
STATUTORY INSTRUMENTS

1991 No. 1247

The Family Proceedings Rules 1991

PART VII

ENFORCEMENT OF ORDERS

Chapter 2.

Judgement summonses

General provisions

7.4.—(1) In this chapter, unless the context otherwise requires—

“order” means an order made in family proceedings for the payment of money;

“judgement creditor” means a person entitled to enforce an order under section 5 of the Debtors Act 1869(1);

“debtor” means a person liable under an order;

“judgement summons” means a summons under the said section 5 requiring a debtor to appear and be examined on oath as to his means.

(2) An application for the issue of a judgement summons may be made—

(a) in the case of an order of the High Court, to the principal registry, a district registry or a divorce county court, whichever in the opinion of the judgement creditor is most convenient,

(b) in the case of an order of a divorce county court, to whichever divorce county court is in the opinion of the judgement creditor most convenient,

having regard (in either case) to the place where the debtor resides or carries on business and irrespective of the court or registry in which the order was made.

(3) The application shall be made by filing a request in Form M 16 together with the affidavit required by rule 7.1(1) and, except where the application is made to the registry or divorce county court in which the order was made, a copy of the order shall be exhibited to the affidavit.

(4) A judgement summons shall not be issued without the leave of a judge if the debtor is in default under an order of commitment made on a previous judgement summons in respect of the same order.

(5) Every judgement summons shall be in Form M 17 and shall be served on the debtor personally not less than 10 days before the hearing and at the time of service there shall be paid or tendered to the debtor a sum reasonably sufficient to cover his expenses in travelling to and from the court at which he is summoned to appear.

(1) 1869 c. 62. Section 5(b) was repealed by the Bankruptcy Act 1883 (c. 52), Schedule 5. Section 5 was extended by section 40 of the Administration of Justice Act 1956 (c. 46) but restricted by section 11 of the Administration of Justice Act 1970 (c. 31).

(6) CCR Order 28, rule 3 (which deals among other things with the issue of successive judgement summonses) shall apply to a judgement summons, whether issued in the High Court or a divorce county court, but as if the said rule 3 did not apply CCR Order 7, rule 19(2).

(7) Successive judgement summonses may be issued notwithstanding that the judgement debtor has ceased to reside or carry on business at the address stated in Form M 16 since the issue of the original judgement summons.

(8) Where an applicant has obtained one or more orders in the same application but for the benefit of different persons—

- (a) he shall be entitled to issue a judgement summons in respect of those orders on behalf of any judgement creditor without (where the judgement creditor is a child) seeking leave to act as his next friend; and
- (b) only one judgement summons need be issued in respect of those orders.

(9) On the hearing of the judgement summons the judge may—

- (a) where the order is for lump sum provision or costs, or
- (b) where the order is for maintenance pending suit or other periodical payments and it appears to him that the order would have been varied or suspended if the debtor had made an application for that purpose,

make a new order for payment of the amount due under the original order, together with the costs of the judgement summons, either at a specified time or by instalments.

(10) If the judge makes an order or committal, he may direct its execution to be suspended on terms that the debtor pays to the judgement creditor the amount due, together with the costs of the judgement summons, either at a suspended time or by instalments, in addition to any sums accruing due under the original order.

(11) All payments under a new order or an order of committal shall be made to the judgement creditor unless the judge otherwise directs.

(12) Where an order of committal is suspended on such terms as are mentioned in paragraph (10)

- (a) all payments thereafter made under the said order shall be deemed to be made, first, in or towards the discharge of any sums from time to time accruing due under the original order and, secondly, in or towards the discharge of a debt in respect of which the judgement summons was issued and the costs of the summons;
- (b) CCR Order 28, rule 7(4) and (5) (which deal with an application for a further suspension) shall apply to the said order, whether it was made in the High Court or a divorce county court; and
- (c) the said order shall not be issued until the judgement creditor has filed an affidavit of default on the part of the debtor.