opinion that it is impracticable to serve the claim form in accordance with any of the foregoing provisions of CPR Part 6, the claim form may be served in a manner authorised by this rule.

(2) The claim form may be served on any person on the premises who is the husband or wife of the defendant or on any person who has or appears to have the authority of the defendant—

- (a) to reside or carry on business in the premises or to manage them on behalf of the defendant or to receive any rents or profits of the premises or to pay any outgoings in respect of the premises; or
- (b) to safeguard or deal with the premises or with the furniture or other goods on the premises, and service on any such person shall be effected in the manner required for service of the notice of the day of hearing in accordance with Order 3, rule 6.

(3) Paragraph (2) shall apply to a man and woman who are living with each other in the same household as husband and wife as it applies to the parties to a marriage.

(4) Where the premises are vacant or are occupied only by virtue of the presence of furniture or other goods, the claim form may be served by affixing it to some conspicuous part of the premises.

(5) Unless the court otherwise orders, service of a claim form in accordance with this rule shall be good service on the defendant, but if a claim for the recovery of money is joined with the claim for recovery of land, the court shall order the claim form to be marked “not served” with respect to the money claim unless in special circumstances the court thinks it just to hear and determine both claims.

#### **Mortgage possession claims**

**Rule 15A.**—(1) After the issue of the claim form in a mortgage possession claim the claimant shall not less than 14 days before the hearing send to the address of the property sought to be recovered a notice addressed to the occupiers which—

- (a) states that possession proceedings have been commenced in respect of the property;
- (b) shows the name and address of the claimant, of the defendant and of the court which issued the claim form; and
- (c) gives details of the case number and of the hearing date.

(2) The claimant shall either—

- (a) not less than 14 days before the hearing, file a certificate stating that a notice has been sent in accordance with paragraph (1); or
- (b) exhibit the notice to any witness statement or affidavit used at the hearing.

(3) In this rule “mortgage possession claim” means a claim in which the claimant claims as mortgagee possession of land which consists of or includes a dwelling-house and “mortgage” has the same meaning as in Order 6, rule 5 (8).

## CCR ORDER 13

### APPLICATIONS AND ORDERS IN THE COURSE OF PROCEEDINGS

#### **General provisions**

**Rule 1.**—(10) An appeal shall lie to a judge from any order made by a district judge on an application made in the course of proceedings and the appeal shall be disposed of in private unless the judge otherwise directs.

(11) An appeal under paragraph (10) shall be made on notice, which shall be filed and served on the opposite party within 5 days after the order appealed from or such further time as the judge may allow.

## CCR ORDER 16

### TRANSFER OF PROCEEDINGS

#### **Interpleader proceedings under execution**

**Rule 7.**—(1) This rule applies to interpleader proceedings under an execution which are ordered to be transferred from the High Court.

(2) Notice of the hearings or pre-trial review of the proceedings shall be given by the court officer to the sheriff as well as to every other party to the proceedings.

(3) The interpleader claimant shall, within 8 days of the receipt by him of the notice referred to in paragraph (2), file in triplicate particulars of any goods alleged to be his property and the grounds of his interpleader claim and the court officer shall send a copy to the execution creditor and to the sheriff, but the judge may hear the proceedings or, as the case may be, the district judge may proceed with the pre-trial review, if he thinks fit, notwithstanding that the particulars have not been filed.

(4) Subject to any directions in the order of the High Court, damages may be claimed against the execution creditor in the same manner as in interpleader proceedings commenced in a county court.

(5) On any day fixed for the pre-trial review of the proceedings or for the hearing of any application by the sheriff or other party for directions the court may order the sheriff—

- (a) to postpone the sale of the goods seized;
- (b) to remain in possession of such goods until the hearing of the proceedings; or
- (c) to hand over possession of such goods to the district judge,

and, where a direction is given under sub-paragraph (c), the district judge shall be allowed reasonable charges for keeping possession of the goods, not exceeding those which might be allowed to the sheriff, and, if the district judge is directed to sell the goods, such charges for the sale as would be allowed under an execution issued by the county court.

(6) No order made in the proceedings shall prejudice or affect the rights of the sheriff to any proper charges and the judge may make such order with respect to them as may be just.

(7) The charges referred to in paragraphs (5) and (6) shall ultimately be borne in such manner as the judge shall direct.

(8) The order made at the hearing of the proceedings shall direct how any money in the hands of the sheriff is to be disposed of.

## CCR ORDER 19

### REFERENCE TO EUROPEAN COURT

#### **Making and transmission of order**

**Rule 15.**—(1) In this rule “the European Court” means the Court of Justice of the European Communities and “order” means an order referring a question to the European Court for a preliminary ruling under Article 177 of the Treaty establishing the European Economic Community, Article 150 of the Treaty establishing the European Atomic Energy Community or Article 41 of the Treaty establishing the European Coal and Steel Community.

(2) An order may be made by the judge before or at the trial or hearing of any claim and either of his own initiative or on the application of any party.

(3) An order shall set out in a schedule the request for the preliminary ruling of the European Court, and the judge may give directions as to the manner and form in which the schedule is to be prepared.

(4) The proceedings in which an order is made shall, unless the judge otherwise orders, be stayed until the European Court has given a preliminary ruling on the question referred to it.

(5) When an order has been made, the court officer shall send a copy thereof to the Senior Master for transmission to the Registrar of the European Court; but, unless the judge otherwise orders, the copy shall not be sent to the Senior Master until the time for appealing to the Court of Appeal against the order has expired or, if an appeal is entered within that time, until the appeal has been determined or otherwise disposed of.

(6) Nothing in these rules shall authorise the district judge to make an order.

## CCR ORDER 22

### JUDGMENTS AND ORDERS

#### **Certificate of judgment**

**Rule 8.**—(1) Any person who wishes to have a certificate of any judgment or order given or made in a claim shall make a request in writing to the court stating—

- (a) if he is a party to the claim whether the certificate—
  - (i) is required for the purpose of taking proceedings on the judgment or order in another court;
  - (ii) is required for the purpose of enforcing the judgment or order in the High Court; or
  - (iii) is for the purpose of evidence only;
- (b) if he is not a party to the claim, the purpose for which the certificate is required, the capacity in which he asks for it and any other facts showing that the certificate may properly be granted.

(1A) Where the certificate is required for the purpose of enforcing the judgment or order in the High Court, the applicant shall also either—

- (a) state that it is intended to enforce the judgment or order by execution against goods; or
- (b) confirm that an application has been made for an order under section 42 of the Act (transfer to High Court by order of a county court) and attach a copy of the application to the request for a certificate.

(2) Where the request is made by a person who is not a party to the claim, the request shall be referred to the district judge, who may, if he thinks fit, refer it to the judge.

(3) Without prejudice to paragraph (2), for the purposes of section 12 (2) of the Act a certificate under this rule may be signed by the court manager or any other officer of the court acting on his behalf.

### **Variation of payment**

**Rule 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 in writing, without notice being served on any other party, 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 court 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; and
- (b) the court 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 court 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 court officer shall make an order in the terms applied for.

(8) Upon receipt of a notice from the judgment creditor under paragraph (6), the court 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 re-considered 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; and

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(b) the court 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.

### **Set-off of cross-judgments**

**Rule 11.**—(1) An application under section 72 of the Act for permission to set off any sums, including costs, payable under several judgments or orders each of which was obtained in a county court shall be made in accordance with this rule.

(2) Where the judgments or orders have been obtained in the same county court, the application may be made to that court on the day when the last judgment or order is obtained, if both parties are present, and in any other case shall be made on notice.

(3) Where the judgments or orders have been obtained in different county courts, the application may be made to either of them on notice, and notice shall be given to the other court.

(4) The district judge of the court to which the application is made and the district judge of any other court to which notice is given under paragraph (3) shall forthwith stay execution on any judgment or order in his court to which the application relates and any money paid into court under the judgment or order shall be retained until the application has been disposed of.

(5) The application may be heard and determined by the court and any order giving permission shall direct how any money paid into court is to be dealt with.

(6) Where the judgments or orders have been obtained in different courts, the court in which an order giving permission is made shall send a copy of the order to the other court, which shall deal with any money paid into that court in accordance with the order.

(7) The court officer or, as the case may be, each of the court officers affected shall enter satisfaction in the records of his court for any sums ordered to be set off, and execution or other process for the enforcement of any judgment or order not wholly satisfied shall issue only for the balance remaining payable.

(8) Where an order is made by the High Court giving permission to set off sums payable under several judgments and orders obtained respectively in the High Court and a county court, the court officer of the county court shall, on receipt of a copy of the order, proceed in accordance with paragraph (7).

### **Order of appellate court**

**Rule 13** Where the Court of Appeal or High Court has heard and determined an appeal from a county court, the party entitled to the benefit of the order of the Court of Appeal or High Court shall deposit the order or an office copy thereof in the office of the county court.

## **CCR ORDER 24**

### **SUMMARY PROCEEDINGS FOR THE RECOVERY OF LAND**

#### **Part I—Land**

### **Proceedings to be by claim form**

**Rule 1.**—(1) Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by claim form in accordance with the provisions of this Order.

(2) Where proceedings of the type referred to in paragraph (1) are brought, the court will fix a day for the hearing when it issues the claim form.

### **Witness statement or affidavit in support**

**Rule 2.**—(1) The applicant shall file in support of the claim form a witness statement or affidavit stating—

- (a) his interest in the land;
- (b) the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises; and
- (c) that he does not know the name of any person occupying the land who is not named in the claim form.

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

### **Service of claim form**

**Rule 3.**—(1) Where any person in occupation of the land is named in the claim form, the application shall be served on him—

- (a) by delivering to him personally a copy of the claim form, together with the notice of the return day and a copy of the witness statement or affidavit in support;
- (b) by an officer of the court leaving the documents mentioned in sub-paragraph (a), or sending them to him, at the premises;
- (c) in accordance with CPR rule 6.4(2); or
- (d) in such other manner as the court may direct.

(2) Where any person not named as a respondent is in occupation of the land, the claim form shall be served (whether or not it is also required to be served in accordance with paragraph (1)), unless the court otherwise directs, by—

- (a) affixing a copy of each of the documents mentioned in paragraph (1)(a) to the main door or other conspicuous part of the premises and, if practicable, inserting through the letterbox at the premises a copy of those documents enclosed in a sealed transparent envelope addressed to “the occupiers”, or
- (b) placing stakes in the ground at conspicuous parts of the occupied land, to each of which shall be affixed a sealed transparent envelope addressed to “the occupiers” and containing a copy of each of the documents mentioned in paragraph (1)(a).

### **Application by occupier to be made a party**

**Rule 4** A person not named as a respondent who is in occupation of the land and wishes to be heard on the question whether an order for possession should be made may apply at any stage of the proceedings to be joined as respondent, and the notice of the return day shall contain a notice to that effect.

### **Hearing of claim**

**Rule 5.**—(1) Except in case of urgency and by permission of the court, the day fixed for the hearing of the claim—

- (a) in the case of residential premises, shall not be less than five days after the day of service, and
- (b) in the case of other land, shall not be less than two days after the day of service.

(3) An order for possession in proceedings under this Order shall be to the effect that the applicant do recover possession of the land mentioned in the claim form.

(4) Nothing in this Order shall prevent the court from ordering possession to be given on a specified date.

### **Warrant of possession**

**Rule 6.**—(1) Subject to paragraphs (2) and (3), a warrant of possession to enforce an order for possession under this Order may be issued at any time after the making of the order and subject to the provisions of Order 26, rule 17, a warrant of restitution may be issued in aid of the warrant of possession.

(2) No warrant of possession shall be issued after the expiry of 3 months from the date of the order without the permission of the court, and an application for such permission may be made without notice being served on any other party unless the court otherwise directs.

(3) Nothing in this rule shall authorise the issue of a warrant of possession before the date on which possession is ordered to be given.

### **Setting aside order**

**Rule 7** The judge or district judge may, on such terms as he thinks just, set aside or vary any order made in proceedings under this Order.

## **Part II—Interim Possession Orders**

### **Definitions and interpretation**

**Rule 8.**—(1) In this Part of this Order—

- (a) “applicant” means a person who applies for an interim possession order;
- (b) “premises” means premises within the meaning of section 12 of the Criminal Law Act 1977(7); and
- (c) “respondent” means a person against whom an application for an interim possession order is made, whether or not that person is named in the application or order.

(2) Where a rule in this Part of this Order requires an act to be done within a specified number of hours, CPR rule 2.8(4) shall not apply to the calculation of the period of time within which the act must be done.

### **Conditions for interim possession order application**

**Rule 9** In proceedings for possession under Part I of this Order, an application may be made for an interim possession order where the following conditions are satisfied—

- (a) the only claim made in the proceedings is for the recovery of premises;

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(7) 1977 c. 45.



- (b) the claim is made by a person who—
  - (i) has an immediate right to possession of the premises; and
  - (ii) has had such a right throughout the period of unlawful occupation complained of;
- (c) the claim is made against a person (not being a tenant holding over after the termination of the tenancy) who entered the premises without the applicant’s consent and has not subsequently been granted such consent, but no application for an interim possession order may be made against a person who entered the premises with the consent of the person who, at the time of entry, had an immediate right to possession of the premises; and
- (d) the claim is made within 28 days of the date on which the applicant first knew, or ought reasonably to have known, that the respondent, or any of the respondents, was in occupation.

### **Issue of the applications**

**Rule 10.**—(1) In proceedings in which an application for an interim possession order is made, unless otherwise provided, rules 2 to 7 shall not apply.

- (2) The applicant shall file—
  - (a) a claim form;
  - (b) a witness statement or affidavit in support; and
  - (c) an application notice,

each of which shall be in the appropriate prescribed form, together with sufficient copies for service on the respondent.

(3) The witness statement or affidavit shall be sworn by the applicant personally or, where the application for an interim possession order is made by a body corporate, shall be sworn by an officer of the body corporate duly authorised to swear the witness statement or affidavit on its behalf.

- (4) On the filing of the documents mentioned in paragraph (2), the court shall—
  - (a) issue the claim form and the application for an interim possession order;
  - (b) fix an appointment for the application to be considered; and
  - (c) insert the time of that appointment in the application notice filed under paragraph (2) and in the copy to be served on the respondent.

(5) The time fixed for consideration of the application for an interim possession order shall be as soon as possible after the documents have been filed, but not less than 3 days after the date on which the application for an interim possession order is issued.

### **Service of the notice of application**

**Rule 11.**—(1) Within 24 hours of the issue of the application for an interim possession order, the applicant shall serve the following documents on the respondent, namely—

- (a) the application notice; and
- (b) the prescribed form of respondent’s witness statement or affidavit, which shall be attached to the application notice.

(2) The applicant shall serve the documents mentioned in paragraph (1) by fixing a copy of them to the main door or other conspicuous part of the premises and, if practicable, inserting through the letter-box at the premises a copy of the documents in a sealed, transparent envelope addressed to “the occupiers”.

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(3) Additionally (but not alternatively), the applicant may place stakes in the ground at conspicuous parts of the premises to each of which shall be fixed a sealed transparent envelope addressed to “the occupiers” and containing a copy of the documents.

(4) At or before the time fixed for consideration of the application for an interim possession order, the applicant shall file a witness statement or affidavit of service in the prescribed form in relation to the documents mentioned in paragraph (1).

(5) At any time before the time fixed for consideration of the application for an interim possession order the respondent may file a witness statement or affidavit in the prescribed form in response to the application.

### **Consideration of the application**

**Rule 12.**—(1) If the respondent has filed a witness statement or affidavit in accordance with rule 11 (5), he may attend before the court when the application for an interim possession order is considered to answer such questions on his witness statement or affidavit or on the applicant’s witness statement or affidavit as the court may put to him.

(2) The parties' witness statements or affidavits shall be read in evidence and no oral evidence shall be adduced except in response to questions put by the court.

(3) If the court so directs, an application for an interim possession order may be dealt with in private and in the absence of one or both of the parties.

(4) In deciding whether to grant an interim possession order the court shall have regard to whether the applicant has given or is prepared to give undertakings in support of his application—

- (a) to reinstate the respondent if, after an interim possession order has been made, the court holds that the applicant was not entitled to the order;
- (b) to pay damages if, after an interim possession order has been made, the court holds that the applicant was not entitled to the order;
- (c) not to damage the premises pending final determination of the possession proceedings;
- (d) not to grant a right of occupation to any other person pending final determination of the possession proceedings; and
- (e) not to damage or dispose of any of the respondent’s possessions pending final determination of the possession proceedings.

(5) The court shall make an interim possession order if—

- (a) the applicant has filed a witness statement or affidavit of service of the notice of application; and
- (b) the court is satisfied that—
  - (i) the conditions specified in rule 9 are met; and
  - (ii) any undertakings given by the applicant as a condition of making the order are adequate.

(6) An interim possession order shall be in a prescribed form and shall be to the effect that the respondent vacate the premises specified in the claim form within 24 hours of service of the order.

(7) On the making of an interim possession order, the court shall fix a return date for the hearing of the claim which shall be not less than 7 days after the date on which the interim possession order is made.

(8) Where an interim possession order is made, the court officer shall submit a draft of the order as soon as possible to the judge or district judge by whom it was made for approval, and when the draft order has been approved the court shall insert in the order the time limit for service under rule 13 (1).

(9) Where the court does not make an interim possession order—

- (a) the court officer shall fix a return date for the hearing of the claim;
- (b) the court may give directions for the further conduct of the matter; and
- (c) subject to such directions, the matter shall proceed in accordance with Part I of this Order.

(10) When it has considered the application for an interim possession order, the court shall give a copy of the respondent's witness statement or affidavit (if any) to the applicant, if the applicant requests such a copy.

(11) The court shall serve any directions made under paragraph (9) on the parties and at the same time shall serve on the respondent a copy of the claim form and witness statement or affidavit in support.

### **Service and enforcement of the interim possession order**

**Rule 13.**—(1) An interim possession order must be served within 48 hours of the judge or district judge's approving the draft order under rule 12 (8).

(2) The applicant shall serve copies of the claim form, the applicant's witness statement or affidavit and the interim possession order in accordance with rule 11 (2) and (3) or in such other manner as the court may direct.

(3) Order 26, rule 17 (enforcement of warrant of possession) shall not apply to the enforcement of an interim possession order.

(4) If an interim possession order is not served within the time limit specified by this rule or by any order extending or abridging time, the applicant may apply to the court for directions for the application for possession to continue under Part I of this Order as if it had not included a claim for an interim possession order.

### **Matters arising after making of an interim possession order**

**Rule 14.**—(1) Before the return date the applicant shall file a witness statement or affidavit of service in the prescribed form in relation to the documents specified in rule 13 (2), and no final order for possession may be made unless such a witness statement or affidavit has been filed.

(2) The interim possession order shall expire on the return date.

(3) On the return date the court may make such order as appears appropriate and may in particular—

- (a) make a final order for possession;
- (b) dismiss the claim for possession;
- (c) give directions for the application for possession to continue under Part I of this Order as if it had not included a claim for an interim possession order.

(4) An order may be made on the return date in the absence of one or both of the parties.

(5) If the court holds that the applicant was not entitled to an interim possession order, the respondent may apply for relief pursuant to any undertakings given by the applicant.

(6) Unless it otherwise directs, the court shall serve a copy of any order or directions made under this rule on the parties.

(7) Unless the court otherwise directs, service on the respondent under paragraph (6) shall be in accordance with rule 11 (2) and (3).

(8) Rule 6 (warrant of possession) shall apply to the enforcement of a final order for possession made under this rule.

### **Application to set aside an interim possession order**

**Rule 15.**—(1) If the respondent has vacated the premises, he may apply on grounds of urgency for the interim possession order to be set aside before the return date.

- (2) An application under this rule shall be supported by a witness statement or affidavit.
- (3) On receipt of an application to set aside, the judge or district judge shall give directions as to—
  - (a) the date for the hearing; and
  - (b) the period of notice, if any, to be given to the applicant and the mode of service of any such notice.
- (4) No application to set aside an interim possession order may be made under CPR Part 39.3.

(5) Where no notice is required under paragraph (3)(b), the only matter to be dealt with at the hearing shall be whether the interim possession order should be set aside (and the consequent application of any undertaking given under rule 12 (4)(a)) and all other matters shall be dealt with on the return date.

(6) The court shall serve on the applicant a copy of any order made under paragraph (5) and, where no notice is required under paragraph (3)(b), the court shall at the same time serve a copy of the respondent’s application to set aside and the witness statement or affidavit in support.

(7) Where notice is required under paragraph (3)(b), the court may treat the application as an application to bring forward the return date, in which case rule 14 (2) to (8) shall apply accordingly.

## **CCR ORDER 25**

### **ENFORCEMENT OF JUDGMENTS AND ORDERS: GENERAL**

#### **Judgment creditor and debtor**

**Rule 1** In this Order and Orders 26 to 29 “judgment creditor” means the person who has obtained or is entitled to enforce a judgment or order and “debtor” means the person against whom it was given or made.

#### **Transfer of proceedings for enforcement**

**Rule 2.**—(1) Where, with a view to enforcing a judgment or order obtained by him in a county court, a judgment creditor desires to apply for—

- (a) the oral examination of the debtor;
- (b) a charging order under section 1 of the Charging Orders Act 1979<sup>(8)</sup>;
- (c) an attachment of earnings order; or
- (d) the issue of a judgment summons,

and the application is required by any provision of these rules to be made to another county court, the judgment creditor shall make a request in writing to the court officer of the court in which the judgment or order was obtained for the transfer of the proceedings to the other court.

(2) On receipt of a request under paragraph (1), the court officer shall make an order transferring the proceedings to the other court and shall—

- (a) make an entry of the transfer in the records in his court; and

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<sup>(8)</sup> 1979 c. 53; section 1 was amended by the Administration of Justice Act 1982 (c. 53) sections 34(3), 37, schedule 3, Part II, paragraphs 2, 3, 6; and by the County Courts Act 1984 (c. 28), section 148(1), schedule 2, Part V.

- (b) send to the court to which the proceedings have been transferred a certificate of the judgment or order stating the purpose for which it has been issued, and, if requested by that officer, all the documents in his custody relating to the proceedings.
- (3) When the proceedings have been transferred to the other court—
  - (a) that court shall give notice of the transfer to the judgment creditor and the debtor;
  - (b) any payment which, by or under these rules or the Court Funds Rules 1987(9), is authorised or required to be made into court shall be made into that court; and
  - (c) subject to sub-paragraph (d), any subsequent steps in the proceedings shall be taken in that court, but
  - (d) any application or appeal under Order 37 shall be made to the court in which the judgment or order was obtained.
- (4) If the judgment creditor desires to make a subsequent application for any of the remedies mentioned in paragraph (1)(a) to (d) and the application is required to be made to another court, he may make a request under paragraph (1) to the court to which the proceedings have been transferred and paragraphs (2) and (3) shall apply with the necessary modifications.

### **Oral examination of debtor**

**Rule 3.**—(1) Where a person has obtained a judgment or order in a county court for the payment of money or where an order has been made under rule 12 of this Order, the appropriate court may, on an application made by the judgment creditor without notice being served on any other party, order the debtor or, if the debtor is a body corporate, an officer thereof to attend before the court officer and be orally examined as to the debtor's means of satisfying the judgment or order, and may also order the person to be examined to produce at the time and place appointed for the examination any books or documents in his possession relevant to the debtor's means.

(1A) An application under paragraph (1) shall certify the amount of money remaining due under the judgment, order or award (as that word is defined by rule 12 (1) of this Order).

(2) The appropriate court for the purposes of paragraph (1) shall be the court for the district in which the person to be examined (or, if there are more such persons than one, any of them) resides or carries on business.

(3) The order shall be served in the manner required for service of the notice of the day of hearing in accordance with Order 3, rule 6 except that Order 3, rule 6(11) will not apply.

(4) If the person to be examined fails to attend at the time and place fixed for the examination, the court may adjourn the examination and make a further order for his attendance and any such order shall direct that any payments made thereafter shall be paid into court and not direct to the judgment creditor.

(5) Nothing in Order 29, rule 1 (2) to (7) shall apply to an order made under paragraph (4), but Order 27, rules 7B and 8, shall apply, with the necessary modifications, as they apply to orders made under section 23 (1) of the Attachment of Earnings Act 1971(10) except that for a period of 5 days specified in paragraph (1) of Order 27, rule 8 there shall be substituted a period of 10 days.

(5A) Where an examination has been adjourned, the judgment creditor, if requested to do so by the person to be examined not less than 7 days before the day fixed for the adjourned examination shall pay to him a sum reasonably sufficient to cover his expenses in travelling to and from the court unless such a sum was paid to him at the time of service of the order for oral examination.

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(9) S.I. 1987/821, as amended by S.I. 1988/817, 1990/518, 1991/227 and 1997/177.

(10) 1971 c. 32; section 23(1) was amended by the Administration of Justice Act 1982 (c. 53), section 53(2).

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(5B) The judgment creditor shall, not more than 4 days before the day fixed for the adjourned examination, file a certificate stating either that no request has been made under paragraph (5A) or that a sum has been paid in accordance with such a request.

(5C) Where the person to be examined has made a request under paragraph (5A), he shall not be committed to prison under Order 29, rule 1 (1) for having failed to attend at the time and place fixed for the adjourned examination unless the judgment creditor has paid to him a sum reasonably sufficient to cover the travelling expenses before the day fixed for the adjourned examination.

(6) CPR rule 34.8 (evidence by deposition) shall apply with the necessary modifications, to an examination under this rule as it applies to an examination under that Part save that CPR rule 34.8(6) (b) shall not apply.

(7) Nothing in this rule shall be construed as preventing the court, before deciding whether to make an order under paragraph (1), from giving the person to be examined an opportunity of making a statement in writing or a witness statement or affidavit as to the debtor's means.

#### **Examination of debtor under judgment not for money**

**Rule 4** Where any difficulty arises in or in connection with the enforcement of any judgment or order for some relief other than the payment of money, the court may make an order under rule 3 for the attendance of the debtor and for his examination on such questions as may be specified in the order, and that rule shall apply accordingly with the necessary modifications.

#### **Provision of information**

**Rule 5.**—(1) The requests and applications mentioned in paragraph (2) are—

- (a) a request for a warrant of execution, delivery or possession;
- (b) a request for a judgment summons or warrant of committal;
- (c) an application for a garnishee order under Order 30, rule 1; and
- (d) an application for a charging order.

(2) Where the judgment creditor has filed any request or application referred to in paragraph (1) or is seeking to enforce a judgment or order by making an application under rule 3 or under Order 27 or 32, he shall forthwith notify the court of any payment received from the debtor in respect of the judgment to be enforced after the date of the application and before—

- (a) the final return to the warrant of execution, delivery or possession; or
- (b) in any other case, the date fixed for the hearing of the application.

(3) Without prejudice to rule 8 (9), where the judgment creditor applies to re-issue enforcement proceedings, he shall file a request in that behalf certifying the amount of money remaining due under the judgment or order and that the whole or part of any instalment due remains unpaid and stating why re-issue is necessary.

#### **Interest on judgment debts**

**Rule 5A** Where the judgment creditor claims interest pursuant to the County Courts (Interest on Judgment Debts) Order 1991(11) and takes proceedings to enforce payment under the relevant judgment (within the meaning of article 4 (1) of that Order), any request or application for enforcement made in those proceedings shall be accompanied by two copies of a certificate giving details of—

- (a) the amount of interest claimed and the sum on which it is claimed;

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(11) S.I. 1991/1184 as amended by S.I. 1996/2516.

- (b) the dates from and to which interest has accrued; and
- (c) the rate of interest which has been applied and, where more than one rate of interest has been applied, the relevant dates and rates.

### **Description of parties**

**Rule 6** Where the name or address of the judgment creditor or the debtor as given in the request for the issue of a warrant of execution or delivery, judgment summons or warrant of committal differs from his name or address in the judgment or order sought to be enforced and the judgment creditor satisfies the court officer that the name or address as given in the request is applicable to the person concerned, the judgment creditor or the debtor, as the case may be, shall be described in the warrant or judgment summons as “C.D. of [name and address as given in the request] suing [or sued] as A.D. of [name and address in the judgment or order]”.

