

1989 No. 1838 (L.17)

COUNTY COURTS

PROCEDURE

The County Court (Amendment No. 3) Rules 1989

Made - - - - - 6th October 1989

*Coming into force in accordance with the Table
following these Rules*

Citation

1.—(1) These Rules may be cited as the County Court (Amendment No. 3) Rules 1989.

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

Curtailement of county courts' banking function

2. In the Arrangement of Orders, for the entry "11. Payment into and out of court.", there shall be substituted the entry "11. Payment into and out of court and between the parties."

3. For Order 8, rule 7, there shall be substituted the following—

"7. When giving leave to serve a process out of England and Wales the court shall—

(a) in the case of a default summons, fix the time for delivering an admission or defence at the court office or paying the total amount of the claim and costs to the plaintiff, and

(b) in any other case, fix the return day,
and in so doing shall have regard to the distance of the country of service."

4. For Order 9, rule 3(2), there shall be substituted the following—

"(2) If the plaintiff accepts the amount admitted (where it is less than the amount claimed) and any proposal as to the time of payment, he may, upon filing a request in that behalf, stating what (if any) payment has been made, have judgment entered for the amount admitted and costs (less any payments made)."

5. For Order 9, rule 3(3), there shall be substituted the following—

"(3) If the plaintiff notifies the proper officer that he accepts the amount admitted and that he does not accept the defendant's proposal as to time of payment, he shall in his notice give his reasons for the non-acceptance and state what (if any) payments have been made."

(a) S.I. 1981/1687; the relevant amending instruments are S.I. 1982/436, 1140, 1983/1716, 1984/878, 1985/566, 1269, 1987/493, 1988/278 and 1989/236.

6. Order 9, rule 6(1) shall be amended—

- (a) by substituting, for the words “into court” in sub-paragraph (a), the words “to the plaintiff”; and
- (b) by substituting, for the words from “the plaintiff may” to the end, the following—
“the plaintiff may, upon filing a request in that behalf stating what (if any) payment has been made and, unless otherwise directed, producing the plaintiff note, have judgment entered against the defendant for the amount of the claim and costs (less any payments made), and the order shall be for payment forthwith or at such time or times as the plaintiff may specify.”.

7. In the title to Order 11, after the words “OUT OF COURT”, there shall be added the words “AND BETWEEN THE PARTIES”.

8. For Order 11, rule 1(1) and (2), there shall be substituted the following—

“(1) In any action for debt or damages any defendant may at any time before judgment pay a sum of money (being a sum less than that which is claimed) into court in satisfaction of the plaintiff’s cause of action or, where two or more causes of action are joined in the action, in satisfaction of any or all of those causes of action and, where such a payment is made, the defendant shall state that the money is paid in satisfaction of the said cause or causes of action.”.

9. In Order 11, rule 1(4), for the words “under paragraph (1)(a)”, there shall be substituted the words “under paragraph (1)”.

10. For Order 11, rule 1(5) there shall be substituted the following—

“(5) Where two or more causes of action are joined in the action, a payment under paragraph (1) shall be accompanied by a notice—

- (a) stating that the payment is made in respect of all those causes of action or specifying the cause or causes of action in respect of which the payment is made; and
- (b) where the defendant desires to make separate payments in respect of any two or more of the causes of action, specifying the sum paid in respect of each,

and, for the purposes of this paragraph, a payment stated (in whatever terms) to be made in satisfaction of the plaintiff’s claim shall, subject to paragraph (6), be treated as being made in satisfaction of all the causes of action.”.

11. In Order 11, rule 1(9), for the words “the notice given under paragraph (2) must state,”, there shall be substituted the words “the payment shall be accompanied by a notice stating,”.

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

“Misdirected payments

1A. A party who receives any payment which under rule 1(1) is required to be made to the court shall forthwith notify the proper officer in writing and the money so paid shall be paid into court.”.

13. In Order 11, rule 2(1), for the words “into court under rule 1”, there shall be substituted the words “to the plaintiff”.

14. For Order 11, rule 2(3), there shall be substituted the following—

“(3) In any case to which paragraph (2) does not apply, the defendant shall not be liable for any costs incurred after receipt by the plaintiff of the payment, but—

- (a) except as provided in sub-paragraph (b), the plaintiff may lodge for taxation a bill of the costs incurred by him before receipt of the payment and, if the costs allowed on taxation are not paid within 14 days after taxation, may have judgment entered for them and the costs of entering judgment;

(b) if an order is required under rule 4(2) for payment of the money out of court, the plaintiff may apply for an order for such costs.”.

