

SCHEDULE 1

Rule 50(3)

Commencement Information

II Sch. 1 in force at 26.4.1999, see [Signature](#)

RSC ORDER 10

SERVICE OF ORIGINATING PROCESS: GENERAL PROVISIONS

Service of claim form in certain actions for possession of land

Rule 4 Where a claim form contains a claim for the possession of land, the Court may—

- (a) if satisfied on an application without notice being served on any other party that no person appears to be in possession of the land and that service cannot be otherwise effected on any defendant, authorise service on that defendant to be effected by affixing a copy of the claim form to some conspicuous part of the land;
- (b) if satisfied on such an application that no person appears to be in possession of the land and that service could not otherwise have been effected on any defendant, order that service already effected by affixing a copy of the claim form to some conspicuous part of the land shall be treated as good service on that defendant.

RSC ORDER 11

SERVICE OF PROCESS, ETC., OUT OF THE JURISDICTION

Principal cases in which service of claim form out of jurisdiction is permissible

^{F1}**Rule 1**

Textual Amendments

F1 Sch. 1 RSC Order 11 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), [Sch. 8](#) (with rule 39(b)) (as amended by [S.I. 2000/940](#), rules 1, 2)

The period for filing an acknowledgment of service or filing or serving an admission where the claim form is served under rule 1(2)

^{F1}**Rule1A**

Textual Amendments

F1 Sch. 1 RSC Order 11 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), [Sch. 8](#) (with rule 39(b)) (as amended by [S.I. 2000/940](#), rules 1, 2)

Status: Point in time view as at 01/04/2001.
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

The period for filing a defence where the claim form is served under rule 1(2)

^{F1}Rule1B

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Textual Amendments
F1 Sch. 1 RSC Order 11 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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Textual Amendments

F1 Sch. 1 RSC Order 11 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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F1 Sch. 1 RSC Order 11 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

RSC ORDER 15

CAUSES OF ACTION, COUNTERCLAIMS AND PARTIES

Proceedings against estates

F2 **Rule 6A**

Textual Amendments

F2 Sch. 1 RSC Order 15 rule 6A revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

Change of parties by reason of death, etc.

F3 **Rule 7**

Status: Point in time view as at 01/04/2001.
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Textual Amendments

F3 Sch. 1 RSC Order 15 rule 7 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by S.I. 2000/940, rules 1, 2)

Failure to proceed after death of party

Rule 9.—(1) If after the death of a claimant or defendant in any claim the cause of action survives, but no order ^{F4}... is made substituting as claimant any person in whom the cause of claim 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, as the case may be, who has died; but where it is the claimant who has died, the Court shall not make an order under this rule unless satisfied that due notice of the application has been given to the personal representatives (if any) of the deceased claimant and to any other interested persons who, in the opinion of the Court, should be notified.

Textual Amendments

F4 Words in Sch. 1 RSC Order 15 rule 9 omitted (2.5.2000) by virtue of [The Civil Procedure \(Amendment No. 2\) Rules 2000 \(S.I. 2000/940\)](#), rules 1, **12**

Relator actions

^{F5}**Rule 11**

Textual Amendments

F5 Sch. 1 RSC Order 15 rule 11 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by S.I. 2000/940, rules 1, 2)

Representative proceedings

^{F6}**Rule 12**

Textual Amendments

F6 Sch. 1 RSC Order 15 rule 12 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by S.I. 2000/940, rules 1, 2)

Derivative claims

^{F7}**Rule 12A**

Textual Amendments

F7 Sch. 1 RSC Order 15 rule 12A revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by S.I. 2000/940, rules 1, 2)

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Representation of interested persons who cannot be ascertained, etc.

^{F8}Rule 13

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Textual Amendments

F8 Sch. 1 RSC Order 15 rule 13 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by [S.I. 2000/940](#), rules 1, 2)

Notice of claim to non—parties

^{F9}Rule 13A

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Textual Amendments

F9 Sch. 1 RSC Order 15 rule 13A omitted (26.3.2001) by virtue of [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(a), **19**

Representation of beneficiaries by trustees, etc.

Rule 14.—(1) Any proceedings, including proceedings to enforce a security by foreclosure or otherwise, may be brought by or against trustees, executors or administrators in their capacity as such without joining any of the persons having a beneficial interest in the trust or estate, as the case may be; and any judgment or order given or made in those proceedings shall be binding on those persons unless the Court in the same or other proceedings otherwise orders on the ground that the trustees, executors or administrators, as the case may be, could not or did not in fact represent the interests of those persons in the first—mentioned proceedings.

(2) Paragraph (1) is without prejudice to the power of the Court to order any person having such an interest as aforesaid to be made a party to the proceedings or to make an order under rule 13.

Representation of deceased person interested in proceedings

^{F10}Rule 15

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Textual Amendments

F10 Sch. 1 RSC Order 15 rule 15 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by [S.I. 2000/940](#), rules 1, 2)

Declaratory judgment

^{F11}Rule 16

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Textual Amendments

F11 Sch. 1 RSC Order 15 rule 16 omitted (26.3.2001) by virtue of [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(a), **19**

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Conduct of proceedings

^{F12}**Rule 17**

Textual Amendments
F12 Sch. 1 RSC Order 15 rule 17 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by [S.I. 2000/940](#), rules 1, 2)

RSC ORDER 17
INTERPLEADER

Entitlement to relief by way of interpleader

Rule 1.—(1) Where—

- (a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be, sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto; or
- (b) claim is made to any money, goods or chattels taken or intended to be taken by a sheriff in execution under any process, or to the proceeds or value of any such goods or chattels, by a person other than the person against whom the process is issued,

the person under liability as mentioned in sub-paragraph (a) or (subject to rule 2) the sheriff, may apply to the Court for relief by way of interpleader.

(2) References in this Order to a sheriff shall be construed as including references to any other officer charged with the execution of process by or under the authority of the High Court.

Claim to goods, etc., taken in execution

Rule 2.—(1) Any person making a claim to or in respect of any money, goods or chattels taken or intended to be taken in execution under process of the Court, or to the proceeds or value of any such goods or chattels, must give notice of his claim to the sheriff charged with the execution of the process and must include in his notice a statement of his address, and that address shall be his address for service.

(2) On receipt of a claim made under this rule the sheriff must forthwith give notice thereof to the execution creditor and the execution creditor must, within seven days after receiving the notice, give notice to the sheriff informing him whether he admits or disputes the claim. An execution creditor who gives notice in accordance with this paragraph admitting a claim shall only be liable to the sheriff for any fees and expenses incurred by the sheriff before receipt of that notice.

(3) Where—

- (a) the sheriff receives a notice from an execution creditor under paragraph (2) disputing a claim, or the execution creditor fails, within the period mentioned in that paragraph, to give the required notice; and
- (b) the claim made under this rule is not withdrawn,

the sheriff may apply to the Court for relief under this Order.

(4) A sheriff who receives a notice from an execution creditor under paragraph (2) admitting a claim made under this rule shall withdraw from possession of the money, goods or chattels claimed and may apply to the Court for relief under this Order of the following kind, that is to say, an order

restraining the bringing of a claim against him for or in respect of his having taken possession of that money or those goods or chattels.

Claim in respect of goods protected from seizure

Rule 2A.—(1) Where a judgment debtor whose goods have been seized, or are intended to be seized, by a sheriff under a writ of execution claims that such goods are not liable to execution by virtue of section 138(3A) of the Act⁽¹⁾, he must within 5 days of the seizure give notice in writing to the sheriff identifying all those goods in respect of which he makes such a claim and the grounds of such claim in respect of each item.

(2) Upon receipt of a notice of claim under paragraph (1), the sheriff must forthwith give notice thereof to the execution creditor and to any person who has made a claim to, or in respect of, the goods under rule 2 (1) and the execution creditor and any person who has made claim must, within 7 days of receipt of such notice, inform the sheriff in writing whether he admits or disputes the judgment debtor's claim in respect of each item.

(3) The sheriff shall withdraw from possession of any goods in respect of which the judgment debtor's claim is admitted or if the execution creditor or any person claiming under rule 2 (1) fails to notify him in accordance with paragraph (2) and the sheriff shall so inform the parties in writing.

(4) Where the sheriff receives notice from—

- (a) the execution creditor; or
- (b) any such person to whom notice was given under paragraph (2), that the claim or any part thereof is disputed, he must forthwith seek the directions of the Court and may include therein an application for an order restraining the bringing of any claim against him for, or in respect of, his having seized any of those goods or his having failed so to do.

(5) The sheriff's application for directions under paragraph (4) shall be made by an application in accordance with CPR Part 23 and, on the hearing of the application, the Court may—

- (a) determine the judgment debtor's claim summarily; or
- (b) give such directions for the determination of any issue raised by such claim as may be just.

(6) A master and a district judge of a district registry shall have power to make an order of the kind referred to in paragraph (4) and the reference to master shall be construed in accordance with rule 4.

Mode of application

Rule 3.—(1) An application for relief under this Order must be made by claim form unless made in an existing claim, in which case it must be made by accordance with CPR Part 23.

(2) Where the applicant is a sheriff who has withdrawn from possession of money, goods or chattels taken in execution and who is applying for relief under rule 2 (4) the claim form must be served on any person who made a claim under that rule to or in respect of that money or those goods or chattels, and that person may attend the hearing of the application.

(4) Subject to paragraph (5) a claim form or application notice under this rule must be supported by evidence that the applicant—

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

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

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(5) Where the applicant is a sheriff, he shall not provide such evidence as is referred to in paragraph (4) unless directed by the Court to do so.

(6) Any person who makes a claim under rule 2 and who is served with a claim form under this rule shall within 14 days serve on the execution creditor and the sheriff a witness statement or affidavit specifying any money and describing any goods and chattels claimed and setting out the grounds upon which such claim is based.

(7) Where the applicant is a sheriff a claim form under this rule must give notice of the requirement in paragraph (6).

To whom Sheriff may apply for relief

Rule 4 An application to the Court for relief under this Order may, if the applicant is a sheriff, be made—

- (a) where the claim in question is proceeding in the Royal Courts of Justice, to a Master or, if the execution to which the application relates has been or is to be levied in the district of a District Registry, either to a Master or to the District Judge of that Registry;
- (b) where the claim in question is proceeding in a District Registry, to the District Judge of that Registry or, if such execution has been or is to be levied in the district of some other District Registry or outside the district of any District Registry, either to the said the District Judge or to the District Judge of that other Registry or to a Master as the case may be.

Where the claim in question is proceeding in the Admiralty Court or the Family Division, references in this rule to a Master shall be construed as references to the Admiralty Registrar or to a Registrar of that Division.

Powers of Court hearing claim

Rule 5.—(1) Where on the hearing of a claim under this Order all the persons by whom adverse claims to the subject—matter in dispute (hereafter in this Order referred to as “the interpleader claimants”) appear, the Court may order—

- (a) that any interpleader claimant be made a defendant in any claim pending with respect to the subject—matter in dispute in substitution for or in addition to the applicant for relief under this Order; or
- (b) that an issue between the interpleader claimants be stated and tried and may direct which of the interpleader claimants is to be claimant and which defendant.

(2) Where—

- (a) the applicant under this Order is a sheriff; or
- (b) all the interpleader claimants consent or any of them so requests; or
- (c) the question at issue between the interpleader claimants is a question of law and the facts are not in dispute,

the Court may summarily determine the question at issue between the interpleader claimants and make an order accordingly on such terms as may be just.

(3) Where an interpleader claimant, having been duly served with a claim form under this Order, does not appear at the hearing or, having appeared, fails or refuses to comply with an order made in the proceedings, the Court may make an order declaring the interpleader claimant, and all persons claiming under him, for ever barred from prosecuting his claim against the applicant for such relief and all persons claiming under him, but such an order shall not affect the rights of the interpleader claimants as between themselves.

Power to order sale of goods taken in execution

Rule 6 Where an application for relief under this Order is made by a sheriff who has taken possession of any goods or chattels in execution under any process, and an interpleader claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the Court may order those goods or chattels or any part thereof to be sold and may direct that the proceeds of sale be applied in such manner and on such terms as may be just and as may be specified in the order.

Power to stay proceedings

Rule 7 Where a defendant to a claim applies for relief under this Order in the claim, the Court may by order stay all further proceedings in the claim.

Other powers

Rule 8.—^[F13](1) Subject to the foregoing rules of this Order, the Court may in or for the purposes of any interpleader proceedings make such order as to costs or any other matter as it thinks just.

^[F14](2) Where the interpleader claimant fails to appear at the hearing, the Court may direct that the sheriff's and execution creditor's costs shall be assessed by a master or, where the hearing was heard in a district registry, by a district judge of that registry and the following CPR rules shall apply—

- (a) 44.4 (basis of assessment);
- (b) 44.5 (factors to be taken into account in deciding the amount of costs);
- (c) 48.4 (limitations on court's power to award costs in favour of trustee or personal representative); and
- (d) 48.6 (litigants in person).

(3) Where the claim in question is proceeding in the Admiralty Court or the Family Division, references in this rule to a Master shall be construed as references to the Admiralty Registrar or to a Registrar of that Division.]

Textual Amendments

F13 Sch. 1 RSC Order 17 rule 8 renumbered as RSC Order 17 rule 8(1) (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, [27\(a\)](#)

F14 Sch. 1 RSC Order 17 rule 8(2)(3) inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, [27\(b\)](#)

One order in several proceedings

Rule 9 Where the Court considers it necessary or expedient to make an order in any interpleader proceedings in several proceedings pending in several Divisions, or before different Judges of the same Division, the Court may make such an order; and the order shall be entitled in all those causes or matters and shall be binding on all the parties to them.

Disclosure

Rule 10 CPR Parts 31 and 18 shall, with the necessary modifications, apply in relation to an interpleader issue as they apply in relation to any other proceedings.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Trial of interpleader issue

Rule 11.—(1) CPR Part 39 shall, with the necessary modifications, apply to the trial of an interpleader issue as it applies to the trial of a claim.

(2) The Court by whom an interpleader issue is tried may give such judgment or make such order as finally to dispose of all questions arising in the interpleader proceedings.

RSC ORDER 23

SECURITY FOR COSTS

Order to apply to High Court and County Court

^{F15}**Rule A1**

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Textual Amendments
F15 Sch.1 RSC Order 23 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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Textual Amendments
F15 Sch.1 RSC Order 23 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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Textual Amendments
F15 Sch.1 RSC Order 23 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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Textual Amendments
F15 Sch.1 RSC Order 23 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

RSC ORDER 30

RECEIVERS

Order to apply to High Court and County Court

Rule A1 This Order applies to proceedings both in the High Court and the county court.

Application for receiver and injunction

Rule 1.—(1) An application for the appointment of a receiver made in existing proceedings must be made in accordance with CPR Part 23 and the Practice Direction supplementing that Part.