### **Recording and giving information as to warrants and orders**

**Rule 7.**—(1) Subject to paragraph (1A), every district judge by whom a warrant or order is issued or received for execution shall from time to time state in the records of his court what has been done in the execution of the warrant or order.

(1A) Where a warrant of execution issued by a court (“the home court”) is sent to another court for execution (“the foreign court”), paragraph (1) shall not apply to the district judge of the home court, but when such a warrant is returned to the home court under paragraph (7), the court officer of the home court shall state in the records of his court what has been done in the execution of the warrant or order.

(2) If the warrant or order has not been executed within one month from the date of its issue or receipt by him, the court officer of the court responsible for its execution shall, at the end of that month and every subsequent month during which the warrant remains outstanding, send notice of the reason for non-execution to the judgment creditor and, if the warrant or order was received from another court, to that court.

(3) The district judge responsible for executing a warrant or order shall give such information respecting it as may reasonably be required by the judgment creditor and, if the warrant or order was received by him from another court, by the district judge of that court.

(4) Where money is received in pursuance of a warrant of execution or committal sent by one court to another court, the foreign court shall, subject to paragraph (5) and to section 346 of Insolvency Act 1986<sup>(12)</sup> and section 326 of the Companies Act 1948<sup>(13)</sup>, send the money to the judgment creditor in the manner prescribed by the Court Funds Rules 1987<sup>(14)</sup> and, where the money is received in pursuance of a warrant of committal, make a return to the home court.

(5) Where interpleader proceedings are pending, the court shall not proceed in accordance with paragraph (4) until the interpleader proceedings are determined and the district judge shall then make a return showing how the money is to be disposed of and, if any money is payable to the judgment creditor, the court shall proceed in accordance with paragraph (4).

(6) Where a warrant of committal has been received from another court, the foreign court shall, on the execution of the warrant, send notice thereof to the home court.

(7) Where a warrant of execution has been received from another court, either—

- (a) on the execution of the warrant; or
- (b) if the warrant is not executed—

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<sup>(12)</sup> 1986 c. 45.

<sup>(13)</sup> 1948 c. 38.

<sup>(14)</sup> S.I. 1988/821, as amended by S.I. 1988/817, 1990/518, 1991/227 and 1997/177.

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- (i) on the making of a final return to the warrant; or
  - (ii) on suspension of the warrant under rule 8 (suspension of judgment or execution) or Order 26, rule 10 (withdrawal and suspension of warrant at creditor's request),
- the foreign court shall return the warrant to the home court.

### **Suspension of judgment or execution**

**Rule 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 court 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 court 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 court 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 court 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 court 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 court 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.

### **Enforcement of judgment or order against firm**

**Rule 9.**—(1) Subject to paragraph (2), a judgment or order against a firm may be enforced against—

- (a) any property of the firm;



- (b) any person who admitted in the proceedings that he was a partner or was adjudged to be a partner;
- (c) any person who was served as a partner with the claim form if—
  - (i) judgment was entered under CPR Part 12, in default of defence or under CPR Part 14 on admission; or
  - (iii) the person so served did not appear at the trial or hearing of the proceedings.

(2) A judgment or order may not be enforced under paragraph (1) against a member of the firm who was out of England and Wales when the claim form was issued unless he—

- (a) was served within England and Wales with the claim form as a partner; or
- (b) was, with the permission of the court under RSC Order 11, rule 1 served out of England and Wales with the claim form as a partner,

and, except as provided by paragraph (1)(a) and by the foregoing provisions of this paragraph, a judgment or order obtained against a firm shall not render liable, release or otherwise affect a member of the firm who was out of England and Wales when the claim form was issued.

(3) A judgment creditor who claims to be entitled to enforce a judgment or order against any other person as a partner may apply to the court for permission to do so by filing an application notice in accordance with CPR Part 23.

(4) An application notice under paragraph (3) shall be served on the alleged partner, not less than three days before the hearing of the application, in the manner required for service of the notice of the day of hearing in accordance with Order 3, rule 6 and on the hearing of the application, if the alleged partner does not dispute his liability, the court may, subject to paragraph (2), give permission to enforce the judgment or order against him and, if he disputes liability, the court may order that the question of his liability be tried and determined in such a manner as the court thinks fit.

(5) The foregoing provisions of this rule shall not apply where it is desired to enforce in a county court a judgment or order of the High Court, or a judgment, order, decree or award of any court or arbitrator which is or has become enforceable as if it were a judgment or order of the High Court, and in any such case the provisions of the RSC relating to the enforcement of a judgment or order against a firm shall apply.

### **Enforcing judgment between a firm and its members**

**Rule 10.**—(1) Execution to enforce a judgment or order given or made in—

- (a) proceedings by or against a firm, in the name of the firm against or by a member of the firm; or
- (b) proceedings by a firm in the name of the firm against a firm in the name of the firm where those firms have one or more members in common,

shall not issue without the permission of the court.

(2) On an application for permission the court may give such directions, including directions as to the taking of accounts and the making of inquiries, as may be just.

### **Enforcement of High Court judgment**

**Rule 11.**—(1) A judgment creditor who desires to enforce a judgment or order of the High Court, or a judgment, order, decree or award of any court or arbitrator which is or has become enforceable as if it were a judgment or order of the High Court, shall file in the appropriate court (with such documents as are required to be filed for the purpose of enforcing a judgment or order of a county court)—

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- (a) an office copy of the judgment or order or, in the case of a judgment, order, decree or award of a court other than the High Court or an arbitrator, such evidence of the judgment, order, decree or award and of its enforceability as a judgment of the High Court as the district judge may require;
- (b) a certificate verifying the amount due under the judgment, order, decree or award;
- (c) where a writ of execution has been issued to enforce it, a copy of the sheriff's return to the writ; and
- (d) a copy of the order to transfer the proceedings to the county court.

(2) In this rule the "appropriate court" means the county court in which the relevant enforcement proceedings might, by virtue of these rules, be brought if the judgment or order had been obtained in proceedings commenced in a county court.

Provided that if under these rules the court in which the relevant enforcement proceedings might be brought is identified by reference to the court in which the judgment or order has been obtained the appropriate court shall be the court for the district in which the debtor resides or carries on business.

- (3) The provisions of this rule are without prejudice to Order 26, rule 2.

#### **Enforcement of award of tribunal**

**Rule 12.**—(1) This rule applies where any enactment (other than these rules) provides that if a county court so orders, a sum of money is recoverable as if payable under an order of a county court, and in this rule an application for such an order is referred to as an application to enforce an award and "award" means the award, order, agreement or decision which it is sought to enforce.

(2) Unless these rules otherwise provide, an application to enforce an award shall be made without notice by—

- (a) certifying the amount remaining due to the applicant; and
- (b) producing either the original or a copy of the award and by filing a copy.

(3) Unless otherwise provided, the application shall be made to the court for the district in which the person against whom the award was made resides or carries on business or, where that person does not reside or carry on business within England and Wales, to the court for the district in which the applicant resides or carries on business.

- (4) The order may be made by the court officer.

#### **Transfer to High Court for enforcement**

**Rule 13.**—(1) Where the judgment creditor makes a request for a certificate of judgment under Order 22, rule 8(1) for the purpose of enforcing the judgment or order in the High Court by execution against goods, the grant of a certificate by the court shall take effect as an order to transfer the proceedings to the High Court and the transfer shall have effect on the grant of that certificate.

(2) On the transfer of proceedings in accordance with paragraph (1), the court shall give notice to the debtor that the proceedings have been transferred and shall make an entry of that fact in the records of his court.

(3) In a case where a request for a certificate of judgment is made under Order 22, rule 8(1) for the purpose of enforcing a judgment or order in the High Court and—

- (a) an application for a variation in the date or rate of payment of money due under a judgment or order;
- (b) an application under either CPR rule 39.3(3) or CPR rule 13.4;
- (c) a request for an administration order; or

(d) an application for a stay of execution under section 88 of the Act, is pending, the request for the certificate shall not be dealt with until those proceedings are determined.

## CCR ORDER 26

### WARRANTS OF EXECUTION, DELIVERY AND POSSESSION

#### **Application for warrant of execution**

**Rule 1.**—(1) A judgment creditor desiring a warrant of execution to be issued shall file a request in that behalf certifying—

- (a) the amount remaining due under the judgment or order; and
- (b) where the order made is for payment of a sum of money by instalments—
  - (i) that the whole or part of any instalment due remains unpaid; and
  - (ii) the amount for which the warrant is to be issued.

(1A) The court officer shall discharge the functions—

- (a) under section 85 (2) of the Act of issuing a warrant of execution;
- (b) under section 85 (3) of the Act of entering in the record mentioned in that subsection and on the warrant the precise time of the making of the application to issue the warrant; and
- (c) under section 103 (1) of the Act of sending the warrant of execution to another county court.

(2) Where the court has made an order for payment of a sum of money by instalments and default has been made in payment of such an instalment, a warrant of execution may be issued for the whole of the said sum of money and costs then remaining unpaid or, subject to paragraph (3), for such part as the judgment creditor may request, not being in the latter case less than £50 or the amount of one monthly instalment or, as the case may be, four weekly instalments, whichever is the greater.

(3) In any case to which paragraph (2) applies no warrant shall be issued unless at the time when it is issued—

- (a) the whole or part of an instalment which has already become due remains unpaid; and
- (b) any warrant previously issued for part of the said sum of money and costs has expired or has been satisfied or abandoned.

(4) Where a warrant is issued for the whole or part of the said sum of money and costs, the court officer shall, unless the district judge responsible for execution of the warrant directs otherwise, send a warning notice to the person against whom the warrant is issued and, where such a notice is sent, the warrant shall not be levied until 7 days thereafter.

(5) Where judgment is given or an order made for payment otherwise than by instalments of a sum of money and costs to be assessed in accordance with CPR Part 47 (detailed assessment procedure) and default is made in payment of the sum of money before the costs have been assessed, a warrant of execution may issue for recovery of the sum of money and a separate warrant may issue subsequently for the recovery of the costs if default is made in payment of them.

#### **Execution of High Court judgment**

**Rule 2.**—(1) Where it is desired to enforce by warrant of execution a judgment or order of the High Court, or a judgment, order, decree or award which is or has become enforceable as if it were

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a judgment of the High Court, the request referred to in rule 1 (1) may be filed in any court in the district of which execution is to be levied.

(2) Subject to Order 25, rule 9 (5), any restriction imposed by these rules on the issue of execution shall apply as if the judgment, order, decree or award were a judgment or order of the county court, but permission to issue execution shall not be required if permission has already been given by the High Court.

(3) Notice of the issue of the warrant shall be sent by the county court to the High Court.

### **Execution against farmer**

**Rule 3** If after the issue of a warrant of execution the district judge for the district in which the warrant is to be executed has reason to believe that the debtor is a farmer, the execution creditor shall, if so required by the district judge, furnish him with an official certificate, dated not more than three days beforehand, of the result of a search at the Land Registry as to the existence of any charge registered against the debtor under the Agricultural Credits Act 1928(15).

### **Concurrent warrants**

**Rule 4** Two or more warrants of execution may be issued concurrently for execution in different districts, but—

- (a) no more shall be levied under all the warrants together than is authorised to be levied under one of them; and
- (b) the costs of more than one such warrant shall not be allowed against the debtor except by order of the court.

### **Permission to issue certain warrants**

**Rule 5.**—(1) A warrant of execution shall not issue without the permission of the court where—

- (a) six years or more have elapsed since the date of the judgment or order;
- (b) any change has taken place, whether by death or otherwise in the parties entitled to enforce the judgment or order or liable to have it enforced against them;
- (c) the judgment or order is against the assets of a deceased person coming into the hands of his executors or administrators after the date of the judgment or order and it is sought to issue execution against such assets; or
- (d) any goods to be seized under a warrant of execution are in the hands of a receiver appointed by a court.

(2) An application for permission shall be supported by a witness statement or affidavit establishing the applicant's right to relief and may be made without notice being served on any other party in the first instance but the court may direct the application notice to be served on such persons as it thinks fit.

(3) Where, by reason of one and the same event, a person seeks permission under paragraph (1) (b) to enforce more judgments or orders than one, he may make one application only, specifying in a schedule all the judgments or orders in respect of which it is made, and if the application notice is directed to be served on any person, it need set out only such part of the application as affects him.

(4) Paragraph (1) is without prejudice to any enactment, rule or direction by virtue of which a person is required to obtain the permission of the court for the issue of a warrant or to proceed to execution or otherwise to the enforcement of a judgment or order.

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(15) 1928 c. 43.

### **Duration and renewal of warrant**

**Rule 6.**—(1) A warrant of execution shall, for the purpose of execution, be valid in the first instance for 12 months beginning with the date of its issue, but if not wholly executed, it may be renewed from time to time, by order of the court, for a period of 12 months at any one time, beginning with the day next following that on which it would otherwise expire, if an application for renewal is made before that day or such later day (if any) as the court may allow.

(2) A note of any such renewal shall be indorsed on the warrant and it shall be entitled to priority according to the time of its original issue or, where appropriate, its receipt by the district judge responsible for its execution.

### **Notice on levy**

**Rule 7** Any bailiff upon levying execution shall deliver to the debtor or leave at the place where execution is levied a notice of the warrant.

### **Bankruptcy or winding up of debtor**

**Rule 8.**—(1) Where the district judge responsible for the execution of a warrant is required by any provision of the Insolvency Act 1986(16) or any other enactment relating to insolvency to retain the proceeds of sale of goods sold under the warrant or money paid in order to avoid a sale, the court shall, as soon as practicable after the sale or the receipt of the money, send notice to the execution creditor and, if the warrant issued out of another court, to that court.

(2) Where the district judge responsible for the execution of a warrant—

- (a) receives notice that a bankruptcy order has been made against the debtor or, if the debtor is a company, that a provisional liquidator has been appointed or that an order has been made or a resolution passed for the winding up of the company; and
- (b) withdraws from possession of goods seized or pays over to the official receiver or trustee in bankruptcy or, if the debtor is a company, to the liquidator the proceeds of sale of goods sold under the warrant or money paid in order to avoid a sale or seized or received in part satisfaction of the warrant,

the court shall send notice to the execution creditor and, if the warrant issued out of another court, to that court.

(3) Where the court officer of a court to which a warrant issued out of another court has been sent for execution receives any such notice as is referred to in paragraph (2)(a) after he has sent to the home court any money seized or received in part satisfaction of the warrant, he shall forward the notice to that court.

### **Withdrawal and suspension of warrant at creditor's request**

**Rule 10.**—(1) Where an execution creditor requests the district judge responsible for executing a warrant to withdraw from possession, he shall, subject to the following paragraphs of this rule, be treated as having abandoned the execution, and the court shall mark the warrant as withdrawn by request of the execution creditor.

(2) Where the request is made in consequence of a claim having been made under Order 33, rule 1, to goods seized under the warrant, the execution shall be treated as being abandoned in respect only of the goods claimed.

(3) If the district judge responsible for executing a warrant is requested by the execution creditor to suspend it in pursuance of an arrangement between him and the debtor, the court shall mark

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(16) 1986 c. 45.

the warrant as suspended by request of the execution creditor and the execution creditor may subsequently apply to the district judge holding the warrant for it to be re-issued and, if he does so, the application shall be deemed for the purpose of section 85 (3) of the Act to be an application to issue the warrant.

(4) Nothing in this rule shall prejudice any right of the execution creditor to apply for the issue of a fresh warrant or shall authorise the re-issue of a warrant which has been withdrawn or has expired or has been superseded by the issue of a fresh warrant.

### **Suspension of part warrant**

**Rule 11** Where a warrant issued for part of a sum of money and costs payable under a judgment or order is suspended on payment of instalments, the judgment or order shall, unless the court otherwise directs, be treated as suspended on those terms as respects the whole of the sum of money and costs then remaining unpaid.

### **Inventory and notice where goods removed**

**Rule 12.**—(1) Where goods seized in execution are removed, the court shall forthwith deliver or send to the debtor a sufficient inventory of the goods removed and shall, not less than 4 days before the time fixed for the sale, give him notice of the time and place at which the goods will be sold.

(2) The inventory and notice shall be given to the debtor by delivering them to him personally or by sending them to him by post at his place of residence or, if his place of residence is not known, by leaving them for him, or sending them to him by post, at the place from which the goods were removed.

### **Account of sale**

**Rule 13** Where goods are sold under an execution, the court shall furnish the debtor with a detailed account in writing of the sale and of the application of the proceeds.

### **Notification to foreign court of payment made**

**Rule 14** Where, after a warrant has been sent to a foreign court for execution but before a final return has been made to the warrant, the home court is notified of a payment made in respect of the sum for which the warrant is issued, the home court shall send notice of the payment to the foreign court.

### **Order for private sale**

**Rule 15.**—(1) Subject to paragraph (6), an order of the court under section 97 of the Act that a sale under an execution may be made otherwise than by public auction may be made on the application of the execution creditor or the debtor or the district judge responsible for the execution of the warrant.

(2) Where he is not the applicant for an order under this rule, the district judge responsible for the execution of the warrant shall, on the demand of the applicant, furnish him with a list containing the name and address of every execution creditor under any other warrant or writ of execution against the goods of the debtor of which the district judge has notice, and where the district judge is the applicant, he shall prepare such a list.

(3) Not less than 4 days before the day fixed for the hearing of the application, the applicant shall give notice of the application to each of the other persons by whom the application might have been made and to every person named in the list referred to in paragraph (2).

(4) The applicant shall produce the list to the court on the hearing of the application.

(5) Every person to whom notice of the application was given may attend and be heard on the hearing of the application.

(6) Where the district judge responsible for the execution of the warrant is the district judge by whom it was issued and he has no notice of any other warrant or writ of execution against the goods of the debtor, an order under this rule may be made by the court of its own motion with the consent of the execution creditor and the debtor or after giving them an opportunity of being heard.

### **Warrant of delivery**

**Rule 16.**—(1) Except where an Act or rule provides otherwise, a judgment or order for the delivery of any goods shall be enforceable by warrant of delivery in accordance with this rule.

(2) If the judgment or order does not give the person against whom it was given or made the alternative of paying the value of the goods, it may be enforced by a warrant of specific delivery, that is to say, a warrant to recover the goods without alternative provision for recovery of their value.

(3) If the judgment or order is for the delivery of the goods or payment of their value, it may be enforced by a warrant of delivery to recover the goods or their value.

(4) Where a warrant of delivery is issued, the judgment creditor shall be entitled, by the same or a separate warrant, to execution against the debtor's goods for any money payable under the judgment or order which is to be enforced by the warrant of delivery.

(4A) Where a judgment or order is given or made for the delivery of goods or payment of their value and a warrant is issued to recover the goods or their value, money paid into court under the warrant shall be appropriated first to any sum of money and costs awarded.

(5) The foregoing provisions of this Order, so far as applicable, shall have effect, with the necessary modifications, in relation to warrants of delivery as they have effect in relation to warrants of execution.

### **Warrant of possession**

**Rule 17.**—(1) A judgment or order for the recovery of land shall be enforceable by warrant of possession.

(2) Without prejudice to paragraph (3A), the person desiring a warrant of possession to be issued shall file a request in that behalf certifying that the land has not been vacated in accordance with the judgment or order for the recovery of the said land.

(3) Where a warrant of possession is issued, the judgment creditor shall be entitled, by the same or a separate warrant, to execution against the debtor's goods for any money payable under the judgment or order which is to be enforced by the warrant of possession.

(3A) In a case to which paragraph (3) applies or where an order for possession has been suspended on terms as to payment of a sum of money by instalments, the judgment creditor shall in his request certify—

- (a) the amount of money remaining due under the judgment or order; and
- (b) that the whole or part of any instalment due remains unpaid.

(4) A warrant of restitution may be issued, with the permission of the court, in aid of any warrant of possession.

(5) An application for permission under paragraph (4) may be made without notice being served on any other party and shall be supported by evidence of wrongful re-entry into possession following the execution of the warrant of possession and of such further facts as would, in the High Court, enable the judgment creditor to have a writ of restitution issued.

(6) Rules 5 and 6 shall apply, with the necessary modifications, in relation to a warrant of possession and any further warrant in aid of such a warrant as they apply in relation to a warrant of execution.

#### **Saving for enforcement by committal**

**Rule 18** Nothing in rule 16 or 17 shall prejudice any power to enforce a judgment or order for the delivery of goods or the recovery of land by an order of committal.

## CCR ORDER 27 ATTACHMENT OF EARNINGS

### **Part I—General**

#### **Interpretation**

**Rule 1.**—(1) In this Order—

“the Act of 1971” means the Attachment of Earnings Act 1971<sup>(17)</sup> and, unless the context otherwise requires, expressions used in that Act have the same meanings as in that Act;

#### **Index of orders**

**Rule 2.**—(1) The court officer of every court shall keep a nominal index of the debtors residing within the district of his court in respect of whom there are in force attachment of earnings orders which have been made by that court or of which the court officer has received notice from another court.

(2) Where a debtor in respect of whom a court has made an attachment of earnings order resides within the district of another court, the court officer of the first-mentioned court shall send a copy of the order to the court officer of the other court for entry in his index.

(3) The court officer shall, on the request of any person having a judgment or order against a person believed to be residing within the district of the court, cause a search to be made in the index of the court and issue a certificate of the result of the search.

#### **Appropriate court**

**Rule 3.**—(1) Subject to paragraphs (2) and (3), an application for an attachment of earnings order may be made to the court for the district in which the debtor resides.

(2) If the debtor does not reside within England or Wales, or the creditor does not know where he resides, the application may be made to the court in which, or for the district in which, the judgment or order sought to be enforced was obtained.

(3) Where the creditor applies for attachment of earnings orders in respect of two or more debtors jointly liable under a judgment or order, the application may be made to the court for the district in which any of the debtors resides, so however that if the judgment or order was given or made by any such court, the application shall be made to that court.

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(17) 1971 c. 32.



### **Mode of applying**

**Rule 4.**—(1) A judgment creditor who desires to apply for an attachment of earnings order shall file his application certifying the amount of money remaining due under the judgment or order and that the whole or part of any instalment due remains unpaid and, where it is sought to enforce an order of a magistrates' court—

- (a) a certified copy of the order; and
- (b) a witness statement or affidavit verifying the amount due under the order or, if payments under the order are required to be made to the clerk to the magistrates' court, a certificate by that clerk to the same effect.

(2) On the filing of the documents mentioned in paragraph (1) the court officer shall, where the order to be enforced is a maintenance order, fix a day for the hearing of the application.

### **Service and reply**

**Rule 5.**—(1) Notice of the application together with a form of reply in the appropriate form, shall be served on the debtor in the manner required for service of the notice of the day of hearing in accordance with Order 3, rule 6 except that Order 3, rule 6(11) shall not apply.

(2) The debtor shall, within 8 days after service on him of the documents mentioned in paragraph (1), file a reply in the form provided, and the instruction to that effect in the notice to the debtor shall constitute a requirement imposed by virtue of section 14 (4) of the Act of 1971:

Provided that no proceedings shall be taken for an offence alleged to have been committed under section 23 (2)(c) or (f) of the Act of 1971 in relation to the requirement unless the said documents have been served on the debtor personally or the court is satisfied that they came to his knowledge in sufficient time for him to comply with the requirement.

(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 or order and, where such payment is made, the judgment creditor shall so inform the court officer.

(3) On receipt of a reply the court officer shall send a copy to the applicant.

### **Notice to employer**

**Rule 6** Without prejudice to the powers conferred by section 14 (1) of the Act of 1971, the court officer may, at any stage of the proceedings, send to any person appearing to have the debtor in his employment a notice requesting him to give to the court, within such period as may be specified in the notice, a statement of the debtor's earnings and anticipated earnings with such particulars as may be so specified.

### **Attachment of earnings order**

**Rule 7.**—(1) On receipt of the debtor's reply, the court 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 court 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.

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(4) Where an order is not made under paragraph (1), the court 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 court 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 court 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 a witness statement or affidavit of evidence from him; or
- (b) the creditor requests the court in writing to proceed in his absence,

the court may 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.

### **Failure by debtor**

**Rule 7A.**—(1) If the debtor has failed to comply with rule 5 (2) or to make payment to the judgment creditor, the court 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 court 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) or (4) of that rule.

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

### **Suspended committal order**

**Rule 7B.**—(1) 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 judge or district judge may direct that the committal order shall be suspended so long as the debtor attends at the time and place specified in the committal order and paragraphs (2), (4) and (5) of Order 28, rule 7 shall apply, with

the necessary modifications, where such a direction is given as they apply where a direction is given under paragraph (1) of that rule.

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

### **Failure by debtor—maintenance orders**

**Rule 8.**—(1) An order made under section 23 (1) of the Act of 1971<sup>(18)</sup> for the attendance of the debtor at an adjourned hearing of an application for an attachment of earnings order to secure payments under a maintenance order shall—

- (a) be served on the debtor personally not less than 5 days before the day fixed for the adjourned hearing; and
- (b) direct that any payments made thereafter shall be paid into the court and not direct to the judgment creditor.

(2) An application by a debtor for the revocation of an order committing him to prison and, if he is already in custody, for his discharge under subsection (7) of the said section 23 shall be made to the judge or district judge in writing without notice to any other party showing the reasons for the debtor's failure to attend the court or his refusal to be sworn or to give evidence, as the case may be, and containing an undertaking by the debtor to attend the court or to be sworn or to give evidence when next ordered or required to do so.

(3) The application shall, if the debtor has already been lodged in prison, be attested by the governor of the prison (or any other officer of the prison not below the rank of principal officer) and in any other case be made on witness statement or affidavit.

(4) Before dealing with the application the judge or district judge may, if he thinks fit, cause notice to be given to the judgment creditor that the application has been made and of a day and hour when he may attend and be heard.

### **Costs**

**Rule 9.**—(1) Where costs are allowed to the judgment creditor on an application for an attachment of earnings order, there may be allowed—

- (a) a charge of a solicitor for attending the hearing and, if the court so directs, for serving the application;
- (b) if the court certifies that the case is fit for counsel, a fee to counsel; and
- (c) the court fee on the issue of the application.

(2) For the purpose of paragraph (1)(a) a solicitor who has prepared on behalf of the judgment creditor a witness statement or affidavit or request under rule 7 (8) shall be treated as having attended the hearing.

(3) The costs may be fixed and allowed without detailed assessment under CPR Part 47.

### **Contents and service of order**

**Rule 10.**—(1) An attachment of earnings order shall contain such of the following particulars relating to the debtor as are known to the court, namely—

- (a) his full name and address;
- (b) his place of work; and

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(18) 1971 c. 32; section 23(1) was amended by the Administration of Justice Act 1982 (c. 53), section 53(2).

(c) the nature of his work and his works number, if any,  
and those particulars shall be the prescribed particulars for the purposes of section 6 (3) of the Act of 1971.

(2) An attachment of earnings order and any order varying or discharging such an order shall be served on the debtor and on the person to whom the order is directed, and CPR Part 6 and CPR rules 40.4 and 40.5 shall apply with the further modification that where the order is directed to a corporation which has requested the court that any communication relating to the debtor or to the class of persons to whom he belongs shall be directed to the corporation at a particular address, service may, if the district judge thinks fit, be effected on the corporation at that address.

(3) Where an attachment of earnings order is made to enforce a judgment or order of the High Court or a magistrates' court, a copy of the attachment of earnings order and of any order discharging it shall be sent by the court officer of the county court to the court officer of the High Court, or, as the case may be, the clerk of the magistrates' court.

### **Application to determine whether particular payments are earnings**

**Rule 11** An application to the court under section 16 of the Act of 1971 to determine whether payments to the debtor of a particular class or description are earnings for the purpose of an attachment of earnings order may be made to the district judge in writing and the court officer shall thereupon fix a date and time for the hearing of the application by the court and give notice thereof to the persons mentioned in the said section 16 (2)(a), (b) and (c).

