
STATUTORY INSTRUMENTS

1994 No. 2403 (L.15)

COUNTY COURTS

PROCEDURE

The County Court (Amendment No. 3) Rules 1994

Made - - - - 8th September 1994

Coming into force - - 3rd October 1994

Citation and interpretation

1.—(1) These Rules may be cited as the County Court (Amendment No. 3) Rules 1994.

(2) In these Rules, an Order referred to by number means the Order so numbered in the County Court Rules 1981(1) and Appendix B means Appendix B to those Rules.

Automatic transfer between county courts

2. For Order 1, rule 13 there shall be substituted the following—

“Automatic transfer

13.—(1) This rule applies where these rules provide that an action be transferred automatically to the defendant’s or the debtor’s home court.

(2) In the following paragraphs of this rule, references to a defendant include references to a debtor.

(3) Where such a provision is made, ‘defendant’s home court’ means—

(a) where the defendant is acting in person, the county court for the district in which the defendant’s address for service is situated;

(b) where the defendant is represented by a solicitor, the county court for the district in which the defendant’s address as shown in the summons or application is situated.

(4) Where two or more events could give rise to the automatic transfer of an action before the entry of judgment, the action shall be automatically transferred only on the occurrence of the first in time of those events.

(5) Where proceedings are transferred automatically, ‘the proper officer’ means the proper officer of the defendant’s home court.”

(1) S.I.1981/1687; the relevant amendments are S.I. 1982/1140; 1983/1716; 1984/878; 1985/566; 1986/636; 1988/278; 1989/236, 1838, 2426; 1991/1126, 1328; 1992/793, 1965 and 1993/2150, 2175 and 3273.

Duration of admiralty summons in rem

3. For Order 7, rule 20(1) there shall be substituted the following—

“(1) The time within which a summons may be served shall, unless extended under the following provisions of this rule, be limited—

- (a) if an Admiralty summons *in rem*, to a period of 12 months;
- (b) where leave to serve the summons out of England and Wales is required under Order 8, rule 2, to a period of 6 months;
- (c) in any other case, to a period of 4 months,

beginning with the date of issue of the summons.”.

Transfer of proceedings between county courts

4. Order 13, rule 2 shall be amended as follows—

(1) in paragraph (3), for the words “the judge or registrar” there shall be substituted “a judge or district judge”; and

(2) after paragraph (3), there shall be inserted the following new paragraph—

“(3A) The functions of a judge or district judge as specified in paragraph (3) may be exercised by the proper officer of the court in which the proceedings are pending, and the proper officer shall give notice of any such direction to all parties who were not present when the direction was made.”.

5. Order 25, rule 2 shall be amended as follows—

(1) in paragraph (1), for the word “registrar” there shall be substituted “proper officer”; and

(2) for paragraph (2), there shall be substituted the following—

“(2) On receipt of a request under paragraph (1), the proper officer shall make an order transferring the action or matter to the court and shall—

- (a) make an entry of the transfer in the records of his court; and
- (b) send to the proper officer of the court to which the action or matter has 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 action or matter.”.

Transfer to the High Court for enforcement

6. For Order 22, rule 8(1) there shall be substituted the following—

“8.—(1) Any person who wishes to have a certificate of any judgment or order given or made in an action or matter shall make a request in writing to the proper officer stating—

- (a) if he is a party to the action or matter, 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 action or matter, 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.”.

7. For Order 25, rule 13(1) and (2) there shall be substituted the following—

“(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 proper officer 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 proper officer 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.”.

Transfer from the High Court for enforcement

8. Order 25, rule 11(1) shall be amended as follows—

- (1) in sub-paragraph (b), for the words “an affidavit” there shall be substituted “a certificate”; and
- (2) after sub-paragraph (c) there shall be inserted the following new sub-paragraph—
 - “(d) a copy of the order to transfer the proceedings to the county court.”.

Enforcement of award

9. For Order 25, rule 12 there shall be substituted the following—

“Enforcement of award

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 ex parte 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 proper officer.”.

10. In Order 44, rule 4(1)(b), for the words “an affidavit verifying” there shall be substituted “a certificate specifying”.

11. Appendix B, Part I shall be amended as follows—

- (1) in the title, after the words “FIXED DATE SUMMONS” there shall be inserted “, APPLICATION TO ENFORCE AN AWARD”;
- (2) in paragraph (1), after the words “the summons” there shall be inserted “or application”;
- (3) at the end of paragraph (1)(c), the word “or” shall be omitted;
- (4) in paragraph (1)(d), for the word “hearing.” there shall be substituted “hearing; or”; and
- (5) at the end of paragraph (1)(d), there shall be inserted the following new sub-paragraph—
 - “(e) in proceedings for the enforcement of a tribunal or other award, for the purposes only of Order 25, rule 12”.