(2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for such order.

(3) The relevant Practice Direction will apply to an application for the immediate grant of such an injunction.

Giving of security by receiver

Rule 2.—(1) A judgment or order directing the appointment of a receiver may include such directions as the Court thinks fit as to the giving of security by the person appointed.

(2) Where by virtue of any judgment or order appointing a person named therein to be receiver a person is required to give security in accordance with this rule he must give security approved by the Court duly to account for what he receives as receiver and to deal with it as the Court directs.

(3) Unless the Court otherwise directs, the security shall be by guarantee.

(4) The guarantee must be filed in the office or Registry of the Court in which the claim is proceeding and it shall be kept as of record until duly vacated.

Remuneration of receiver

Rule 3.—(1) A person appointed receiver shall be allowed such proper remuneration, if any, as may be authorised by the Court.

(2) The Court may direct that such remuneration shall be—

- (a) fixed by reference to such scales or rates of professional charges as it thinks fit; or
- (b) assessed by a costs judge or a district judge.

(3) Where remuneration is assessed by a costs judge or district judge following a direction under paragraph 2(b), CPR rules 44.4(1) and (2) and 44.5(1) will apply as though the remuneration were costs directed to be assessed on the standard basis.

(4) An appeal shall lie from the assessment in accordance with Section 8 of CPR Part 47 (CPR Rules 47.21 to 47.27)

Service of order and notice

Rule 4 A copy of the judgment or order appointing a receiver shall be served by the party having conduct of the proceedings on the receiver and all other parties to the proceedings in which the receiver has been appointed.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Receiver's accounts

Rule 5.—(1) A receiver shall submit such accounts to such parties at such intervals or on such dates as the Court may direct.

(2) Any party to whom a receiver is required to submit accounts may, on giving reasonable notice to the receiver, inspect, either personally or by an agent, the books and other papers relating to such accounts.

(3) Any party who is dissatisfied with the accounts of the receiver may give notice specifying the item or items to which objection is taken and requiring the receiver within not less than 14 days to file his accounts with the Court and a copy of such notice shall be filed in the office or Registry of the Court dealing with the proceedings.

(4) Following an examination by or on behalf of the Court of an item or items in an account to which objection is taken the result of such examination must be certified by a Master, the Admiralty Registrar, a District Judge of the Family Division or a District Judge, as the case may be, and an order may thereupon be made as to the incidence of any costs or expenses incurred.

Payment into Court by receiver

Rule 6 The Court may fix the amounts and frequency of payments into Court to be made by a receiver.

Default by receiver

Rule 7.—(1) Where a receiver fails to attend for the examination of any account of his, or fails to submit any account, provide access to any books or papers or do any other thing which he is required to submit, provide or do, he and any or all of the parties to the cause or matter in which he was appointed may be required to attend the Court ^{F16}... to show cause for the failure, and the Court may ^{F17}... give such directions as it thinks proper including, if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.

(2) Without prejudice to paragraph (1) where a receiver fails to attend for the examination of any account of his or fails to submit any account or fails to pay into Court on the date fixed by the Court any sum required to be so paid, the Court may disallow any remuneration claimed by the receiver and may, where he has failed to pay any such sum into Court, charge him with interest at the rate currently payable in respect of judgment debts in the High Court on that sum while in his possession as receiver.

Textual Amendments

F16 Words in Sch. 1 RSC Order 30 rule 7(1) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **28(a)**

F17 Words in Sch. 1 RSC Order 30 rule 7(1) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **28(b)**

Directions to receivers

Rule 8 A receiver may at any time request the Court to give him directions and such request shall state in writing the matters with regard to which directions are required.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

RSC ORDER 31

SALES, ETC. OF LAND BY ORDER OF COURT: CONVEYANCING COUNSEL OF THE COURT

Order to apply to High Court and County Court

^{F18} **Rule A1**

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Textual Amendments

F18 Sch. 1 RSC Order 31 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), rules 1, 2)

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Textual Amendments

F18 Sch. 1 RSC Order 31 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), rules 1, 2)

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F18 Sch. 1 RSC Order 31 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), rules 1, 2)

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Textual Amendments

F18 Sch. 1 RSC Order 31 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), rules 1, 2)

Status: Point in time view as at 01/04/2001.
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

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RSC ORDER 44

PROCEEDINGS UNDER JUDGMENTS AND ORDERS: CHANCERY DIVISION

Application to Orders

Rule 1 In this order references to a judgment include references to an order.

Service of notice of judgment on person not a party

Rule 2.—(1) Where in a claim for—

- (a) the administration of the estate of a deceased person; or
- (b) the execution of a trust; or
- (c) the sale of any property,

the Court gives a judgment or makes a direction which affects persons not parties to the claim, the Court may when giving the judgment or at any stage of the proceedings under the judgment direct notice of the judgment to be served on any such person and any person so served shall, subject to paragraph (4), be bound by the judgment as if he had originally been a party to the claim.

(2) If it appears that it is not practicable to serve notice of a judgment on a person directed to be served the Court may dispense with service and may also order that such person be bound by the judgment.

(3) Every notice of a judgment for service under this rule must be indorsed with a memorandum in Form No. 52A in the relevant Practice Direction and accompanied by a form of acknowledgment

of service ^{F19}... with such modifications as may be appropriate and the copy of the notice to be served shall be a sealed copy.

(4) A person served with notice of a judgment may, within one month after service of the notice on him, and after acknowledging service apply to the Court to discharge, vary or add to the judgment.

(5) A person served with notice of a judgment may, after acknowledging service of the notice, attend the proceedings under the judgment.

(6) CPR Part 10 except for CPR Rule 10.2 shall apply in relation to the acknowledgment of service of a notice of judgment as if the judgment were a claim form, the person by whom the notice is served were the claimant and the person on whom it is served were a defendant.

Textual Amendments

F19 Words in [Sch. 1 RSC Order 44 rule 2\(3\)](#) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **30(a)**

Directions by the Court

Rule 3.—(1) Where a judgment given in a proceedings in the Chancery Division contains directions which make it necessary to proceed in private under the judgment the Court may, when giving the judgment or at any time during proceedings under the judgment, give further directions for the conduct of those proceedings, including, in particular, directions with respect to—

- (a) the manner in which any account or inquiry is to be prosecuted;
 - (b) the evidence to be adduced in support thereof;
 - (c) the preparation and service on the parties to be bound thereby of the draft of any deed or other instrument which is directed by the judgment to be settled by the Court and the service of any objections to the draft;
 - (d) the parties required to attend all or any part of the proceedings;
 - (e) the representation by the same solicitors of parties who constitute a class and by different solicitors of parties who ought to be separately represented; and
 - (f) the time within which each proceeding is to be taken, and may fix a day or days for the further attendance of the parties.
- (2) The Court may revoke or vary any directions given under this rule.

Application of rules 5 to 8

Rule 4 Rules 5 to 8 apply—

- (a) where in proceedings for the administration under the direction of the Court of the estate of a deceased person the judgment directs any account of debts or other liabilities of the deceased's estate to be taken or any inquiry for next of kin or other ascertained claimants to be made; and
- (b) where in proceedings for the execution under the direction of the Court of a trust the judgment directs any such inquiry to be made,

and those rules shall, with the necessary modifications, apply where in any other proceedings the judgment directs an account of debts or other liabilities to be taken or any inquiry to be made.

Status: Point in time view as at 01/04/2001.

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Advertisements for creditors and other claimants

Rule 5 The Court may, when giving a judgment or at any stage of proceedings under a judgment, give directions for the issue of advertisements for creditors or other claimants and may fix the time within which creditors and claimants may respond.

Examination of claims

Rule 6.—(1) Where an account of debts or other liabilities of the estate of a deceased person has been directed, such party as the Court may direct must—

- (a) examine the claims of persons claiming to be creditors of the estate;
- (b) determine, so far as he is able, to which of such claims the estate is liable; and
- (c) at least seven clear days before the time appointed for adjudicating on claims, make a witness statement or affidavit stating his findings and his reasons for them and listing all the other debts of the deceased which are or may still be due.

(2) Where an inquiry for next of kin or other unascertained claimants has been directed, such party as the Court may direct must—

- (a) examine the claims;
- (b) determine, so far as he is able, which of them are valid; and
- (c) at least seven clear days before the time appointed for adjudicating on claims, make a witness statement or affidavit stating his findings and his reasons for them.

(3) If the personal representatives or trustees concerned are not the parties directed by the Court to examine claims, they must join with the party directed to examine them in making the witness statement or affidavit required by this rule.

Adjudication on claims

Rule 7 For the purpose of adjudicating on claims the Court may—

- (a) direct any claim to be investigated in such manner as it thinks fit;
- (b) require any claimant to attend and prove his claim or to furnish further particulars or evidence of it; or
- (c) allow any claim after or without proof thereof.

Notice of adjudication

Rule 8 The Court shall give directions that there be served on every creditor whose claim or any part thereof has been allowed or disallowed, and who did not attend when the claim was disposed of, a notice informing him of that fact.

Interest on debts

Rule 9.—(1) Where an account of the debts of a deceased person is directed by any judgment, then, unless the deceased's estate is insolvent or the Court otherwise orders, interest shall be allowed—

- (a) on any such debt as carries interest, at the rate it carries; and
- (b) on any other debt, from the date of the judgment at the rate payable on judgment debts at that date.

(2) A creditor who has established his debt in proceedings under the judgment and whose debt does not carry interest shall be entitled to interest on his debt in accordance with paragraph (1) (b)

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out of any assets which may remain after satisfying the costs of the proceedings, the debts which have been established and the interest on such of those debts as by law carry interest.

(3) For the purpose of this rule “debt” includes funeral, testamentary or administration expenses and, in relation to expenses incurred after the judgment, for the reference in paragraph (1) (b) to the date of the judgment there shall be substituted a reference to the date when the expenses became payable.

Interest on legacies

Rule 10 Where an account of legacies is directed by any judgment, then, subject to any directions contained in the will or codicil in question and to any order made by the Court, interest shall be allowed on each legacy at the rate of 6 per cent. per annum beginning at the expiration of one year after the testator’s death.

Master’s order

Rule 11.—(1) The result of proceedings before a Master under a judgment shall be stated in the form of an order.

(2) Subject to any direction of the Master under paragraph (3) or otherwise an order under this rule shall have effect as a final order disposing of the proceedings in which it is made.

(3) An order under this rule shall contain such directions as the Master thinks fit as to the further consideration ^{F20} ... of the proceedings in which it is made.

(4) Every order made under this rule shall have immediate binding effect on the parties to the proceedings in which it is made and copies of the order shall be served on such of the parties as the Master may direct.

Textual Amendments

F20 Words in [Sch. 1 RSC Order 44 rule 11\(3\)](#) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **30(b)**

Appeal against Master’s order

^{F21}**Rule 12**

Textual Amendments

F21 [Sch. 1 RSC Order 44 rule 12](#) revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), rules 1, 2)

RSC ORDER 45

ENFORCEMENT OF JUDGMENTS AND ORDERS: GENERAL

Enforcement of judgment, etc., for payment of money

Rule 1.—(1) Subject to the provisions of these rules, a judgment or order for the payment of money, not being a judgment or order for the payment of money into Court, may be enforced by one or more of the following means, that is to say—

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- (a) writ of fieri facias;
 - (b) garnishee proceedings;
 - (c) a charging order;
 - (d) the appointment of a receiver;
 - (e) in a case in which rule 5 applies, an order of committal;
 - (f) in such a case, writ of sequestration.
- (2) Subject to the provisions of these rules, a judgment or order for the payment of money into Court may be enforced by one or more of the following means, that is to say—
- (a) the appointment of a receiver;
 - (b) in a case in which rule 5 applies, an order of committal;
 - (c) in such a case, writ of sequestration.
- (3) Paragraphs (1) and (2) are without prejudice to any other remedy available to enforce such a judgment or order as is therein mentioned or to the power of a Court under the Debtors Acts 1869 and 1878⁽²⁾, to commit to prison a person who makes default in paying money adjudged or ordered to be paid by him, or to the right of a person prosecuting a judgment or order for the payment of money to a person to apply under section 105 (1) of the County Courts Act 1984, to have the judgment or order enforced in a county Court, or to the enactments relating to bankruptcy or the winding up of companies.
- (4) In this Order references to any writ shall be construed as including references to any further writ in aid of the first mentioned writ.

Notice of seizure

Rule 2 When first executing a writ of fieri facias, the Sheriff or his officer shall deliver to the debtor or leave at each place where execution is levied a notice in Form No. 55 in the relevant Practice Direction informing the debtor of the execution.

Enforcement of judgment for possession of land

Rule 3.—(1) Subject to the provisions of these rules, a judgment or order for the giving of possession of land may be enforced by one or more of the following means, that is to say—

- (a) writ of possession;
 - (b) in a case in which rule 5 applies, an order of committal;
 - (c) in such a case, writ of sequestration.
- (2) A writ of possession to enforce a judgment or order for the giving of possession of any land shall not be issued without the permission of the Court except where the judgment or order was given or made in mortgage proceedings to which Order 88 applies.
- (3) Such permission shall not be granted unless it is shown—
- (a) that every person in actual possession of the whole or any part of the land has received such notice of the proceedings as appears to the Court sufficient to enable him to apply to the Court for any relief to which he may be entitled; and
 - (b) if the operation of the judgment or order is suspended by subsection (2) of section 16 of the Landlord and Tenant Act, 1954⁽³⁾, that the applicant has not received notice in

(2) 1869 c. 62; 1878 c. 54.

(3) 1954 c. 56.

writing from the tenant that he desires that the provisions of paragraphs (a) and (b) of that subsection shall have effect.

(4) A writ of possession may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

Enforcement of judgment for delivery of goods

Rule 4.—(1) Subject to the provisions of these rules, a judgment or order for the delivery of any goods which does not give a person against whom the judgment is given or order made the alternative of paying the assessed value of the goods may be enforced by one or more of the following means, that is to say—

- (a) writ of delivery to recover the goods without alternative provision for recovery of the assessed value thereof (hereafter in this rule referred to as a “writ of specific delivery”);
- (b) in a case in which rule 5 applies, an order of committal;
- (c) in such a case, writ of sequestration.

(2) Subject to the provisions of these rules, a judgment or order for the delivery of any goods or payment of their assessed value may be enforced by one or more of the following means, that is to say—

- (a) writ of delivery to recover the goods or their assessed value;
- (b) by order of the Court, writ of specific delivery;
- (c) in a case in which rule 5 applies, writ of sequestration.

An application for an order under sub-paragraph (b) shall be made in accordance with CPR Part 23, which must be served on the defendant against whom the judgment or order sought to be enforced was given or made.