### **Notice of cesser**

**Rule 12** Where an attachment of earnings order ceases to have effect under section 8 (4) of the Act of 1971, the court officer of the court in which the matter is proceeding shall give notice of the cesser to the person to whom the order was directed.

### **Variation and discharge by court of own motion**

**Rule 13.**—(1) Subject to paragraph (9), the powers conferred by section 9 (1) of the Act of 1971 may be exercised by the court of its own motion in the circumstances mentioned in the following paragraphs.

(2) Where it appears to the court that a person served with an attachment of earnings order directed to him has not the debtor in his employment, the court may discharge the order.

(3) Where an attachment of earnings order which has lapsed under section 9 (4) of the Act of 1971 is again directed to a person who appears to the court to have the debtor in his employment, the court may make such consequential variations in the order as it thinks fit.

(4) Where, after making an attachment of earnings order, the court makes or is notified of the making of another such order in respect of the same debtor which is not to secure the payment of a judgment debt or payments under an administration order, the court may discharge or vary the first-mentioned order having regard to the priority accorded to the other order by paragraph 8 of Schedule 3 to the Act of 1971.

(5) Where, after making an attachment of earnings order, the court makes an order under section 4 (1)(b) of the Act of 1971(19) or makes an administration order, the court may discharge the attachment of earnings order or, if it exercises the power conferred by section 5 (3) of the said Act, may vary the order in such manner as it thinks fit.

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(19) 1971 c. 32; section 4 was amended by the Insolvency Act 1976 (c. 60), section 13(2); and by the County Courts Act 1984 (c. 28), section 148(1), schedule 2, Part V, paragraph 40.

(6) On making a consolidated attachment of earnings order the court may discharge any earlier attachment of earnings order made to secure the payment of a judgment debt by the same debtor.

(7) Where it appears to the court that a bankruptcy order has been made against a person in respect of whom an attachment of earnings order is in force to secure the payment of a judgment debt, the court may discharge the attachment of earnings order.

(8) Where an attachment of earnings order has been made to secure the payment of a judgment debt and the court grants permission to issue execution for the recovery of the debt, the court may discharge the order.

(9) Before varying or discharging an attachment of earnings order of its own motion under any of the foregoing paragraphs of this rule, the court shall, unless it thinks it unnecessary in the circumstances to do so, give the debtor and the person on whose application the order was made an opportunity of being heard on the question whether the order should be varied or discharged, and for that purpose the court officer may give them notice of a date, time and place at which the question will be considered.

### **Transfer of attachment order**

**Rule 14.**—(1) Where the court by which the question of making a consolidated attachment order falls to be considered is not the court by which any attachment of earnings order has been made to secure the payment of a judgment debt by the debtor, the district judge of the last-mentioned court shall, at the request of the district judge of the first-mentioned court, transfer to that court the matter in which the attachment of earnings order was made.

(2) Without prejudice to paragraph (1), if in the opinion of the judge or district judge of any court by which an attachment of earnings order has been made, the matter could more conveniently proceed in some other court, whether by reason of the debtor having become resident in the district of that court or otherwise, he may order the matter to be transferred to that court.

(3) The court to which proceedings arising out of an attachment of earnings are transferred under this rule shall have the same jurisdiction in relation to the order as if it has been made by that court.

### **Exercise of power to obtain statement of earnings etc.**

**Rule 15.**—(1) An order under section 14 (1) of the Act of 1971 shall be indorsed with or incorporate a notice warning the person to whom it is directed of the consequences of disobedience to the order and shall be served on him personally.

(2) Order 34, rule 2, shall apply, with the necessary modifications, in relation to any penalty for failure to comply with an order under the said section 14 (1) or, subject to the proviso to rule 5 (2), any penalty for failure to comply with a requirement mentioned in that rule, as it applies in relation to a fine under section 55 of the County Courts Act 1984(20).

### **Offences**

**Rule 16.**—(1) Where it is alleged that a person has committed any offence mentioned in section 23 (2)(a), (b), (d), (e) or (f) of the Act of 1971 in relation to proceedings in, or to an attachment of earnings order made by, a county court, the district judge shall, unless it is decided to proceed against the alleged offender summarily, issue a summons calling upon him to show cause why he should not be punished for the alleged offence.

The summons shall be served on the alleged offender personally not less than 14 days before the return day.

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(20) 1984 c. 28.

*Status: This is the original version (as it was originally made).*

(2) Order 34, rules 3 and 4, shall apply, with the necessary modifications, to proceedings for an offence under section 23 (2) of the Act of 1971 as they apply to proceedings for offences under the County Courts Act 1984<sup>(21)</sup>.

### **Maintenance orders**

**Rule 17.**—(1) The foregoing rules of this Order shall apply in relation to maintenance payments as they apply in relation to a judgment debt, subject to the following paragraphs.

(2) An application for an attachment of earnings order to secure payments under a maintenance order made by a county court shall be made to that county court.

(3) Any application under section 32 of the Matrimonial Causes Act 1973<sup>(22)</sup> for permission to enforce the payment of arrears which became due more than 12 months before the application for an attachment of earnings order shall be made in that application.

(3A) Notice of the application together with a form of reply in the appropriate form shall be served in the manner required for service of the notice of the day of hearing in accordance with Order 3, rule 6.

(3B) Rule 5 (1) shall apply and rule 5 (2A) shall not apply.

(4) An application by the debtor for an attachment of earnings order to secure payments under a maintenance order may be made on the making of the maintenance order or an order varying the maintenance order, and rules 4 and 5 shall not apply.

(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 private.”

(6) Rule 9 shall apply as if for the reference to the amount payable under the relevant adjudication there were substituted a reference to the arrears due under the related maintenance order.

(7) Where an attachment of earnings order made by the High Court designates the court officer of a county court as the collecting officer, that officer shall, on receipt of a certified copy of the order from the court officer of the High Court, send to the person to whom the order is directed a notice as to the mode of payment.

(8) Where an attachment of earnings order made by a county court to secure payments under a maintenance order ceases to have effect and—

(a) the related maintenance order was made by that court; or

(b) the related maintenance order was an order of the High Court and—

(i) the court officer of the county court has received notice of the cessation from the court officer of the High Court; or

(ii) a committal order has been made in the county court for the enforcement of the related maintenance order,

the court officer of the county court shall give notice of the cessation to the person to whom the attachment of earnings order was directed.

(9) Where an attachment of earnings order has been made by a county court to secure payments under a maintenance order, notice under section 10 (2) of the Act of 1971 to the debtor and to the person to whom the district judge is required to pay sums received under the order shall be in the form provided for that purpose, and if the debtor wishes to request the court to discharge the attachment

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<sup>(21)</sup> 1984 c. 28.

<sup>(22)</sup> 1973 c. 18.

of earnings order or to vary it otherwise than by making the appropriate variation, he shall apply to the court, within 14 days after the date of the notice, for the remedy desired.

(10) Rule 13 shall have effect as if for paragraphs (4) to (7) there were substituted the following paragraph:—

“(4) Where it appears to the court by which an attachment of earnings order has been made that the related maintenance order has ceased to have effect, whether by virtue of the terms of the maintenance order or under section 28 of the Matrimonial Causes Act 1973(23) or otherwise, the court may discharge or vary the attachment of earnings order.”

## **Part II—Consolidated Attachment of Earnings Orders**

### **Cases in which consolidated order may be made**

**Rule 18** Subject to the provisions of rules 19 to 21, the court may make a consolidated attachment order where—

- (a) two or more attachment of earnings orders are in force to secure the payment of judgment debts by the same debtor; or
- (b) on an application for an attachment of earnings order to secure the payment of a judgment debt, or for a consolidated attachment order to secure the payment of two or more judgment debts, it appears to the court that an attachment of earnings order is already in force to secure the payment of a judgment debt by the same debtor.

### **Application for consolidated order**

**Rule 19.**—(1) An application for a consolidated attachment order may be made—

- (a) by the debtor in respect of whom the order is sought; or
- (b) by any person who has obtained or is entitled to apply for an attachment of earnings order to secure the payment of a judgment debt by that debtor.

(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 court 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 court 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 court officer shall refer the application to the district judge who may grant the application after considering the objection made and the reasons given.

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(23) 1973 c. 18; section 28(1) was amended by the Matrimonial and Family Proceedings Act 1984 (c. 42), section 5.

*Status: This is the original version (as it was originally made).*

- (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.
- (4) A person to whom two or more attachment of earnings orders are directed to secure the payment of judgment debts by the same debtor may request the court in writing to make a consolidated attachment order to secure the payment of those debts, and on receipt of such a request paragraphs (3B) to (3E) shall apply, with the necessary modifications, as if the request were an application by the judgment creditor.

#### **Making of consolidated order by court of its own motion**

**Rule 20** Where an application is made for an attachment of earnings order to secure the payment of a judgment debt by a debtor in respect of whom an attachment of earnings order is already in force to secure the payment of another judgment debt and no application is made for a consolidated attachment order, the court officer may make such an order of his own motion after giving all persons concerned an opportunity of submitting written objections.

#### **Extension of consolidated order**

**Rule 21.**—(1) Where a consolidated attachment order is in force to secure the payment of two or more judgment debts, any creditor to whom another judgment debt is owed by the same judgment debtor may apply to the court by which the order was made for it to be extended so as to secure the payment of that debt as well as the first-mentioned debts and, if the application is granted, the court may either vary the order accordingly or may discharge it and make a new consolidated attachment order to secure payment of all the aforesaid judgment debts.

(2) An application under this rule shall be treated for the purposes of rules 19 and 20 as an application for a consolidated attachment order.

#### **Payments under consolidated order**

**Rule 22** Instead of complying with section 13 of the Act of 1971, a court officer who receives payments made to him in compliance with a consolidated attachment order shall, after deducting such court fees, if any, in respect of proceedings for or arising out of the order as are deductible from those payments, deal with the sums paid as he would if they had been paid by the debtor to satisfy the relevant adjudications in proportion to the amounts payable thereunder, and for that purpose dividends may from time to time be declared and distributed among the creditors entitled thereto.

## CCR ORDER 28

### JUDGMENT SUMMONSES

#### **Application for judgment summons**

**Rule 1.**—(1) An application for the issue of a judgment summons may be made to the court for the district in which the debtor resides or carries on business or, if the summons is to issue against two or more persons jointly liable under the judgment or order sought to be enforced, in the court for the district in which any of the debtors resides or carries on business.



(2) The judgment creditor shall make his application by filing a request in that behalf certifying the amount of money remaining due under the judgment or order, the amount in respect of which the judgment summons is to issue and that the whole or part of any instalment due remains unpaid.

### **Mode of service**

**Rule 2.**—(1) Subject to paragraph (2), a judgment summons shall be served personally on every debtor against whom it is issued.

(2) Where the judgment creditor or his solicitor gives a certificate for postal service in respect of a debtor residing or carrying on business within the district of the court, the judgment summons shall, unless the district judge otherwise directs, be served on that debtor by an officer of the court sending it to him by first-class post at the address stated in the request for the judgment summons and, unless the contrary is shown, the date of service shall be deemed to be the seventh day after the date on which the judgment summons was sent to the debtor.

(3) Where a judgment summons has been served on a debtor in accordance with paragraph (2), no order of commitment shall be made against him unless—

- (a) he appears at the hearing; or
- (b) the judge is satisfied that the summons came to his knowledge in sufficient time for him to appear at the hearing.

(4) Where a judgment summons is served personally, there may, if the judgment creditor so desires, be paid to the debtor at the time of service a sum reasonably sufficient to cover his expenses in travelling to and from the court.

### **Time for service**

**Rule 3.**—(1) A judgment summons shall be served not less than 14 days before the day fixed for the hearing.

(2) A notice of non-service shall be sent pursuant to CPR rule 6.11 in respect of a judgment summons which has been sent by post under rule 2 (2) and has been returned to the court office undelivered.

(3) CPR rules 7.5 and 7.6 shall apply, with the necessary modifications, to a judgment summons as they apply to a claim form.

### **Enforcement of debtor's attendance**

**Rule 4.**—(1) Order 27, rules 7B and 8, shall apply, with the necessary modifications, to an order made under section 110 (1) of the Act for the attendance of the debtor at an adjourned hearing of a judgment summons as they apply to an order made under section 23 (1) of the Attachment of Earnings Act 1971<sup>(24)</sup> for the attendance of the debtor at an adjourned hearing of an application for an attachment of earnings order.

(2) At the time of service of the order there shall be paid or tendered to the debtor a sum reasonably sufficient to cover his expenses in travelling to and from the court, unless such a sum was paid to him at the time of service of the judgment summons.

### **Evidence by witness statement or affidavit**

**Rule 5** Where the judgment creditor does not reside or carry on business within the district of the court from which the judgment summons issued, evidence by witness statement or affidavit shall be admissible on his behalf without any notice having been given, unless the judge otherwise directs.

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(24) 1971 c. 32; section 23(1) was amended by the Administration of Justice Act 1982 (c. 53), section 53(2).

### **Suspension of committal order**

**Rule 7.**—(1) If on the hearing of a judgment summons a committal order is made, the judge may direct execution of the order to be suspended to enable the debtor to pay the amount due.

(2) A note of any direction given under paragraph (1) shall be entered in the records of the court and notice of the suspended committal order shall be sent to the debtor.

(3) Where a judgment summons is issued in respect of one or more but not all of the instalments payable under a judgment or order for payment by instalments and a committal order is made and suspended under paragraph (1), the judgment or order shall, unless the judge otherwise orders, be suspended for so long as the execution of the committal order is suspended.

(4) Where execution of a committal order is suspended under paragraph (1) and the debtor subsequently desires to apply for a further suspension, the debtor shall attend at or write to the court office and apply for the suspension he desires, stating the reasons for his inability to comply with the terms of the original suspension, and the court shall fix a day for the hearing of the application by the judge and give at least 3 days' notice thereof to the judgment creditor and the debtor.

(5) The district judge may suspend execution of the committal order pending the hearing of an application under paragraph (4).

### **New order on judgment summons**

**Rule 8.**—(1) Where on the hearing of a judgment summons, the judge makes a new order for payment of the amount of the judgment debt remaining unpaid, there shall be included in the amount payable under the order for the purpose of any enforcement proceedings, otherwise than by judgment summons, any amount in respect of which a committal order has already been made and the debtor imprisoned.

(2) No judgment summons under the new order shall include any amount in respect of which the debtor was imprisoned before the new order was made, and any amount subsequently paid shall be appropriated in the first instance to the amount due under the new order.

### **Notification of order on judgment of High Court**

**Rule 9.**—(1) Notice of the result of the hearing of a judgment summons on a judgment or order of the High Court shall be sent by the county court to the High Court.

(2) If a committal order or a new order for payment is made on the hearing, the office copy of the judgment or order filed under Order 25, rule 11, shall be deemed to be a judgment or order of the court in which the judgment summons is heard, and if the judgment creditor subsequently desires to issue a judgment summons in another county court, Order 25, rule 2, shall apply with the necessary modifications.

### **Costs on judgment summons**

**Rule 10.**—(1) No costs shall be allowed to the judgment creditor on the hearing of a judgment summons unless—

- (a) a committal order is made; or
  - (b) the sum in respect of which the judgment summons was issued is paid before the hearing.
- (2) Where costs are allowed to the judgment creditor,
- (a) there may be allowed—
    - (i) a charge of the judgment creditor's solicitor for attending the hearing and, if the judge so directs, for serving the judgment summons;
    - (ii) a fee to counsel if the court certifies that the case is fit for counsel;

- (iii) any travelling expenses paid to the debtor, and
- (iv) the court fee on the issue of the judgment summons;

(b) the costs may be fixed and allowed without detailed assessment under CPR Part 47.

(3) For the purposes of paragraph (2)(a)(i) a solicitor who has prepared on behalf of the judgment creditor a witness statement or affidavit under rule 5 shall be treated as having attended the hearing.

### **Issue of warrant of committal**

**Rule 11.**—(1) A judgment creditor desiring a warrant to be issued pursuant to a committal order shall file a request in that behalf.

(2) Where two or more debtors are to be committed in respect of the same judgment or order, a separate warrant of committal shall be issued for each of them.

(3) Where a warrant of committal is sent to a foreign court for execution, that court shall indorse on it a notice as to the effect of section 122 (3) of the Act addressed to the governor of the prison of that court.

### **Notification to foreign court of part payment before debtor lodged in prison**

**Rule 12** Where, after a warrant of committal has been sent to a foreign court for execution but before the debtor is lodged in prison, the home court is notified that an amount which is less than the sum on payment of which the debtor is to be discharged has been paid, the home court shall send notice of the payment to the foreign court.

### **Payment after debtor lodged in prison**

**Rule 13.**—(1) Where, after the debtor has been lodged in prison under a warrant of committal, payment is made of the sum on payment of which the debtor is to be discharged, then—

- (a) if the payment is made to the court responsible for the execution of the warrant, he shall make and sign a certificate of payment and send it by post or otherwise to the gaoler;
- (b) if the payment is made to the court which issued the warrant of committal after the warrant has been sent to a foreign court for execution, the home court shall send notice of the payment to the foreign court, which shall make and sign a certificate of payment and send it by post or otherwise to the gaoler;
- (c) if the payment is made to the gaoler, he shall sign a certificate of payment and send the amount to the court which made the committal order.

(2) Where, after the debtor has been lodged in prison under a warrant of committal, payment is made of an amount less than the sum on payment of which the debtor is to be discharged, then subject to paragraph (3), paragraph (1)(a) and (b) shall apply with the substitution of references to a notice of payment for the references to a certificate of payment and paragraph (1)(c) shall apply with the omission of the requirement to make and sign a certificate of payment.

(3) Where, after the making of a payment to which paragraph (2) relates, the balance of the sum on payment of which the debtor is to be discharged is paid, paragraph (1) shall apply without the modifications mentioned in paragraph (2).

### **Discharge of debtor otherwise than on payment**

**Rule 14.**—(1) Where the judgment creditor lodges with the district judge a request that a debtor lodged in prison under a warrant of committal may be discharged from custody, the district judge shall make an order for the discharge of the debtor in respect of the warrant of committal and the court shall send the gaoler a certificate of discharge.

*Status: This is the original version (as it was originally made).*

(2) Where a debtor who has been lodged in prison under a warrant of committal desires to apply for his discharge under section 121 of the Act, the application shall be made to the judge in writing and without notice showing the reasons why the debtor alleges that he is unable to pay the sum in respect of which he has been committed and ought to be discharged and stating any offer which he desires to make as to the terms on which his discharge is to be ordered, and Order 27, rule 8 (3) and (4), shall apply, with the necessary modifications, as it applies to an application by a debtor for his discharge from custody under section 23 (7) of the Attachment of Earnings Act 1971<sup>(25)</sup>.

(3) If in a case to which paragraph (2) relates the debtor is ordered to be discharged from custody on terms which include liability to re-arrest if the terms are not complied with, the judge may, on the application of the judgment creditor if the terms are not complied with, order the debtor to be re-arrested and imprisoned for such part of the term of imprisonment as remained unserved at the time of discharge.

(4) Where an order is made under paragraph (3), a duplicate warrant of committal shall be issued, indorsed with a certificate signed by the court officer as to the order of the judge.

## CCR ORDER 29

### COMMITTAL FOR BREACH OF ORDER OR UNDERTAKING

#### **Enforcement of judgment to do or abstain from doing any act**

**Rule 1.**—(1) Where a person required by a judgment or order to do an act refuses or neglects to do it within the time fixed by the judgment or order or any subsequent order, or where a person disobeys a judgment or order requiring him to abstain from doing an act, then, subject to the Debtors Acts 1869 and 1878<sup>(26)</sup> and to the provisions of these rules, the judgment or order may be enforced, by order of the judge, by a committal order against that person or, if that person is a body corporate, against any director or other officer of the body.

(2) Subject to paragraphs (6) and (7), a judgment or order shall not be enforced under paragraph (1) unless—

- (a) a copy of the judgment or order has been served personally on the person required to do or abstain from doing the act in question and also, where that person is a body corporate, on the director or other officer of the body against whom a committal order is sought, and
- (b) in the case of a judgment or order requiring a person to do an act, the copy has been so served before the expiration of the time within which he was required to do the act and was accompanied by a copy of any order, made between the date of the judgment or order and the date of service, fixing that time.

(3) Where a judgment or order enforceable by committal order under paragraph (1) has been given or made, the court officer shall, if the judgment or order is in the nature of an injunction, at the time when the judgment or order is drawn up, and in any other case on the request of the judgment creditor, issue a copy of the judgment or order, indorsed with or incorporating a notice as to the consequences of disobedience, for service in accordance with paragraph (2).

(4) If the person served with the judgment or order fails to obey it, the judgment creditor may issue a claim form or, as the case may be, an application notice seeking the committal for contempt of court of that person and subject to paragraph (7), the claim form or application notice shall be served on him personally.

(4A) The claim form or application notice (as the case may be) shall:—

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<sup>(25)</sup> 1971 c. 32.

<sup>(26)</sup> 1869 c. 62; 1878 c. 54.

- (a) identify the provisions of the injunction or undertaking which it is alleged have been disobeyed or broken;
  - (b) list the ways in which it is alleged that the injunction has been disobeyed or the undertaking has been broken.
  - (c) be supported by an affidavit stating the grounds on which the application is made, and unless service is dispensed with under paragraph (7), a copy of the affidavit shall be served with the claim form or application notice.
- (5) If a committal order is made, the order shall be for the issue of a warrant of committal and, unless the judge otherwise orders—
- (a) a copy of the order shall be served on the person to be committed either before or at the time of the execution of the warrant; or
  - (b) where the warrant has been signed by the judge, the order for issue of the warrant may be served on the person to be committed at any time within 36 hours after the execution of the warrant.
- (6) A judgment or order requiring a person to abstain from doing an act may be enforced under paragraph (1) notwithstanding that service of a copy of the judgment or order has not been effected in accordance with paragraph (2) if the judge is satisfied that, pending such service, the person against whom it is sought to enforce the judgment or order has had notice thereof either—
- (a) by being present when the judgment or order was given or made, or
  - (b) by being notified of the terms of the judgment or order whether by telephone, telegram or otherwise.
- (7) Without prejudice to its powers under Part 6 of the CPR, the court may dispense with service of a copy of a judgment or order under paragraph (2) or a claim form or application notice under paragraph (4) if the court thinks it just to do so.
- (8) Where service of the claim form or application notice has been dispensed with under paragraph (7) and a committal order is made in the absence of the respondent, the judge may on his own initiative fix a date and time when the person to be committed is to be brought before him or before the court.

### **Undertaking given by party**

**Rule 1A** Rule 1 (except paragraph (6)) shall apply to undertakings as it applies to orders with the necessary modifications and as if—

- (a) for paragraph (2) of that rule there were substituted the following—
  - “(2) A copy of the document recording the undertaking shall be delivered by the court officer to the party giving the undertaking—
  - (a) by handing a copy of the document to him before he leaves the court building; or
  - (b) where his place of residence is known, by posting a copy to him at his place of residence; or
  - (c) through his solicitor,and, where delivery cannot be effected in this way, the court officer shall deliver a copy of the document to the party for whose benefit the undertaking is given and that party shall cause it to be served personally as soon as is practicable.”
- (b) in paragraph (7), the words from “a copy of” to “paragraph (2) or” were omitted.

### **Solicitor's undertaking**

**Rule 2.**—(1) An undertaking given by a solicitor in relation to any proceeding in a county court may be enforced, by order of the judge of that court, by committal order against the solicitor.

(2) Where it appears to the judge that a solicitor has failed to carry out any such undertaking, he may of his own initiative direct the court officer to issue a notice calling on the solicitor to show cause why he should not be committed to prison.

(3) Where any party to the proceedings desires to have the undertaking enforced by committal order, the court officer shall, on the application of the party supported by an affidavit setting out the facts on which the application is based, issue such a notice as is referred to in paragraph (2).

### **Discharge of person in custody**

**Rule 3.**—(1) Where a person in custody under a warrant or order, other than a warrant of committal to which Order 27, rule 8, or Order 28, rule 4 or 14, relates, desires to apply to the court for his discharge, he shall make his application in writing attested by the governor of the prison (or any other officer of the prison not below the rank of principal officer) showing that he has purged or is desirous of purging his contempt and shall, not less than one day before the application is made, serve notice of it on the party, if any, at whose instance the warrant or order was issued.

(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<sup>(27)</sup>,

any application for discharge may be made to the district judge.

(3) Nothing in paragraph (1) shall apply to an application made by the Official Solicitor in his official capacity for the discharge of a person in custody.

## **CCR ORDER 30**

### **GARNISHEE PROCEEDINGS**

#### **Attachment of debt due to judgment debtor**

**Rule 1.**—(1) Where a person (in this Order called “the judgment creditor”) has obtained in a county court a judgment or order for the payment of a sum of money amounting in value to at least £50 by some other person (“the judgment debtor”) and any person within England and Wales (“the garnishee”) is indebted to the judgment debtor, that court may, subject to the provisions of this Order and of any enactment, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due from the garnishee to the judgment debtor or so much thereof as is sufficient to satisfy the judgment or order against the judgment debtor and the costs of the garnishee proceedings.

(2) An order under this rule shall in the first instance be an order to show cause, specifying the place and time for the further consideration of the matter (in this Order called “the return day”) and in the meantime attaching the debt due or accruing due from the garnishee or so much of it as is sufficient for the purpose aforesaid.

(3) Among the conditions mentioned in section 108 (3) of the Act (which enables any sum standing to the credit of a person in certain types of account to be attached notwithstanding that certain conditions applicable to the account in question have not been satisfied) there shall be

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<sup>(27)</sup> Section 118 was amended by the Statute Law (Repeals) Act 1986 (c. 12); and by the Courts and Legal Services Act 1990 (c. 41), section 74(6).

included any condition that a receipt for money deposited in the account must be produced before any money is withdrawn.

(5) An order under this rule shall not require a payment which would reduce below £1 the amount standing in the name of the judgment debtor in an account with a building society or a credit union.

### **Application for order**

**Rule 2** An application for an order under rule 1 may be made without notice being served on any other party by filing a witness statement or affidavit—

- (a) stating the name and last known address of the judgment debtor;
- (b) identifying the judgment or order to be enforced and stating the amount of such judgment or order;
- (c) stating that, to the best of the information or belief of the witness, the garnishee (giving his name and address) is indebted to the judgment debtor;
- (d) where the garnishee is a deposit-taking institution having more than one place of business, giving the name and address of the branch at which the judgment debtor's account is believed to be held and the number of that account or, if it be the case, that all or part of this information is unknown to the witness; and
- (e) certifying the amount of money remaining due under the judgment or order and that the whole or part of any instalment due remains unpaid.

### **Preparation, service and effect of order to show cause**

**Rule 3.**—(1) An order under rule 1 to show cause shall be drawn up by the court with sufficient copies for service under this rule.

(2) Unless otherwise directed, a copy of the order shall be served—

- (a) on the garnishee in the manner required for the notice of the day of hearing in accordance with Order 3, rule 6 at least 15 days before the return day;
- (b) on the judgment debtor in accordance with CPR Part 6 at least 7 days after a copy has been served on the garnishee and at least 7 days before the return day,

and as from such service on the garnishee the order shall bind in his hands any debt due or accruing due from the garnishee to the judgment debtor, or so much thereof as is sufficient to satisfy the judgment or order obtained by the judgment creditor against the judgment debtor, and the costs entered on the order to show cause.

### **Notice by deposit-taking institution denying indebtedness**

**Rule 5** Where the garnishee being a deposit-taking institution alleges that it does not hold any money to the credit of the judgment debtor, the garnishee may, at any time before the return day, give notice to that effect to the court and to the judgment creditor and thereupon, subject to rule 8 the proceedings against the garnishee shall be stayed.

### **Order where no notice given etc.**

**Rule 7.**—(1) Where the garnishee—

- (a) does not give notice under rule 5; and
- (b) does not on the return day appear or dispute the debt due or claimed to be due from him to the judgment debtor,

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then, if the judgment debtor does not appear or show cause to the contrary, the court may, if it thinks fit, make an order absolute under rule 1 against the garnishee.