15. In Order 11, rule 3(1), for the words from “Where the amount” to “less than the amount claimed”, there shall be substituted the words “Where the defendant pays a sum of money into court under rule 1(1)”.

16. In Order 11, rules 3(2)(a) and 7(1), for the words “under rule 1(1)(a)”, there shall be substituted the words “under rule 1(1)”.

17. In Order 11, rule 4(1), for the words “under rule 2(1) or 3(3)”, there shall be substituted the words “under rule 3(3)”.

18. In Order 16, rule 5(1), the words “, or section 174 of the Act” shall be omitted.

19. In Order 16, rule 5(2), for the words “County Court Funds Rules”, there shall be substituted the words “Court Funds Rules 1987(a)”.

20. Order 16, rule 8 shall be revoked.

21. After Order 21, rule 3, there shall be inserted the following new rule—

“Payments received after hearing fixed

3A. Where, after a day has been fixed for the hearing of an action or matter, payment of all or part of the amount claimed is made, the plaintiff shall forthwith inform the proper officer.”.

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

“(1) Subject to the provisions of these rules with respect to particular judgments and orders, every judgment or final order and every order for directions made under Order 13, rule 2, or Order 17, rule 1, shall, unless the court otherwise directs, be drawn up and served by the proper officer on all parties to the proceedings.”.

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

“(3) Where judgment is entered in a default action under Order 9, rule 6(1), for payment forthwith, it shall be necessary to draw up and serve the judgment only where—

- (a) a request to issue enforcement proceedings has not been made;
- (b) the plaintiff has abandoned part of his claim otherwise than by amending his particulars of claim and serving a copy on the defendant;
- (c) the judgment is an interlocutory judgment for damages to be assessed; or
- (d) an application to which Order 35, rule 3 applies is to be made.”.

24. Order 22, rule 1(4) shall be omitted.

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

“Payment of money under judgments

1A. Except where under these rules or the Court Funds Rules 1987 money is authorised or required to be paid into court, all monies payable under a judgment or order shall be paid to the party in whose favour the judgment or order is given or made.”.

26. For Order 22, rule 9, there shall be substituted the following new rule—

“Misdirected payments

9. A party who receives any payment which is, by or under these rules or the Court Funds Rules 1987, required to be made to the court shall forthwith notify the proper officer in writing and, where the payment is—

- (a) made by or on behalf or in respect of a person under disability; or
- (b) ordered to be paid into court to abide the event or as a condition of granting an application; or
- (c) required to be paid into court by Order 31, rule 4(5),

the money so paid shall be paid into court.”

27. For Order 25, rule 2(3)(b), there shall be substituted the following—

“(b) any payment which, by or under these rules or the Court Funds Rules 1987, is authorised or required to be made into court shall be made into that court, and”.

28. After Order 25, rule 3(1), there shall be inserted the following—

“(1A) An application under paragraph (1) 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.”.

29. For Order 25, rule 5, there shall be substituted the following—

“Production of plaint note and other information

5.—(1) On filing—

- (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, or
- (d) an application for a charging order,

the judgment creditor shall, if the judgment or order sought to be enforced is a judgment or order of a county court, produce the plaint note or originating process unless otherwise directed.

(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 proper officer 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(5)(b), 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.”.

30. For Order 25, rule 8(5)(b), there shall be substituted the following—

“(b) subject to any directions given by the court, the warrant 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.”.

31. For Order 26, rule 1(1), there shall be substituted the following—

“(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.”.

32. For Order 26, rule 1(4), there shall be substituted the following—

“(4) Where a warrant is issued for the whole or part of the said sum of money and costs, the proper officer shall, unless the registrar 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.”.

33. For Order 26, rule 14, there shall be substituted the following—

“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 proper officer of the home court shall send notice of the payment to the proper officer of the foreign court.”.

34. After Order 26, rule 16(4), there shall be inserted the following—

“(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.”.

35. After Order 26, rule 17(3), there shall be inserted the following—

“(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.”.

36. In Order 27, rule 4(1), for the words from “A judgment creditor” to “application”, there shall be substituted the following—

“(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”.

37. Order 27, rule 7(7) shall be omitted.

38. For Order 27, rule 8(1), there shall be substituted the following—

“(1) An order made under section 23(1) of the Act of 1971 for the attendance of the debtor at an adjourned hearing of an application for an attachment of earnings 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.”.

39. For Order 28, rule 1(2), there shall be substituted the following—

“(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 and that the whole or part of any instalment due remains unpaid.”.