(3) A writ of specific delivery, and a writ of delivery to recover any goods or their assessed value, may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

(4) A judgment or order for the payment of the assessed value of any goods may be enforced by the same means as any other judgment or order for the payment of money.

Enforcement of judgment to do or abstain from doing any act

Rule 5.—(1) Where—

- (a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or, as the case may be, within that time as extended or abridged under a court order or CPR rule 2.11; or
- (b) a person disobeys a judgment or order requiring him to abstain from doing an act, then, subject to the provisions of these rules, the judgment or order may be enforced by one or more of the following means, that is to say—
 - (i) with the permission of the Court, a writ of sequestration against the property of that person;
 - (ii) where that person is a body corporate, with the permission of the Court, a writ of sequestration against the property of any director or other officer of the body;
 - (iii) subject to the provisions of the Debtors Act 1869 and 1878(4), an order of committal against that person or, where that person is a body corporate, against any such officer.

(4) 1869 c. 62; 1878 c. 54.

Status: Point in time view as at 01/04/2001.

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(2) Where a judgment or order requires a person to do an act within a time therein specified and an order is subsequently made under rule 6 requiring the act to be done within some other time, references in paragraph (1) of this rule to a judgment or order shall be construed as references to the order made under rule 6.

(3) Where under any judgment or order requiring the delivery of any goods the person liable to execution has the alternative of paying the assessed value of the goods, the judgment or order shall not be enforceable by order of committal under paragraph (1), but the Court may, on the application of the person entitled to enforce the judgment or order, make an order requiring the first mentioned person to deliver the goods to the applicant within a time specified in the order, and that order may be so enforced.

Judgment, etc. requiring act to be done: order fixing time for doing it

Rule 6.—(1) Notwithstanding that a judgment or order requiring a person to do an act specifies a time within which the act is to be done, the Court shall, have power to make an order requiring the act to be done within another time, being such time after service of that order, or such other time, as may be specified therein.

(2) Where, a judgment or order requiring a person to do an act does not specify a time within which the act is to be done, the Court shall have power subsequently to make an order requiring the act to be done within such time after service of that order, or such other time, as may be specified therein.

(3) An application for an order under this rule must be made in accordance with CPR Part 23 and the application notice must be served on the person required to do the act in question.

Service of copy of judgment, etc., prerequisite to enforcement under r.5

Rule 7.—(1) In this rule references to an order shall be construed as including references to a judgment.

(2) Subject to paragraphs (6) and (7) of this rule, an order shall not be enforced under rule 5 unless—

- (a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question; and
- (b) in the case of an 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.

(3) Subject as aforesaid, an order requiring a body corporate to do or abstain from doing an act shall not be enforced as mentioned in rule 5 (1)(b)(ii) or (iii) unless—

- (a) a copy of the order has also been served personally on the officer against whose property permission is sought to issue a writ of sequestration or against whom an order of committal is sought; and
- (b) in the case of an order requiring the body corporate to do an act, the copy has been so served before the expiration of the time within which the body was required to do the act.

(4) There must be prominently displayed on the front of the copy of an order served under this rule a warning to the person on whom the copy is served that disobedience to the order would be a contempt of court punishable by imprisonment, or (in the case of an order requiring a body corporate to do or abstain from doing an act) punishable by sequestration of the assets of the body corporate and by imprisonment of any individual responsible.

(5) With the copy of an order required to be served under this rule, being an order requiring a person to do an act, there must also be served a copy of any order or agreement under CPR rule 2.11

extending or abridging the time for doing the act and, where the first—mentioned order was made under rule 5 (3) or 6 of this Order, a copy of the previous order requiring the act to be done.

(6) An order requiring a person to abstain from doing an act may be enforced under rule 5 notwithstanding that service of a copy of the order has not been effected in accordance with this rule if the Court is satisfied that pending such service, the person against whom or against whose property is sought to enforce the order has had notice thereof either—

(a) by being present when the order was made; or

(b) by being notified of the terms of the order, whether by telephone, telegram or otherwise.

(7) The Court may dispense with service of a copy of an order under this rule if it thinks it just to do so.

Court may order act to be done at expense of disobedient party

Rule 8 If an order of mandamus, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to its powers under section 39 of the Act and its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person appointed by the Court, at the cost of the disobedient party, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs.

Execution by or against person not being a party

Rule 9.—(1) Any person, not being a party to proceedings, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to the order by the same process as if he were a party.

(2) Any person, not being a party to proceedings, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to the judgment or order as if he were a party.

Conditional judgment: waiver

Rule 10 A party entitled under any judgment or order to any relief subject to the fulfilment of any condition who fails to fulfil that condition is deemed to have abandoned the benefit of the judgment or order, and, unless the Court otherwise directs, any other person interested may take any proceedings which either are warranted by the judgment or order or might have been taken if the judgment or order had not been given or made.

Matters occurring after judgment: stay of execution, etc.

Rule 11 Without prejudice to Order 47, rule 1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just.

Forms of writs

Rule 12.—(1) A writ of fieri facias must be in such of the Forms Nos. 53 to 63 in the relevant Practice Direction as is appropriate in the particular case.

(2) A writ of delivery must be in Form No. 64 or 65 in the relevant Practice Direction, whichever is appropriate.

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(3) A writ of possession must be in Form No. 66 or 66A in the relevant Practice Direction, whichever is appropriate.

(4) A writ of sequestration must be in Form No. 67 in the relevant Practice Direction.

Enforcement of judgments and orders for recovery of money, etc.

Rule 13.—(1) Rule 1 (1) of this Order, with the omission of sub-paragraphs (e) and (f) thereof, and Orders 46 to 51 shall apply in relation to a judgment or order for the recovery of money as they apply in relation to a judgment or order for the payment of money.

(2) Rule 3 of this Order, with the omission of paragraphs (1)(b) and (c) thereof, and Order 47, rule 3 (2) shall apply in relation to a judgment or order for the recovery of possession of land as they apply in relation to a judgment or order for the giving or delivery of possession of land.

(3) Rule 4 of this Order, with the omission of paragraph 1 (b) and (c) and (2)(c) thereof, and Order 47, rule 3 (2) shall apply in relation to a judgment or order that a person do have a return of any goods and to a judgment or order that a person do have a return of any goods or do recover the assessed value thereof as they apply in relation to a judgment or order for the delivery of any goods and a judgment or order for the delivery of any goods or payment of the assessed value thereof respectively.

Enforcement of decisions of Value Added Tax Tribunals

Rule 14.—(1) An application under section 29 of the Finance Act 1985⁽⁵⁾ for registration of a decision of a Value Added Tax Tribunal on an appeal under section 83 of the Value Added Tax Act 1994⁽⁶⁾ shall be made by a request in writing to the head clerk of the Crown Office—

- (a) exhibiting the decision or a duly authenticated copy thereof;
- (b) stating, so far as is known to the witness, the name and occupation and the usual or last known address or place of business of the person against whom it is sought to enforce the decision; and
- (c) stating, to the best of the information and belief of the witness, the amount which as a result of the decision is, or is recoverable as, tax from such person at the date of the application and the amount then remaining unpaid of any costs awarded to the Commissioners of Customs and Excise by the decision.

(2) Notice of the registration of a decision must be served on the person against whom it is sought to enforce the decision by delivering it to him personally or by sending it to him at his usual or last known address or place of business or in such manner as the Court may direct.

(3) There shall be kept in the Central Office under the direction of the Senior Master a register of the decisions registered under section 29 of the Finance Act 1985, and there shall be included in the register particulars of any execution issued on a decision so registered.

⁽⁵⁾ 1985 c. 54.

⁽⁶⁾ 1994 c. 23.

RSC ORDER 46

WRITS OF EXECUTION: GENERAL

Definition

Rule 1 In this Order, unless the context otherwise requires, “writ of execution” includes a writ of fieri facias, a writ of possession, a writ of delivery, a writ of sequestration and any further writ in aid of any of the aforementioned writs.

When permission to issue any writ of execution is necessary

Rule 2.—(1) A writ of execution to enforce a judgment or order may not issue without the permission of the Court in the following cases, that is to say:—

- (a) where six years or more have elapsed since the date of the judgment or order;
- (b) where any change has taken place, whether by death or otherwise, in the parties entitled or liable to execution under the judgment or order;
- (c) where the judgment or order is against the assets of a deceased person coming to 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;
- (d) where under the judgment or order any person is entitled to a remedy subject to the fulfilment of any condition which it is alleged has been fulfilled;
- (e) where any goods sought to be seized under a writ of execution are in the hands of a receiver appointed by the Court or a sequestrator.

(2) Paragraph (1) is without prejudice to section 2 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(7), or any other enactment or rule by virtue of which a person is required to obtain the permission of the Court for the issue of a writ of execution or to proceed to execution on or otherwise to the enforcement of a judgment or order.

(3) Where the Court grants permission, whether under this rule or otherwise, for the issue of a writ of execution and the writ is not issued within one year after the date of the order granting such permission, the order shall cease to have effect, without prejudice, however, to the making of a fresh order.

Permission required for issue of writ in aid of other writ

Rule 3 A writ of execution in aid of any other writ of execution shall not issue without the permission of the Court.

Application for permission to issue writ

Rule 4.—(1) An application for permission to issue a writ of execution may be made in accordance with CPR Part 23 but the application notice need not be served on the respondent unless the Court directs.

(2) Such an application must be supported by a witness statement or affidavit—

- (a) identifying the judgment or order to which the application relates and, if the judgment or order is for the payment of money, stating the amount originally due thereunder and the amount due thereunder at the date the application notice is filed;

(7) 1951 c. 65.

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- (b) stating, where the case falls within rule 2 (1)(a) the reasons for the delay in enforcing the judgment or order;
- (c) stating where the case falls within rule 2 (1)(b) the change which has taken place in the parties entitled or liable to execution since the date of the judgment or order;
- (d) stating, where the case falls within rule 2 (1)(c) or (d) that a demand to satisfy the judgment or order was made on the person liable to satisfy it and that he has refused or failed to do so;
- (e) giving such other information as is necessary to satisfy the Court that the applicant is entitled to proceed to execution on the judgment or order in question and that the person against whom it is sought to issue execution is liable to execution on it.

(3) The Court hearing such application may grant permission in accordance with the application or may order that any issue or question, a decision on which is necessary to determine the rights of the parties, be tried in any manner in which any question of fact or law arising in proceedings may be tried and, in either case, may impose such terms as to costs or otherwise as it thinks just.

Application for permission to issue writ of sequestration

Rule 5.—(1) Notwithstanding anything in rules 2 and 4, an application for permission to issue a writ of sequestration must be made in accordance with CPR Part 23 and be heard by a Judge.

(2) Subject to paragraph (3) the application notice, stating the grounds of the application and accompanied by a copy of the witness statement or affidavit in support of the application, must be served personally on the person against whose property it is sought to issue the writ.

(3) The Court may dispense with service of the application notice under this rule if it thinks it just to do so.

(4) The judge hearing an application for permission to issue a writ of sequestration may sit in private in any case in which, if the application were for an order of committal, he would be entitled to do so by virtue of Order 52, rule 6 but, except in such a case, the application shall be heard in public.

Issue of writ of execution

Rule 6.—(1) Issue of a writ of execution takes place on its being sealed by a court officer of the appropriate office.

(2) Before such a writ is issued a praecipe for its issue must be filed.

(3) The praecipe must be signed by or on behalf of the solicitor of the person entitled to execution or, if that person is acting in person, by him.

(4) No such writ shall be sealed unless at the time of the tender thereof for sealing—

(a) the person tendering it produces—

- (i) the judgment or order on which the writ is to issue, or an office copy thereof;
- (ii) where the writ may not issue without the permission of the Court, the order granting such permission or evidence of the granting of it;
- (iii) where judgment on failure to acknowledge service has been entered against a State, as defined in section 14 of the State Immunity Act 1978(8), evidence that the State has been served in accordance with CPR rule 40.10 and that the judgment has taken effect; and

(b) the court officer authorised to seal it is satisfied that the period, if any, specified in the judgment or order for the payment of any money or the doing of any other act thereunder has expired.

(8) 1978 c. 33.

- (5) Every writ of execution shall bear the date of the day on which it is issued.
- (6) In this rule “the appropriate office” means—
- (a) where the proceedings in which execution is to issue are in a District Registry, that Registry;
 - (b) where the proceedings are in the Principal Registry of the Family Division, that Registry;
 - (c) where the proceedings are Admiralty proceedings or commercial proceedings which are not in a District Registry, the Admiralty and Commercial Registry;
 - (ca) where the proceedings are in the Chancery Division, Chancery Chambers;
 - (d) in any other case, the Central Office of the Supreme Court.

Duration and renewal of writ of execution

Rule 8.—(1) For the purpose of execution, a writ of execution is valid in the first instance for 12 months beginning with the date of its issue.

(2) Where a writ has not been wholly executed the Court may by order extend the validity of the writ from time to time for a period of 12 months at any one time beginning with the day on which the order is made, if an application for extension is made to the Court before the day next following that on which the writ would otherwise expire or such later day, if any, as the Court may allow.

(3) Before a writ the validity of which had been extended under paragraph (2) is executed either the writ must be sealed with the seal of the office out of which it was issued showing the date on which the order extending its validity was made or the applicant for the order must serve a notice (in Form No. 71 in the relevant Practice Direction) sealed as aforesaid, on the sheriff to whom the writ is directed informing him of the making of the order and the date thereof.

(4) The priority of a writ, the validity of which has been extended under this rule, shall be determined by reference to the date on which it was originally delivered to the sheriff.

(5) The production of a writ of execution, or of such a notice as is mentioned in paragraph (3) purporting in either case to be sealed as mentioned in that paragraph, shall be evidence that the validity of that writ, or, as the case may be, of the writ referred to in that notice, has been extended under paragraph (2).

(6) If, during the validity of a writ of execution, an interpleader summons is issued in relation to an execution under that writ, the validity of the writ shall be extended until the expiry of 12 months from the conclusion of the interpleader proceedings.

Return to writ of execution

Rule 9.—(1) Any party at whose instance or against whom a writ of execution was issued may serve a notice on the sheriff to whom the writ was directed requiring him, within such time as may be specified in the notice, to indorse on the writ a statement of the manner in which he has executed it and to send to that party a copy of the statement.

(2) If a sheriff on whom such a notice is served fails to comply with it the party by whom it was served may apply to the Court for an order directing the sheriff to comply with the notice.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

RSC ORDER 47

WRITS OF FIERI FACIAS

Power to stay execution by writ of fieri facias

Rule 1.—(1) Where a judgment is given or an order made for the payment by any person of money, and the Court is satisfied, on an application made at the time of the judgment or order, or at any time thereafter, by the judgment debtor or other party liable to execution—

- (a) that there are special circumstances which render it inexpedient to enforce the judgment or order; or
- (b) that the applicant is unable from any cause to pay the money,

then, notwithstanding anything in rule 2 or 3, the Court may by order stay the execution of the judgment or order by writ of fieri facias either absolutely or for such period and subject to such conditions as the Court thinks fit.