(2) An order absolute under rule 1 may be enforced in the same manner as any other order for the payment of money.

#### **Directions where dispute as to notice under rule 5**

**Rule 8** Where the garnishee in a notice given under rule 5 makes an allegation which the judgment creditor disputes, the court shall on the return day give directions for the determination of the question at issue.

#### **Determination of liability in other cases**

**Rule 9** Where in a case in which no notice has been given under rule 5 the garnishee on the return day disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the court may summarily determine the question at issue or order that any question necessary for determining the liability of the garnishee be tried in any manner in which any question or issue in proceedings may be tried.

#### **Transfer of proceedings**

**Rule 10** A garnishee who does not reside or carry on business within the district of the court in which the garnishee proceedings have been commenced and who desires to dispute liability for the debt due or claimed to be due from him to the judgment debtor may apply without notice being served on any other party in writing to that court for an order transferring the proceedings in which the judgment or order sought to be enforced was obtained to the court for the district in which the garnishee resides or carries on business, and the court applied to may, if it thinks fit, grant the application after considering any representations which it may give the judgment creditor and the judgment debtor an opportunity of making.

#### **Discharge of garnishee**

**Rule 11** Any payment made by a garnishee in compliance with an order absolute in garnishee proceedings, and any execution levied against him in pursuance of such an order, shall be a valid discharge of his liability to the judgment debtor to the extent of the amount paid or levied (otherwise than in respect of any costs ordered to be paid by the garnishee personally), notwithstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which they arise is reversed.

#### **Money in court**

**Rule 12.**—(1) Where money is standing to the credit of the judgment debtor in any county court, the judgment creditor shall not be entitled to take garnishee proceedings in respect of the money but may apply to the court on notice for an order that the money or so much of it as is sufficient to satisfy the judgment or order sought to be enforced and the costs of the application be paid to the judgment creditor.

(2) On receipt of notice of an application under paragraph (1) the court officer shall retain the money in court until the application has been determined.

(3) The court hearing an application under paragraph (1) may make such order with respect to the money in court as it thinks just.



### **Costs of judgment creditor**

**Rule 13** Any costs allowed to the judgment creditor on an application for an order under rule 1 or 12 which in the former case are not ordered to be paid by the garnishee personally shall, unless the court otherwise directs be retained by the judgment creditor out of the money recovered by him under the order in priority to the amount due under the judgment or order obtained by him against the judgment debtor.

### **Attachment of debt owed by firm**

**Rule 14.**—(1) An order may be made under rule 1 in relation to a debt due or accruing due from a firm carrying on business within England and Wales, notwithstanding that one or more members of the firm may be resident out of England and Wales.

(2) An order to show cause under rule 1 relating to such a debt shall be served on a member of the firm within England and Wales or on some other person having the control or management of the partnership business.

### **Powers of district judge**

**Rule 15** The powers conferred on the court by any provision of this Order may be exercised by the judge or district judge.

## **CCR ORDER 31**

### **CHARGING ORDERS**

#### **Application for charging order**

**Rule 1.**—(1) An application to a county court for a charging order under section 1 of the Charging Orders Act 1979<sup>(28)</sup> may be made—

- (a) if the order is sought in respect of a fund in court, to the court where the money is lodged;
- (b) subject to (a), if the judgment or order sought to be enforced is that of a county court, to the court in which the judgment or order was obtained or, if the proceedings have been transferred to another court under CPR rule 30.2(1)(b)(ii) or Order 25, rule 2, the court to which it has been transferred.
- (c) subject to (a) and (b), to the court for the district in which the debtor resides or carries on business or, if there is no such district, to the court for the district in which the judgment creditor resides or carries on business.

(1A) An application for a charging order under paragraph 11 of Schedule 4 to the Local Government Finance Act 1992<sup>(29)</sup> shall be made to the court for the district in which the relevant dwelling (within the meaning of section 3 of that Act) is situated.

(2) The application may be made without notice being served on any other party by filing a witness statement or affidavit—

- (a) stating the name and address of the debtor and, if known, of every creditor of his whom the applicant can identify;
- (aa) certifying the amount of money remaining due under the judgment or order and that the whole or part of any instalment due remains unpaid;

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<sup>(28)</sup> 1979 c. 53; section 1 was amended by the Administration of Justice Act 1982 (c. 53) sections 34(3), 37, schedule 3, Part II, paragraphs 2, 3, 6; and by the County Courts Act 1984 (c. 28), section 148(1), schedule 2, Part V.

<sup>(29)</sup> 1992 c. 14.

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- (b) identifying the subject matter of the intended charge;
- (c) either verifying the debtor's beneficial ownership of the asset to be charged or, where the asset is held by one or more trustees (including where the asset is land which is jointly owned) and the applicant relies on paragraph (b) of section 2 (1) of the said Act of 1979, stating on which of the three grounds appearing in that paragraph the application is based and verifying the material facts;
- (d) stating, in the case of securities other than securities in court, the name and address of the person or body to be served for the purpose of protecting the intended charge;
- (e) stating, where the subject matter is an interest under a trust, or held by a trustee, the names and addresses of such trustees and beneficiaries as are known to the applicant.

Where the judgment or order to be enforced is a judgment or order of the High Court or a judgment, order, decree or award of a court or arbitrator which is or has become enforceable as if it were a judgment or order of the High Court, the applicant shall file with his witness statement or affidavit the documents mentioned in Order 25, rule 11 (a) and (c), and the witness statement or affidavit shall verify the amount unpaid at the date of the application.

(3) Subject to paragraph (1), an application may be made for a single charging order in respect of more than one judgment or order against a debtor.

(4) Upon the filing of the witness statement or affidavit mentioned in paragraph (2), the application shall be entered in the records of the court, and if, in the opinion of the district judge, a sufficient case for such an order is made in the witness statement or affidavit, the district judge shall make a charging order nisi fixing a day for the further consideration of the matter by the court.

(5) A copy of the order shall be sent by the court officer to the judgment creditor and, where funds in court are to be charged, shall be served by the court officer on the Accountant-General at the Court Funds Office.

(6) Copies of the order and of the witness statement or affidavit shall be served by the judgment creditor on—

- (a) the debtor;
- (b) the other creditors named in the witness statement or affidavit (unless the district judge otherwise directs); and
- (c) where a trust is involved, on any trustee holding the asset to be charged, where the applicant relies on paragraph (b) of section 2 (1) of the said Act of 1979 and on such other trustees and beneficiaries as the district judge may direct.

(7) Where an interest in securities not in court is to be charged, copies of the order nisi shall be served by the judgment creditor on the person or body required to be served in like circumstances by RSC Order 50, rule 2 (1)(b).

(8) The documents required by the foregoing paragraphs to be served shall be served in accordance with CPR Part 6 not less than 7 days before the day fixed for the further consideration of the matter.

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

### **Order on further consideration of application for charging order**

**Rule 2.**—(1) On the day fixed under rule 1 (4) for the further consideration of the matter, the court shall either make the order absolute, with or without modifications, or discharge it.

(2) If an order absolute is made, a copy shall be served by the court officer, in accordance with CPR Part 6 on each of the following persons, namely—

- (a) the debtor;

- (b) the applicant for the order;
  - (c) where funds in court are charged, the Accountant General at the Court Funds Office; and
  - (d) unless otherwise directed, any person or body on whom a copy of the order nisi was served pursuant to rule 1 (7).
- (3) Every copy of an order served on a person or body under paragraph (2)(d) shall contain a stop notice.

**Effect of charging order etc.**

**Rule 3.**—(1) Where a charging order nisi or a charging order absolute has been made and served in accordance with rule 1 or 2, it shall have the same effect as an order made and served in like circumstances under RSC Order 50.

(2) The court may vary or discharge a charging order in the like circumstances and in accordance with the same procedure, with the necessary modifications, as a like order made by the High Court.

(3) The powers of the court under rule 2 or the last preceding paragraph, except the power to vary an order made by the judge, may be exercised by the district judge.

**Enforcement of charging order by sale**

**Rule 4.**—(1) Proceedings in a county court for the enforcement of a charging order by sale of the property charged shall be commenced by a claim form, which shall be filed in the appropriate court, together with a witness statement or affidavit and a copy thereof—

- (a) identifying the charging order sought to be enforced and the subject matter of the charge;
  - (b) specifying the amount in respect of which the charge was imposed and the balance outstanding at the date of the application;
  - (c) verifying, so far as known, the debtor’s title to the property charged;
  - (d) identifying any prior incumbrances on the property charged, with, so far as known, the names and addresses of the incumbrancers and the amounts owing to them; and
  - (e) giving an estimate of the price which would be obtained on sale of the property.
- (2) The appropriate court shall be—
- (a) if the charging order was made by a county court, that court;
  - (b) in any other case, the court for the district in which the debtor resides or carries on business or, if there is no such district, the court for the district in which the judgment creditor resides or carries on business.
- (3) A copy of the witness statement or affidavit filed under paragraph (1) shall be served on the respondent with a copy of the claim form and a notice to each respondent of the date of the hearing.
- (4) The proceedings may be heard and determined by a district judge.
- (5) The net proceeds of sale, after discharging any prior incumbrances and deducting the amount referred to in paragraph (1)(b) and the costs of the sale, shall be paid into court.

**CCR ORDER 33**

**INTERPLEADER PROCEEDINGS**

**Part I Under Execution**

### **Notice of claim**

**Rule 1.**—(A1) In this Part of this Order “the interpleader claimant” means any person making a claim to or in respect of goods seized in execution or the proceeds or value thereof and “the interpleader claim” means that claim.

(1) The interpleader claimant shall deliver to the bailiff holding the warrant of execution, or file in the office of the court for the district in which the goods were seized, notice of his claim stating—

- (a) the grounds of the interpleader claim or, in the case of a claim for rent, the particulars required by section 102 (2) of the Act; and
- (b) the interpleader claimant’s full name and address.

(2) On receipt of an interpleader claim made under this rule, the court shall—

- (a) send notice thereof to the execution creditor; and
- (b) except where the interpleader claim is to the proceeds or value of the goods, send to the interpleader claimant a notice requiring him to make a deposit or give security in accordance with section 100 of the Act.

### **Reply to interpleader claim**

**Rule 2.**—(1) Within 4 days after receiving notice of an interpleader claim under rule 1 (2) the execution creditor shall give notice to the court informing him whether he admits or disputes the interpleader claim or requests the district judge to withdraw from possession of the goods or money claimed.

(2) If, within the period aforesaid, the execution creditor gives notice to the court admitting the interpleader claim or requesting the district judge to withdraw from possession of the goods or money claimed, the execution creditor shall not be liable to the district judge for any fees or expenses incurred after receipt of the notice.

### **Order protecting district judge**

**Rule 3** Where the execution creditor gives the court such a notice as is mentioned in rule 2 (2), the district judge shall withdraw from possession of the goods or money claimed and may apply to the judge, on notice to the interpleader claimant, for an order restraining the bringing of a claim against the district judge for or in respect of his having taken possession of the goods or money and on the hearing of the application the judge may make such order as may be just.

### **Issue of interpleader proceedings**

**Rule 4.**—(1) Where the execution creditor gives notice under rule 2 (1) disputing an interpleader claim made under rule 1 or fails, within the period mentioned in rule 2 (1), to give the notice required by that rule, the district judge shall, unless the interpleader claim is withdrawn, issue an interpleader notice to the execution creditor and the interpleader claimant.

(2) On the issue of an interpleader notice under paragraph (1) the court officer shall enter the proceedings in the records of the court, fix a day for the hearing by the judge and prepare sufficient copies of the notice for service under this rule.

(3) Subject to paragraph (4) the notice shall be served on the execution creditor and the interpleader claimant in the manner required for service of the notice of the day of hearing in accordance with Order 3, rule 6.

(4) Service shall be effected not less than 14 days before the return day.

### **Claim for damages**

**Rule 5** Where in interpleader proceedings under an execution the interpleader claimant claims from the execution creditor or the district judge, or the execution creditor claims from the district judge, damages arising or capable of arising out of the execution—

- (a) the party claiming damages shall, within 8 days after service of the notice on him under rule 4(3), give notice of this claim to the court and to any other party against whom the claim is made, stating the amount and the grounds of the claim; and
- (b) the party from whom damages are claimed may pay money into court in satisfaction of the claim as if the interpleader proceedings were a claim brought in accordance with CPR Part 7 by the person making the claim.

### **Part II— Otherwise than under Execution**

#### **Application for relief**

**Rule 6.**—(1) Where a person (in this Part of this Order called “the applicant”) is under a liability in respect of a debt or any money or goods and he is, or expects to be, sued for or in respect of the debt, money or goods by two or more persons making adverse claims thereto (“the interpleader claimants”), he may apply to the court, in accordance with these rules, for relief by way of interpleader.

(2) The application shall be made to the court in which the claim is pending against the applicant or, if no claim is pending against him, to the court in which he might be sued.

(3) The application shall be made by filing a witness statement or affidavit showing that—

- (a) the applicant claims no interest in the subject-matter in dispute other than for charges or costs;
- (b) the applicant does not collude with any of the interpleader claimants; and
- (c) the applicant is willing to pay or transfer the subject-matter into court or to dispose of it as the court may direct,

together with as many copies of the witness statement or affidavit as there are interpleader claimants.

#### **Relief in pending claim**

**Rule 7** Where the applicant is a defendant in a pending claim—

- (a) the witness statement or affidavit and copies required by rule 6 (3) shall be filed within 14 days after service on him of the claim form;
- (b) the return day of the application shall be a day fixed for the pre-trial review of the claim including the interpleader proceedings and, if a day has already been fixed for the pre-trial review or hearing of the claim, the court shall, if necessary, postpone it;
- (c) the interpleader claimant, the applicant and the claimant in the claim shall be given notice of the application, which shall be prepared by the court together with sufficient copies for service;
- (d) the notice to the interpleader claimant shall be served on him, together with a copy of the witness statement or affidavit filed under rule 6 (3) and of the claim form and particulars of claim in the claim, not less than 21 days before the return day in the same manner as an interpleader notice in accordance with rule 4(3);
- (e) the notices to the applicant and the claimant shall be sent to them by the court and the notice to the claimant shall be accompanied by a copy of the said witness statement or affidavit.

### **Relief otherwise than in pending claim**

**Rule 8** Where the applicant is not a defendant in a pending claim—

- (a) the court shall enter the proceedings in the records of the court;
- (b) the court shall fix a day for the pre-trial review or, if the court so directs, a day for the hearing of the proceedings and shall prepare and issue an interpleader notice, together with sufficient copies for service;
- (c) the notice together with a copy of the witness statement or affidavit filed under rules 6 (3), shall be served on each of the claimants not less than 21 days before the return day in the same manner as an interpleader notice to be served under rule 4(3); and
- (d) the court shall deliver or send a notice of issue to the applicant.

### **Payment into court etc.**

**Rule 9** Before or after the court officer proceeds under rule 7 or 8 the district judge may direct the applicant to bring the subject-matter of the proceedings into court, or to dispose of it in such manner as the district judge thinks fit, to abide the order of the court.

### **Reply by interpleader claimant**

**Rule 10.**—(1) An interpleader claimant shall, within 14 days after service on him of the notice under rule 7 (c) or the interpleader notice under rule 8 (c), file—

- (a) a notice that he makes no interpleader claim; or
- (b) particulars stating the grounds of his interpleader claim to the subject matter,

together in either case with sufficient copies for service under paragraph (2).

(2) The court shall send to each of the other parties a copy of any notice or particulars filed under paragraph (1).

(3) The court may, if it thinks fit, hear the proceedings although no notice or particulars have been filed.

### **Order barring interpleader claim etc.**

**Rule 11.**—(1) Where an interpleader claimant does not appear on any day fixed for a pre-trial review or the hearing of interpleader proceedings, or fails or refuses to comply with an order made in the proceedings, the court may make an order barring his interpleader claim.

(2) If, where the applicant is a defendant in a pending claim, the claimant does not appear on any day fixed for a pre-trial review or the hearing of the interpleader proceedings, the claim including the interpleader proceedings may be struck out.

(3) In any other case where a day is fixed for the hearing of interpleader proceedings, the court shall hear and determine the proceedings and give judgment finally determining the rights and claims of the parties.

(4) Where the court makes an order barring the interpleader claim of an interpleader claimant, the order shall declare the interpleader claimant, and all persons claiming under him, for ever barred from prosecuting his interpleader claim against the applicant and all persons claiming under him, but unless the interpleader claimant has filed a notice under rule 10 that he makes no interpleader claim, such an order shall not affect the rights of the interpleader claimants as between themselves.

## CCR ORDER 34

### PENAL AND DISCIPLINARY PROVISIONS

#### **Issue and service of summons for offence under s.14, 92 or 124 of the Act**

##### **Rule 1** Where—

- (a) it is alleged that any person has committed an offence under section 14 or 92 of the Act by assaulting an officer of the court while in the execution of his duty, or by rescuing or attempting to rescue any goods seized in execution, and the alleged offender has not been taken into custody and brought before the judge; or
- (b) a complaint is made against an officer of the court under section 124 of the Act for having lost the opportunity of levying execution,

the court officer shall issue a summons, which shall be served on the alleged offender personally not less than 8 days before the return day appointed in the summons.

#### **Committal under s.14, 92 or 118 of the Act**

**Rule 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.

#### **Notice to show cause before or after fine under s.55 of the Act**

**Rule 2** Before or after imposing a fine on any person under section 55 of the Act for disobeying a witness summons or refusing to be sworn or give evidence, the judge may direct the court officer to give to that person notice that if he has any cause to show why a fine should not be or should not have been imposed on him, he may show cause in person or by witness statement or affidavit or otherwise on a day named in the notice, and the judge after considering the cause shown may make such order as he thinks fit.

#### **Non-payment of fine**

**Rule 3.**—(1) If a fine is not paid in accordance with the order imposing it, the court officer shall forthwith report the matter to the judge.

(2) Where by an order imposing a fine, the amount of the fine is directed to be paid by instalments and default is made in the payment of any instalment, the same proceedings may be taken as if default had been made in payment of the whole of the fine.

(3) If the judge makes an order for payment of a fine to be enforced by warrant of execution, the order shall be treated as an application made to the district judge for the issue of the warrant at the time when the order was received by him.

#### **Repayment of fine**

**Rule 4** If, after a fine has been paid, the person on whom it was imposed shows cause sufficient to satisfy the judge that, if it had been shown at an earlier date, he would not have imposed a fine or would have imposed a smaller fine or would not have ordered payment to be enforced, the judge may order the fine or any part thereof to be repaid.

**CCR ORDER 35**  
**ENFORCEMENT OF COUNTY COURT**  
**JUDGMENTS OUTSIDE ENGLAND AND WALES**

**Part I—Enforcement outside United Kingdom**

**Interpretation of Part I**

**Rule 1** In this Part of this Order “the Act of 1933” means the Foreign Judgments (Reciprocal Enforcement) Act 1933(30), “the Act of 1982” means the Civil Jurisdiction and Judgments Act 1982(31) and expressions which are defined in those Acts have the same meaning in this Part of this Order as they have in those Acts.

**Application under s.10 of the Act of 1933 for certified copy of county court judgment**

**Rule 2.**—(1) An application under section 10 of the Act of 1933 for a certified copy of a judgment of a county court may be made by filing a witness statement or affidavit, made by a solicitor of the party entitled to enforce the judgment, or by the party himself, if he is acting in person.

(2) A witness statement or affidavit by which an application under section 10 of the Act of 1933 is made must—

- (a) give particulars of the proceedings in which the judgment was obtained;
- (b) have annexed to it evidence of service on the defendant of the claim form or other process by which the proceedings were begun (where service was effected otherwise than through the court), copies of the statements of case, if any, and a statement of the grounds on which the judgment was based;
- (c) state whether the defendant did or did not object to the jurisdiction, and, if so, on what grounds;
- (d) show that the judgment is not subject to any stay of execution;
- (e) state that the time for appealing or applying for a re-hearing has expired, or, as the case may be, the date on which it will expire and in either case whether notice of appeal against the judgment has been given or an application for a re-hearing has been made; and
- (f) state whether interest is recoverable on the judgment or part thereof and, if so, the rate and period in respect of which it is recoverable.

(3) The certified copy of the judgment shall be a sealed copy indorsed with a certificate signed by the district judge certifying that the copy is a true copy of a judgment obtained in the county court and that it is issued in accordance with section 10 of the Act of 1933.

(4) There shall also be issued a sealed certificate signed by the district judge and having annexed to it a copy of the claim form or other process by which the proceedings were begun and stating—

- (a) the manner in which the claim form or other process was served on the defendant or that the defendant has delivered to the court an admission, defence or counterclaim;
- (b) what objections, if any, were made to the jurisdiction;
- (c) what statements of case, if any, were filed;

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(30) 1933 c. 13; section 10 was substituted by the Civil Jurisdiction and Judgments Act 1982 (c. 27), section 35(1), schedule 10, paragraph 3.

(31) 1982 c. 27; section 12 was amended by the Civil Jurisdiction and Judgments Act 1991 (c. 12), section 3, schedule 2, paragraph 7.



- (d) the grounds on which the judgment was based;
- (e) that the time for appealing or applying for a re-hearing has expired or, as the case may be, the date on which it will expire;
- (f) whether notice of appeal against the judgment has been given or an application for a re-hearing has been made;
- (g) whether interest is recoverable on the judgment or part thereof and, if such be the case, the rate of interest, the date from which interest is recoverable, and the date on which interest ceases to accrue; and
- (h) such other particulars as it may be necessary to give the court in the foreign country in which it is sought to obtain execution of the judgment.

### **Application under s.12 of the Act of 1982 for certified copy of county court judgment**

**Rule 3.**—(1) An application under section 12 of the Act of 1982 for a certified copy of a judgment of a county court may be made by filing a witness statement or affidavit made by a solicitor of the party entitled to enforce the judgment, or by the party himself, if he is acting in person.

(2) A witness statement or affidavit by which an application under section 12 of the Act of 1982 is made must—

- (a) give particulars of the proceedings in which the judgment was obtained;
- (b) have annexed to it evidence of service on the defendant of the claim form or other process by which the proceedings were begun (where service was effected otherwise than through the court), copies of the statements of case, if any, and a statement of the grounds on which the judgment was based together with, where appropriate, any document under which the applicant is entitled to legal aid or assistance by way of representation for the purposes of the proceedings;
- (c) state whether the defendant did or did not object to the jurisdiction and, if so, on what grounds;
- (d) show that the judgment has been served in accordance with CPR Part 6 and CPR rule 40.4 and is not subject to any stay of execution;
- (e) state that the time for appealing or applying for a re-hearing has expired, or, as the case may be, the date on which it will expire and in either case whether notice of appeal against the judgment has been given or an application for a re-hearing has been made; and
- (f) state—
  - (i) whether the judgment provides for the payment of a sum or sums of money;
  - (ii) whether interest is recoverable on the judgment or part thereof and, if such be the case, the rate of interest, the date from which interest is recoverable, and the date on which interest ceases to accrue.

(3) The certified copy of the judgment shall be a sealed copy and there shall be issued with the copy of the judgment a sealed certificate signed by the district judge and having annexed to it a copy of the claim form or other process by which the proceedings were begun.

## **Part II—Enforcement in other parts of the United Kingdom**

### **Interpretation of Part II**

**Rule 4** In this Part of this Order—

*Status: This is the original version (as it was originally made).*

“the Act of 1982” means the Civil Jurisdiction and Judgments Act 1982(32),

“money provision” means a provision in any judgment to which section 18 of the Act of 1982 applies for the payment of one or more sums of money,

“non-money provision” means a provision in any judgment to which section 18 of the Act of 1982 applies for any relief or remedy not requiring payment of a sum of money.

### **Application for certificate of money provision**

**Rule 5.**—(1) A certificate in respect of any money provision contained in a judgment of the county court may be obtained by filing a witness statement or affidavit made by the solicitor of the party entitled to enforce the judgment, or by the party himself if he is acting in person, together with a form of certificate.

- (2) A witness statement or affidavit by which an application under paragraph (1) is made must—
- (a) give particulars of the judgment, stating the rate of payment, if any, specified under the money provisions contained in the judgment, the sum or aggregate of sums (including any costs or expenses) remaining unsatisfied, the rate of interest, if any, applicable and the date or time from which any such interest began to accrue;
  - (b) verify that the time for appealing against the judgment or for applying for a re-hearing has expired, or that any appeal or re-hearing has been finally disposed of and that enforcement of the judgment is not stayed or suspended; and
  - (c) state to the best of the information or belief of the witness the usual or last known address of the party entitled to enforce the judgment and of the party liable to execution on it.
- (3) The court officer shall enter on the certificate—
- (a) the number of the proceedings;
  - (b) the amount remaining due under the judgment;
  - (c) the rate of interest payable on the judgment debt, and the date or time from which any such interest began to accrue;
  - (d) a note of the costs, if any, allowed for obtaining the certificate; and
  - (e) the date on which the certificate is issued.

### **Application for certified copy of judgment containing non-money provision**

**Rule 6.**—(1) A certified copy of a judgment of a county court which contains any non-money provision may be obtained by filing a witness statement or affidavit made by the solicitor of the party entitled to enforce the judgment, or by the party himself, if he is acting in person.

(2) The requirements in paragraph (2) of rule 5 shall apply with the necessary modifications to a witness statement or affidavit made in an application under paragraph (1) of this rule.

(3) The certified copy of a judgment shall be a sealed copy to which shall be annexed a certificate signed by the court officer and stating that the conditions specified in paragraph (3)(a) and (b) of Schedule 7 to the Act of 1982 are satisfied in relation to the judgment.

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(32) 1982 c. 27.

## CCR ORDER 37

### REHEARING, SETTING ASIDE AND APPEAL FROM DISTRICT JUDGE

#### **Rehearing**

**Rule 1.**—(1) In any proceedings tried without a jury the judge shall have power on application to order a rehearing where no error of the court at the hearing is alleged.

(2) Unless the court otherwise orders, any application under paragraph (1) shall be made to the judge by whom the proceedings were tried.

(3) A rehearing may be ordered on any question without interfering with the finding or decision on any other question.

(4) Where the proceedings were tried by the district judge, the powers conferred on the judge by paragraphs (1) and (3) shall be exercisable by the district judge and paragraph (2) shall not apply.

(5) Any application for a rehearing under this rule shall be made on notice stating the grounds of the application and the notice shall be served on the opposite party not more than 14 days after the day of the trial and not less than 7 days before the day fixed for the hearing of the application.

(6) On receipt of the notice, the court officer shall, unless the court otherwise orders, retain any money in court until the application has been heard.

#### **Appeal from district judge**

**Rule 6.**—(1) Any party affected by a judgment or final order of the district judge may, except where he has consented to the terms of the order, appeal from the judgment or order to the judge, who may, upon such terms as he thinks fit—

- (a) set aside or vary the judgment or order or any part of it;
- (b) give any other judgment or make any other order in substitution for the judgment or order appealed from;
- (c) remit the claim or any question in the claim to the district judge for rehearing or further consideration; or
- (d) order a new trial to take place before himself or another judge of the court on a day to be fixed.

(2) The appeal shall be made on notice, which shall state the grounds of the appeal and be served within 14 days after the day on which judgment or order appealed from was given or made.

#### **Imposition of terms and stay of execution**

**Rule 8.**—(1) An application to the judge or district judge under any of the foregoing rules may be granted on such terms as he thinks reasonable.

(2) Notice of any such application shall not of itself operate as a stay of execution on the judgment or order to which it relates but the court may order a stay of execution pending the hearing of the application or any rehearing or new trial ordered on the application.

(3) If a judgment or order is set aside under any of the foregoing rules, any execution issued on the judgment or order shall cease to have effect unless the court otherwise orders.

## CCR ORDER 38

### COSTS

#### **Fixed costs**

**Rule 18.**—(1) Appendix B shall effect for the purpose of showing the total amount which, in the several cases to which Appendix B applies, shall be allowed to the solicitor for the claimant as fixed costs without assessment (whether by the summary or the detailed procedure), unless the court otherwise orders.