Attachment of earnings

12. Order 27 shall be amended as follows—

- (1) after rule 7A there shall be inserted the following new rule—

“Suspended committal order

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 proper officer shall be sufficient authority for the issue of a warrant of committal.”;

- (2) in rule 8, paragraphs (1A) and (1B) shall be omitted.

13. Order 25, rule 3(5) shall be amended as follows—

- (a) for “Order 27, rule 8” there shall be substituted “Order 27, rules 7B and 8”;
- (b) for “as it applies” there shall be substituted “as they apply”;
- (c) for “paragraph (1) thereof” there shall be substituted “paragraph (1) of Order 27, rule 8”.

14. Order 28, rule 4(1) shall be amended as follows—

- (a) for “Order 27, rule 8” there shall be substituted “Order 27, rules 7B and 8”;
- (b) for “as it applies” there shall be substituted “as they apply”.

Charging orders

15. For Order 31, rule 1(6) there shall be substituted the following—

“(6) Copies of the order and of the affidavit shall be served by the judgment creditor on

- (a) the debtor,
- (b) the other creditors named in the 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(2) and on such other trustees and beneficiaries as the district judge may direct.”.

Definition of proper officer

16. In Order 1, rule 3, for sub-paragraph (b) of the definition of “proper officer” there shall be substituted the following—

- “(b) in
- (i) Order 9, rule 3,
 - (ii) Order 13, rule 2(3A),
 - (iii) Order 22, rules 7A and 10,
 - (iv) Order 25, rules 2, 8 and 12,
 - (v) Order 27, rule 7, 7A, 7B, 19(3C) and 20,
 - (vi) Order 39, rule 5 and
 - (vii) Order 48B, rule 4,

the chief clerk or any other officer of the court acting on his behalf in accordance with directions given by the Lord Chancellor.”.

The undersigned members of the Rule Committee, appointed by the Lord Chancellor under section 75 of the County Courts Act 1984(3), having made these Rules, certify them and submit them to the Lord Chancellor.

*Frank White
Helen Paling
J.H. Wroath
Hugh Jones
Margaret Wilby
W.A. Vincent
Henrietta Manners
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I allow these Rules, which shall come into force on 3rd October 1994.

Dated 8th September 1994

Mackay of Clashfern, C

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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the County Court Rules 1981 as follows.

- (1) Rule 2 amends the provisions relating to automatic transfer so as to provide that—
 - (a) the proceedings will be transferred to the court for the address for service given by the defendant or debtor in person, if that is different from the court for the address given in the summons or application;
 - (b) automatic transfer before judgment may take place only once, on the occurrence of the first in time of any event which could give rise to automatic transfer.
- (2) Rule 3 extends the period of validity of an admiralty summons in rem from 4 to 12 months.
- (3) Rule 4 applies where proceedings are to be heard by a judge who is the judge for two or more districts. It—
 - (a) enables any judge of the court for the district in which the proceedings are pending, not just the judge who is to hear the proceedings, to direct that the hearing take place in another district;
 - (b) enables a court officer to give such a direction.
- (4) Rule 5 enables a court officer to order a transfer of proceedings from one county court to another for the purposes of enforcement.
- (5) Rules 6 and 7 alter the procedure relating to transfers to the High Court for enforcement so that a transfer by way of a certificate of judgment will only be possible where the transfer is for the purpose of enforcement by execution against goods.
- (6) Rule 8 provides that a judgment creditor wishing to enforce a High Court judgment or order must verify the amount due by way of a certificate, rather than an affidavit, and specifies that the judgment creditor must file a copy of the order to transfer the proceedings.
- (7) Rule 9 specifies that an application under Order 25, rule 12 (enforcement of award) must be supported by a certificate, rather than an affidavit, and rule 10 makes a similar provision for proceedings under Order 44, rule 4 (agricultural holdings). Rule 9 also provides for orders under Order 25, rule 12 to be made by a court officer and provides for cases where the respondent is not within England and Wales. Rule 11 provides fixed costs for applications under Order 25, rule 12.
- (8) Rule 12 extends the suspended committal order procedure to non-maintenance attachment of earnings cases. Rules 13 and 14 amend relevant cross-references.
- (9) Rule 15 provides that a charging order nisi must be served on all creditors named in the affidavit in support of the application, unless the court otherwise orders.
- (10) Rule 16 extends the list of instances where the proper officer may be an officer of the court to include orders made under Order 13, rule 2(3A) (direction that hearing take place in another court), Order 25, rule 2 (transfer between county courts for enforcement) and Order 25, rule 12 (enforcement of awards).