(2) An application under this rule, if not made at the time the judgment is given or order made, must be made in accordance with CPR Part 23 and may be so made notwithstanding that the party liable to execution did not acknowledge service of the claim form or serve a defence or take any previous part in the proceedings.

(3) The grounds on which an application under this rule is made must be set out in the application notice and be supported by a witness statement or affidavit made by or on behalf of the applicant substantiating the said grounds and, in particular, where such application is made on the grounds of the applicant's inability to pay, disclosing his income, the nature and value of any property of his and the amount of any other liabilities of his.

(4) The application notice and a copy of the supporting witness statement or affidavit must, not less than 4 clear days before the hearing, be served on the party entitled to enforce the judgment or order.

(5) An order staying execution under this rule may be varied or revoked by a subsequent order.

Two or more writs of fieri facias

Rule 2.—(1) A party entitled to enforce a judgment or order by writ of fieri facias may issue two or more such writs, directed to the sheriffs of different counties, at either the same time or different times, to enforce that judgment or order, but no more shall be levied under all those writs together than is authorised to be levied under one of them.

(2) Where a party issues two or more writs of fieri facias directed to the sheriffs of different counties to enforce the same judgment or order he must inform each sheriff of the issue of the other writ or writs.

Separate writs to enforce payment of costs, etc.

Rule 3.—(1) Where only the payment of money, together with costs to be assessed in accordance with CPR Part 47 (detailed costs assessment), is adjudged or ordered, then, if when the money becomes payable under the judgment or order the costs have not been assessed, the party entitled to enforce that judgment or order may issue a writ of fieri facias to enforce payment of the sum (other than for costs) adjudged or ordered and, not less than 8 days after the issue of that writ, he may issue a second writ to enforce payment of the assessed costs.

(2) A party entitled to enforce a judgment or order for the delivery of possession of any property (other than money) may, if he so elects, issue a separate writ of fieri facias to enforce payment of any damages or costs awarded to him by that judgment or order.

No expenses of execution in certain cases

Rule 4 Where a judgment or order is for less than £600 and does not entitle the claimant to costs against the person against whom the writ of fieri facias to enforce the judgment or order is issued, the writ may not authorise the sheriff to whom it is directed to levy any fees, poundage or other costs of execution.

Writ of fieri facias de bonis ecclesiasticis, etc.

Rule 5.—(1) Where it appears upon the return of any writ of fieri facias that the person against whom the writ was issued has no goods or chattels in the county of the sheriffs to whom the writ was directed but that he is the incumbent of a benefice named in the return, then, after the writ and return have been filed, the party by whom the writ of fieri facias was issued may issue a writ of fieri facias de bonis ecclesiasticis or a writ of sequestrari de bonis ecclesiasticis directed to the bishop of the diocese within which that benefice is.

(2) Any such writ must be delivered to the bishop to be executed by him.

(3) Only such fees for the execution of any such writ shall be taken by or allowed to the bishop or any diocesan officer as are for the time being authorised by or under any enactment, including any measure of the General Synod.

Order for sale otherwise than by auction

Rule 6.—(1) An order of the Court under section 145 of the Bankruptcy Act 1883⁽⁹⁾, that a sale under an execution may be made otherwise than by public auction may be made on the application of the person at whose instance the writ of execution under which the sale is to be made was issued or the person against whom that writ was issued (in this rule referred to as “the judgment debtor”) or the sheriff to whom it was issued.

(2) Such an application must be made in accordance with CPR Part 23 and the application notice must contain a short statement of the grounds of the application.

(3) Where the applicant for an order under this rule is not the sheriff, the sheriff must, on the demand of the applicant, send to the applicant a list containing the name and address of every person at whose instance any other writ of execution against the goods of the judgment debtor was issued and delivered to the sheriff (in this rule referred to as “the sheriff’s list”); and where the sheriff is the applicant, he must prepare such a list.

(4) Not less than 4 clear days before the hearing the applicant must serve the application notice on each of the other persons by whom the application might have been made and on every person named in the sheriff’s list.

(5) Service of the application notice on a person named in the sheriff’s list is notice to him for the purpose of section 12 of the Bankruptcy Act 1890⁽¹⁰⁾ (which provides that the Court shall not consider an application for permission to sell privately goods taken in execution until notice directed by rules of Court has been given to any other execution creditor).

(6) The applicant must produce the sheriff’s list to the Court on the hearing of the application.

(7) Every person on whom the application notice was served may attend and be heard on the hearing of the application.

⁽⁹⁾ 1883 c. 52.

⁽¹⁰⁾ 1890 c. 71.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

RSC ORDER 48

EXAMINATION OF JUDGMENT DEBTOR, ETC.

Order for examination of judgment debtor

Rule 1.—(1) Where a person has obtained a judgment or order for the payment by some other person (hereinafter referred to as “the judgment debtor”) of money, the Court may, on an application made without notice being served on any other party by the person entitled to enforce the judgment or order, order the judgment debtor or, if the judgment debtor is a body corporate, an officer thereof, to attend before such Master, Registrar, District Judge or nominated officer as the Court may appoint and be orally examined on the questions—

- (a) whether any and, if so, what debts are owing to the judgment debtor; and
- (b) whether the judgment debtor has any and, if so, what other property or means of satisfying the judgment or order;

and the Court may also order the judgment debtor or officer to produce any books or documents in the possession of the judgment debtor relevant to the questions aforesaid at the time and place appointed for the examination.

In this paragraph “district judge” includes the district judge of a district registry or county court, and where the Court appoints such a district judge without specifying him personally, the examination may, if he thinks fit, be conducted on his behalf by a nominated officer of that registry or county court.

(2) An order under this rule must be served personally on the judgment debtor and on any officer of a body corporate ordered to attend for examination.

(3) Any difficulty arising in the course of an examination under this rule before a nominated officer, including any dispute with respect to the obligation of the person being examined to answer any question put to him, may be referred to the Senior Master or Practice Master (or, in the case of an examination at the principal registry of the Family Division, a district registry or a county court, a district judge of that registry, district registry or county court respectively) and he may determine it or give such directions for determining it as he thinks fit.

(4) In this rule “nominated officer” in relation to an examination which is to take place at the Central Office of the Supreme Court, the principal registry of the Family Division, a district registry or a county court means such of the officers of that Office, registry or county court^{F22}... as may be nominated for the purposes of this rule by the Senior Master, the Senior District Judge of the Family Division or the district judge of that district registry or county court respectively.

Textual Amendments

F22 Words in Sch. 1 RSC Order 48 rule 1(4) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, 31

Examination of party liable to satisfy other judgment

Rule 2 Where any difficulty arises in or in connection with the enforcement of any judgment or order, other than such a judgment or order as is mentioned in rule 1, the Court may make an order under that rule for the attendance of the party liable to satisfy the judgment or order and for his examination on such questions as may be specified in the order, and that rule shall apply accordingly with the necessary modifications.

Examiner to make record of debtor's statement

Rule 3 The officer conducting the examination shall take down, or cause to be taken down, in writing the statement made by the judgment debtor or other person at the examination, read it to him and ask him to sign it; and if he refuses the officer shall sign the statement.

RSC ORDER 49

GARNISHEE PROCEEDINGS

Attachment of debt due to judgment debtor

Rule 1.—(1) Where a person (in this Order referred to as “the judgment creditor”) has obtained a judgment or order for the payment by some other person (in this Order referred to as “the judgment debtor”) of a sum of money amounting in value to at least £50, not being a judgment or order for the payment of money into court, and any other person within the jurisdiction (in this Order referred to as “the garnishee”) is indebted to the judgment debtor, the 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 to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy that judgment or order 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 time and place for further consideration of the matter, and in the meantime attaching such debt as is mentioned in paragraph (1) or so much thereof as may be specified in the order, to answer the judgment or order mentioned in that paragraph and the costs of the garnishee proceedings.

(3) Among the conditions mentioned in section 40 of the Supreme Court Act 1981⁽¹¹⁾ (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 included any condition that a receipt for money deposited in the account must be produced before any money is withdrawn.

(4) 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.—(1) An application for an order under rule 1 must be made in accordance with CPR Part 23 but the application notice need not be served on the judgment debtor.

(2) An application must be supported by 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 and the amount remaining unpaid under it at the time of the application;
- (c) stating that to the best of the information or belief of the witness the garnishee (naming him) is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the witness's information or the grounds for his belief; and
- (d) stating, where the garnishee is a deposit-taking institution having more than one place of business, 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 not known to the witness.

⁽¹¹⁾ 1981 c. 54; section 40 was amended by the Banking Act 1987 (c. 22) section 108(1), schedule 6.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Service and effect of order to show cause

Rule 3.—(1) Unless the Court otherwise directs, an order under rule 1 to show cause must be served—

- (a) on the garnishee personally, at least 15 days before the time appointed thereby for the further consideration of the matter; and
- (b) on the judgment debtor, at least 7 days after the order has been served on the garnishee and at least 7 days before the time appointed by the order for the further consideration of the matter.

(2) Such an order shall bind in the hands of the garnishee as from the service of the order on him any debt specified in the order or so much thereof as may be so specified.

No appearance or dispute of liability by garnishee

Rule 4.—(1) Where on the further consideration of the matter the garnishee does not attend or does not dispute the debt due or claimed to be due from him to the judgment debtor, the Court may make an order absolute under rule 1 against the garnishee.

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

Dispute of liability by garnishee

Rule 5 Where on the further consideration of the matter the garnishee 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, without, if it orders trial before a Master, the need for any consent by the parties.

Claims of third persons

Rule 6.—(1) If in garnishee proceedings it is brought to the notice of the Court that some other person than the judgment debtor is or claims to be entitled to the debt sought to be attached or has or claims to have a charge or lien upon it, the Court may order that person to attend before the Court and state the nature of his claim with particulars thereof.

(2) After hearing any person who attends before the Court in compliance with an order under paragraph (1) the Court may summarily determine the questions at issue between the claimants or make such other order as it thinks just, including an order that any question or issue necessary for determining the validity of the claim of such other person as is mentioned in paragraph (1) be tried in such manner as is mentioned in rule 5.

Discharge of garnishee

Rule 8 Any payment made by a garnishee in compliance with an order absolute under this Order, 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 notwithstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which they arose reversed.

Money in Court

Rule 9.—(1) Where money is standing to the credit of the judgment debtor in Court, the judgment creditor shall not be entitled to take garnishee proceedings in respect of that money but may apply

to the Court in accordance with CPR Part 23 for an order that the money or so much thereof 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 filing an application notice under this rule the applicant must produce the application notice at the office of the Accountant General and leave a copy at that office, and the money to which the application relates shall not be paid out of Court until after the determination of the application. If the application is dismissed, the applicant must give notice of that fact to the Accountant General.

(3) Unless the Court otherwise directs, the application notice must be served on the judgment debtor at least 7 days before the hearing.

(4) Subject to Order 75, rule 24, the Court hearing an application under this rule may make such order with respect to the money in Court as it thinks just.

Costs

Rule 10 The costs of any application for an order under rule 1 or 9, and of any proceedings arising therefrom or incidental thereto, shall, unless the Court otherwise directs, be retained by the judgment creditor out of the money recovered by him under the order and in priority to the judgment debt.

RSC ORDER 50

CHARGING ORDERS, STOP ORDERS, ETC.

Order imposing a charge on a beneficial interest

Rule 1.—(1) The power to make a charging order under section 1 of the Charging Orders Act 1979(12) (referred to in this Order as “the Act”) shall be exercisable by the Court.

(2) An application by a judgment creditor for a charging order in respect of a judgment debtor’s beneficial interest must be in accordance with CPR Part 23, but the application notice need not be served on the judgment debtor, and any order made on such an application shall in the first instance be an order, made in Form No. 75 in the relevant Practice Direction, to show cause, specifying the time and place for further consideration of the matter and imposing the charge in any event until that time.

(3) The application shall be supported by a witness statement or affidavit—

- (a) identifying the judgment or order to be enforced and stating the amount unpaid at the date of the application;
- (b) stating the name of the judgment debtor and of any creditor of his whom the applicant can identify;
- (c) giving full particulars of the subject matter of the intended charge, including, in the case of securities other than securities in Court, the full title of the securities, their amount and the name in which they stand and, in the case of funds in Court, the number of the account; and
- (d) verifying that the interest to be charged is owned beneficially by the judgment debtor.

(4) Unless the Court otherwise directs, a witness statement or affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

(5) An application may be made for a single charging order in respect of more than one judgment or order against the debtor.

(12) 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.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Service of notice of order to show cause

Rule 2.—(1) On the making of an order to show cause, notice of the order shall, unless the Court otherwise directs, be served as follows—

- (a) a copy of the order, together with a copy of the witness statement or affidavit in support, shall be served on the judgment debtor;
- (b) where the order relates to securities other than securities in Court, copies of the order shall also be served—
 - (i) in the case of government stock for which the Bank of England keeps the Register, on the Bank of England;
 - (ii) in the case of government stock to which (i) does not apply, on the keeper of the register;
 - (iii) in the case of stock of any body incorporated within England and Wales, on that body, or, where the register is kept by the Bank of England, on the Bank of England;
 - (iv) in the case of stock of any body incorporated outside England and Wales or of any state or territory outside the United Kingdom, being stock registered in a register kept in England and Wales, on the keeper of the register;
 - (v) in the case of units of any unit trust in respect of which a register of the unit holders is kept in England and Wales, on the keeper of the register;
- (c) where the order relates to a fund in Court, a copy of the order shall be served on the Accountant General at the Court Funds Office; and
- (d) where the order relates to an interest under a trust, copies of the order shall be served on such of the trustees as the Court may direct.

(2) Without prejudice to the provisions of paragraph (1), the Court may, on making the order to show cause, direct the service of copies of the order, and of the witness statement or affidavit in support, on any other creditor of the judgment debtor or on any other interested person as may be appropriate in the circumstances.

(3) Documents to be served under this rule must be served at least seven days before the time appointed for the further consideration of the matter.

Order made on further considerations

Rule 3.—(1) On the further consideration of the matter the Court shall either make the order absolute, with or without modifications, or discharge it.

(2) Where the order is made absolute, it shall be made in Form No. 76 in the relevant practice direction, and where it is discharged, the provisions of rule 7, regarding the service of copies of the order of discharge, shall apply.

Order imposing a charge on an interest held by a trustee

Rule 4.—(1) Save as provided by this rule, the provisions of rules 1, 2 and 3 shall apply to an order charging an interest held by a trustee as they apply to an order charging the judgment debtor's beneficial interest.