(2) In a claim to which Appendix B or CPR Part 45 does not apply no amount shall be entered on the claim form for the charges of the claimant's solicitor, but the words "to be assessed" shall be inserted.

## APPENDIX B

### PART I

#### **Claims for the Recovery of Property, Applications to Enforce an Award**

#### **Directions**

**1.** The Tables in this Part of this Appendix show the amount to be entered on the claim form or application in respect of solicitors' charges—

- (c) in a claim for the recovery of property, including land, with or without a claim for a sum of money (other than a claim to which CPR Part 45 applies), for the purpose of Part II of this Appendix or of fixing the amount which the plaintiff may receive in respect of solicitors' charges without assessment whether by the detailed or summary procedure in the event of the defendant giving up possession and paying the amount claimed, if any, and costs;
- (e) in proceedings for the enforcement of a tribunal or other award, for the purposes only of Order 25, rule 12.

**2.** In addition to the amount entered in accordance with the relevant Table the appropriate court fees shall be entered on the application.

**3.** In the Tables the expression "claim" means—

- (a) the sum of money claimed, or
- (b) in relation to a claim for the recovery of land (with or without a claim for a sum of money), a sum exceeding £600 but not exceeding £2,000;
- (c) in relation to a claim for the recovery of property other than money or land, the value of the property claimed or in the case of goods supplied under a hire purchase agreement, the unpaid balance of the total price.

**4.** The Tables do not apply where the application or the claim form is to be served out of England and Wales or where service by an alternative method is ordered.

**Tables of Fixed Costs****TABLE I**

Where claim exceeds £25 but does not exceed £250

<i>Amount of charges</i>		<i>£</i>
(a)	(a) Where service is not by solicitor	30.75
(b)	(b) Where service is by solicitor	35.00

**TABLE II**

Where claim exceeds £250 but does not exceed £600

<i>Amount of charges</i>		<i>£</i>
(a)	(a) Where service is not by solicitor	41.00
(b)	(b) Where service is by solicitor	48.50

**TABLE III**

Where claim exceeds £600 but does not exceed £2,000

<i>Amount of charges</i>		<i>£</i>
(a)	(a) Where service is not by solicitor	69.50
(b)	(b) Where service is by solicitor	77.00

**TABLE IV**

Where claim exceeds £2,000

<i>Amount of charges</i>		<i>£</i>
(a)	(a) Where service is not by solicitor	75.50
(b)	(b) Where service is by solicitor	82.00

**Part II****Judgments****Directions**

Where an amount in respect of solicitors' charges has been entered on the claim form under Part I of this Appendix and judgment is given in the circumstances mentioned in paragraph (d) in column 1 of the following Table, the amount to be included in the judgment in respect of the solicitors' charges shall, be the amount entered on the application or the claim form together with the amount shown in column 2 of the Table under the sum of money by reference to which the amount entered on the application or the claim form was fixed. Where judgment is given for a sum less than the amount claimed or for the delivery of goods of which the value or the balance of the total price is a sum less than the amount claimed, the foregoing paragraph shall, unless the court otherwise directs, have effect as if the amount entered on the application or the claim form had been fixed by reference to that sum.

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**Fixed Costs on Judgments**

<i>Column 1</i>	<i>Column 2</i>		
	<i>Sum of money</i>		
	<i>A exceeding £25 but not exceeding £600</i>	<i>B exceeding £600 but not exceeding £3000</i>	<i>C exceeding £3000</i>
	£	£	£
(d) (d) Where judgment is given in a fixed date action for—  (i) delivery of goods where goods are not subject to a regulated agreement; or (ii) possession of land suspended on payment of arrears of rent, whether claimed or not, in addition to current rent, and the defendant has neither delivered a defence, admission or counterclaim, nor otherwise	38.50	57.25	70.75

<i>Column 1</i>	<i>Column 2</i>		
	<i>Sum of money</i>		
	<i>A exceeding £25 but not exceeding £600</i>	<i>B exceeding £600 but not exceeding £3000</i>	<i>C exceeding £3000</i>
	£	£	£
denied liability			

(Delivery of goods claims subject to a regulated agreement are dealt with by CPR Part 45)

### PART III

#### Miscellaneous Proceedings

The following Table shows the amount to be allowed in respect of solicitors' charges in the circumstances mentioned. The appropriate court fee shall be allowed in addition.

<i>Amount to be allowed</i>	<i>£</i>
<b>3.</b> For filing a request for the issue of a warrant of execution for a sum exceeding £25	£2.25
<b>4.</b> For service of any document required to be served personally (other than an application for an attachment of earnings order or a judgment summons unless allowed under Order 27, rule 9(1)(a), or Order 28, rule 10(2)(a)(i)), including copy and preparation of certificate of service	£8.50
<b>5.</b> For service by an alternative method, including attendances, making appointments to serve claim forms, preparing and attending to swear and file affidavits and to obtain order, and the fees paid for oaths	£25.00
<b>6.</b> For each attendance on the hearing of an application for an attachment of earnings order or a judgment summons where costs are allowed under Order 27, rule 9, or Order 28, rule 10	£8.50
<b>7.</b> For the costs of the judgment creditor when allowed in garnishee proceedings or an application under Order 30, rule 12	one half of the amount recovered
(a) where the money recovered is less than £70.00	
(b) where the money recovered is not less than £70.00	£46.50
<b>8.</b> For the costs of the judgment creditor when allowed on an application for a charging order	£71.00
<b>9.</b> For obtaining a certificate of judgment where costs allowed under Order 35, rule 5(3)(d)	£8.00

*Status: This is the original version (as it was originally made).*

<i>Amount to be allowed</i>	<i>£</i>
<b>10.</b> Where an order for possession is made under rule 6 or rule 6A of Order 49 without the attendance of the claimant, for preparing and filing the application, the documents attached to the application and the request for possession	£79.50
<b>11.</b> On examination of a witness under CCR Order 25, rule 3 where any responsible representative of the solicitor attends, for each half-hour or part thereof	£15.00

## CCR ORDER 39

### ADMINISTRATION ORDERS

#### **Exercise of powers by district judge**

**Rule 1** Any powers conferred on the court by Part VI of the Act, section 4 of the Attachment of Earnings Act 1971<sup>(33)</sup> or this Order may be exercised by the district judge or, in the circumstances mentioned in this Order, by the court officer.

#### **Request and list of creditors**

**Rule 2.**—(1) A debtor who desires to obtain an administration order under Part VI of the Act shall file a request in that behalf in the court for the district in which he resides or carries on business.

(2) Where on his examination under Order 25, rule 3, or otherwise, a debtor furnishes to the court on oath a list of his creditors and the amounts which he owes to them respectively and sufficient particulars of his resources and needs, the court may proceed as if the debtor had filed a request under paragraph (1).

(3) Where a debtor is ordered to furnish a list under section 4 (1)(b) of the said Act of 1971, then, unless otherwise directed, the list shall be filed within 14 days after the making of the order.

#### **Verification on oath**

**Rule 3** The statements in the request mentioned in rule 2 (1) and the list mentioned in rule 2 (3) shall be verified by the debtor on oath.

#### **Orders made by the court officer**

**Rule 5.**—(1) The question whether an administration order should be made, and the terms of such an order, may be decided by the court officer in accordance with the provisions of this rule.

(2) On the filing of a request or list under rule 2, the court officer may, if he considers that the debtor's means are sufficient to discharge in full and within a reasonable period the total amount of the debts included in the list, determine the amount and frequency of the payments to be made under such an order ("the proposed rate") and—

<sup>(33)</sup> 1971 c. 32; section 4 was amended by the Insolvency Act 1976 (c. 60), section 13(2); and by the County Courts Act 1984 (c. 28), section 148(1), schedule 2, Part V, paragraph 40.



- (a) notify the debtor of the proposed rate requiring him to give written reasons for any objection he may have to the proposed rate within 14 days of service of notification upon him;
- (b) send to each creditor mentioned in the list provided by the debtor a copy of the debtor's request or of the list together with the proposed rate;
- (c) require any such creditor to give written reasons for any objection he may have to the making of an administration order within 14 days of service of the documents mentioned in sub-paragraph (b) upon him.

Objections under sub-paragraph (c) may be to the making of an order, to the proposed rate or to the inclusion of a particular debt in the order.

(3) Where no objection under paragraph (2)(a) or (c) is received within the time stated, the court officer may make an administration order providing for payment in full of the total amount of the debts included in the list.

(4) Where the debtor or a creditor notifies the court of any objection within the time stated, the court officer shall fix a day for a hearing at which the district judge will decide whether an administration order should be made and the court officer shall give not less than 14 days' notice of the day so fixed to the debtor and to each creditor mentioned in the list provided by the debtor.

(5) Where the court officer is unable to fix a rate under paragraph (2) (whether because he considers that the debtor's means are insufficient or otherwise), he shall refer the request to the district judge.

(6) Where the district judge considers that he is able to do so without the attendance of the parties, he may fix the proposed rate providing for payment of the debts included in the list in full or to such extent and within such a period as appears practicable in the circumstances of the case.

(7) Where the proposed rate is fixed under paragraph (6), paragraphs (2) to (4) shall apply with the necessary modifications as if the rate had been fixed by the court officer.

(8) Where the district judge does not fix the proposed rate under paragraph (6), he shall direct the court officer to fix a day for a hearing at which the district judge will decide whether an administration order should be made and the court officer shall give not less than 14 days' notice of the day so fixed to the debtor and to each creditor mentioned in the list provided by the debtor.

(9) Where an administration order is made under paragraph (3), the court officer may exercise the power of the court under section 5 of the Attachment of Earnings Act 1971 to make an attachment of earnings order to secure the payments required by the administration order.

### **Notice of objection by creditor**

**Rule 6.**—(1) Any creditor to whom notice has been given under rule 5 (8) and who objects to any debt included in the list furnished by the debtor shall, not less than 7 days before the day of hearing, give notice of his objection, stating the grounds thereof, to the court officer, to the debtor and to the creditor to whose debt he objects.

(2) Except with the permission of the court, no creditor may object to a debt unless he has given notice of his objection under paragraph (1).

### **Procedure on day of hearing**

**Rule 7** On the day of the hearing—

- (a) any creditor, whether or not he is mentioned in the list furnished by the debtor, may attend and prove his debt or, subject to rule 6, object to any debt included in that list;
- (b) every debt included in that list shall be taken to be proved unless it is objected to by a creditor or disallowed by the court or required by the court to be supported by evidence;

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- (c) any creditor whose debt is required by the court to be supported by evidence shall prove his debt;
- (d) the court may adjourn proof of any debt and, if it does so, may either adjourn consideration of the question whether an administration order should be made or proceed to determine the question, in which case, if an administration order is made, the debt, when proved, shall be added to the debts scheduled to the order;
- (e) any creditor whose debt is admitted or proved, and, with the permission of the court, any creditor the proof of whose debt has been adjourned, shall be entitled to be heard and to adduce evidence on the question whether an administration order should be made and, if so, in what terms.

#### **Direction for order to be subject to review**

**Rule 8.**—(1) The court may, on making an administration order or at any subsequent time, direct that the order shall be subject to review at such time or at such intervals as the court may specify.

(2) Where the court has directed that an administration order shall be subject to review, the court officer shall give to the debtor and to every creditor who appeared when the order was made not less than 7 days' notice of any day appointed for such a review.

(3) Nothing in this rule shall require the court officer to fix a day for a review under rule 13A.

#### **Service of order**

**Rule 9** Where an administration order is made, the court officer shall send a copy to—

- (a) the debtor;
- (b) every creditor whose name was included in the list furnished by the debtor;
- (c) any other creditor who has proved his debt; and
- (d) every other court in which, to the knowledge of the district judge, judgment has been obtained against the debtor or proceedings are pending in respect of any debt scheduled to the order.

#### **Subsequent objection by creditor**

**Rule 10.**—(1) After an administration order has been made, a creditor who has not received notice under rule 5 and who wishes to object to a debt scheduled to the order, or to the manner in which payment is directed to be made by instalments, shall give notice to the court officer of his objection and of the grounds thereof.

(2) On receipt of such notice the court shall consider the objection and may—

- (a) allow it;
- (b) dismiss it; or
- (c) adjourn it for hearing on notice being given to such persons and on such terms as to security for costs or otherwise as the court thinks fit.

(3) Without prejudice to the generality of paragraph (2), the court may dismiss an objection if it is not satisfied that the creditor gave notice of it within a reasonable time of his becoming aware of the administration order.

#### **Subsequent proof by creditor**

**Rule 11.**—(1) Any creditor whose debt is not scheduled to an administration order, and any person who after the date of the order became a creditor of the debtor, shall, if he wishes to prove

his debt, send particulars of his claim to the court officer, who shall give notice of it to the debtor and to every creditor whose debt is so scheduled.

(2) If neither the debtor nor any creditor gives notice to the court officer, within 7 days after receipt of notice under paragraph (1), that he objects to the claim, then, unless it is required by the court to be supported by evidence, the claim shall be taken to be proved.

(3) If the debtor or a creditor gives notice of objection within the said period of 7 days or the court requires the claim to be supported by evidence, the court officer shall fix a day for consideration of the claim and give notice of it to the debtor, the creditor by whom the claim was made and the creditor, if any, making the objection, and on the hearing the court may either disallow the claim or allow it in whole or in part.

(4) If a claim is taken to be proved under paragraph (2) or allowed under paragraph (3), the debt shall be added to the schedule to the order and a copy of the order shall then be sent to the creditor by whom the claim was made.

### **Permission to present bankruptcy petition**

**Rule 12** An application by a creditor under section 112 (4) of the Act<sup>(34)</sup> for permission to present or join in a bankruptcy petition shall be made on notice to the debtor in accordance with CPR Part 23, but the court may, if it thinks fit, order that notice be given to any other creditor whose debt is scheduled to the administration order.

### **Conduct of order**

**Rule 13.**—(1) The court manager or such other officer of the court as the court making an administration order shall from time to time appoint shall have the conduct of the order and shall take all proper steps to enforce the order (including exercising the power of the court under section 5 of the Attachment of Earnings Act 1971 to make an attachment of earnings order to secure payments required by the administration order) or to bring to the attention of the court any matter which may make it desirable to review the order.

(2) Without prejudice to section 115 of the Act, any creditor whose debt is scheduled to the order may, with the permission of the court, take proceedings to enforce the order.

(3) The debtor or, with the permission of the court, any such creditor may apply to the court to review the order.

(4) When on a matter being brought to its attention under paragraph (1) the court so directs or the debtor or a creditor applies for the review of an administration order, rule 8 (2) shall apply as if the order were subject to review under that rule.

(5) Nothing in this rule shall require the court officer to fix a day for a review under rule 13A.

### **Review by court officer in default of payment**

**Rule 13A.**—(1) Where it appears that the debtor is failing to make payments in accordance with the order, the court officer shall (either of his own initiative or on the application of a creditor whose debt is scheduled to the administration order) send a notice to the debtor—

- (a) informing him of the amounts which are outstanding; and
- (b) requiring him (within 14 days of service of the notice upon him) to
  - (i) make the payments as required by the order; or
  - (ii) explain his reasons for failing to make the payments; and

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<sup>(34)</sup> Section 112 was amended by the Insolvency Act 1985 (c. 65), section 220(2).

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- (iii) make a proposal for payment of the amounts outstanding, or
- (iv) make a request to vary the order.

(2) If the debtor does not comply with paragraph (1)(b) within the time stated, the court officer shall revoke the administration order.

(3) The court officer shall refer a notice given by a debtor under paragraph (1)(b)(ii), (iii) or (iv) to the district judge who may—

- (a) without requiring the attendance of the parties—
  - (i) revoke the administration order or vary it so as to provide for payment of the debts included in the order in full or to such extent and within such a period as appears practicable in the circumstances of the case; or
  - (ii) suspend the operation of the administration order for such time and on such terms as he thinks fit; or
- (b) require the court officer to fix a day for the review of the administration order and to give to the debtor and to every creditor whose debt is scheduled to the administration order not less than 8 days' notice of the day so fixed.

(4) Any party affected by an order made under paragraph (2) or (3)(a) may, within 14 days of service of the order on him and giving his reasons, apply on notice for the district judge to consider the matter afresh and the court officer shall fix a day for the hearing of the application before the district judge and give to the debtor and to every creditor whose debt is scheduled to the administration order 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.

### **Review of order**

**Rule 14.**—(1) On the review of an administration order the court may—

- (a) if satisfied that the debtor is unable from any cause to pay any instalment due under the order, suspend the operation of the order for such time and on such terms as it thinks fit;
- (b) if satisfied that there has been a material change in any relevant circumstances since the order was made, vary any provision of the order made by virtue of section 112 (6) of the Act;
- (c) if satisfied that the debtor has failed without reasonable cause to comply with any provision of the order or that it is otherwise just and expedient to do so, revoke the order, either forthwith or on failure to comply with any condition specified by the court; or
- (d) make an attachment of earnings order to secure the payments required by the administration order or vary or discharge any such attachment of earnings order already made.

(2) The court officer shall send a copy of any order varying or revoking an administration order to the debtor, to every creditor whose debt is scheduled to the administration order and, if the administration order is revoked, to any other court to which a copy of the administration order was sent pursuant to rule 9.

### **Discharge of attachment of earnings order**

**Rule 16** On the revocation of an administration order any attachment of earnings order made to secure the payments required by the administration order shall be discharged.

### **Declaration of dividends**

**Rule 17.**—(1) The officer having the conduct of an administration order shall from time to time declare dividends and distribute them among the creditors entitled to them.

(2) When a dividend is declared, notice shall be sent by the officer to each of the creditors.

### **Creditors to rank equally**

**Rule 18** All creditors scheduled under section 113 (d) of the Act<sup>(35)</sup> before an administration order is superseded under section 117 (2) of the Act shall rank equally in proportion to the amount of their debts subject to the priority given by the said paragraph (d) to those scheduled as having been creditors before the date of the order, but no payment made to any creditor by way of dividend or otherwise shall be disturbed by reason of any subsequent proof by any creditor under the said paragraph (d).

### **Change of debtor's address**

**Rule 19.**—(1) A debtor who changes his residence shall forthwith inform the court of his new address.

(2) Where the debtor becomes resident in the district of another court, the court in which the administration order is being conducted may transfer the proceedings to that other court.

## **CCR ORDER 42**

### **PROCEEDINGS BY AND AGAINST THE CROWN**

#### **Application and interpretation**

**Rule 1.**—(1) These rules apply to any proceedings, so far as they are civil proceedings to which the Crown is a party, subject to the following rules of this Order.

(2) Except where the context otherwise requires, references in these rules to a claim for the recovery of land or other property shall be construed as including references to proceedings against the Crown for an order declaring that the claimant is entitled as against the Crown to the land or property or to the possession of it.

(3) In this Order—

“the Act of 1947” means the Crown Proceedings Act 1947<sup>(36)</sup>;

“civil proceedings by the Crown” and “civil proceedings against the Crown” and “civil proceedings by or against the Crown” have the same respective meanings as in Part II of the Act of 1947 and do not include any of the proceedings specified in section 23 (3) of that Act;

“civil proceedings to which the Crown is a party” has the same meaning as it has for the purposes of Part IV of the Act of 1947 by virtue of section 38 (4) of that Act.

#### **Particulars of claim in claim against the Crown**

**Rule 4** The particulars of claim shall, in the case of civil proceedings against the Crown, include a statement of the circumstances in which the Crown's liability is said to have arisen and as to the government department and officers of the Crown concerned.

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<sup>(35)</sup> Section 113 was amended by the Administration of Justice Act 1985 (c. 61), section 67(2), schedule 8, Part II.

<sup>(36)</sup> 1947 c. 44.

### **Subsequent procedure in claim**

**Rule 5.**—(1) If in a claim against the Crown the defendant considers that the particulars of claim do not contain a sufficient statement as required by rule 4, he may, before the time for delivering a defence has expired, file two copies of a demand for further information as specified in the demand and thereupon the court officer shall serve one copy on the claimant.

(2) Where the defendant files a demand under paragraph (1), the time for delivering a defence shall not expire until 4 days after the defendant has given notice to the court and the claimant that the defendant is satisfied with the information supplied in compliance with the demand or 4 days after the court has, on the application of the claimant of which not less than 7 days' notice has been given to the defendant, decided that no further information as to the matters referred to in rule 4 is reasonably required.

(3) Except with the permission of the court, no default judgment shall be entered under CPR Part 12 in a claim against the Crown.

(4) An application for permission under paragraph (3) shall be made on not less than 7 days' notice to the defendant.

(5) No application against the Crown shall be made under CPR Part 24 (summary judgment).

### **Subsequent procedure in fixed date claim**

**Rule 6.**—(1) In the case of a fixed date claim against the Crown, on the filing of the claim form the court shall—

- (a) enter a plaint in the records of the court and deliver to the claimant a notice of issue omitting any reference to a return day;
- (b) serve on the defendant a copy of the particulars of claim if they are filed with the claim form and the notice of issue and of the effect of paragraphs (3) and (5).

(2) Upon the service of the notice mentioned in paragraph (1)(b) all further proceedings in the claim shall be stayed except as provided in this rule.

(3) If the defendant considers that the particulars of claim do not contain a sufficient statement as required by rule 4, he may, within 21 days after service on him of the particulars of claim, file in the court office two copies of a demand for further information as specified in the demand and thereupon the court shall serve one copy on the claimant.

(4) If within the said period the defendant does not file two copies of such a demand, then, subject to paragraph (5), the stay of proceedings provided for by paragraph (2) shall cease to have effect at the end of that period.

(5) If within the said period the defendant files a statement that no such demand will be made, the stay of proceedings provided for by paragraph (2) shall cease to have effect forthwith.

(6) If within the said period the defendant files two copies of such a demand, the stay of proceedings provided for by paragraph (2) shall cease to have effect when the defendant gives notice to the court and the claimant that the defendant is satisfied with the information supplied in compliance with the demand or when the court decides, on the application of the claimant of which not less than 7 days' notice has been given to the defendant, that no further information as to the matters referred to in rule 4, is reasonably required.

(7) When the stay of proceedings provided for by paragraph (2) ceases to have effect, the court shall fix a return day and give notice of it to the claimant and shall proceed to issue the claim form.

### **Service on the Crown**

**Rule 7.**—(1) RSC Order 11 and any other provision of these rules relating to service of process out of England and Wales shall apply in relation to civil proceedings by the Crown but shall not apply in relation to civil proceedings against the Crown.

(2) Personal service of any document which is to be served on the Crown for the purpose of or in connection with civil proceedings by or against the Crown shall not be requisite.

(3) Any such document may be served on the Crown—

- (a) by leaving the document at the office of the person to be served in accordance with section 18 of the Act of 1947, or any agent whom he has nominated for the purpose, but in either case with a member of the staff of that person or agent; or
- (b) by posting it in a prepaid envelope addressed to the person to be served in accordance with the said section 18 or to any such agent as aforesaid.

### **Special provisions regarding orders made by the Court of its own initiative against the Crown**

**Rule 8.**—(2) No order shall be made against the Crown by the court of its own initiative—

- (a) (i) requiring the Crown to file or serve any statement of case or give any particulars which the court thinks necessary for defining the issues in the proceedings; and  
(ii) at the same or any subsequent time directing that the claim be dismissed or the defendant be debarred from defending altogether or that anything in any statement of case of which particulars have been ordered be struck out unless the order is obeyed;
- (b) ordering one or more questions or issues to be tried before the others; or
- (c) at a hearing other than the trial.

### **Counterclaim in proceedings by or against the Crown**

**Rule 9.**—(1) In proceedings by the Crown for the recovery of taxes, duties or penalties the defendant shall not be entitled to avail himself of any set-off or counterclaim and accordingly the claim form to be served on the defendant and the forms for defending the claim, admitting the claim and acknowledging service, to accompany the claim form shall omit any reference to a counterclaim.

(2) In proceedings of any other nature by the Crown the defendant shall not be entitled to avail himself of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties.

(3) In any proceedings by the Crown the defendant shall not be entitled, and in any proceedings against the Crown the Crown shall not be entitled, without the permission of the court to be obtained on application of which not less than 7 days' notice has been given to the claimant, to make any counterclaim or claim in his statements of case to be entitled to any set-off if—

- (a) the Crown sues or is sued in the name of a Government department and the subject-matter of the set-off or counterclaim does not relate to that department; or
- (b) the Crown sues or is sued in the name of the Attorney-General.

### **Adjustment of liability under judgment for taxes**

**Rule 10** Where the Crown has obtained a judgment for taxes but subsequently the tax liability is reduced, whether by reason of an appeal against an assessment or otherwise, and the Crown has given notice of the reduction to the court and to the debtor, the sum remaining unsatisfied under the judgment shall be reduced accordingly, but the amount of the reduction shall not rank as a payment under the judgment.

## **Part 20 claim against the Crown where the Crown is not already a party**

**Rule 11.**—(1) A Part 20 claim for service on the Crown where the Crown is not already a party shall not be issued without the permission of the court to be obtained on application in accordance with CPR Part 23

(1A) An application notice under paragraph (1) must be served on the Crown and the claimant at least 7 days before the hearing.

(2) Permission shall not be granted under paragraph (1) unless the court is satisfied that the Crown is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned.

## **Disclosure against the Crown**

**Rule 12.**—(2) Where in any proceedings an order of the court directs that a list of documents made in answer to an order for disclosure against the Crown shall be verified by witness statement or affidavit, the witness statement or affidavit shall be made by such officer of the Crown as the court may direct.

(3) The court may direct which officer of the Crown shall make the disclosure statement required by CPR rule 31.10(5).

## **Execution and satisfaction of orders against the Crown**

**Rule 13.**—(1) Nothing in Orders 25 to 32 shall apply in respect of any order against the Crown.

(2) A certificate issued under section 25 (1) of the Act of 1947 shall be in the form used under Order 22, rule 8, with such variations as the circumstances of the case may require.

## **Attachment of debts etc.**

**Rule 14.**—(1) No order for the attachment of a debt under Order 30 or for the appointment of a receiver under RSC Order 30 shall be made or have effect in respect of any money due or accruing due, or alleged to be due or accruing due, from the Crown.

(2) Where such an order could have been obtained in a county court if the money had been due or accruing due from a subject, an application may be made to that county court in accordance with CPR Part 23 for an order under section 27 of the Act of 1947<sup>(37)</sup> restraining the person to whom the money is payable by the Crown from receiving the money and directing payment to the applicant or to the receiver.

(3) The application shall be supported by a witness statement or affidavit setting out the facts giving rise to it and in particular identifying the particular debt from the Crown in respect of which it is made.

(4) Notice of the application together with a copy of the witness statement or affidavit shall be served on the Crown and, unless the court otherwise directs, on the person to be restrained or his solicitor at least 7 days before the day fixed for the hearing.

(5) Order 30, rules 7 to 9, shall apply, with the necessary modifications, in relation to an application under the said section 27 as they apply in relation to an application for an order under Order 30, rule 1, except that the court shall not have power to issue execution against the Crown.

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(37) 1947 c. 44; section 27(1) was amended by the Supreme Court Act 1981 (c. 54), section 139(1) and schedule 7.



## CCR ORDER 43

### THE LANDLORD AND TENANT ACTS 1927, 1954, 1985 AND 1987

#### Interpretation

**Rule 1.**—(1) In this order “the Act of 1927” means the Landlord and Tenant Act 1927<sup>(38)</sup>, “the Act of 1954” means the Landlord and Tenant Act 1954<sup>(39)</sup>, “the Act of 1985” means the Landlord and Tenant Act 1985 and “the Act of 1987” means the Landlord and Tenant Act 1987.

(2) In relation to any proceedings under the Act of 1954 any reference in this Order to a landlord shall, if the interest of the landlord in question is subject to a mortgage and the mortgagee is in possession or a receiver appointed by the mortgagee or by the court is in receipt of the rents and profits, be construed as a reference to the mortgagee.