40. Order 28, rule 6 shall be revoked.

41. For Order 28, rule 12, there shall be substituted the following—

“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 proper officer of the home court shall send notice of the payment to the proper officer of the foreign court.”.

42. In Order 30, rule 2, the words "and the amount remaining unpaid under it at the time of the application" in paragraph (b) and the word "and" at the end of paragraph (c) shall be omitted and, after paragraph (d), there shall be inserted the following—

“, 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.”.

43. Order 30, rules 4 and 6 shall be revoked.

44. For the title to Order 30, rule 7, there shall be substituted the following—

“Order where no notice given etc.”.

45. Order 30, rule 7(1)(a) shall be amended by omitting the words “make a payment into court under rule 4 or”.

46. For Order 30, rule 8, there shall be substituted the following—

“Directions where dispute as to notice under rule 5

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.”.

47. In Order 30, rule 9, the words “no payment into court has been made under rule 4 and” shall be omitted.

48. In Order 30, rule 11, the words “either under rule 4 or” shall be omitted.

49. After Order 31, rule 1(2)(a), there shall be inserted the following—

“(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;”.

50. After Order 31, rule 4(4), there shall be inserted the following—

“(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.”.

51. In Order 42, rule 14(5), for the words “Order 30, rules 4 and 6 to 9”, there shall be substituted the words “Order 30, rules 7 to 9”.

Miscellaneous amendments

52. In Order 11, rule 4(4), for the words “legal aid under Part I of the Legal Aid Act 1974” and “the Law Society”, there shall be substituted the words “representation under Part IV of the Legal Aid Act 1988(a)” and “the Legal Aid Board” respectively.

53. After Order 50, rule 6, there shall be inserted the following new rule—

“Signature of documents by mechanical means

6A. Where by or under these rules any document is required to bear a person's signature, that requirement shall be deemed to be satisfied if that person's name is printed by computer or other mechanical means.”.

(a) 1988 c.34.

Summons production centre

54. Order 2 shall be amended by inserting, after the title "OFFICES", the following—
"PART I—GENERAL".

55. After Order 2, rule 5, there shall be inserted the following new Part—
"PART II—SUMMONS PRODUCTION CENTRE

Interpretation

6. In this Part of this Order, unless the context otherwise requires,—
"the Centre" means the summons production centre established under rule 7 and "appropriate officer" means the officer in charge of the Centre or another officer of the Centre acting on his behalf;
"Centre number" means the number or reference allotted under rule 8(3); and
"Centre user" means a plaintiff or solicitor who, in accordance with rule 8, has been given permission to commence proceedings through the Centre and from whom such permission has not been withdrawn.

Establishment of the Centre

7.—(1) There shall be a summons production centre situated at such place or places as the Lord Chancellor may determine and having such functions relating to the production of summonses 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 summons to which the functions relate or in whose name the summons is requested to be issued, and
- (b) any officer of the Centre shall, in exercising its functions, be deemed to act as the proper officer of that court,

and these rules shall have effect accordingly.

Issue of summons through the Centre

8.—(1) A plaintiff or solicitor who desires to commence proceedings through the Centre for the recovery of debt shall give notice of his desire to the appropriate officer.

(2) Where notice is given under paragraph (1) and the appropriate officer so permits, the Centre user may, subject to paragraph (4), commence proceedings through the Centre in accordance with the provisions of this Part of this Order.

(3) The appropriate officer shall allot to a Centre user a distinguishing number or reference and send notice thereof to the Centre user.

(4) The appropriate officer may at any time withdraw permission given under paragraph (2) and, where he does so, he shall give notice of the withdrawal to the Centre user.

Filing of documents

9.—(1) Where by or under these rules any document is required to be filed before the issue of a summons and the summons is to be produced by the Centre, that requirement shall be deemed to be satisfied if the information which would be contained in the document is delivered to the Centre in computer-readable form.

(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) Information furnished to the Centre shall begin with the Centre number allotted to the Centre user, and he shall be deemed, unless the contrary appears, to have authorised the giving of information beginning with that number.

Security

10. A Centre user shall not divulge a Centre number allotted to him except to a solicitor authorised to issue proceedings on his behalf.

Court documents

11.—(1) Where by or under these rules any document is required to be served on any person prior to or immediately after the issue of a summons then, where the summons is or is to be produced by the Centre, the document may be served by the appropriate officer sending it to him by post and Order 7, rule 10 shall apply, with any necessary modifications, where a document is served in accordance with this paragraph.

(2) Where by or under these rules or by virtue of any order a document containing information stored in the Centre 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 by the Centre for storing such information.