(2) Instead of verifying the judgment debtor's beneficial ownership of the interest to be charged, the witness statement or affidavit required by rule 1 (3) shall state the ground on which the application is based and shall verify the material facts.

(3) On making the order to show cause, the Court shall give directions for copies of the order, and of the witness statement or affidavit in support, to be served on such of the trustees and beneficiaries, if any, as may be appropriate.

(4) Rules 5, 6 and 7 shall apply to an order charging an interest held by a trustee as they apply to an order charging the judgment debtor's beneficial interest, except that, where the order is made under sub—section (ii) or (iii) of section 2 (1)(b) of the Act references in those rules to “the judgment debtor” shall be references to the trustee.

(5) Forms No. 75 and 76 in the relevant Practice Direction shall be modified so as to indicate that the interest to be charged is held by the debtor as trustee or, as the case may be, that it is held by a trustee (to be named in the order) on trust for the debtor beneficially.

Effect of order in relation to securities out of Court

Rule 5.—(1) No disposition by the judgment debtor of his interest in any securities to which an order to show cause relates made after the making of that order shall, so long as that order remains in force, be valid as against the judgment creditor.

(2) Until such order is discharged or made absolute, the Bank of England (or other person or body served in accordance with rule 2 (1)(b)), shall not permit any transfer of any of the securities specified in the order, or pay any dividend, interest or redemption payment in relation thereto, except with the authority of the Court, and, if it does so, shall be liable to pay the judgment creditor the value of the securities transferred or, as the case may be, the amount of the payment made or, if that value or amount is more than sufficient to satisfy the judgment or order to which such order relates, so much thereof as is sufficient to satisfy it.

(3) If the Court makes the order absolute, a copy of the order, including a stop notice as provided in Form No. 76 in the relevant Practice Direction, shall be served on the Bank of England, or on such other person or body specified in rule 2 (1)(b) as may be appropriate and, save as provided in rule 7 (5), rules 11 to 14 shall apply to such a notice as they apply to a stop notice made and served under rule 11.

(4) This rule does not apply to orders in respect of securities in Court.

Effect of order in relation to funds in Court

Rule 6.—(1) Where an order to show cause has been made in relation to funds in Court (including securities in Court) and a copy thereof has been served on the Accountant General in accordance with rule 2, no disposition by the judgment debtor of any interest to which the order relates, made after the making of that order, shall, so long as the order remains in force, be valid as against the judgment creditor.

(2) If the Court makes the order absolute, a copy of the order shall be served on the Accountant General at the Court Funds Office.

Discharge, etc., of charging order

Rule 7.—(1) Subject to paragraph (2), on the application of the judgment debtor or any other person interested in the subject matter of the charge, the Court may, at any time, whether before or after the order is made absolute, discharge or vary the order on such terms (if any) as to costs or otherwise as it thinks just.

(2) Where an application is made for the discharge of a charging order in respect of the judgment debtor's land on the ground that the judgment debt has been satisfied, the applicant shall state in his application, and the Court shall specify in its order, the title number of the land in the case of registered land, and the entry number of any relevant land charge in the case of unregistered land.

(3) The application notice seeking the discharge or variation of the order shall be served on such interested parties as the Court may direct.

(4) Where an order is made for the discharge or variation of a charging order in respect of funds in Court, a copy thereof shall be served on the Accountant General at the Court Funds Office.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(5) Where an order is made for the discharge or variation of a charging order in respect of securities other than securities in Court, a copy thereof shall be served on the Bank of England or on such other person or body specified in rule 2 (1)(b) as may be appropriate, and the service thereof shall discharge, or, as the case may be, vary, any stop notice in respect of such securities which may be in force pursuant to the original order.

Jurisdiction of Master, etc., to grant injunction

Rule 9 A master and the Admiralty Registrar and a district judge of the Family Division shall have power to grant an injunction if, and only so far as, it is ancillary or incidental to an order under rule 1, 3 or 4 and an application for an injunction under this rule may be joined with the application for the order under rule 1, 3 or 4 to which it relates.

Enforcement of charging order by sale

Rule 9A.—(1) Proceedings for the enforcement of a charging order by sale of the property charged must be begun by a claim form issued out of Chancery Chambers or out of one of the Chancery District Registries.

(2) The provisions of Order 88 shall apply to all such proceedings.

Funds in Court: stop order

Rule 10.—(1) The Court, on the application of any person—

- (a) who has a mortgage or charge on the interest of any person in funds in Court; or
- (b) to whom that interest has been assigned; or
- (c) who is a judgment creditor of the person entitled to that interest, may make an order prohibiting the transfer, sale, delivery out, payment or other dealing with such funds, or any part thereof, or the income thereon, without notice to the applicant.

(2) An application for an order under this rule must, if there are existing proceedings, be made in accordance with CPR Part 23 by filing an application notice relating to the funds in Court, or, if there are no such proceedings, by a claim.

(3) The application notice or claim form must be served on every person whose interest may be affected by the order applied for and on the Accountant-General but shall not be served on any other person.

(4) Without prejudice to the Court's powers and discretion as to costs, the Court may order the applicant for an order under this rule to pay the costs of any party to the proceedings relating to the funds in question, or of any person interested in those funds, occasioned by the application.

Securities not in Court: stop notice

Rule 11.—(1) Any person claiming to be beneficially entitled to an interest in any securities of the kinds set out in section 2 (2)(b) of the Act, other than securities in Court, who wishes to be notified of any proposed transfer or payment of those securities may avail himself of the provisions of this rule.

(2) A person claiming to be so entitled must file in Chancery Chambers or in a District Registry—

- (a) a witness statement or affidavit identifying the securities in question and describing his interest therein by reference to the document under which it arises; and
- (b) a notice in Form No. 80 in the relevant Practice Direction (a stop notice) signed by the witness who made the witness statement or affidavit, and annexed to it, addressed to the Bank of England or, as the case may be, the body, state, territory or unit trust concerned, and must serve an office copy of the witness statement or affidavit, and a copy of the notice

sealed with the seal of Chancery Chambers or the District Registry, on the Bank or other person or body, as provided in rule 2 (1)(b).

(3) There must be indorsed on the witness statement or affidavit filed under this rule a note stating the address to which any such notice as is referred to in rule 12 is to be sent and, subject to paragraph (4), that address shall for the purpose of that rule be the address for service of the person on whose behalf the witness statement or affidavit is filed.

(4) A person on whose behalf a witness statement or affidavit under this rule is filed may change his address for service for the purpose of rule 12 by serving on the Bank of England, or other person or body, a notice to that effect, and, as from the date of service of such a notice the address stated therein shall for the purpose of that rule be the address for service of that person.

Effect of stop notice

Rule 12 Where a stop notice has been served in accordance with rule 11, then, so long as the stop notice is in force, the Bank of England or other person or body on which it is served shall not register a transfer of the securities or take any other step restrained by the stop notice until 14 days after sending notice thereof, by ordinary first class post, to the person on whose behalf the stop notice was filed, but shall not by reason only of that notice refuse to register a transfer, or to take any other step, after the expiry of that period.

Amendment of stop notice

Rule 13 If any securities are incorrectly described in a stop notice which has been filed and of which a sealed copy has been served in accordance with rule 11, an amended stop notice may be filed and served in accordance with the same procedure and shall take effect as a stop notice on the day on which the sealed copy of the amended notice is served.

Withdrawal etc. of stop notice

Rule 14.—(1) The person on whose behalf a stop notice was filed may withdraw it by serving a request for its withdrawal on the Bank of England or other person or body on whom the notice was served.

(2) Such request must be signed by the person on whose behalf the notice was filed and his signature must be witnessed by a practising solicitor.

(3) The Court, on the application of any person claiming to be beneficially entitled to an interest in the securities to which a stop notice relates, may by order discharge the notice.

(4) An application for an order under paragraph (3) must be made in the Chancery Division by a claim form, and the claim form must be served on the person on whose behalf a stop notice was filed.

Order prohibiting transfer, etc. of securities

Rule 15.—(1) The Court, on the application of any person claiming to be beneficially entitled to an interest in any securities of the kinds set out in section 2 (2)(b) of the Act may by order prohibit the Bank of England or other person or body concerned from registering any transfer of the securities or taking any other step to which section 5 (5) of the Act applies. The order shall specify the securities to which the prohibition relates, the name in which they stand and the steps which may not be taken, and shall state whether the prohibition applies to the securities only or to the dividends or interest as well.

(2) An application for an order under this rule must be made by claim form or if made in existing proceedings in accordance with CPR Part 23 in the Chancery Division.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(3) The Court, on the application of any person claiming to be entitled to an interest in any securities to which an order under this rule relates, may vary or discharge the order on such terms (if any) as to costs or otherwise as it thinks fit.

RSC ORDER 51

RECEIVERS: EQUITABLE EXECUTION

Appointment of receiver by way of equitable execution

Rule 1 Where an application is made for the appointment of a receiver by way of equitable execution, the Court in determining whether it is just or convenient that the appointment should be made shall have regard to the amount claimed by the judgment creditor, to the amount likely to be obtained by the receiver and to the probable costs of his appointment and may direct an inquiry on any of these matters or any other matter before making the appointment.

Masters etc. may appoint receiver

Rule 2 A Master and the Admiralty Registrar and a District Judge of the Family Division shall have power to make an order for the appointment of a receiver by way of equitable execution and to grant an injunction if, and only so far as, the injunction is ancillary or incidental to such an order.

Application of rules as to appointment of receiver, etc.

Rule 3 An application for the appointment of a receiver by way of equitable execution may be made in accordance with Order 30, rule 1, and rules 2 to 6 of that Order shall apply in relation to a receiver appointed by way of equitable execution as they apply in relation to a receiver appointed for any other purpose.

RSC ORDER 52

COMMITTAL

Committal for contempt of court

Rule 1.—(1) The power of the High Court or Court of Appeal to punish for contempt of court may be exercised by an order of committal.

(2) Where contempt of court—

(a) is committed in connection with—

- (i) any proceedings before a Divisional Court of the Queen’s Bench Division; or
- (ii) criminal proceedings, except where the contempt is committed in the face of the court or consists of disobedience to an order of the court or a breach of an undertaking to the court; or
- (iii) proceedings in an inferior court; or

(b) is committed otherwise than in connection with any proceedings, then, subject to paragraph (4), an order of committal may be made only by a Divisional Court of the Queen’s Bench Division.

This paragraph shall not apply in relation to contempt of the Court of Appeal.

(3) Where contempt of court is committed in connection with any proceedings in the High Court, then, subject to paragraph (2), an order of committal may be made by a single judge of the Queen's Bench Division except where the proceedings were assigned or subsequently transferred to some other Division, in which case the order may be made only by a single judge of that other Division.

The reference in this paragraph to a single judge of the Queen's Bench Division shall, in relation to proceedings in any court the judge or judges of which are, when exercising the jurisdiction of that court, deemed by virtue of any enactment to constitute a court of the High Court, be construed as a reference to a judge of that court.

(4) Where by virtue of any enactment the High Court has power to punish or take steps for the punishment of any person charged with having done anything in relation to a court, tribunal or person which would, if it had been done in relation to the High Court, have been a contempt of that Court, an order of committal may be made by a single judge of the Queen's Bench Division.

Application to Divisional Court

Rule 2.—(1) No application to a Divisional Court for an order of committal against any person may be made unless permission to make such an application has been granted in accordance with this rule.

(2) An application for such permission must be made without notice to a Divisional Court, except in vacation when it may be made to a judge in chambers and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

(3) The applicant must give notice of the application for permission not later than the preceding day to the Crown Office and must at the same time lodge in that office copies of the statement and affidavit.

(4) Where an application for permission under this rule is refused by a judge in chambers, the applicant may make a fresh application for such permission to a Divisional Court.

(5) An application made to a Divisional Court by virtue of paragraph (4) must be made within 8 days after the judge's refusal to give permission or, if a Divisional Court does not sit within that period, on the first day on which it sits thereafter.

Application for order after leave to apply granted

Rule 3.—(1) When permission has been granted under rule 2 to apply for an order of committal, the application for the order must be made to a Divisional Court and, unless the court or judge granting permission has otherwise directed, there must be at least 14 clear days between the service of the claim form and the day named therein for the hearing.

(2) Unless within 14 days after such permission was granted, the claim form is issued the permission shall lapse.

(3) Subject to paragraph 4, the claim form, accompanied by a copy of the statement and affidavit in support of the application for permission, must be served personally on the person sought to be committed.

(4) Without prejudice to the powers of the court or judge under Part 6 of the CPR, the court or judge may dispense with service under this rule if it or he thinks it just to do so.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Application to Court other than Divisional Court

Rule 4.—(1) Where an application for an order of committal may be made to a court other than a Divisional Court, the application must be made by claim form or application notice and be supported by an affidavit.

(2) Subject to paragraph (3) the claim form or application notice, stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, must be served personally on the person sought to be committed.

(3) Without prejudice to its powers under Part 6 of the CPR, the Court may dispense with service under this rule if it thinks it just to do so.

(4) This rule does not apply to committal applications which under rules 1(2) and 3(1) should be made to a Divisional Court but which, in vacation, have been properly made to a single judge in accordance with Order 64, rule 4.

Saving for power to commit without application for purpose

Rule 5 Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the High Court or Court of Appeal to make an order of committal of its own initiative against a person guilty of contempt of court.

Provisions as to hearing

Rule 6.—(1) Subject to paragraph (2), the Court hearing an application for an order of committal may sit in private in the following cases, that is to say—

- (a) where the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant;
- (b) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder within the meaning of the Mental Health Act 1983(13);
- (c) where the application arises out of proceedings in which a secret process, discovery or invention was in issue;
- (d) where it appears to the Court that in the interests of the administration of justice or for reasons of national security the application should be heard in private;

but, except as aforesaid, the application shall be heard in [F23public].

(2) If the Court hearing an application in private by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, it shall in [F23public] state—

- (a) the name of that person,
- (b) in general terms the nature of the contempt of Court in respect of which the order of committal is being made, and
- (c) the length of the period for which he is being committed.

(3) Except with the permission of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the statement under rule 2 or, as the case may be, in the claim form or application notice under rule 4.

(4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf, he shall be entitled to do so.

(13) 1983 c. 20.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Textual Amendments

F23 Word in Sch. 1 RSC Order 52 rule 6 substituted (26.4.1999) by The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **32**

Power to suspend execution of committal order

Rule 7.—(1) The Court by whom an order of committal is made may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as it may specify.

(2) Where execution of an order of committal is suspended by an order under paragraph (1), the applicant for the order of committal must, unless the Court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.

Discharge of person committed

Rule 8.—(1) The Court may, on the application of any person committed to prison for any contempt of Court, discharge him.