#### Commencement of proceedings and answer

**Rule 2.**—(1) Proceedings in a county court under the Act of 1927 or of 1954, or of 1985 or of 1987 shall be commenced by claim form and the respondent shall file an answer.

(2) The court shall fix a return day which, unless it otherwise directs, shall be a day fixed for the case management hearing of the proceedings.

#### Claim for compensation in respect of improvement

**Rule 3.**—(1) A claim under section 1 of the Act of 1927 for compensation in respect of any improvement, or a claim by a mesne landlord under section 8 (1) of that Act, shall be in writing, signed by the claimant, his solicitor or agent, and shall contain—

- (a) a statement of the name and address of the claimant and of the landlord against whom the claim is made;
- (b) a description of the holding in respect of which the claim arises and of the trade or business carried on there;
- (c) a concise statement of the nature of the claim;
- (d) particulars of the improvement including the date when it was completed and the cost of it; and
- (e) a statement of the amount claimed.

(2) Where any document relating to any proposed improvement, or to any claim, is sent to or served on a mesne landlord in pursuance of Part I of the Act of 1927, he shall forthwith serve on his immediate landlord a copy of the document, together with a notice in writing stating the date when the document was received by the mesne landlord, and if the immediate landlord is himself a mesne landlord, he shall, forthwith on receipt of the documents aforesaid, serve on his immediate landlord a similar copy and notice and so on from landlord to landlord.

(3) Any document required to be served under paragraph (2) shall be served in the manner prescribed by section 23 of the Act of 1927.

#### Proceedings under Part I of the Act of 1927

**Rule 4.**—(1) Subject to paragraph (2), the claim form by which proceedings under Part I of the Act of 1927 are commenced shall state—

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<sup>(38)</sup> 1927 c. 36; section 1 was amended by the Landlord and Tenant Act 1954 (c. 56), section 47(5); and section 8 by the 1954 Act, sections 45, 68(1) and schedule 7.

<sup>(39)</sup> 1954 c. 56.

*Status: This is the original version (as it was originally made).*

- (a) the nature of the claim or application or matter to be determined;
- (b) the holding in respect of which the claim or application is made, its rateable value and the trade or business carried on there;
- (c) particulars of the improvement or proposed improvement to which the claim or application relates; and
- (d) if the claim is for payment of compensation, the amount claimed.

(2) In any case to which rule 3 (1) relates the particulars required by paragraph (1) may, so far as they are contained in a claim made in accordance with that rule, be given by appending a copy of the claim to the claim form.

(3) The applicant's immediate landlord shall be made respondent to the application.

(4) Any certificate of the court under section 3 of the Act of 1927 that an improvement is a proper improvement or has been duly executed shall be embodied in an order.

#### **Proceedings under Part I of the Act of 1954**

**Rule 5.**—(1) A respondent to an application under section 7 of the Act of 1954<sup>(40)</sup> who resists any of the applicant's proposals as to the terms of a statutory tenancy shall state in his answer the terms which he proposes in their place.

(2) The particulars in an application under section 13 of the Act of 1954 for the recovery of possession shall state, in addition to the matters set out in Order 6, rule 3—

- (a) the date and terms of the lease under which the tenant holds or has held the property;
- (b) the date of service upon the tenant of the landlord's notice to resume possession and the date of termination specified in the notice;
- (c) where the tenant has notified the landlord that he is not willing to give up possession, the date of the notification; and
- (d) where the claimant is not both the freeholder of the property comprised in the tenancy and the immediate landlord of the defendant, details of the interest constituting him the landlord for the purpose of proceedings under Part I of the Act of 1954.

(3) Where an order has been made under paragraph 1 of the Second Schedule to the Act of 1954 for the reduction of rent of any premises on the ground of failure by the landlord to do initial repairs, and it is subsequently agreed between the landlord and the tenant that the repairs to which the order relates have been carried out, the landlord shall file a copy of the agreement, and a note thereof shall be entered in the records of the court.

(4) Where the court makes an order for the recovery of possession of the property in proceedings to which paragraph 9 of the Fifth Schedule to the Act of 1954 applies, the claimant shall, if the occupying tenant is not a party to the proceedings, forthwith notify him of the terms of the order and inform him of his rights to obtain relief under sub-paragraph (2) of that paragraph.

(5) If a copy of a notice under section 16 (2) of the Act of 1954 or paragraph 9 (2) or 10 (2) of the Fifth Schedule to that Act is lodged in court, a note of the lodgment shall be entered in the records of the court.

#### **Application for new tenancy under section 24 of the Act of 1954**

**Rule 6.**—(1) An application under section 24 of the Act of 1954<sup>(41)</sup> for a new tenancy shall state—

<sup>(40)</sup> Section 7 was amended by the Leasehold Reform Act 1967 (c. 88), section 39(2), schedule 5, paragraph 3(1)(b).

<sup>(41)</sup> Section 24 was amended by the Law of Property Act 1969 (c. 59), sections 3(2) and 4(1).

- (a) the premises to which the application relates, their rateable value and the business carried on there;
  - (b) particulars of the applicant's current tenancy of the premises and of every notice or request given or made in respect of that tenancy under section 25 or 26 of that Act;
  - (c) the applicant's proposals as to the terms of the new tenancy applied for, including, in particular, terms as to the duration thereof and as to the rent payable thereunder;
  - (d) the name and address of any person other than the respondent who, to the knowledge of the applicant, has an interest in reversion in the premises expectant (whether immediately or in not more than 14 years) on the termination of the applicant's current tenancy; and
  - (e) the name and address of any person having an interest in the premises other than a freehold interest or tenancy who, to the knowledge of the applicant, is likely to be affected by the grant of a new tenancy.
- (2) The person who, in relation to the applicant's current tenancy, is the landlord as defined by section 44 of the Act of 1954<sup>(42)</sup> shall be made respondent to the application.
- (3) A claim form under this rule must be served within 2 months after the date of issue whether served within or out of the jurisdiction and CPR rule 7.5(2) and 7.5(3) will not apply

#### **Answer to application for new tenancy under section 24 of the Act of 1954**

**Rule 7** Every answer by a respondent to an application to which rule 6 relates shall state—

- (a) whether or not the respondent opposes the grant of a new tenancy and, if so, on what grounds;
- (b) whether or not, if a new tenancy is granted, the respondent objects to any of the terms proposed by the applicant and, if so, the terms to which he objects and the terms which he proposes in so far as they differ from those proposed by the applicant;
- (c) whether the respondent is a tenant under a lease having less than 14 years unexpired at the date of the termination of the applicant's current tenancy and, if he is, the name and address of any person who, to the knowledge of the respondent, has an interest in reversion in the premises expectant (whether immediately or in not more than 14 years from the said date) on the termination of the respondent's tenancy;
- (d) the name and address of any person having an interest in the premises other than a freehold interest or tenancy who is likely to be affected by the grant of a new tenancy; and
- (e) if the applicant's current tenancy is one to which section 32 (2) of the Act of 1954 applies, whether the respondent requires that any new tenancy ordered to be granted shall be a tenancy of the whole of the property comprised in the applicant's current tenancy.

#### **Order dismissing application under section 24 which is successfully opposed**

**Rule 8** Where the court hearing an application under section 24 of the Act of 1954 is precluded by section 31 of that Act from ordering the grant of a new tenancy by reason of any of the grounds specified in section 30 (1) of that Act, the order dismissing the application shall state all the grounds by reason of which the court is so precluded.

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<sup>(42)</sup> Section 44 was amended by the Law of Property Act 1969 (c. 59), section 14(1).

### **Other applications under Part II of the Act of 1954**

**Rule 9** An application for an order under section 31 (2)(b) of the Act of 1954 and, unless made at the hearing of the application under section 24, an application for a certificate under section 37 (4) of that Act(43) may be made to the district judge without notice being served on any other party.

### **Service of order in proceedings under Part II of the Act of 1954**

**Rule 10** A copy of any order made on an application to which rule 6 or 9 relates shall be sent by the court to every party to the proceedings.

### **Proof of determination of rateable value**

**Rule 11** Where pursuant to section 37 (5) of the Act of 1954 any dispute as to the rateable value of any premises has been referred to the Commissioners of Inland Revenue for decision by a valuation officer, whether for the purpose of section 37 (2) or of section 63 of that Act(44), any document purporting to be a notification by the valuation officer of his decision shall be admissible in any proceedings in a county court as evidence of the matters contained therein.

### **Provisions as to assessors**

**Rule 13.**—(1) This rule applies to proceedings under Part I of the Act of 1927 or Part I or II of the Act of 1954, where an assessor is summoned by the judge under section 63 (1) of the County Courts Act 1984(45), as extended by section 63 of the Act of 1954.

(3) Any report made by the assessor pursuant to paragraph (a) of section 63 (6) of the Act of 1954 shall be filed by the assessor, together with a copy for each party to the proceedings, and thereupon the court shall send a copy to each party and shall, if the further consideration of the proceedings has not been adjourned to a day named, fix a day for further consideration and give notice thereof to all parties.

### **District judge's jurisdiction**

**Rule 15.**—(1) If on the day fixed for the hearing of an application under section 7 or section 24 of the Act of 1954 the district judge is satisfied that—

- (a) the parties to the application have agreed, in the case of an application under section 7, on the matters specified in subsection (2) of that section, or, in the case of an application under section 24, on the subject, period and terms of the new tenancy;
- (b) the owner of any reversionary interest in the property consents thereto; and
- (c) there are no other persons with interests in the property who are likely to be affected,

the district judge shall have power to make an order giving effect to the agreement.

(2) An application under section 38 (4) of the Act of 1954(46) for the authorisation of an agreement may be heard and determined by the district judge and may be dealt with in private.

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(43) Section 37 was amended by the Law of Property Act 1969 (c. 59), section 11; and by the Local Government and Housing Act 1989 (c. 42), section 149(6), schedule 7, paragraph 2.

(44) Section 63 was amended by S.I. 1991/724.

(45) 1984 c. 28; section 63 was amended by S.I. 1998/2940.

(46) Section 38 was amended by the Law of Property Act 1969 (c. 59), section 5.

### **Application under section 12 (2) of the Act of 1985**

**Rule 16** An application under section 12 (2) of the Act of 1985 for an order authorising the inclusion in a lease of provisions excluding or modifying the provisions of section 11 of that Act may be heard and determined by the district judge and may, if the court thinks fit, be dealt with in private.

### **Transfer to leasehold valuation tribunal**

**Rule 16A** Where a question arising in proceedings is ordered to be transferred to a leasehold valuation tribunal for determination under section 31C of the Landlord and Tenant Act 1985<sup>(47)</sup> the court shall—

- (a) send notice of the transfer to all parties to the proceedings; and
- (b) send to the leasehold valuation tribunal copies certified by the district judge of all entries in the records of the court relating to the question, together with the order of transfer and all documents filed in the proceedings which relate to the question.

### **Application under section 19 of the Act of 1987**

**Rule 17** A copy of the notice served under section 19 (2)(a) of the Act of 1987 shall be appended to the claim form seeking an order under section 19 (1) thereof, and an additional copy of the notice shall be filed.

### **Application for order under section 24 of the Act of 1987**

**Rule 18.**—(1) An applicant for an order under section 24 of the Act of 1987<sup>(48)</sup> shall state—

- (a) the premises to which the application relates;
- (b) the name and address of the applicant and of the landlord of the premises, or, where the landlord cannot be found or his identity ascertained, the steps taken to find him or ascertain his identity;
- (c) the name and address of every person known to the applicant who is likely to be affected by the application, including, but not limited to, the other tenants of flats contained in the premises, any mortgagee or superior landlord of the landlord, and any tenants' association;
- (d) the name, address and qualifications of the person it is desired to be appointed manager of the premises;
- (e) the functions which it is desired that the manager should carry out; and
- (f) the grounds of the application,

and a copy of the notice served on the landlord under section 22 of the Act of 1987<sup>(49)</sup> shall be appended to the claim form unless the requirement to serve such a notice has been dispensed with, and an additional copy of the notice shall be filed.

(2) The respondent to an application for an order under section 24 of the Act of 1987 shall be the landlord of the premises.

(3) A copy of the application shall be served on—

- (a) each of the persons named by the applicant under paragraph (1)(c), together with a notice stating that he may apply under rule 14 to be made a party to the proceedings; and
- (b) the person named under paragraph (1)(d).

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<sup>(47)</sup> 1985 c. 70. section 31C was inserted by the Housing Act 1996 (c. 52), section 83(3).

<sup>(48)</sup> 1987 c. 31; section 24 was amended by the Housing Act 1996 (c. 52), section 85, 227, schedule 19, Part III.

<sup>(49)</sup> Section 22 was amended by the Housing Act 1996 (c. 52), section 86.

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(4) RSC Order 30, rules 2 to 8 shall apply to proceedings in which an application is made for an order under section 24 of the Act of 1987 as they apply to proceedings in which an application is made for the appointment of a receiver, and as if for the references in those rules to a receiver there were references to a manager under the Act of 1987.

### **Application for acquisition order under section 29 of the Act of 1987**

**Rule 19.**—(1) An application for an acquisition order under section 29 of the Act of 1987<sup>(50)</sup> shall—

- (a) identify the premises to which the application relates and give such details of them as are necessary to show that section 25 of the Act of 1987 applies to them;
- (b) give such details of the applicants as are necessary to show that they constitute the requisite majority of qualifying tenants;
- (c) state the names and addresses of the applicants and of the landlord of the premises, or, where the landlord cannot be found or his identity ascertained, the steps taken to find him or ascertain his identity;
- (d) state the name and address of the person nominated by the applicants for the purposes of Part III of the Act of 1987;
- (e) state the name and address of every person known to the applicants who is likely to be affected by the application, including, but not limited to, the other tenants of flats contained in the premises (whether or not they could have made an application), any mortgagee or superior landlord of the landlord, and any tenants' association; and
- (f) state the grounds of the application,

and a copy of the notice served on the landlord under section 27 of the Act of 1987<sup>(51)</sup> shall be appended to the claim form unless the requirement to serve such a notice has been dispensed with, and an additional copy of the notice shall be filed.

(2) The respondents to an application for an acquisition order under section 29 of the Act of 1987 shall be the landlord of the premises and the nominated person, where he is not an applicant.

(3) A copy of the application shall be served on each of the persons named by the applicant under paragraph (1)(e), together with a notice stating that he may apply under rule 14 to be made a party to the proceedings.

(4) Where the nominated person pays money into court in accordance with an order under section 33 (1) of the Act of 1987, he shall file a copy of the certificate of the surveyor selected under section 33 (2)(a) thereof.

### **Application for order under section 38 or section 40 of the Act of 1987**

**Rule 20.**—(1) An application for an order under section 38 or section 40 of the Act of 1987<sup>(52)</sup> shall state—

- (a) the name and address of the applicant and of the other current parties to the lease or leases to which the application relates;
- (b) the date of the lease or leases, the premises demised thereby, the relevant terms thereof and the variation sought;
- (c) the name and address of every person who the applicant knows or has reason to believe is likely to be affected by the variation, including, but not limited to, the other tenants of

<sup>(50)</sup> Section 29 was amended by the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28), section 85, 187(2), schedule 22; and by the Housing Act 1996 (c. 52), section 88.

<sup>(51)</sup> Section 27 was amended by the Leasehold Reform Housing and Urban Development Act 1993 (c. 28), section 85.

<sup>(52)</sup> Section 40 was amended by the Housing Act 1988 (c. 50), section 119, schedule 13, paragraph 6.

flats contained in the premises of which the demised premises form a part, any previous parties to the lease, any mortgagee or superior landlord of the landlord, any mortgagee of the applicant, and any tenants' association; and

(d) the grounds of the application.

(2) The other current parties to the lease or leases shall be made respondents to the application.

(3) A copy of the application shall be served by the applicant on each of the persons named by the applicant under paragraph (1)(c) and by the respondent on any other person who he knows or has reason to believe is likely to be affected by the variation, together, in each case, with a notice stating that the person may apply under rule 14 to be made a party to the proceedings.

(4) An application under section 36 of the Act of 1987 shall be contained in the respondent's answer, and paragraphs (1) to (3) shall apply to such an application as if the respondent were the applicant.

### **Service of documents in proceedings under the Act of 1987**

**Rule 21.**—(1) Where a claim form or answer is to be served in proceedings under the Act of 1987 it shall be served by the applicant or, as the case may be, by the respondent.

(2) Where a notice is to be served in or before proceedings under the Act of 1987, it shall be served in accordance with section 54 and, in the case of service on a landlord, it shall be served at the address furnished under section 48 (1).

### **Tenants' associations**

**Rule 22** In rules 18, 19 and 20 a reference to a tenants' association is a reference to a recognised tenants' association within the meaning of section 29 of the Act of 1985 which represents tenants of the flats of which the demised premises form a part.

## **CCR ORDER 44**

### **THE AGRICULTURAL HOLDINGS ACT 1986**

#### **Order to arbitrator to state case**

**Rule 1.**—(1) An application under paragraph 26 of Schedule 11 to the Agricultural Holdings Act 1986<sup>(53)</sup> for an order directing an arbitrator to state, in the form of a special case for the opinion of the court, a question of law arising in the course of the arbitration shall include a concise statement of the question of law.

(2) The arbitrator shall not be made a respondent to the application, but if the judge grants the application, a copy of the order shall be served on the arbitrator.

#### **Special case stated by arbitrator**

**Rule 2.**—(1) Where, pursuant to the said paragraph 26, an arbitrator states, in the form of a special case for the opinion of the court, any question of law arising in the course of the arbitration, the case shall contain a statement of such facts and reference to such documents as may be necessary to enable the judge to decide the question of law.

(2) The case shall be signed by the arbitrator and shall be lodged in the court office by the arbitrator or any party to the arbitration, together with a copy for the use of the judge.

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(53) 1986 c. 5.

*Status: This is the original version (as it was originally made).*

(3) The court officer shall fix a day for the hearing of the special case and give notice thereof to the parties.

(4) On the hearing the judge shall be at liberty to draw any inferences of fact from the case and the documents referred to therein.

(5) The judge may remit the case to the arbitrator for restatement or further statement.

(6) A copy of the order made by the judge on the hearing shall be served on the parties to the arbitration and on the arbitrator.

#### **Removal of arbitrator or setting aside award**

**Rule 3.**—(1) An application under paragraph 27 of Schedule 11 to the said Act of 1986 for the removal of an arbitrator on the ground of his misconduct or for an order setting aside an award on the ground that the arbitrator has misconducted himself or that an arbitration or award has been improperly procured or that there is an error of law on the face of the award shall be made within 21 days after the date of the award.

(2) The arbitrator and all parties to the arbitration, other than the applicant, shall be made respondents.

#### **Enforcement of order imposing penalty**

**Rule 4.**—(1) When taking any proceedings for the enforcement in a county court of an order under section 27 of the Agricultural Holdings Act 1986, the party in whose favour the order was made shall file—

(a) a certified copy of the order; and

(b) a certificate specifying the amount due under the order and stating whether any previous proceedings have been taken for its enforcement and, if so, the nature of the proceedings and their result.

(2) Where it is desired to enforce the order by warrant of execution, the proceedings may be taken in any court in the district of which execution is to be levied.

## **CCR ORDER 45**

### **THE REPRESENTATION OF THE PEOPLE ACT 1983**

#### **Application for detailed assessment of returning officer's account**

**Rule 1.**—(1) An application by the Secretary of State under section 30 of the Representation of the People Act 1983<sup>(54)</sup> for the detailed assessment of a returning officer's account shall be made by claim form and on issuing the claim form the court will fix a day for the hearing which shall be a day for proceeding with the detailed assessment if the application is granted.

(2) Where on the application the returning officer desires to apply to the court to examine any claim made against him in respect of matters charged in the account, the application shall be made in writing and filed, together with a copy thereof, within 7 days after service on the returning officer of the copy of the application for detailed assessment.

(3) On the filing of an application under paragraph (2) the court officer shall fix a day for the hearing and give notice thereof to the returning officer, and a copy of the application and of the

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(54) 1983 c. 3.



notice shall be served on the claimant in the manner required for service of the notice of the day of hearing in accordance with Order 3, rule 6.

(4) The examination and detailed assessment may, if the court thinks fit, take place on the same day, but the examination shall be determined before the detailed assessment is concluded.

(5) The application for detailed assessment and any application under paragraph (2) may be heard and determined by the district judge and a copy of the order made on the application shall be served on the Secretary of State and the returning officer and, in the case of an application under paragraph (2), on the claimant.

### **Appeal from decision of registration officer**

**Rule 2.**—(1) Where notice of appeal from a decision of a registration officer is given pursuant to regulations made under section 53 of the said Act of 1983, the registration officer shall, within 7 days after receipt of the notice by him, forward the notice by post to the court in which the appeal is required to be brought, together with the statement mentioned in those regulations.

(2) The appeal shall be brought in the court for the district in which the qualifying premises are situated.

In this paragraph “qualifying premises” means the premises in respect of which—

- (a) the person whose right to be registered in the register of electors is in question on the appeal is entered on the electors' list or is registered or claims to be entitled to be registered; or
- (b) the person whose right to vote by proxy or by post is in question on the appeal is or will be registered in the register of electors; or
- (c) the elector whose proxy's right to vote by post is in question on the appeal is or will be registered in the register of electors,

as the case may be.

(3) The respondents to the appeal shall be the registration officer and the party (if any) in whose favour the decision of the registration officer was given.

(4) On the hearing of the appeal—

- (a) the statement forwarded to the court by the registration officer and any document containing information furnished to the court by the registration officer pursuant to the regulations mentioned in paragraph (1) shall be admissible as evidence of the facts stated therein; and
- (b) the judge shall have power to draw all inferences of fact which might have been drawn by the registration officer and to give any decision and make any order which ought to have been given or made by the registration officer.

(5) A respondent to an appeal other than the registration officer shall not be liable for or entitled to costs, unless he appears before the court in support of the decision of the registration officer.

### **Selected appeals**

**Rule 3.**—(1) Where two or more appeals to which rule 2 relates involve the same point of law, the judge may direct that one appeal shall be heard in the first instance as a test case and thereupon the court shall send a notice of the direction to the parties to the selected appeal and the parties to the other appeals.

(2) If within 7 days after service of such notice on him any party to an appeal other than the selected appeal gives notice to the court that he desires the appeal to which he is a party to be heard—

- (a) the appeal shall be heard after the selected appeal is disposed of;

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- (b) the court shall give the parties to the appeal notice of the day on which it will be heard;
  - (c) the party giving notice under this paragraph shall not be entitled to receive any costs occasioned by the separate hearing of the appeal to which he is a party, unless the judge otherwise orders.
- (3) If no notice is given under paragraph (2) within the time limited—
- (a) the decision on the selected appeal shall bind the parties to each other appeal without prejudice to their right to appeal to the Court of Appeal;
  - (b) an order similar to the order in the selected appeal shall be made in each other appeal without further hearing;
  - (c) the party to each other appeal who is in the same interest as the unsuccessful party to the selected appeal shall be liable for the costs of the selected appeal in the same manner and to the same extent as the unsuccessful party to that appeal and an order directing him to pay such costs may be made and enforced accordingly.

## CCR ORDER 46

### THE LEGITIMACY ACT 1976

#### **Manner of application**

**Rule 1.**—(1) An application to a county court under section 45 (2) of the Matrimonial Causes Act 1973(55) for a declaration of legitimation by virtue of the Legitimacy Act 1976(56) shall be made by claim form stating—

- (a) the grounds on which the applicant relies;
- (b) the date and place of birth of the applicant and the maiden name of his mother and, if it be the case, that the applicant is known by a name other than that which appears in the certificate of his birth; and
- (c) particulars of every person whose interest may be affected by the proceedings and his relationship, if any, to the applicant, including any person other than the applicant's father to whom his mother was married at the date of his birth.

(2) The application may be filed in the court for the district in which the applicant resides or the marriage leading to the legitimation was celebrated, or if neither the residence of the applicant nor the place of the marriage is in England or Wales, then in the Westminster County Court.

(3) The applicant shall file with the claim form—

- (a) a witness statement or affidavit by him (or, if he is a child, by his litigation friend) verifying the application; and
- (b) any birth, death or marriage certificate intended to be relied on at the hearing.

#### **Preliminary consideration and service**

**Rule 2.**—(1) On the filing of the documents mentioned in rule 1, the court officer shall fix a day for a case management hearing and give notice thereof to the Attorney-General.

(2) It shall not be necessary to serve the application on the Attorney-General otherwise than by delivering a copy of it to him in accordance with section 45 (6) of the Matrimonial Causes Act 1973.

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(55) 1973 c. 18; section 45 was amended by the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22); section 89, schedule 2, paragraph 39; by the Matrimonial and Family Proceedings Act 1984 (c. 42), section 46(1), schedule 1, paragraph 15; and by the Family Law Act 1986 (c. 55), section 68(1), schedule 1, paragraph 14.

(56) 1976 c. 31.

(3) At the case management hearing the court shall give directions as to the persons, if any, other than the Attorney-General, who are to be made respondents to the application.

(4) Where in the opinion of the court it is impracticable to serve a respondent other than the Attorney-General in accordance with the rules relating to service or it is otherwise necessary or expedient to dispense with service of the claim form on any such respondent, the court may make an order dispensing with service on him.

### **Answer**

**Rule 3.**—(1) The Attorney-General may file an answer to the application within 14 days after directions have been given at the case management hearing.

(2) Any other respondent who wishes to oppose the application or to dispute any of the facts alleged in it shall, within 14 days after service of the application on him, file an answer to the application.

(3) A respondent who files an answer shall file with it as many copies as there are other parties to the proceedings and the court shall send one of the copies to each of those parties.

## **CCR ORDER 47**

### **DOMESTIC AND MATRIMONIAL PROCEEDINGS**

#### **Family Law Reform Act 1969**

**Rule 5.**—(1) In this rule—

“blood samples” and “blood tests” have the meanings assigned to them by section 25 of the Family Law Reform Act 1969(57); and

“direction” means a direction for the use of blood tests under section 20 (1) of that Act.

(2) Except with the permission of the court, an application in any proceedings for a direction shall be made on notice to every party to the proceedings (other than the applicant) and to any other person from whom the direction involves the taking of blood samples.

(3) Where an application is made for a direction involving the taking of blood samples from a person who is not a party to the proceedings in which the application is made, the application notice shall be served on him personally and the court may at any time direct him to be made a party to the proceedings.

(4) Where an application is made for a direction in respect of a person (in this paragraph referred to as a person under disability) who is either—

(a) under 16; or

(b) suffering from mental disorder within the meaning of the Mental Health Act 1983(58) and incapable of understanding the nature and purpose of blood tests,

the notice of application shall state the name and address of the person having the care and control of the person under disability and shall be served on him instead of on the person under disability.

(5) Where the court gives a direction in any proceedings, the court officer shall send a copy to every party to the proceedings and to every other person from whom the direction involves the

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(57) 1969 c. 46; section 25 was amended by the Human Fertilisation and Embryology Act 1990 (c. 37), section 49(5), schedule 4, paragraph 1; and section 20 by the Children Act 1989 (c. 41), section 89; and by the Courts and Legal Services Act 1990 (c. 41), section 116, schedule 16, Part I, paragraph 3.

(58) 1983 c. 20.

taking of blood samples, and, unless otherwise ordered, the proceedings shall stand adjourned until the court receives a report pursuant to the direction.

(6) On receipt by the court of a report made pursuant to a direction, the court officer shall send a copy to every party to the proceedings and to every other person from whom the direction involved the taking of blood samples.

## CCR ORDER 48B

### ENFORCEMENT OF PARKING PENALTIES UNDER THE ROAD TRAFFIC ACT 1991<sup>(59)</sup>

#### **Application and interpretation**

**Rule 1.**—(1) This Order applies for the recovery of—

- (a) increased penalty charges provided for in parking charge certificates issued under paragraph 6 of Schedule 6 to the 1991 Act; and
- (b) amounts payable by a person other than an authority under an adjudication of a parking adjudicator pursuant to section 73 of the 1991 Act.

