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STATUTORY INSTRUMENTS

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**1993 No. 711 (L. 10)**

**COUNTY COURTS**

**PROCEDURE**

**The County Court (Amendment) Rules 1993**

*Made* - - - - *5th March 1993*

*Coming into force* - - *31st March 1993*

**Citation and interpretation**

1.—(1) These Rules may be cited as the County Court (Amendment) Rules 1993.

(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(1).

**Administration orders**

2. The definition of “proper officer” in Order 1, rule 3 shall be amended by substituting, for “and 20”, “20 and Order 39, rule 5”.

3. Order 39, rule 1 shall be amended by substituting for the word “registrar” the words “district judge or, in the circumstances mentioned in this Order, by the proper officer”.

4. For Order 39, rule 5 there shall be substituted the following

**“Orders made by the proper officer**

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

(2) On the filing of a request or list under rule 2, the proper 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—

- (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 proper 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 proper officer shall fix a day for a hearing at which the district judge will decide whether an administration order should be made and the proper 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 proper 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 proper officer.

(8) Where the district judge does not fix the proposed rate under paragraph (6), he shall direct the proper officer to fix a day for a hearing at which the district judge will decide whether an administration order should be made and the proper 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 proper officer may exercise the power of the court under section 5 of the Attachment of Earnings Act 1971(2) to make an attachment of earnings order to secure the payments required by the administration order.

(10) In this rule "proper officer" does not include the district judge."

5. Order 39, rule 6 shall be amended by substituting, for the words "under rule 5", the words "under rule 5(8)".

6. After Order 39, rule 8(2) there shall be inserted the following new paragraph—

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

7. Order 39, rule 13(1) shall be amended by inserting, after the words "enforce the order", the words "(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 the payments required by the administration order)".

8. After Order 39, rule 13(4) there shall be inserted the following new paragraph—

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

9. After Order 39, rule 13, there shall be inserted the following new rule—

**“Review by proper officer in default of payment**

**13A.**—(1) Where it appears that the debtor is failing to make payments in accordance with the order, the proper officer shall (either of his own motion 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
  - (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 proper officer shall revoke the administration order.

(3) The proper 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 proper 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 proper 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.

(6) In this rule “proper officer” does not include the district judge.”.

We, the undersigned members of the Rule Committee appointed by the Lord Chancellor under section 75 of the County Courts Act 1984(3), having by virtue of the powers vested in us in that

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(3) 1984 c. 28; section 75 was amended by the Courts and Legal Services Act 1990 (c. 41), sections 2(4), 16, Schedule 18, paragraph 47.

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behalf made the foregoing Rules, do hereby certify the same under our hands and submit them to the Lord Chancellor accordingly.

*Frank J. White  
C. S. Stuart-White  
R. H. Hutchinson  
Eifion Roberts  
J. H. Wroath  
R. Greenslade  
Margaret Wilby  
Henrietta Manners  
E. C. Gee  
Robert Winstanley*

I allow these Rules, which shall come into force on 31st March 1993.

Dated 5th March 1993

*Mackay of Clashfern, C.*

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## **EXPLANATORY NOTE**

*(This note is not part of the Rules)*

These Rules amend the County Court Rules 1981 so to devolve to court staff certain functions in relation to the making and the review of administration orders under section 112 of the County Courts Act 1984.