(2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver any thing to some other person or to deposit it in Court or elsewhere, and a writ of sequestration has also been issued to enforce that judgment or order, then, if the thing is in the custody or power of the person committed, the commissioners appointed by the writ of sequestration may take possession of it as if it were the property of that person and, without prejudice to the generality of paragraph (1), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the commissioners as it thinks fit.

(RSC Order 46, rule 5 contains rules relating to writs of sequestration)

Saving for other powers

Rule 9 Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any enactment in like manner as if he had been guilty of contempt of the High Court, to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

^{F24}RSC ORDER 53 APPLICATIONS FOR JUDICIAL REVIEW

Textual Amendments

F24 Sch. 1 RSC Order 53 revoked (2.10.2000) by The Civil Procedure (Amendment No. 4) Rules 2000 (S.I. 2000/2092), rules 1, **23** (with rule 30)

Cases appropriate for application for judicial review

Rule 1 ^{F24}

*Status: Point in time view as at 01/04/2001.
Changes to legislation: There are currently no known outstanding effects
for the The Civil Procedure Rules 1998. (See end of Document for details)*

Joinder of claims for relief

Rule 2 ^{F24}

Grant of leave to apply for judicial review

Rule 3 ^{F24}

Delay in applying for relief

Rule 4 ^{F24}

Mode of applying for judicial review

Rule 5 ^{F24}

Statements and evidence

Rule 6 ^{F24}

Claim for damages

Rule 7 ^{F24}

Application for disclosure, further information, cross—examination, etc.

Rule 8 ^{F24}

Hearing of application for judicial review

Rule 9 ^{F24}

Saving for person acting in obedience to mandamus

Rule 10 ^{F24}

Proceedings for disqualification of member of local authority

Rule 11 ^{F24}

Consolidation of applications

Rule 12 ^{F24}

Appeal from Judge’s order

Rule 13 ^{F24}

Meaning of “Court”

Rule 14 ^{F24}

RSC ORDER 54

APPLICATIONS FOR WRIT OF HABEAS CORPUS

Application for writ of habeas corpus ad subjiciendum

Rule 1.—(1) Subject to rule 11, an application for a writ of habeas corpus ad subjiciendum shall be made to a judge in Court, except that—

- (a) it shall be made to a Divisional Court of the Queen’s Bench Division if the Court so directs;
- (b) it may be made to a judge otherwise than in court at any time when no judge is sitting in court; and
- (c) any application on behalf of a child must be made in the first instance to a judge otherwise than in court.

(2) An application for such writ may be made without notice being served on any other party and, subject to paragraph (3) must be supported by a witness statement or affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint.

(3) Where the person restrained is unable for any reason to make the witness statement or affidavit required by paragraph (2) the witness statement or affidavit may be made by some other person on his behalf and that witness statement or affidavit must state that the person restrained is unable to make the witness statement or affidavit himself and for what reason.

Power of Court to whom application made without notice being served on any other party

Rule 2.—(1) The Court or judge to whom an application under rule 1 is made without notice being served on any other party may make an order forthwith for the writ to issue, or may—

- (a) where the application is made to a judge otherwise than in court, direct the issue of a claim form seeking the writ, or that an application therefor be made by claim form to a Divisional Court or to a judge in court;
- (b) where the application is made to a judge in court, adjourn the application so that notice thereof may be given, or direct that an application be made by claim form to a Divisional Court;
- (c) where the application is made to a Divisional Court, adjourn the application so that notice thereof may be given.

(2) The claim form must be served on the person against whom the issue of the writ is sought and on such other persons as the Court or judge may direct, and, unless the Court or judge otherwise directs, there must be at least 8 clear days between the service of the claim form and the date named therein for the hearing of the application.

Copies of witness statement or affidavits to be supplied

Rule 3 Every party to an application under rule 1 must supply to every other party on demand and on payment of the proper charges copies of the witness statement or affidavits which he proposes to use at the hearing of the application.

Power to order release of person restrained

Rule 4.—(1) Without prejudice to rule 2 (1), the Court or judge hearing an application for a writ of habeas corpus ad subjiciendum may in its or his discretion order that the person restrained be released, and such order shall be a sufficient warrant to any governor of a prison, constable or other person for the release of the person under restraint.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(2) Where such an application in criminal proceedings is heard by a judge and the judge does not order the release of the person restrained, he shall direct that the application be made by claim form to a Divisional Court of the Queen's Bench Division.

Directions as to return to writ

Rule 5 Where a writ of habeas corpus ad subjiciendum is ordered to issue, the Court or judge by whom the order is made shall give directions as to the Court or judge before whom, and the date on which, the writ is returnable.

Service of writ and notice

Rule 6.—(1) Subject to paragraphs (2) and (3), a writ of habeas corpus ad subjiciendum must be served personally on the person to whom it is directed.

(2) If it is not possible to serve such writ personally, or if it is directed to a governor of a prison or other public official, it must be served by leaving it with a servant or agent of the person to whom the writ is directed at the place where the person restrained is confined or restrained.

(3) If the writ is directed to more than one person, the writ must be served in manner provided by this rule on the person first named in the writ, and copies must be served on each of the other persons in the same manner as the writ.

(4) There must be served with the writ a notice (in Form No. 90 in the relevant Practice Direction) stating the Court or judge before whom and the date on which the person restrained is to be brought and that in default of obedience proceedings for committal of the party disobeying will be taken.

Return to the writ

Rule 7.—(1) The return to a writ of habeas corpus ad subjiciendum must be indorsed on or annexed to the writ and must state all the causes of the detainer of the person restrained.

(2) The return may be amended, or another return substituted therefor, by permission of the Court or judge before whom the writ is returnable.

Procedure at hearing of writ

Rule 8 When a return to a writ of habeas corpus ad subjiciendum is made, the return shall first be read, and motion then made for discharging or remanding the person restrained or amending or quashing the return, and where that person is brought up in accordance with the writ, his counsel shall be heard first, then the counsel for the Crown, and then one counsel for the person restrained in reply.

Bringing up prisoner to give evidence, etc.

Rule 9.—(1) An application for a writ of habeas corpus ad testificandum or of habeas corpus ad respondendum must be made on witness statement or affidavit to a Judge ^{F25}....

(2) An application for an order to bring up a prisoner, otherwise than by writ of habeas corpus, to give evidence in any proceedings, civil or criminal, before any Court, tribunal or justice, must be made on witness statement or affidavit to a Judge ^{F26}....

Textual Amendments

F25 Words in [Sch. 1 RSC Order 11 52 rule 9\(1\)](#) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, [62\(a\)](#)

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

F26 Words in Sch. 1 RSC Order 11 52 rule 9(2) omitted (26.4.1999) by virtue of The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **62(a)**

Form of writ

Rule 10 A writ of habeas corpus must be in Form No. 89, 91 or 92 in the relevant Practice Direction, whichever is appropriate.

Applications relative to the custody, etc., of child

Rule 11 An application by a parent or guardian of a child for a writ of habeas corpus ad subjiciendum relative to the custody, care or control of the child must be made in the Family Division, and this Order shall accordingly apply to such applications with the appropriate modifications.

RSC ORDER 55

**APPEALS TO HIGH COURT FROM COURT,
TRIBUNAL OR PERSON: GENERAL**

Application

F27 **Rule 1**

Textual Amendments
F27 Sch. 1 RSC Order 55 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

F27

Textual Amendments
F27 Sch. 1 RSC Order 55 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

F27

Textual Amendments
F27 Sch. 1 RSC Order 55 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

F27

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Textual Amendments

F27 Sch. 1 RSC Order 55 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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Textual Amendments

F27 Sch. 1 RSC Order 55 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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Textual Amendments

F27 Sch. 1 RSC Order 55 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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F27 Sch. 1 RSC Order 55 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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F27 Sch. 1 RSC Order 55 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

F27

Textual Amendments

F27 Sch. 1 RSC Order 55 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

RSC ORDER 56

APPEALS, ETC., TO HIGH COURT BY CASE STATED: GENERAL

Appeals from the Crown Court by case stated

^{F28}**Rule 1**

Textual Amendments

F28 Sch. 1 RSC Order 56 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

^{F28}

Textual Amendments

F28 Sch. 1 RSC Order 56 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

^{F28}

Textual Amendments

F28 Sch. 1 RSC Order 56 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

^{F28}

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F28 Sch. 1 RSC Order 56 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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^{F28}

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Textual Amendments

F28 Sch. 1 RSC Order 56 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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Textual Amendments

F28 Sch. 1 RSC Order 56 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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F28 Sch. 1 RSC Order 56 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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F28 Sch. 1 RSC Order 56 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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F28

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Textual Amendments

F28 Sch. 1 RSC Order 56 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by S.I. 2000/940, rules 1, 2)

F28

Textual Amendments

F28 Sch. 1 RSC Order 56 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by S.I. 2000/940, rules 1, 2)

F29 RSC ORDER 57 DIVISIONAL COURT
PROCEEDINGS, ETC.: SUPPLEMENTARY PROVISIONS

Textual Amendments

F29 Sch. 1 RSC Order 57 revoked (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, **24**

Application

Rule 1 ^{F29}

Entry of claims

Rule 2 ^{F29}

Issue, etc., of claim form

Rule 3 ^{F29}

Filing of witness statement or affidavits and drawing up of orders

Rule 4 ^{F29}

Issue of writs

Rule 5 ^{F29}

Custody of records

Rule 6 ^{F29}

*Status: Point in time view as at 01/04/2001.
Changes to legislation: There are currently no known outstanding effects
for the The Civil Procedure Rules 1998. (See end of Document for details)*

RSC ORDER 58

APPEALS FROM MASTERS, REGISTRARS, REFEREES AND JUDGES

Appeals from certain decisions of Masters, etc. to Judge sitting in private

^{F30}Rule 1

Textual Amendments
F30 Sch. 1 RSC Order 58 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

^{F30}

Textual Amendments
F30 Sch. 1 RSC Order 58 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

^{F30}

Textual Amendments
F30 Sch. 1 RSC Order 58 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

^{F30}

Textual Amendments
F30 Sch. 1 RSC Order 58 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

RSC ORDER 59

APPEALS TO THE COURT OF APPEAL

Application of Order to appeals

^{F31}Rule 1

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Textual Amendments

F31 Sch. 1 RSC Order 59 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

F31

Textual Amendments

F31 Sch. 1 RSC Order 59 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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Textual Amendments

F31 Sch. 1 RSC Order 59 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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F31 Sch. 1 RSC Order 59 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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Status: Point in time view as at 01/04/2001.
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

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Textual Amendments
F31 Sch. 1 RSC Order 59 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

F31

Textual Amendments
F31 Sch. 1 RSC Order 59 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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Status: Point in time view as at 01/04/2001.

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Textual Amendments

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RSC ORDER 60

APPEALS TO COURT OF APPEAL FROM THE RESTRICTIVE PRACTICES COURT

Appeal to be brought by notice of appeal

^{F32}**Rule 1**

Textual Amendments

F32 Sch. 1 RSC Order 60 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

^{F32}

Textual Amendments

F32 Sch. 1 RSC Order 60 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

^{F32}

Textual Amendments

F32 Sch. 1 RSC Order 60 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

^{F32}

Textual Amendments

F32 Sch. 1 RSC Order 60 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

RSC ORDER 61

APPEALS FROM TRIBUNALS TO COURT OF APPEAL BY CASE STATED

Statement of case by Lands Tribunal

^{F33} **Rule 1**

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Textual Amendments

F33 Sch. 1 RSC Order 61 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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Textual Amendments

F33 Sch. 1 RSC Order 61 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

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Textual Amendments

F33 Sch. 1 RSC Order 61 revoked (2.5.2000) by The Civil Procedure (Amendment) Rules 2000 (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

RSC ORDER 62

COSTS

APPENDIX 3

Fixed Costs

The scale of costs set out in this Appendix shall apply in the cases to which the Appendix refers.

Part II

Costs on judgment without trial for possession of land

1.—(1) Where the claim is for the possession of land, and the claimant obtains judgment—

- (a) under CPR Part 12 (default judgment); or
- (c) under CPR Part 24 (summary judgment),

for possession of the land and costs, then, subject to sub-paragraph (2), there shall be allowed the costs prescribed by paragraph 2 of this Part of this Appendix.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(2) Where the claimant is also entitled under the judgment to damages to be assessed, or where the plaintiff claims any remedy of the nature specified in Order 88, rule 1 (mortgage claims), this Part of this Appendix shall not apply.

2. The costs to be allowed under this Part of this Appendix shall be £143.75, together with any court fee, and additional costs where appropriate set out the Table below.

Additional Costs

B. Additional Costs

<i>Amount to be allowed</i>	<i>£</i>
(1) Where there is more than one defendant, in respect of each additional defendant served	£13.75
(2) Where service by an alternative method is ordered and effected, in respect of each defendant served	£53.25
(3) Where service out of the jurisdiction is ordered and effected, in the case of service—	£68.25
(a) in Scotland, Northern Ireland, the Isle of Man or the Channel Islands	
(b) in any other place out of the jurisdiction	£77.00
(4) In the case of default judgment under CPR Part 12 or summary judgment under CPR Part 24 the claimant makes an affidavit of service for the purpose of a judgment where the defendant failed to respond to the claim form (the allowance to include the search fee)	£20.50
(5) In the case of summary judgment under CPR Part 24 where an affidavit of service of the Part 23 application is required	£20.50
(6) In the case of summary judgment under CPR Part 24 for each adjournment of the application	£20.50

Part III

Miscellaneous

This Part shows the amount to be allowed in respect of enforcement costs.

2. Where a certificate in respect of money provisions contained in a judgment is registered in the High Court in the Register of United Kingdom judgments under Schedule 6 to the Civil Jurisdiction and Judgments Act 1982(14), there shall be allowed—

(14) 1982 c. 27.

Costs of registration

2A. Where costs are allowed under the following paragraphs of this Part, the appropriate court fees shall be allowed in addition.

3. Where, upon the application of any person £23.00 who has obtained a judgment or order against a debtor for the recovery or payment of money, a garnishee order is made under Order 49 rule 1, against a garnishee attaching debts due or accruing due from the debtor, the following costs shall be allowed—

- (a) to the garnishee to be deducted by him from any debt due by him as aforesaid before payment to the applicant
- (b) (b) to the applicant, to be retained, one half of the amount recovered unless the Court otherwise orders, out of the money recovered by him under the garnishee order and in priority to the amount of the debt owing to him under the judgment or order—

(i) Basic costs

If the amount recovered by the applicant from the garnishee is—
less than £150

not less than £150 £98.50

(ii) Additional costs £18.00

Where the garnishee fails to attend the hearing of the application and an affidavit of service is required

4. Where a charging order is granted and £110.00 made absolute there shall be allowed—

Basic costs

Additional costs where an affidavit of service is £18.00 required

together with such reasonable disbursements in respect of search fees and the registration of the order as the Court may allow.