(2) In this Order, unless the context otherwise requires—

“authority” means the local authority which served the charge certificate;

“order” means an order made under paragraph 7 of Schedule 6 to the 1991 Act or, as the case may be, under section 73 of that Act;

“the Order” means the Enforcement of Road Traffic Debts Order 1993<sup>(60)</sup> made under section 78 of the 1991 Act as it applies to a local authority;

“relevant period” means the period of 21 days allowed for serving a statutory declaration by paragraph 8 (1) of Schedule 6 to the 1991 Act or, where a longer period has been allowed pursuant to paragraph 8 (4) of the said Schedule, that period;

“respondent” means the person on whom the charge certificate was served or, as the case may be, the person (other than an authority) by whom the amount due under an adjudication of a parking adjudicator is payable;

“specified debts” means the Part II debts specified in article 2 of the Order;

“statutory declaration” means a declaration in the appropriate form which complies with paragraph 8 (2) of Schedule 6 to the 1991 Act; and

“the 1991 Act” means the Road Traffic Act 1991.

(3) Unless the context otherwise requires, expressions which are used in the 1991 Act have the same meaning in this Order as they have in that Act.

(4) The references in paragraph (2) to a local authority mean—

- (a) in England, a London authority, a county or district council or the Council of the Isles of Scilly; and
- (b) in Wales, a county or county borough council.

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<sup>(59)</sup>  
<sup>(60)</sup> S.I. 1993/2073.

1991 c. 40.

### **Establishment of the parking enforcement centre**

**Rule 1A.**—(1) There shall be a parking enforcement centre (“the Centre”) situated at such place or places as the Lord Chancellor may determine and having such functions relating to proceedings under this Order and other related matters as he may direct.

(2) For any purpose connected with the exercise of the Centre’s functions—

- (a) the Centre shall be deemed to be part of the office of the court whose name appears on the documents to which the functions relates or in whose name the documents are issued;
- (b) any officer of the Centre shall, in exercising its functions, be deemed to act as a court officer of that court,

and these rules shall have effect accordingly.

### **Requests for orders**

**Rule 2.**—(1) An authority which wishes to take proceedings under this Order shall give notice to the court officer and, where the court officer so allows, requests for orders may be made, and such orders may be enforced, in accordance with the following provisions of this Order.

(2) An authority shall file a request for an order in the appropriate form scheduling the increased penalty charges in respect of which an order is sought.

(3) The authority shall in the request or in another manner approved by the court officer—

- (a) certify—
  - (i) that 14 days have elapsed since service of the charge certificate;
  - (ii) the amount due under the charge certificate and the date on which the charge certificate was served; and
  - (iii) that the amount due remains unpaid;
- (b) give the charge certificate number;
- (c) specify (whether by reference to the appropriate code or otherwise) the grounds stated in the notice to owner on which the parking attendant who issued the penalty charge notice believed that a penalty charge was payable with respect to the vehicle;
- (d) state—
  - (i) the name and address of the respondent and, where known, his title;
  - (ii) the registration number of the vehicle concerned;
  - (iii) (whether by reference to the appropriate charge certificate’s number or otherwise) the authority’s address for service;
  - (iv) the court fee.

(4) If satisfied that the request is in order, the court officer shall order that the increased charge (together with the court fee) may be recovered as if it were payable under a county court order by sealing the request and returning it to the authority.

(5) When the court officer so orders and on receipt of the sealed request, the authority may draw up the order and shall annex to any such order a form of statutory declaration for the respondent’s use.

(6) Within 14 days of receipt of the sealed request, the authority shall serve the order (and the form of statutory declaration) on the respondent by—

- (a) delivering the order to the respondent personally; or
- (b) sending it by first-class post to the respondent at the address given in the request.

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(6A) Where an order is served in accordance with paragraph (6)(b), the date of service shall, unless the contrary is shown, be deemed to be the seventh day after the date on which the order was sent to the respondent.

(6B) Subject to paragraphs (6C) and (6D), where partners are served in the name of their firm, service of an order shall be good service on all the partners, whether any of them is out of England and Wales or not, if the order is—

- (a) delivered to a partner personally; or
- (b) served by a court officer sending it by first class post to the firm at the address stated in the request.

(6C) Where the partnership has to the knowledge of the authority been dissolved before the service of the order, the order shall be served upon every person within the jurisdiction sought to be made liable.

(6D) Unless the authority, or its solicitor, otherwise requests, service on the partnership shall be effected in accordance with paragraph (6B)(b).

(6E) Where an order is served in accordance with paragraph (6B)(b) the date of service shall, unless the contrary is shown, be deemed to be the seventh day after the date on which the order was sent to the respondent.

(6F) Service on a corporation may 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.

(6G) 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 an issue in the proceedings.

(6H) Where an order has been served under paragraph (6G) other than at the registered office, and after a request for a warrant of execution has been sealed, it appears to the court officer that the order did not come to the attention of the appropriate person within the company in due time, the court may, on application under CPR Part 23 or of its own initiative, set aside the warrant, and may give such directions as it considers appropriate.

(7) Where an authority requests an order in respect of amounts payable by a person other than an authority under an adjudication of a parking adjudicator pursuant to section 73 of the 1991 Act, paragraphs (2) and (3) shall apply with the necessary modifications and in addition the authority shall—

- (a) state the date on which the adjudication was made;
- (b) provide details of the order made on the adjudication; and
- (c) certify the amount awarded by way of costs and that the amount remains unpaid.

## **Documents**

**Rule 3.**—(1) Where by or under this Order any document is required to be filed, that requirement shall be deemed to be satisfied if the information which would be contained in the document is delivered in computer-readable form but nothing in this paragraph shall be taken as enabling an authority to commence proceedings without supplying a written request in the appropriate form under rule 2 (2).

(2) For the purposes of paragraph (1), information which would be contained in a document relating to one case may be combined with information of the same nature relating to another case.

(3) Where by or under this Order or by virtue of any order a document which contains information is required to be produced, that requirement shall be deemed to be satisfied if a copy of the document is produced from the computer records kept for storing such information.

### **Functions of court officer**

**Rule 4.**—(1) The functions of the district judge under paragraph 8 (4) and (5)(d) of Schedule 6 to the 1991 Act (longer period for service of the statutory declaration and notice of effect of statutory declaration) may be exercised by the court officer.

(2) Where pursuant to paragraph 8 (4) of Schedule 6 to the 1991 Act a longer period is allowed for service of the statutory declaration, the court officer shall notify the authority and the respondent accordingly.

### **Enforcement of orders**

**Rule 5.**—(1) Subject to the Order and to this rule, the following provisions of Orders 25 to 27, 30 and 31 of these Rules shall apply for the enforcement of specified debts—

Order 25, rules 1, 2 (except paragraph (3)(b), (c) and (d)), 3, 5 (except paragraph (1)(a) and (b)) and 9;

Order 26, rule 5;

Order 27, rules 1 to 7, 7A, 9 to 16 and 18 to 22;

Order 30, rules 1 to 3, 5 and 7 to 15;

Order 31, rules 1 to 4.

(2) CPR rule 30.2(1) (b) (ii) (court may order transfer of proceedings to enforce judgment or order to another county court if proceedings could be more conveniently or fairly taken there) applies to proceedings under this Order.

(3) An authority desiring to issue a warrant of execution shall file a request in that behalf in the appropriate form or in another manner approved by the court officer—

(a) certifying the amount remaining due under the order;

(b) specifying the date of service of the order on the respondent; and

(c) certifying that the relevant period has elapsed.

(4) The court shall seal the request and return it to the authority which shall, within 7 days of the sealing of the request, prepare the warrant in the appropriate form.

(5) No payment under a warrant shall be made to the court.

(6) A warrant shall, for the purpose of execution, be valid for 12 months beginning with the date of its issue and nothing in this rule or in Order 26 shall authorise an authority to renew a warrant.

(7) Where an order is deemed to have been revoked under paragraph 8 (5) of Schedule 6 to the 1991 Act—

(a) the court shall serve a copy of the statutory declaration on the authority;

(b) any execution issued on the order shall cease to have effect; and

(c) on receipt of the court officer's notice under paragraph 8 (5)(d) of Schedule 6, the authority shall forthwith inform any bailiff instructed to levy execution of the withdrawal of the warrant.

(8) In addition to the requirements of that rule, any application by an authority under Order 25, rule 2, shall—

(a) where the authority has not attempted to enforce by execution, give the reasons why no such attempt was made;

(b) certify that there has been no relevant return to the warrant of execution;

(c) specify the date of service of the order on the respondent; and

(d) certify that the relevant period has elapsed.

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(9) An application under Order 30, rule 2 and (unless provided pursuant to an application under Order 25 rule 2) any application by an authority under Order 25, rule 3, Order 27, rule 4 (1) or Order 31, rule 1 (2) shall, in addition to the requirements of those rules—

- (a) where the authority has not attempted to enforce by execution, give the reasons why no such attempt was made;
- (b) certify that there has been no relevant return to the warrant of execution;
- (c) specify the date of service of the order on the respondent, and
- (d) certify that the relevant period has elapsed.

(10) In paragraphs (8) and (9) “no relevant return to the warrant” means that—

- (a) the bailiff has been unable to seize goods because he has been denied access to the premises occupied by the respondent or because the goods have been removed from those premises;
- (b) any goods seized under the warrant of execution are insufficient to satisfy the specified debt and the cost of execution; or
- (c) the goods are insufficient to cover the cost of their removal and sale.

(11) If the court officer allows, an authority may combine information relating to one charge certificate with information concerning the same respondent in another charge certificate in any request made, or any application brought, under one of the provisions mentioned in paragraph (8) or (9) above.

## CCR ORDER 49

### MISCELLANEOUS STATUTES

#### **Access to Neighbouring Land Act 1992(61)**

**Rule 1.**—(1) In this rule, “the 1992 Act” means the Access to Neighbouring Land Act 1992, a section referred to by number means the section so numbered in the 1992 Act and expressions which are defined in the 1992 Act have the same meaning in this rule as they have in that Act.

(2) An application for an access order under section 1 of the 1992 Act shall be made by the issue of a claim form which shall be filed in the court for the district in which the dominant land is situated.

(3) The application shall—

- (a) identify the dominant land and the servient land and state whether the dominant land is or includes residential land;
- (b) specify the works alleged to be necessary for the preservation of the whole or a part of the dominant land;
- (c) state why entry upon the servient land is required and specify the area to which access is required by reference, if possible, to a plan annexed to the application;
- (d) give the name of the person who will be carrying out the works if it is known at the time of the application;
- (e) state the proposed date on which, or the dates between which, the works are to be started and their approximate duration, and
- (f) state what (if any) provision has been made by way of insurance in the event of possible injury to persons or damage to property arising out of the proposed works.

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(61) 1992 c. 23.



(4) The respondents shall be the owner and the occupier of the servient land and any respondent who wishes to be heard on the application shall file an answer within 14 days after the date of service of the application on him.

(5) Order 24, rule 3 shall apply with the necessary modifications to service of the claim form under this rule.

(6) The court may direct that a copy of the claim form shall be served on any person who may be affected by the proposed entry and any such person may, within 14 days after service of the claim form on him, apply to be made a respondent to the application.

(7) The application may be heard and determined by the district judge and may, if the court thinks fit, be dealt with in private.

### **Administration of Justice Act 1970(62)**

**Rule 1A** Any claim by a mortgagee for possession of a dwelling-house, being a claim to which section 36 of the Administration of Justice Act 1970 applies, shall be dealt with by the court sitting in private unless the court otherwise directs.

### **Chancel Repairs Act 1932(63)**

**Rule 2.**—(1) A notice to repair under section 2 of the Chancel Repairs Act 1932 shall—

- (a) identify the responsible authority by whom it is given and the chancel alleged to be in need of repair;
- (b) state the repairs alleged to be necessary and the grounds on which the person to whom the notice is addressed is alleged to be liable to repair the chancel, and
- (c) call upon that person to put the chancel in proper repair,

and shall be served in accordance with paragraph 1A.

(1A) The notice may be served—

- (a) where no solicitor is acting for the person to be served, by delivering it to him personally, or by delivering it at, or sending it by first-class post to his address for service or, if he has no address for service by—
  - (i) by delivering it at his residence or by sending it by first class post to his last known residence, or
  - (ii) in the case of a proprietor of a business, by delivering it at his place of business or sending it by first class post to his last known place of business.
- (b) Where a solicitor is acting for the person to be served—
  - (i) by delivering it at, or sending it by first-class post to the solicitor’s address for service; or
  - (ii) where the solicitor’s address for service includes a numbered box at a document exchange, by leaving it at that document exchange or at a document exchange which transmits documents daily to that document exchange.
- (c) For the purpose of this rule first class post means pre-paid post or post in respect of which prepayment is not required
- (d) Any document which is left at a document exchange shall be deemed served on the second day after the day on which it was left, unless the contrary is shown.
- (e) In determining for the purposes of this rule—

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(62) 1970 c. 31.

(63) 1932 c. 20.

- (i) whether a document exchange transmits documents daily to another document exchange, and
- (ii) the second day after the day on which a document was left at a document exchange, any day on which the court office is closed shall be excluded.

(2) Proceedings to recover the sum required to put a chancel in proper repair shall be started by a claim form.

(3) An application for the permission of the court under the proviso to subsection (2) of the said section 2 may be made in accordance with CPR Part 23.

(4) If the court is satisfied that the defendant has a defence to the claim on the merits, the court may, on an application made by the defendant in accordance with CPR Part 23 order the claimant to give security for the defendant's costs.

(5) Where judgment is given for the payment of a sum of money in respect of repairs not yet executed, the court may order that the money be paid into court and dealt with in such manner as the court may direct for the purpose of ensuring that the money is spent in executing the repairs, but nothing in this paragraph shall prejudice a solicitor's lien for costs.

#### **Consumer Credit Act 1974(64)**

**Rule 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) This rule only applies to claims relating to land.

(Claims under the Act relating to money only shall be started by a claim form issued in accordance with CPR Part 7, and claims relating to recovery of goods shall be made in accordance with the procedure set out in the CPR Consumer Credit Act Practice Direction)

(3) Where in any claim relating to a regulated agreement the debtor or any surety has not been served with the claim form, the court may, on the claimant's application made in accordance with CPR Part 23 without notice, at or before the hearing of the claim, 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 a claim relating to a regulated agreement is brought by a person to whom a former creditor's rights and duties under the agreement have been passed by assignment or by operation of law, the requirement in section 141 (5) that all parties to the agreement shall be made parties to the claim shall not apply to the former creditor unless the court so directs.

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

- (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 district judge.
- (9) An application for an enforcement order may be made—
- (a) by a claim form asking for permission 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 land to which the agreement relates, by a claim to recover the money or land.
- (10) A claim form under paragraph (9)(a) and the particulars of claim in a claim 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.
- (14) An application to a county court under section 139 (1)(a) for a credit agreement to be reopened shall be made by a claim form
- (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 claim form on him, give notice to that effect to the court 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.

#### **Applications under section 114, 204 and 231 of the Copyright, Designs and Patents Act 1988(65)**

**Rule 4A** The CPR Patents Courts practice direction shall apply with the necessary modifications to proceedings brought under sections 114 (1), 204 (1) and 231 (1) of the Copyright, Designs and Patents Act 1988.

#### **Fair Trading Act 1973(66)**

**Rule 5.**—(1) In this rule a section referred to by number means the section so numbered in the Fair Trading Act 1973 and “the Director” means the Director General of Fair Trading.

- (2) Proceedings in a county court under section 35, 38 or 40 shall be started by a claim form.
- (3) The respondent shall file an answer.

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(65) 1988 c. 48.

(66) 1973 c. 41.

(4) Where in any proceedings under section 35 or 38 the Director intends to apply for a direction under section 40 (2) that any order made against a body corporate (in this rule referred to as the “respondent body”) which is a member of a group of interconnected bodies corporate shall be binding on all members of the group, he shall file notice of his intention together with as many copies of the claim form and of the notice as are required for the purposes of paragraph (5).

(5) A copy of any notice under paragraph (4) shall be served on the respondent body and a copy of the notice together with a copy of the claim form and a notice of the return day shall be served on each of the bodies corporate specified in the notice under paragraph (4).

(6) The respondent body may at any time serve on the Director a notice containing particulars of any interconnected body corporate not mentioned in a notice under paragraph (4).

(7) With a view to deciding whether or in respect of which bodies notice should be given under paragraph (4) the Director may serve on the respondent body a notice requiring that body to give to him within 14 days after service of the notice particulars of any interconnected bodies corporate belonging to the same group as the respondent body and a copy of any such notice shall be filed.

(8) An application under section 40 (3) shall be made on notice to the respondent body and every interconnected body belonging to the same group.

### **Housing Act 1988: assured tenancies**

**Rule 6.**—(1) In this rule

“the 1988 Act” means the Housing Act 1988(67);

“dwelling-house” has the same meaning as in Part I of the 1988 Act; a Ground referred to by number means the Ground so numbered in Schedule 2 to the 1988 Act;

“the requisite notice” means such a notice as is mentioned in any of those Grounds and

“the relevant date” means the beginning of the tenancy.

(2) This rule applies to proceedings brought by a landlord to recover possession of a dwelling-house which has been let on an assured tenancy in a case where all the conditions mentioned in paragraph (3) below are satisfied.

(3) The conditions referred to in paragraph (2) are these.

(a) The tenancy and any agreement for the tenancy were entered into on or after 15th January 1989.

(b) The proceedings are brought

(i) on Ground 1 (landlord occupation),

(ii) on Ground 3 (former holiday occupation),

(iii) on Ground 4 (former student letting) or

(iv) on Ground 5 (occupation by a minister of religion).

(c) The only purpose of the proceedings is to recover possession of the dwelling-house and no other claim is made in the proceedings (such as for arrears of rent).

(d) The tenancy is an assured tenancy within the meaning of the 1988 Act (and consequently is not a protected, statutory or housing association tenancy under the Rent Act 1977), and

(i) is the subject of a written agreement, or

(ii) is on the same terms (though not necessarily as to rent) as a tenancy which was the subject of a written agreement and arises by virtue of section 5 of the 1988 Act, or

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(67) 1988 c. 50.

(iii) relates to the same or substantially the same premises which were let to the same tenant and is on the same terms (though not necessarily as to rent or duration) as a tenancy which was the subject of a written agreement.

Where the tenancy in relation to which the proceedings are brought arises by virtue of section 5 of the 1988 Act but follows a tenancy which was the subject of an oral agreement, the condition mentioned in sub-paragraph (d)(ii) or (iii) above is not satisfied.

- (e) The proceedings are brought against the tenant to whom the requisite notice was given.
- (f) The tenant was given the requisite notice, not later than the relevant date.
- (g) The tenant was given notice in accordance with section 8 of the 1988 Act that proceedings for possession would be brought.

(4) Where the conditions mentioned in paragraph (3) of this rule are satisfied, the landlord may bring possession proceedings under this rule instead of making a claim in accordance with Order 6, rule 3 (claim for recovery of land by claim form).

(5) The application must be made in the prescribed form, and a copy of the application, with a copy for each defendant, must be filed in the court for the district in which the dwelling-house is situated.

(6) The application shall include the following information and statements.

- (a) a statement identifying the dwelling-house which is the subject matter of the proceedings;
- (b) a statement identifying the nature of the tenancy, namely—
  - (i) whether it is the subject of a written agreement; or
  - (ii) whether the tenancy arises by virtue of section 5 of the 1988 Act, or
  - (iii) where it is the subject of an oral agreement whether the tenancy is periodic or for a fixed term and, if for a fixed term, the length of the term and the date of termination;
- (c) a statement that the dwelling-house (or another dwelling-house) was not let to the tenant by the landlord (or any of his predecessors) before 15th January 1989;
- (d) the date on which and the method by which the requisite notice was given to the tenant;
- (e) a statement identifying the Ground on which possession is claimed giving sufficient particulars to substantiate the claimant's claim to be entitled to possession on that Ground;
- (f) a statement that a notice was served on the tenant in accordance with section 8 of the 1988 Act,
  - (i) specifying the date on which and the method by which the notice was served; and
  - (ii) confirming that the period of notice required by section 8 of the 1988 Act has been given; and
- (g) the amount of rent which is currently payable.

(7) Copies of the following documents shall be attached to the application—

- (i) the current (or most recent) written tenancy agreement,
- (ii) the requisite notice (referred to in paragraph (6)(d) above), and
- (iii) the notice served in accordance with section 8 of the 1988 Act, together with any other documents necessary to prove the claim.

(8) The statements made in the application and any documents attached to the application shall be verified by the claimant on oath.

(9) Service of the application and of the attachments shall be effected by an officer of the court sending them by first-class post to the defendant at the address stated in the application and

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paragraphs (c) and (d) of Order 3, rule 6 (mode of service) and Order 7, rule 15 (service of claim form for recovery of land) shall apply as they apply where service is effected under those rules.

(10) A defendant who wishes to oppose the claimant’s application must, within 14 days after the service of the application on him, complete and deliver at the court office the form of reply which was attached to the application.

(11) On receipt of the defendant’s reply the court shall—

- (a) send a copy of it to the claimant;
- (b) refer the reply and the claimant’s application to the judge, and where a reply is received after the period mentioned in paragraph (10) but before a request is filed in accordance with paragraph (12) the reply shall be referred without delay to the judge.

(12) Where the period mentioned in paragraph (10) has expired without the defendant filing a reply, the claimant may file a written request for an order for possession and the court shall without delay refer the claimant’s application to the judge.

(13) After considering the application and the defendant’s reply (if any), the judge shall either—

- (a) make an order for possession under paragraph (15) or
- (b) fix a day for a hearing under paragraph (14) and give directions regarding the steps to be taken before and at the hearing.

(14) The court shall fix a day for the hearing of the application where the judge is not satisfied as to any of the following—

- (a) that the requisite notice was given before the relevant date,
- (b) that a notice was served in accordance with section 8 of the 1988 Act and that the time limits specified in the 1988 Act have been complied with,
- (c) that service of the application was duly effected, or
- (d) that the claimant has established that he is entitled to recover possession under the Ground relied on against the defendant.

(15) Except where paragraph (14) applies, the judge shall without delay make an order for possession without requiring the attendance of the parties.

(16) Where a hearing is fixed under paragraph (14)—

- (a) the court shall give to all parties not less than 14 days’ notice of the day fixed;
- (b) the judge may give such directions regarding the steps to be taken before and at the hearing as may appear to him to be necessary or desirable.

(17) The court may, on application made on notice in accordance with CPR Part 23 within 14 days of service of the order or of its own initiative, set aside, vary or confirm any order made under paragraph (15).

(18) A district judge shall have power to hear and determine an application to which this rule applies and references in this rule to the judge shall include references to the district judge.

### **Housing Act 1988: assured shorthold tenancies**

**Rule 6A.**—(1) In this rule, “the 1988 Act” means the Housing Act 1988 and “dwelling-house” has the same meaning as in Part I of the 1988 Act.

(2) This rule applies to proceedings brought by a landlord under section 21 of the 1988 Act<sup>(68)</sup> to recover possession of a dwelling-house let on an assured shorthold tenancy on the expiry or

<sup>(68)</sup> 1988 c. 50; section 21 was amended by the Local Government and Housing Act 1989 (c. 42), section 194(1), schedule 11, paragraph 103; and by the Housing Act 1996 (c. 52), sections 98, 99.

termination of that tenancy in a case where all the conditions mentioned in paragraph (3) below (or, as the case may be, paragraph (9)) are satisfied.

- (3) The conditions referred to in paragraph (2) are these—
- (a) The tenancy and any agreement for the tenancy were entered into on or after 15th January 1989.
  - (b) The only purpose of the proceedings is to recover possession of the dwelling-house and no other claim is made in the proceedings (such as for arrears of rent).
  - (c) The tenancy—
    - (i) was an assured shorthold tenancy and not a protected, statutory or housing association tenancy under the Rent Act 1977<sup>(69)</sup>;
    - (ii) did not immediately follow an assured tenancy which was not an assured shorthold tenancy;
    - (iii) fulfilled the conditions provided by section 19A or section 20(1)(a) to (c) of the 1988 Act<sup>(70)</sup>, and
    - (iv) was the subject of a written agreement.
  - (d) Where the tenancy and any agreement for the tenancy were entered into before 28th February 1997, a notice in writing was served on the tenant in accordance with section 20 (2) of the 1988 Act and the proceedings are brought against the tenant on whom that notice was served.
  - (e) A notice in accordance with section 21 (1)(b) of the 1988 Act was given to the tenant in writing.

(4) Where the conditions mentioned in paragraph (3) or paragraph (9) of this rule are satisfied, the landlord may bring possession proceedings under this rule instead of making a claim in accordance with Order 6, rule 3 (claim for recovery of land by claim form).

(5) The application must be made in the prescribed form and a copy of the application, with a copy for each defendant, shall be filed in the court for the district in which the dwelling-house is situated.

- (6) The application shall include the following information and statements—
- (a) A statement identifying the dwelling-house which is the subject matter of the proceedings.
  - (b) A statement that the dwelling-house (or another dwelling-house) was not let to the tenant by the landlord (or any of his predecessors) before 15th January 1989.
  - (c) A statement that possession is claimed on the expiry of an assured shorthold tenancy under section 21 of the 1988 Act giving sufficient particulars to substantiate the claimant's claim to be entitled to possession.
  - (d) Where the tenancy and any agreement for the tenancy were entered into before 28th February 1997, a statement that a written notice was served on the tenant in accordance with section 20 (2) of the 1988 Act.
  - (e) A statement that a notice in writing was given to the tenant in accordance with section 21 (1) of the 1988 Act specifying the date on which, and the method by which, the notice was given.
  - (f) In a case where the original fixed term tenancy has expired, a statement that no other assured tenancy is in existence other than an assured shorthold periodic tenancy (whether statutory or not).

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<sup>(69)</sup> 1977 c. 42.

<sup>(70)</sup> Section 19A was amended by the Housing Act 1996 (c. 52), section 96(1), and section 20 by that Act, section 104, 227, schedule 8, paragraph 2; schedule 19, Part IV.

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- (g) A statement confirming that there is no power under the tenancy agreement for the landlord to determine the tenancy (within the meaning given for the purposes of Part I of the 1988 Act by section 45 (4) of the 1988 Act) at a time earlier than six months from the beginning of the tenancy.
  - (h) A statement that no notice under section 20 (5) of the 1988 Act has been served.
- (7) Copies of the following documents shall be attached to the application
- (i) the written tenancy agreement (or, in a case to which paragraph (9) applies, the current (or most recent) written tenancy agreement),
  - (ii) where the tenancy and any agreement for the tenancy were entered into before 28th February 1997 the written notice served in accordance with section 20 (2) of the 1988 Act, and
  - (iii) the notice in writing given in accordance with section 21 of the 1988 Act,
- together with any other documents necessary to prove the claim.
- (8) The statements made in the application and any documents attached to the application shall be verified by the claimant on oath.
- (9) Where on the coming to an end of an assured shorthold tenancy (including a tenancy which was an assured shorthold but ceased to be assured before it came to an end) a new assured shorthold tenancy of the same or substantially the same premises (in this paragraph referred to as “the premises”) comes into being under which the landlord and the tenant are the same as at the coming to an end of the earlier tenancy, then the provisions of this rule apply to that tenancy but with the following conditions instead of those in paragraph (3)—
- (a) The tenancy and any agreement for the tenancy were entered into on or after 15th January 1989.
  - (b) The only purpose of the proceedings is to recover possession of the dwelling-house and no other claim is made in the proceedings (such as for arrears of rent).
  - (c) The tenancy in relation to which the proceedings are brought—
    - (i) is an assured shorthold tenancy within the meaning of section 20 of the 1988 Act and consequently is not a protected, statutory or housing association tenancy under the Rent Act 1977;
    - (ii) did not immediately follow an assured tenancy which was not an assured shorthold tenancy, and
      - (aa) is the subject of a written agreement, or
      - (ab) is on the same terms (though not necessarily as to rent) as a tenancy which was the subject of a written agreement and arises by virtue of section 5 of the 1988 Act, or
      - (ac) relates to the same or substantially the same premises which were let to the same tenant and is on the same terms (though not necessarily as to rent or duration) as a tenancy which was the subject of a written agreement.
- Where the tenancy in relation to which the proceedings are brought arises by virtue of section 5 of the 1988 Act but follows a tenancy which was the subject of an oral agreement, the conditions mentioned in sub-paragraph (c)(ii)(ab) or (ac) above is not satisfied.
- (d) Where the agreement and any agreement for the tenancy were entered into before 28th February 1997, a written notice was served in accordance with section 20 (2) of the 1988 Act on the tenant in relation to the first assured shorthold tenancy of the premises and the proceedings are brought against the tenant on whom that notice was served.