Venue

12. Nothing in this Part of this Order shall affect the provisions of these rules relating to the venue—

- (a) for bringing particular proceedings, or
- (b) for hearing or disposing of an action after the issue of a summons.”.

Domestic violence

56. For Order 47, rule 8(5) and (6), there shall be substituted the following—

“(5) Where an injunction contains one or more provisions of the kind described in section 2(1) (in this paragraph and paragraph (6) referred to as “the relevant provisions”) and a power of arrest is attached to the injunction—

- (a) the relevant provisions shall be set out in separate clauses of the injunction and those clauses shall not refer to any form of molestation which would not entitle a constable to arrest the respondent under section 2(3); and
- (b) a copy of the relevant provisions shall be delivered to the officer for the time being in charge of any police station for the applicant’s address.

(6) Where an order is made varying or discharging the relevant provisions of an injunction to which a power of arrest has been attached under section 2, and the power of arrest has not expired, an officer of the court shall immediately inform the officer for the time being in charge of the police station at which a copy of the relevant provisions was delivered pursuant to paragraph (5) and, if the applicant’s address has since changed, any police station for the new address; and a copy of the relevant provisions shall be delivered to any officer so informed.”.

Applications under section 114, 204 and 231 of the Copyright, Designs and Patents Act 1988(a) and section 58C of the Trade Marks Act 1938(b)

57. After Order 49, rule 4, there shall be inserted the following new rule—

“Applications under section 114, 204 and 231 of the Copyright, Designs and Patents Act 1988

4A. R.S.C. Order 93, rule 24 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 in a county court.”.

58. After Order 49, rule 18A, there shall be inserted the following new rule—

“Applications under section 58C of the Trade Marks Act 1938

18B. R.S.C. Order 100, rule 2(7) and (8) shall apply with the necessary modifications to proceedings brought under section 58C(1) of the Trade Marks Act 1938 in a county court.”.

(a) 1988 c.48.

(b) 1938 c.22; section 58C was inserted by the Copyright, Designs and Patents Act 1988 (c.48), section 300.

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

*C. S. Stuart-White,
R. Lockett,
A. N. Fricker,
R. Greenslade,
Patrick Eccles,
Gillian Stuart-Brown,*

*Eifion Roberts,
R. E. Hammerton,
K. H. P. Wilkinson,
Timothy Stow,
R. C. Newport.*

I allow these Rules, which shall come into force in accordance with the Table below.

Dated 6th October 1989

Mackay of Clashfern, C.

TABLE

<i>Rule</i>	<i>Commencement Date</i>
1, 57 and 58	1st November 1989
52 to 56	1st December 1989
2 to 51	1st April 1990

(a) 1984 c.28.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the County Court Rules 1981 in a number of respects.

Rules 2 to 51 curtail the banking function of county courts. Under the new arrangements, any payments made before judgment is entered, and after judgment but before enforcement, will be made direct to the plaintiff and not through the court (subject to some exceptions for e.g. payments made for the benefit of a person under a disability). When steps are taken to enforce a judgment, payments will in most instances be made through the court as long as the enforcement process continues. Thereafter payment will be made direct to the judgment creditor. The rules make detailed provision for the court to be informed of any payments made after a court hearing has been fixed and for the creditor to certify the amount outstanding when enforcement proceedings are begun. Since the court will no longer maintain records of payments made, corresponding amendments to the relevant court forms will advise parties of the desirability of keeping records of payments and of providing receipts.

Rule 52 amends outdated references relating to legal aid. Rule 53 modifies requirements in the County Court Rules relating to the signature of documents to allow for the use of documents prepared by computer or other mechanical means.

Rules 54 and 55 provide for the establishment of a Summons Production Centre which will handle bulk requests for the issue of summonses. The Centre (which will be deemed to be part of the court in whose name the summons is issued) will be able to prepare and issue summonses from computer-readable information supplied by persons authorised to use the Centre. Provision is made for the modification of existing requirements in the County Court Rules to allow for the use of documents prepared by computer or other mechanical means.

Rule 56 amends Order 47, rule 8 which relates to applications for injunctions under section 1 of the Domestic Violence and Matrimonial Proceedings Act 1976 (1976 c.50) to ensure that those provisions of the injunction that are relevant to the power of arrest are set out in a separate part of the injunction and that they do not refer to any form of molestation which would not entitle a constable to arrest the respondent pursuant to section 2(3) of the 1976 Act.

Rules 57 and 58 provide for the making of applications under section 114, 204 or 231 of the Copyright, Designs and Patents Act 1988 and new section 58C of the Trade Marks Act 1938.

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