5. Where leave is given under Order 45, rule £42.50 3, to enforce a judgment or order for the giving of possession of land by writ of possession, if the costs are allowed on the judgment or order there shall be allowed the following costs, which shall be added to the judgment or order—

Basic costs

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Where notice of the proceedings has been given £2.75 to more than one person, in respect of each additional person

6. Where a writ of execution within the £51.75 meaning of Order 46, rule 1, is issued against any party, there shall be allowed—

Costs of issuing execution

RSC ORDER 64

SITTINGS, VACATIONS AND OFFICE HOURS

Divisional Court business during vacation

Rule 4 Proceedings which require to be immediately or promptly heard and which by virtue of the following provisions must be brought in a Divisional Court may, in vacation, be brought before a single judge:

(a) Order 52, rules 1 (2) and 3 (1);

^{F34}(b)

^{F35}(c)

^{F35}(d)

Textual Amendments

F34 Sch. 1 RSC Order 64 rule 4(b) revoked (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, **25**

F35 Sch. 1 RSC Order 64 rule 4(c)(d) revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

RSC ORDER 69

SERVICE OF FOREIGN PROCESS

Definitions

Rule 1 In this Order—

“a convention country” means a foreign country in relation to which there subsists a civil procedure convention providing for service in that country of process of the High Court, and includes a country which is a party to the Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters signed at the Hague on 15 November 1965;

“officer of the county court” means any clerk or bailiff in the service of a county court;

“process” includes a citation;

“process server” means the process server appointed under rule 4 or his authorised agent;

Applications

Rule 2 This Order applies to the service on a person in England or Wales of any process in connection with civil or commercial proceedings in a foreign court or tribunal where the Senior Master receives a written request for service—

- (a) from Her Majesty’s Principal Secretary of State for Foreign and Commonwealth Affairs, with a recommendation by him that service should be effected; or
- (b) where the foreign court or tribunal is in a convention country, from a consular or other authority of that country.

Service of process

Rule 3.—(1) The request shall be accompanied by a translation thereof in English, two copies of the process and, unless the foreign court or tribunal certifies that the person to be served understands the language of the process, two copies of a translation thereof.

(2) Subject to paragraphs (3) and (5) and to any enactment providing for the manner of service of documents on corporate bodies, the process shall be served by the process server’s leaving a copy of the process and a copy of the translation or certificate, as the case may be, with the person to be served.

(3) The provisions of CPR rule 6.2(1)(c) and CPR rule 6.7 regarding service by leaving at a place specified in CPR rule 6.5, shall apply to the service of foreign process as they apply to the service of claim form, except that service may be proved by a witness statement or affidavit or by a certificate or report in such form as the Senior Master may direct.

(4) The process server shall send to the Senior Master a copy of the process and a witness statement or affidavit, certificate or report proving due service of process or stating the reason why service could not be effected, as the case may be, and shall, if the Court so directs, specify the costs incurred in effecting or attempting to effect service.

(5) CPR rule 6.8 (Service by an alternative method) shall apply to the service of foreign process as it applies to the service of claim forms, except that the Senior Master may make an order for alternative service of foreign process on the basis of the process server’s witness statement or affidavit, certificate or report, without an application being made to him in that behalf.

(6) The Senior Master shall send a certificate, together with a copy of the process, to the consular or other authority or the Secretary of State, as the case may be, stating—

- (i) when and how service was effected or the reason why service could not be effected, as the case may be;
- (ii) where appropriate, the amount certified by the costs judge to be the costs of effecting or attempting to effect service.

(7) The certificate under paragraph (6) shall be sealed with the seal of the Supreme Court for use out of the jurisdiction.

Appointment of process server

Rule 4 The Lord Chancellor may appoint a process server for the purposes of this Order.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

RSC ORDER 70

OBTAINING EVIDENCE FOR FOREIGN COURTS, ETC.

Interpretation and exercise of jurisdiction

Rule 1.—(1) In this Order “the Act of 1975” means the Evidence (Proceedings in Other Jurisdictions) Act 1975⁽¹⁵⁾ and expressions used in this Order which are used in that Act shall have the same meaning as in that Act.

(2) The power of the High Court to make an order under section 2 of the Act of 1975 may be exercised by a master of the Queen’s Bench Division.

Application for order

Rule 2.—(1) Subject to paragraph (3) and rule 3 an application for an order under the Act of 1975 must be made without notice being served on any other party and must be supported by witness statement or affidavit.

(2) There shall be exhibited to the witness statement or affidavit the request in pursuance of which the application is made, and if the request is not in the English language, a translation thereof in that language.

(3) Where on an application under section 1 of the Act of 1975 as applied by section 92 of the Patents Act 1977⁽¹⁶⁾ an order is made for the examination of witnesses the Court may allow an officer of the European Patent Office to attend the examination and examine the witnesses or request the Court or the examiner before whom the examination takes place to put specified questions to them.

Application by Treasury Solicitor in certain cases

Rule 3. Where a request

- (a) is received by the Secretary of State and sent by him to the Senior Master with an intimation that effect should be given to the request without requiring an application for that purpose to be made by the agent in England of any party to the matter pending or contemplated before the foreign court or tribunal; or
- (b) is received by the Senior Master in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in England or Wales for the assistance of a court or tribunal in the foreign country, and no person is named in the document as the person who will make the necessary application on behalf of such party,

the Senior Master shall send the document to the Treasury Solicitor and the Treasury Solicitor may, with the consent of the Treasury, make an application for an order under the Act of 1975, and take such other steps as may be necessary, to give effect to the request.

Person to take and manner of taking examination

Rule 4.—(1) Any order made in pursuance of this Order for the examination of a witness may order the examination to be taken before any fit and proper person nominated by the person applying for the order or before an examiner of the Court or before such other qualified person as to the Court seems fit.

(15) 1975 c. 34.

(16) 1977 c. 37.

(2) Subject to rule 6 and to any special directions contained in any order made in pursuance of this Order for the examination of any witness, the examination shall be taken in manner provided by CPR rules 34.9 and 34.10 and an order may be made under CPR rule 34.14, for payment of the fees and expenses due to the examiner, and those rules shall apply accordingly with any necessary modifications.

Dealing with deposition

Rule 5 Unless any order made in pursuance of this Order for the examination of any witness otherwise directs, the examiner before whom the examination was taken must send the deposition of that witness to the Senior Master, and the Senior Master shall—

- (a) give a certificate sealed with the seal of the Supreme Court for use out of the jurisdiction identifying the documents annexed thereto, that is to say, the request, the order of the Court for examination and the deposition taken in pursuance of the order; and
- (b) send the certificate with the documents annexed thereto to the Secretary of State, or, where the request was sent to the Senior Master by some other person in accordance with a Civil Procedure Convention to that other person, for transmission to the court or tribunal out of the jurisdiction requesting the examination.

Claim to privilege

Rule 6.—(1) The provisions of this rule shall have effect where a claim by a witness to be exempt from giving any evidence on the ground specified in section 3 (1)(b) of the Act of 1975 is not supported or conceded as mentioned in subsection (2) of that section.

(2) The examiner may, if he thinks fit, require the witness to give the evidence to which the claim relates and, if the examiner does not do so, the Court may do so, on the application without notice being served on any other party of the person who obtained the order under section 2.

(3) If such evidence is taken—

- (a) it must be contained in a document separate from the remainder of the deposition of the witness;
- (b) the examiner shall send to the Senior Master with the deposition a statement signed by the examiner setting out the claim and the ground on which it was made;
- (c) on receipt of the statement the Senior Master shall, notwithstanding anything in rule 5, retain the document containing the part of the witness' evidence to which the claim relates and shall send the statement and a request to determine the claim to the foreign court or tribunal with the documents mentioned in rule 5;
- (d) if the claim is rejected by the foreign court or tribunal, the Senior Master shall send to that court or tribunal the document containing that part of the witness' evidence to which the claim relates, but if the claim is upheld he shall send the document to the witness, and shall in either case notify the witness and the person who obtained the order under section 2 of the court or tribunal's determination.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

RSC ORDER 71

RECIPROCAL ENFORCEMENT OF JUDGMENTS AND ENFORCEMENT OF EUROPEAN COMMUNITY JUDGMENTS AND RECOMMENDATIONS ETC. UNDER THE MERCHANT SHIPPING (LINER CONFERENCES) ACT 1982⁽¹⁷⁾

I. Reciprocal Enforcement: the Administration of Justice Act 1920⁽¹⁸⁾ and the Foreign Judgments (Reciprocal Enforcement) Act 1933⁽¹⁹⁾

Powers under relevant Acts exercisable by judge or master

Rule 1 The powers conferred on the High Court by Part II of the Administration of Justice Act 1920 (in this Part of this Order referred to as the “Act of 1920”) or Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933 (in this Part of this Order referred to as the “Act of 1933”) may be exercised by a judge and a master of the Queen’s Bench Division ^{F36}....

Textual Amendments

F36 Words in Sch. 1 RSC Order 71 rule 1 omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **62(e)**

Application for registration

Rule 2.—(1) An application—

- (a) under section 9 of the Act of 1920, in respect of a judgment obtained in a superior court in any part of Her Majesty’s dominions or other territory to which Part II of that Act applies; or
- (b) under section 2 of the Act of 1933, in respect of a judgment to which Part I of that Act applies,

to have the judgment registered in the High Court may be made without notice being served on any other party, but the Court hearing the application may direct that a claim form be filed and served.

Evidence in support of application

Rule 3.—(1) An application for registration must be supported by a witness statement or affidavit—

- (a) exhibiting the judgment or a verified or certified or otherwise duly authenticated copy thereof, and where the judgment is not in the English language, a translation thereof in that language certified by a notary public or authenticated by witness statement or affidavit;
- (b) stating the name, trade or business and the usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively, so far as known to the witness;
- (c) stating to the best of the information or belief of the witness—
 - (i) that the judgment creditor is entitled to enforce the judgment;

(17)

1982 c. 37.

(18) 1920 c. 81.

(19) 1933 c. 13, section 2 was amended by the Administration of Justice Act 1977 (c. 38), section 4, 32(4), schedule 5, Part 1; section 4 was amended by the Civil Jurisdiction and Judgments Act 1982 (c. 27), section 54, schedule 14.

- (ii) as the case may require, either that at the date of the application the judgment has not been satisfied, or the amount in respect of which it remains unsatisfied;
 - (iii) where the application is made under the Act of 1920, that the judgment does not fall within any of the cases in which a judgment may not be ordered to be registered under section 9 of that Act;
 - (iv) where the application is made under the Act of 1933, that at the date of the application the judgment can be enforced by execution in the country of the original court and that, if it were registered, the registration would not be, or be liable to be, set aside under section 4 of that Act;
- (d) specifying, where the application is made under the Act of 1933, the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of registration;
- (e) verifying that the judgment is not a judgment to which section 5 of the Protection of Trading Interests Act 1980(20) applies.

(2) Where a judgment sought to be registered under the Act of 1933 is in respect of different matters, and some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments, those judgments could properly have been registered, the witness statement or affidavit must state the provisions in respect of which it is sought to register the judgment.

(3) In the case of an application under the Act of 1933, the witness statement or affidavit must be accompanied by such other evidence with respect to the enforceability of the judgment by execution in the country of the original court, and of the law of that country under which any interest has become due under the judgment, as may be required having regard to the provisions of the Order in Council extending that Act to that country.

Security for costs

Rule 4 Save as otherwise provided by any relevant Order in Council, the Court may order the judgment creditor to give security for the costs of the application for registration and of any proceedings which may be brought to set aside the registration.

Order for registration

Rule 5.—(1) An order giving permission to register a judgment must be drawn up by, or on behalf of, the judgment creditor.

(2) Except where the order is made by claim form, no such order need be served on the judgment debtor.

(3) Every such order shall state the period within which an application may be made to set aside the registration and shall contain a notification that execution on the judgment will not issue until after the expiration of that period.

(4) The Court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, extend the period (either as originally fixed or as subsequently extended) within which an application to have the registration set aside may be made.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Register of judgments

Rule 6.—(1) There shall be kept in the Central Office of the Supreme Court under the direction of the Senior Master a register of the judgments ordered to be registered under the Act of 1920 and a register of the judgments ordered to be registered under the Act of 1933.

(2) There shall be included in each such register particulars of any execution issued on a judgment ordered to be so registered.

Notice of registration

Rule 7.—(1) Notice of the registration of a judgment must be served on the judgment debtor by delivering it to him personally or by sending it to him at his usual or last known place of abode or business or in such other manner as the Court may direct.

(2) Permission is not required to serve such a notice out of the jurisdiction, and [^{F37}CPR rules 6.24, 6.25 and 6.29], shall apply in relation to such a notice as they apply in relation to a claim form.

(3) The notice of registration must state—

- (a) full particulars of the judgment registered and the order for registration;
- (b) the name and address of the judgment creditor or of his solicitor or agent on whom, and at which, any application notice or other document issued by the judgment debtor may be served;
- (c) the right of the judgment debtor to apply to have the registration set aside; and
- (d) the period within which an application to set aside the registration may be made.

Textual Amendments

F37 Words in [Sch. 1 RSC Order 71 rule 7\(2\)](#) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rules 1\(b\)](#), [22\(a\)](#)

Application to set aside registration

Rule 9.—(1) An application to set aside the registration of a judgment must be made in accordance with CPR Part 23 and be supported by witness statement or affidavit.

(2) The Court hearing such application may order any issue between the judgment creditor and the judgment debtor to be tried in any manner in which an issue in a claim may be ordered to be tried.

(3) Where the Court hearing an application to set aside the registration of a judgment registered under the Act of 1920 is satisfied that the judgment falls within any of the cases in which a judgment may not be ordered to be registered under s.9 of that Act or that it is not just or convenient that the judgment should be enforced in England or Wales or that there is some other sufficient reason for setting aside the registration, it may order the registration of the judgment to be set aside on such terms as it thinks fit.

Issue of execution

Rule 10.—(1) Execution shall not issue on a judgment registered under the Act of 1920 or the Act of 1933 until after the expiration of the period which, in accordance with rule 5 (3) is specified in the order for registration as the period within which an application may be made to set aside the registration or, if that period has been extended by the Court, until after the expiration of that period as so extended.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(2) If an application is made to set aside the registration of a judgment, execution on the judgment shall not issue until after such application is finally determined.

(3) Any party wishing to issue execution on a judgment registered under the Act of 1920 or the Act of 1933 must produce to the court officer a witness statement or affidavit of service of the notice of registration of the judgment and any order made by the Court in relation to the judgment.