- (e) A notice in writing was given to the tenant in accordance with section 21 (4) of the 1988 Act.
- (10) In a case to which paragraph (9) applies, the application shall include the following information and statements.
- (a) A statement identifying the dwelling-house which is the subject matter of the proceedings.
  - (b) A statement identifying the nature of the tenancy, namely—
    - (i) whether it is the subject of a written agreement;
    - (ii) whether the tenancy arises by virtue of section 5 of the 1988 Act, or
    - (iii) where it is the subject of an oral agreement, that the tenancy is periodic or for a fixed term, and if for a fixed term, the length of the term and the date of termination.
  - (c) A statement that the dwelling-house (or another dwelling-house) was not let to the tenant by the landlord (or any of his predecessors) before 15th January 1989.
  - (d) A statement that possession is claimed under section 21 of the 1988 Act giving sufficient particulars to substantiate the claimant's claim to be entitled to possession.
  - (e) Where the tenancy and any agreement for the tenancy were entered into before 28th February 1997, a statement that a written notice was served in accordance with section 20 (2) of the 1988 Act in relation to the first assured shorthold tenancy of the premises on the tenant against whom the proceedings are brought.
  - (f) A statement that a notice in writing was given to the tenant in accordance with section 21 (4) of the 1988 Act specifying the date on which, and the method by which, the notice was given.
  - (g) In a case where the tenancy is a fixed term tenancy which has expired, a statement that no other assured tenancy is in existence other than an assured shorthold periodic tenancy (whether statutory or not).
  - (h) A statement confirming that there was no power under the tenancy agreement for the landlord to determine (within the meaning given for the purposes of Part I of the 1988 Act by section 45 (4) of the 1988 Act) the first assured shorthold tenancy of the premises to the tenant against whom the proceedings are brought at a time earlier than six months from the beginning of the tenancy.
  - (i) A statement that no notice under section 20 (5) of the 1988 Act has been served.
  - (j) The amount of rent which is currently payable.
- (11) Service of the application and of the attachments shall be effected by an officer of the court sending them by first-class post to the defendant at the address stated in the application and paragraphs (c) and (d) of Order 3, rule 6 (mode of service) and Order 7, rule 15 (service of claim form for recovery of land) shall apply as they apply where service is effected under those rules.
- (12) A defendant who wishes to oppose the claimant's application must, within 14 days after the service of the application on him, complete and deliver at the court office the form of reply which was attached to the application.
- (13) On receipt of the defendant's reply the court shall—
- (a) send a copy of it to the claimant;
  - (b) refer the reply and the claimant's application to the judge and where a reply is received after the period mentioned in paragraph (12) but before a request is filed in accordance with paragraph (14) the reply shall be referred without delay to the judge.
- (14) Where the period mentioned in paragraph (12) has expired without the defendant filing a reply, the claimant may file a written request for an order for possession and the court shall without delay refer any such request to the judge.

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- (15) After considering the application and the defendant’s reply (if any), the judge shall either—
- (a) make an order for possession under paragraph (17); or
  - (b) fix a day for a hearing under paragraph (16) and give directions regarding the steps to be taken before and at the hearing.
- (16) The court shall fix a day for the hearing of the application where the judge is not satisfied as to any of the following—
- (a) where the tenancy and any agreement for the tenancy were entered into before 28th February 1997 that a written notice was served in accordance with section 20 of the 1988 Act,
  - (b) that a written notice was given in accordance with section 21 of the 1988 Act,
  - (c) that service of the application was duly effected, or
  - (d) that the claimant has established that he is entitled to recover possession under section 21 of the 1988 Act against the defendant.
- (17) Except where paragraph (16) applies, the judge shall without delay make an order for possession without requiring the attendance of the parties.
- (18) Where a hearing is fixed under paragraph (16)—
- (a) the court shall give to all parties not less than 14 days' notice of the day so fixed;
  - (b) the judge may give such directions regarding the steps to be taken before and at the hearing as may appear to him to be necessary or desirable.
- (19) The court may, on application made on notice in accordance with CPR Part 23 within 14 days of service of the order or of its own initiative, set aside, vary or confirm any order made under paragraph (17).
- (20) A district judge shall have power to hear and determine an application to which this rule applies and references in this rule to the judge shall include references to the district judge.

### **Housing Act 1996: injunctions and powers of arrest**

**Rule 6B.**—(1) An application for an injunction under section 152 of the Housing Act 1996<sup>(71)</sup> may be made by a claim in the appropriate prescribed form and shall be commenced in the court for the district in which the respondent resides or the conduct complained of occurred.

(2) Every application shall—

- (a) state the terms of the injunction applied for; and
- (b) be supported by a witness statement or affidavit in which the grounds on which the application is made are set out.

(3) Every application made on notice must be served, together with a copy of the witness statement or affidavit, by the applicant on the respondent personally not less than 2 days before the date on which the application will be heard.

(4) Where an application is made without giving notice, the affidavit in support shall explain why notice was not given and the application and witness statement or affidavit shall be served (with a copy of any order made by the court), on the respondent personally without delay.

(5) Unless otherwise directed, every application made on notice shall be heard in public.

(6) Where in exercise of the powers conferred by section 152 (6) or 153 (1) of the Housing Act 1996, a power of arrest is attached to any provision of an injunction (“a relevant provision”)—

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(71) 1996 c. 52.

- (a) each relevant provision shall be set out in a separate clause of the injunction and no such clause shall refer to any form of conduct which would not entitle a constable to arrest the respondent under paragraph (a), (b) or (c) of section 152(1) or under paragraph (a), (b) or (c) of section 153 (5) of the Housing Act 1996; and
  - (b) the applicant shall deliver a copy of the relevant provisions to the police officer for the time being in charge of any police station for the area where the conduct occurred.
- (7) Where an order is made varying or discharging any relevant provision of an injunction to which a power of arrest has been attached, the court shall—
- (a) immediately inform the police officer for the time being in charge of the police station to which a copy of the relevant provisions was delivered under paragraph (6); and
  - (b) deliver a copy of the order to any police officer so informed.
- (8) The judge before whom a person is brought following his arrest may adjourn the proceedings and, where such an order is made, the arrested person shall be released and—
- (a) be dealt with (whether by the same or another judge) within 14 days of the day on which he was arrested; and
  - (b) be given not less than 2 days' notice of the adjourned hearing;

Nothing in this paragraph shall prevent the issue of a notice under Order 29 rule 1 (4) if the arrested person is not dealt with within the period mentioned in sub-paragraph (a).

(9) In relation to a person who is in custody under such an order and warrant of a county court, Order 29, rule 3, shall have effect as if the order and warrant were issued at the instance of the person who made the application.

- (10) Order 29, rule 1 shall apply where an application is made to commit a person—
- (a) for breach of an injunction granted, or
  - (b) arrested under a power of arrest attached to an injunction under Chapter III of Part V of the Housing Act 1996,

as if references in that rule to the judge included references to a district judge.

(11) In paragraph (8) “arrest” means the arrest of a person pursuant to a power of arrest which, in exercise of the powers conferred by section 152 (6) or 153 (1) of the Housing Act 1996, has been attached to an injunction.

(12) The jurisdiction of the court under sections 152 to 157 of the Housing Act 1996 may be exercised by a district judge

### **Injunctions to prevent environmental harm: Town and Country Planning Act 1990 etc.**

**Rule 7.**—(1) An injunction under—

- (a) section 187B or 214A of the Town and Country Planning Act 1990(72),
- (b) section 44A of the Planning (Listed Buildings and Conservation Areas) Act 1990(73), or
- (c) section 26AA of the Planning (Hazardous Substances) Act 1990(74),

may be granted against a person whose identity is unknown to the applicant; and in the following provisions of this rule such an injunction against such a person is referred to as “an injunction under paragraph (1)”, and the person against whom it is sought is referred to as “the respondent”.

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(72) 1990 c. 8; section 187B was amended by the Planning and Compensation Act 1991 (c. 34), section 3; and section 214A was amended by the section 23(7) of that Act.

(73) 1990 c. 9; section 44A was amended by the Planning and Compensation Act 1991 (c. 34), section 25, schedule 3, Part 1, paragraph 7.

(74) 1990 c. 10; section 26AA was inserted by the Planning and Compensation Act 1991 (c. 34), section 25, schedule 3, Part I, paragraph 15.

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(2) An applicant for an injunction under paragraph (1) shall, describe the respondent by reference to—

- (a) a photograph,
- (b) a thing belonging to or in the possession of the respondent, or
- (c) any other evidence,

with sufficient particularity to enable service to be effected, and the form of the claim form used shall be modified accordingly.

(3) An applicant for an injunction under paragraph (1) shall file evidence by witness statement or affidavit—

- (a) verifying that he was unable to ascertain, within the time reasonably available to him, the respondent's identity.
- (b) setting out the action taken to ascertain the respondent's identity and
- (c) verifying the means by which the respondent has been described in the claim form and that the description is the best that the applicant is able to provide.

(4) Paragraph (2) is without prejudice to the power of the court to make an order in accordance with CPR Part 6 for service by an alternative method or dispensing with service.

### **Leasehold Reform Act 1967(75)**

**Rule 8.**—(1) In this rule a section referred to by number means the section so numbered in the Leasehold Reform Act 1967 and “Schedule 2” means Schedule 2 to that Act.

(2) Where a tenant of a house and premises desires to pay money into court pursuant to section 11 (4) or section 13 (1) or (3)—

- (a) he shall file in the office of the appropriate court a witness statement or affidavit stating—
  - (i) the reasons for the payment into court,
  - (ii) the house and premises to which the payment relates and the name and address of the landlord, and
  - (iii) so far as they are known to the tenant, the name and address of every person who is or may be interested in or entitled to the money;
- (b) on the filing of the witness statement or affidavit the tenant shall pay the money into court and the court officer shall enter the matter in the records of the court and send notice of the payment to the landlord and to every person whose name and address are given in the witness statement or affidavit pursuant to sub-paragraph (a)(iii);
- (c) any subsequent payment into court by the landlord pursuant to section 11 (4) shall be made to the credit of the same account as the payment into court by the tenant and sub-paragraphs (a) and (b) shall apply as if for the references to the tenant and the landlord there were substituted references to the landlord and the tenant respectively.
- (d) the appropriate court for the purposes of sub-paragraph (a) shall be the court for the district in which the property is situated or, if the payment into court is made by reason of a notice under section 13 (3), any other county court specified in the notice.

(3) Where the proceedings on an application are ordered to be transferred to a leasehold valuation tribunal under section 21 (3), the court shall—

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(75) **1967 c. 88**; section 11 was amended by the **Rentcharges Act 1977 (c. )**, section 17(2), schedule 2. Section 21 was amended by the **Housing Act 1980 (c. 51)**, sections 142, 152, schedule 22, Part II, paragraph 8, schedule 26; by the **County Courts Act 1984 (c. 28)**, section 148(1), schedule 2, Part V, paragraph 31; by the **Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)**, section 187(1), schedule 21, paragraph 4; and by the **Housing Act 1996 (c. 52)**, sections 115, 116, schedule 11, paragraph 1(2).

- (a) send notice of the transfer to all parties to the application; and
  - (b) send to the leasehold valuation tribunal copies certified by the district judge of all entries in the records of the court relating to the application, together with the order of transfer and all documents filed in the proceedings.
- (4) Where an application is made under section 17 or 18 for an order for possession of a house and premises the respondent shall—
- (a) forthwith after being served with the application, serve on every person in occupation of the property or part of it under an immediate or derivative sub-tenancy, a notice informing him of the proceedings and of his right under paragraph 3 (4) of Schedule 2 to appear and be heard in the proceedings with the permission of the court, and
  - (b) within 14 days after being served with the application, file an answer stating the grounds, if any, on which he intends to oppose the application and giving particulars of every such sub-tenancy.

### **Leasehold Reform, Housing and Urban Development Act 1993(76)**

**Rule 9.**—(1) In this rule—

- (a) “the 1993 Act” means the Leasehold Reform, Housing and Urban Development Act 1993;
  - (b) a section or Schedule referred to by number means the section or Schedule so numbered in the 1993 Act; and
  - (c) expressions used in this rule have the same meaning as they have in the 1993 Act.
- (2) Where an application is made under section 23 (1) by a person other than the reversioner—
- (a) on the issue of the application, the applicant shall send a copy of the application to the reversioner;
  - (b) the applicant shall promptly inform the reversioner either—
    - (i) of the court’s decision; or
    - (ii) that the application has been withdrawn.

(3) Where an application is made under section 26 (1) or (2) or section 50 (1) or (2) it shall be made by the issue of a claim form which must not be served on any other person to the district judge, who may grant or refuse it or give directions for its future conduct, including the addition as respondents of such persons as appear to have an interest in it.

(4) Where an application is made under section 26 (3), it shall be made by the issue of a claim form and—

- (a) the applicants shall serve notice of the application on any person who they know or have reason to believe is a relevant landlord, giving particulars of the application and the return date and informing that person of his right to be joined as a party to the proceedings;
- (b) the landlord whom it is sought to appoint as the reversioner shall be a respondent to the application, and shall file an answer;
- (c) a person on whom notice is served under sub-paragraph (a) shall be added as a respondent to the proceedings when he gives notice in writing to the court of his wish to be added as party, and the court shall notify all other parties of the addition.

(5) Where a person wishes to pay money into court under section 27 (3), section 51 (3) or paragraph 4 of Schedule 8, rule 8 (2) shall apply as it applies to payments into court made under the Leasehold Reform Act 1967, subject to the following modifications—

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(76) 1993 c. 28; section 26 was amended by the Housing Act 1996 (c. 52).

*Status: This is the original version (as it was originally made).*

- (a) references in rule 8 to the payment of money into court by a tenant shall be construed as references to the person or persons making a payment into court under the 1993 Act;
- (b) the reference in rule 8 (2)(a)(ii) to “house and premises” shall be construed as a reference to the interest or interests in the premises to which the payment into court relates, or, where the payment into court is made under section 51 (3), to the flat to which it relates;
- (c) the witness statement or affidavit filed by the tenant under rule 8(2)(a) shall include details of any vesting order; and
- (d) the appropriate court for the purposes of that sub-paragraph shall be—
  - (i) where a vesting order has been made, the court which made the vesting order; or
  - (ii) where no such order has been made, the court in whose district the premises are situated.

(6) Where an order is made under section 91 (4), rule 8 (3) (transfer to leasehold valuation tribunal) shall apply as it applies on the making of an order under section 21 (3) of the Leasehold Reform Act 1967.

(7) Where a relevant landlord acts independently under Schedule 1, paragraph 7, he shall be entitled to require any party to proceedings under the 1993 Act (as described in paragraph 7 (1)(b) of Schedule 1) to supply him, on payment of the reasonable costs of copying, with copies of all documents which that party has served on the other parties to the proceedings.

#### **Local Government Finance Act 1982(77)**

**Rule 10.**—(1) In this rule a section referred to by number means the section so numbered in the Local Government Finance Act 1982.

(2) Proceedings in a county court under section 19 or section 20 shall be commenced in the court for the district in which the principal office of the body to whose accounts the application relates (in this rule referred to as “the body concerned”) is situated.

(3) A claim form for a declaration under section 19 (1) shall state the facts on which the applicant intends to rely at the hearing of the application and the respondents to the application shall be the body concerned and any person against whom an order is sought under section 19 (2).

(4) An appeal under section 19 (4) or section 20 (3) against a decision of an auditor shall be brought within 28 days of the receipt by the appellant of the auditor’s statement of the reasons for his decision.

(5) The notice of appeal to which paragraph (4) relates shall state—

- (a) the reasons stated by the auditor for his decision;
- (b) the date on which the appellant received the auditor’s statement;
- (c) the facts on which the appellant intends to rely at the hearing of the appeal; and
- (d) in the case of a decision not to apply for a declaration, such facts within the appellant’s knowledge as will enable the court to consider whether to exercise the powers conferred on it by section 19 (2).

(6) The respondents to the appeal shall be:—

- (i) the auditor who for the time being has responsibility for the audit of the accounts of the body concerned;

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(77) **1982 c. 32**; sections 19 and 20 were amended by the National Health Service and Community Care Act 1990 (c. 19), section 20, schedule 4, paragraphs 9 and 10; by the Education Reform Act 1988 (c. 40), section 237(2), schedule 13, Part I; by the Police and Magistrates' Courts Act 1994 (c. 29), section 43, schedule 4, Part I, paragraphs 26 and 27; by the Police Act 1996 (c. 16), section 103(1), schedule 7, Part 1, paragraph 1, and by the Police Act 1997 (c. 50), section 88, schedule 6, paragraphs 19 and 21; and by S.I. 1991/724 and 1996/3141.

- (ii) the body concerned; and
  - (iii) in the case of an appeal against a decision not to certify under section 20 (1) that a sum or amount is due from any person, that person.
- (7) The court may at any stage of an application or appeal under section 19 or section 20 direct that any officer or member of the body concerned be added to the proceedings as a respondent.

### **Local Government (Miscellaneous Provisions) Act 1976(78)**

**Rule 11** A person who appeals against a notice under section 21, 23 or 35 of the Local Government (Miscellaneous Provisions) Act 1976 shall state in his notice of appeal the grounds of the appeal and where one of those grounds is that it would have been fairer to serve the notice on another person or, as the case may be, that it would be reasonable for the whole or part of the expenses to which the notice relates to be paid by some other person, that person shall be made a respondent to the appeal, less the court on the application of the appellant made without notice, otherwise directs.

### **Mental Health Act 1983(79)**

**Rule 12.**—(1) In this rule— a section referred to by number means the section so numbered in the Mental Health Act 1983 and “Part II” means Part II of that Act;

“place of residence” means, in relation to a patient who is receiving treatment as an in-patient in a hospital or other institution, that hospital or institution;

“hospital authority” means the managers of a hospital as defined in section 145 (1).

(2) An application to a county court under Part II shall be made by a claim form filed in the court for the district in which the patients' place of residence is situated or, in the case of an application made under section 30 for the discharge or variation of an order made under section 29, in that court or in the court which made the order.

(3) Where an application is made under section 29 for an order that the functions of the nearest relative of the patient shall be exercisable by some other person—

(a) the nearest relative shall be made a respondent to the application unless the application is made on the grounds set out in subsection (3)(a) of the said section or the court otherwise orders, and

(b) the court may order that any other person, not being the patient, shall be made a respondent.

(4) On the hearing of the application the court may accept as evidence of the facts stated therein any report made by a medical practitioner and any report made in the course of his official duties by—

(a) a probation officer, or

(b) an officer of a local authority or of a voluntary organisation exercising statutory functions on behalf of a local authority, or

(c) an officer of a hospital authority:

Provided that the respondent shall be told the substance of any part of the report bearing on his fitness or conduct which the judge considers to be material for the fair determination of the application.

(5) Unless otherwise ordered, an application under Part II shall be heard and determined by the court sitting in private.

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(78) 1976 c. 57; section 23 was amended by S.I. 1996/3071. Section 35 was amended by the Local Government Act 1985 (c. 51), section 102(2), schedule 17 and by S.I. 1996/3071.

(79) 1983 c. 20; section 145(1) was amended by the Health Authorities Act 1995 (c. 17), section 2(1), schedule 1, Part III, paragraph 107; by the National Health Service and Community Care Act 1990 (c. 19), section 66(1), schedule 9, paragraph 24(9); and by the Mental Health (Amendment) Act 1994 (c. 6), section 1.

*Status: This is the original version (as it was originally made).*

(6) For the purpose of determining the application the judge may interview the patient either in the presence of or separately from the parties and either at the court or elsewhere, or may direct the district judge to interview the patient and report to the judge in writing.

### **Mobile Homes Act 1983(80)**

**Rule 13.**—(1) An application—

- (a) under section 1 or 2 of the Mobile Homes Act 1983; or
- (b) pursuant to paragraph 4, 5 or 6 of Part I of Schedule 1 to that Act; or
- (c) with respect to any question arising under paragraph 8 (1) or 9 of the same Part of that Schedule,

shall be made by a claim form and the respondent shall file an answer.

(2) Any application to which paragraph 1 (b) applies may include an application for an order enforcing the rights mentioned in section 3 (1)(b) of the Caravan Sites Act 1968(81).

(3) Any application to which this rule applies may be heard and determined by the district judge and may, if the court thinks fit, be dealt with in private.

### **Post Office Act 1969(82)**

**Rule 15.**—(1) An application under section 30 (5) of the Post Office Act 1969 for permission to bring proceedings in the name of the sender or addressee of a postal packet or his personal representatives shall be made by a claim form.

(2) The respondents to the application shall be the Post Office and the person in whose name the applicant seeks to bring proceedings.

### **Rentcharges Act 1977(83)**

**Rule 16** Where for the purposes of section 9 of the Rentcharges Act 1977 the sum required to redeem a rentcharge is to be paid into the county court, it shall be paid into the court for the district in which the land affected by the rentcharge or any part thereof is situated.

### **Sex Discrimination Act 1975 and Race Relations Act 1976**

**Rule 17.**—(1) In this rule—

- (a) “the Act of 1975” and “the Act of 1976” mean respectively the Sex Discrimination Act 1975(84) and the Race Relations Act 1976(85);
- (b) in relation to proceedings under either of those Acts expressions which are used in the Act concerned have the same meanings in this rule as they have in that Act;
- (c) in relation to proceedings under the Act of 1976 “court” means a designated county court and “district” means the district assigned to such a court for the purposes of that Act.

(2) A claimant who brings a claim under section 66 of the Act of 1975 or section 57 of the Act of 1976 shall forthwith give notice to the Commission of the commencement of the proceedings and file a copy of the notice.

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(80) 1983 c. 34.

(81) 1968 c. 52; section was amended by the Criminal Justice Act 1982 (c. 48), sections 38, 46.

(82) 1969 c. 48.

(83) 1977 c. 30.

(84) 1975 c. 65; section 66 was amended by the Race Relations Act 1976 (c. 74), section 79(4), schedule 4, paragraph 5; by the County Courts Act 1984 (c. 28), section 148(1), schedule 2, Part V, paragraph 55; and by S.I. 1996/438.

(85) 1976 c. 74.



(3) CPR Rule 35.15 shall have effect in relation to an assessor who is to be appointed in proceedings under section 66 (1) of the Act of 1975.

(4) Proceedings under section 66, 71 or 72 of the Act of 1975 or section 57, 62 or 63 of the Act of 1976 may be commenced—

- (a) in the court for the district in which the defendant resides or carries on business; or
- (b) in the court for the district in which the act or any of the acts in respect of which the proceedings are brought took place.

(5) An appeal under section 68 of the Act of 1975 or section 59 of the Act of 1976 against a requirement of a non-discrimination notice shall be brought in the court for the district in which the acts to which the requirement relates were done.

(6) Where the claimant in any claim alleging discrimination has questioned the defendant under section 74 of the Act of 1975 or section 66 of the Act of 1976—

- (a) either party may make an application to the court in accordance with CPR Part 23 to determine whether the question or any reply is admissible under that section; and
- (b) CPR Rule 3.4, shall apply to the question and any answer as it applies to any statement of case.

(7) Where in any claim the Commission claim a charge for expenses incurred by them in providing the claimant with assistance under section 75 of the Act of 1975 or section 66 of the Act of 1976—

- (a) the Commission shall, within 14 days after the determination of the claim, give notice of the claim to the court and the claimant and thereafter no money paid into court for the benefit of the claimant, so far as it relates to any costs or expenses, shall be paid out except in pursuance of an order of the court, and
- (b) the court may order the expenses incurred by the Commission to be assessed whether by the summary or detailed procedure as if they were costs payable by the claimant to his own solicitor for work done in connection with the proceedings.

(8) Where an application is made for the removal or modification of any term of a contract to which section 77 (2) of the Act of 1975 or section 72 (2) of the Act of 1976 applies, all persons affected shall be made respondents to the application, unless in any particular case the court otherwise directs, and the proceedings may be commenced—

- (a) in the court for the district in which the respondent or any of the respondents resides or carries on business; or
- (b) in the court for the district in which the contract was made.

#### **Solicitors Act 1974(86)**

**Rule 18** Any application under Part III of the Solicitors Act 1974 may be heard and determined by the district judge and may, if the court thinks fit, be dealt with in private.

#### **Telecommunications Act 1984(87)**

**Rule 18A.**—(1) CPR Rule 35.15 applies to proceedings under paragraph 5 of Schedule 2 to the Telecommunications Act 1984.

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(86) 1974 c. 47.

(87) 1984 c. 12.

### **Applications under section 19 of the Trade Marks Act 1994(88)**

**Rule 18B** The CPR Patents Court Practice direction shall apply with the necessary modifications to proceedings brought under section 19 of the Trade Marks Act 1994 in a county court.

### **Trade Union and Labour Relations Consolidation Act 1992(89)**

**Rule 19.**—(1) Where a complainant desires to have an order of the Certification Officer under section 82 of the Trade Union and Labour Relations Consolidation Act 1992 recorded in the county court, he shall produce the order and a copy thereof to the court for the district in which he resides or the head or main office of the trade union is situate.

(2) The order shall be recorded by filing it, and the copy shall be sealed and dated and returned to the complainant.

(3) The sealed copy shall be treated as if it were the notice of issue in a claim begun by the complainant.

(4) The costs, if any, allowed for recording the order shall be recoverable as if they were payable under the order.

(5) The order shall not be enforced until proof is given to the satisfaction of the court that the order has not been obeyed and, if the order is for payment of money, of the amount remaining unpaid.

### **Trustee Act 1925, s.63(90)**

**Rule 20.**—(1) Any person wishing to make a payment into court under section 63 of the Trustee Act 1925 shall make and file in the office of the appropriate court a witness statement or an affidavit setting out—

- (a) a brief description of the trust and of the instrument creating it or, as the case may be, of the circumstances in which the trust arose;
- (b) so far as known to him, the names and addresses of the persons interested in or entitled to the money or securities to be paid into court;
- (c) his submission to answer all such inquiries relating to the application of such money or securities as the court may make or direct;
- (d) his place of residence, and
- (e) an address where he may be served with any notice or application relating to such money or securities.

(2) The appropriate court for the purposes of paragraph (1) shall be the court for the district in which the person or any of the persons making the payment into court resides.

(3) The costs incurred in the payment into court shall be assessed by the detailed procedure and the amount of the assessed costs may be retained by the person making the payment into court.

(4) The district judge may require, in addition to the witness statement or affidavit, such evidence as he thinks proper with regard to the matter in respect of which the payment into court is made.

(5) On the making of the payment into court the court shall send notice thereof to each person mentioned in the witness statement or affidavit pursuant to paragraph (1)(b).

(6) An application for the investment or payment out of court of any money or securities paid into court under paragraph (1) may be made without notice but on the hearing of the application the court may require notice to be served on such person as it thinks fit and fix a day for the further hearing.

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(88) 1994 c. 26.

(89) 1992 c. 52.

(90) 1925 c. 19; section 63 was amended by the Administration of Justice Act 1965 (c. 2), section 36(4), schedule 3.

(7) No witness statement or affidavit in support of the application shall be necessary in the first instance but the court may direct evidence to be adduced in such manner as it thinks fit.

(8) The application may be heard and determined by the district judge.

(9) Paragraphs (6) to (8) are without prejudice to any provision of the County Court Funds Rules enabling or requiring the court to transfer money from a deposit to an investment account of its own motion.