Determination of certain questions

Rule 11 If, in any case under the Act of 1933, any question arises whether a foreign judgment can be enforced by execution in the country of the original court, or what interest is payable under a foreign judgment under the law of the original court, that question shall be determined in accordance with the provisions in that behalf contained in the Order in Council extending Part I of that Act to that country.

Rules to have effect subject to Orders in Council

Rule 12 The foregoing rules shall, in relation to any judgment registered or sought to be registered under the Act of 1933, have effect subject to any such provisions contained in the Order in Council extending Part I of that Act to the country of the original court as are declared by the Order to be necessary for giving effect to the agreement made between Her Majesty and that country in relation to matters with respect to which there is power to make those rules.

Certified copy of High Court judgment

Rule 13.—(1) An application under section 10 of the Act of 1920 or section 10 of the Act of 1933 for a certified copy of a judgment entered in the High Court must be made without notice being served on any other party on witness statement or affidavit to a master or, in the case of a judgment given in proceedings in the Family Division, to a district judge of that Division.

(2) A witness statement or affidavit by which an application under section 10 of the Act of 1920 is made must give particulars of the judgment, show that the judgment creditor wishes to secure the enforcement of the judgment in a part (stating which) of Her Majesty's dominions outside the United Kingdom to which Part II of that Act extends and state the name, trade or business and the usual or last known place of abode of the judgment creditor and the judgment debtor respectively, so far as known to the witness.

(3) 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 a copy of the claim form by which the proceedings were begun, the evidence of service thereof on the defendant, copies of the statements of case or pleadings, 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 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 entered; and
- (f) state the rate at which the judgment carries interest.

(4) The certified copy of the judgment shall be an office copy sealed with the seal of the Supreme Court and indorsed with a certificate signed by a master or, where appropriate, a district judge or a registrar certifying that the copy is a true copy of a judgment obtained in the High Court of England

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

and that it is issued in accordance with section 10 of the Act of 1920 or section 10 of the Act of 1933, as the case may be.

(5) Where the application is made under section 10 of the Act of 1933 there shall also be issued a certificate (signed by a master or, where appropriate, a district judge or a registrar and sealed with the seal of the Supreme Court) 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 was served on the defendant or that the defendant acknowledged service thereof;
- (b) what objections, if any, were made to the jurisdiction;
- (c) what statements of case, if any, were served;
- (d) the grounds on which the judgment was based;
- (e) that the time for appealing 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 entered; and
- (g) such other particulars as it may be necessary to give to the court in the foreign country in which it is sought to obtain execution of the judgment,

and a certificate (signed and sealed as aforesaid) stating the rate at which the judgment carries interest.

II. Enforcement of European Community Judgments

Interpretation

Rule 15 In this Part of this Order “the Order in Council” means the European Communities (Enforcement of Community Judgments) Order 1972(21), and expressions used in the Order in Council shall, unless the context otherwise requires, have the same meanings as in that Order.

Functions under Order in Council exercisable by judge or master

Rule 16 The functions assigned to the High Court by the Order in Council may be exercised by a judge and a master of the Queen’s Bench Division ^{F38}....

Textual Amendments

F38 Words in [Sch. 1 RSC Order 71 rule 16](#) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, [62\(e\)](#)

Application for registration of Community judgment, etc.

Rule 17 An application for the registration in the High Court of a Community judgment or Euratom inspection order may be made without notice being served on any other party.

Evidence in support of application

Rule 18.—(1) An application for registration must be supported by a witness statement or affidavit exhibiting—

(21) [S.I. 1972/1590](#) as amended by [S.I. 1998/1259](#).

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- (a) the Community judgment and the order for its enforcement or, as the case may be, the Euratom inspection order or, in either case, a duly authenticated copy thereof, and
 - (b) where the Community judgment or Euratom inspection order is not in the English language, a translation into English certified by a notary public or authenticated by witness statement or affidavit.
- (2) Where the application is for registration of a Community judgment under which a sum of money is payable, the witness statement or affidavit shall also state—
- (a) the name and occupation and the usual or last known place of abode or business of the judgment debtor, so far as known to the witness; and
 - (b) to the best of the witness's information and belief that at the date of the application the European Court has not suspended enforcement of the judgment and that the judgment is unsatisfied or, as the case may be, the amount in respect of which it remains unsatisfied.

Register of judgments and orders

Rule 19.—(1) There shall be kept in the Central Office of the Supreme Court under the direction of the Senior Master a register of the Community judgments and Euratom inspection orders registered under the Order in Council.

(2) There shall be included in the register particulars of any execution issued on a judgment so registered.

Notice of registration

Rule 20.—(1) Upon registering a Community judgment or Euratom inspection order, the court shall forthwith send notice of the registration to every person against whom the judgment was given or the order was made.

(2) The notice of registration shall have annexed to it a copy of the registered Community judgment and the order for its enforcement or, as the case may be, a copy of the Euratom inspection order, and shall state the name and address of the person on whose application the judgment or order was registered or of his solicitor or agent on whom process may be served.

(3) Where the notice relates to a Community judgment under which a sum of money is payable, it shall also state that the judgment debtor may apply within 28 days of the date of the notice, or thereafter with the permission of the Court, for the variation or cancellation of the registration on the ground that the judgment had been partly or wholly satisfied at the date of registration.

Issue of execution

Rule 21 Execution shall not issue without the permission of the Court on a Community judgment under which a sum of money is payable until the expiration of 28 days after the date of notice of registration of the judgment or, as the case may be, until any application made within that period for the variation or cancellation of the registration has been determined.

Application to vary or cancel registration

Rule 22 An application for the variation or cancellation of the registration of a Community judgment on the ground that the judgment had been wholly or partly satisfied at the date of registration shall be made [^{F39}in accordance with CPR Part 23 and] supported by witness statement or affidavit.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Textual Amendments

F39 Words in [Sch. 1 RSC Order 71 rule 22](#) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **22(b)**

Application for registration of suspension order

Rule 23 An application for the registration in the High Court of an order of the European Court that enforcement of a registered Community judgment be suspended may be made without notice being served on any other party by lodging a copy of the order in the Central Office of the Supreme Court.

Application for enforcement of Euratom inspection order

Rule 24 An application for an order under Article 6 of the Order in Council for the purpose of ensuring that effect is given to a Euratom inspection order may, in case of urgency, be made without notice being served on any other party on witness statement or affidavit but, except as aforesaid, shall be made by claim form.

III. Reciprocal Enforcement: the Civil Jurisdiction and Judgments Act 1982(22)

Interpretation

Rule 25.—(1) In this Part of this Order—

“the Act of 1982” means the Civil Jurisdiction and Judgments Act 1982:

“Convention territory” means the territory or territories of any Contracting State, as defined by s.1 (3) of the Act of 1982, to which the Brussels Convention or the Lugano Convention as defined in s.1 (1) of the Act of 1982 apply;

“judgment” is to be construed in accordance with the definition of “judgment” in s.50 of the Act of 1982;

“money provision” means a provision for the payment of one or more sums of money;

“non-money provision” means a provision for any relief or remedy not requiring payment of a sum of money;

“protective measures” means the protective measures referred to in Art 39 of Schedule 1 or of Schedule 3C to the Act of 1982.

(2) For the purposes of this Part of this Order domicile is to be determined in accordance with the provisions of ss.41 to 46 of the Act of 1982.

Assignment of business and exercise of powers

Rule 26 Any application to the High Court under the Act of 1982 shall be assigned to the Queen’s Bench Division.

Application for registration

Rule 27 An application for registration of a judgment under s.4 of the Act of 1982 shall be made without notice being served on any other party.

(22) [1982 c. 27](#); section 1 was amended by [S.I. 1989/1346](#), [1990/2591](#), and by the Civil Jurisdiction and Judgments Act [1991 \(c. 12\)](#), section 2.

Evidence in support of application

Rule 28.—(1) An application for registration under s.4 of the Act of 1982 must be supported by a witness statement or affidavit—

- (a) exhibiting—
 - (i) the judgment or a verified or certified or otherwise duly authenticated copy thereof together with such other document or documents as may be requisite to show that, according to the law of the State in which it has been given, the judgment is enforceable and has been served;
 - (ii) in the case of a judgment given in default, the original or a certified true copy of the document which establishes that the party in default was served with the document instituting the proceedings or with an equivalent document;
 - (iii) where it is the case, a document showing that the party making the application is in receipt of legal aid in the State in which the judgment was given;
 - (iv) where the judgment or document is not in the English language, a translation thereof into English certified by a notary public or a person qualified for the purpose in one of the Contracting States or authenticated by witness statement or affidavit;
 - (b) stating—
 - (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 in accordance with the law of the State in which the judgment was given, 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;
 - (c) giving an address within the jurisdiction of the Court for service of process on the party making the application and stating, so far as is known to the witness, the name and the usual or last known address or place of business of the person against whom judgment was given;
 - (d) stating to the best of the information or belief of the witness—
 - (i) the grounds on which the right to enforce the judgment is vested in the party making the application;
 - (ii) as the case may require, either that at the date of the application the judgment has not been satisfied, or the part or amount in respect of which it remains unsatisfied.
- (2) Where the party making the application does not produce the documents referred to in paragraphs (1)(a)(ii) and (iii) of this rule, the Court may—
- (a) fix a time within which the documents are to be produced; or
 - (b) accept equivalent documents; or
 - (c) dispense with production of the documents.

Security for costs

Rule 29 Notwithstanding the provisions of [F40Section II of CPR Part 25] a party making an application for registration under section 4 of the Act of 1982 shall not be required solely on the ground that he is not domiciled or resident within the jurisdiction, to give security for costs of the application.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Textual Amendments

F40 Words in Sch. 1 RSC Order 71 rule 29 substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **22(c)**

Order for registration

Rule 30.—(1) An order giving permission to register a judgment under section 4 of the Act of 1982 must be drawn up by or on behalf of the party making the application for registration.

(2) Every such order shall state the period within which an appeal may be made against the order for registration and shall contain a notification that execution on the judgment will not issue until after the expiration of that period.

(3) The notification referred to in paragraph (2) shall not prevent any application for protective measures pending final determination of any issue relating to enforcement of the judgment.

Register of judgments registered under s.4 of the Act of 1982

Rule 31 There shall be kept in the Central Office of the Supreme Court under the direction of the Senior Master a register of the judgments ordered to be registered under section 4 of the Act of 1982.

Notice of registration

Rule 32.—(1) Notice of the registration of a judgment must be served on the person against whom judgment was given by delivering it to him personally or by sending it to him at his usual or last known address or place of business or in such other manner as the Court may direct.

(2) Permission is not required to serve such a notice out of the jurisdiction and [^{F41}CPR rules 6.24, 6.25 and 6.29] shall apply in relation to such a notice as they apply in relation to a claim form.

(3) The notice of registration must state—

- (a) full particulars of the judgment registered and the order for registration;
- (b) the name of the party making the application and his address for service within the jurisdiction;
- (c) the right of the person against whom judgment was given to appeal against the order for registration; and
- (d) the period within which an appeal against the order for registration may be made.

Textual Amendments

F41 Words in Sch. 1 RSC Order 71 rule 32(2) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **22(d)**

Appeals

Rule 33.—(1) An appeal under Article 37 or Article 40 of Schedule 1 or 3C to the Act of 1982 must be made to a judge by application in accordance with CPR Part 23.

(2) [^{F42}An application notice] in an appeal to which this rule applies must be served—

- (a) in the case of an appeal under the said Article 37 of Schedule 1 or 3C, within one month of service of notice of registration of the judgment, or two months of service of such notice where that notice was served on a party not domiciled within the jurisdiction;

(b) in the case of an appeal under the said Article 40 of Schedule 1 or 3C, within one month of the determination of the application under rule 27.

(3) If the party against whom judgment was given is not domiciled in a Convention territory and an application is made within two months of service of notice of registration, the Court may extend the period within which an appeal may be made against the order for registration.

Textual Amendments

F42 Words in Sch. 1 RSC Order 71 rule 33(2) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), 22(e)

Issue of execution

Rule 34.—(1) Execution shall not issue on a judgment registered under s.4 of the Act of 1982 until after the expiration of the period specified in accordance with rule 30 (2) or, if that period has been extended by the Court, until after the expiration of the period so extended.

(2) If an appeal is made under rule 33 (1) execution on the judgment shall not issue until after such appeal is determined.

(3) Any party wishing to issue execution on a judgment registered under section 4 of the Act of 1982 must produce to the court officer a witness statement or affidavit of service of the notice of registration of the judgment and of any order made by the Court in relation to the judgment.

(4) Nothing in this rule shall prevent the Court from granting protective measures pending final determination of any issue relating to enforcement of the judgment.

Application for recognition

Rule 35.—(1) Registration of the judgment under these rules shall serve for the purposes of the second paragraph of Article 26 of Schedule 1 or 3C to the Act of 1982 as a decision that the judgment is recognised.

(2) Where it is sought to apply for recognition of a judgment, the foregoing rules of this Order shall apply to such application as they apply to an application for registration under section 4 of the Act, with the exception that the applicant shall not be required to produce a document or documents which establish that according to the law of the State in which it has been given the judgment is enforceable and has been served, or the document referred to in rule 28 (1)(a)(iii).

Enforcement of High Court judgments in other Contracting States

Rule 36.—(1) An application under section 12 of the Act of 1982 for a certified copy of a judgment entered in the High Court must be made without notice being served on any other party on witness statement or affidavit to the Court.

(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 a copy of the claim form, by which the proceedings were begun, the evidence of service thereof on the defendant, copies of the statements of case, if any, and a statement of the grounds on which the judgment was based together, where appropriate, with any document under which the applicant is entitled to legal aid or assistance by way of representation for the purposes of the proceedings;

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- (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 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; 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 an office copy sealed with the seal of the Supreme Court and there shall be issued with the copy of the judgment a certificate in Form 110, signed by a High Court judge, the Admiralty Registrar, a master or a district judge and sealed with the seal of the Supreme Court, having annexed to it a copy of the claim form by which the proceedings were begun.

Enforcement of United Kingdom judgments in other parts of the United Kingdom: money provisions

Rule 37.—(1) An application for registration in the High Court of a certificate in respect of any money provisions contained in a judgment given in another part of the United Kingdom to which section 18 of the Act of 1982 applies may be made by producing at the Central Office of the Supreme Court, within six months from the date of its issue, a certificate in the appropriate form prescribed under that Act together with a copy thereof certified by the applicant's solicitor to be a true copy.

(2) A certificate under paragraph (1) must be filed in the Central Office of the Supreme Court and the certified copy thereof, sealed by an officer of the office in which the certificate is filed, shall be returned to the applicant's solicitor.

(3) A certificate in respect of any money provisions contained in a judgment of the High Court to which section 18 of the Act of 1982 applies may be obtained by producing the form of certificate prescribed in Form 111 at the office in which the judgment is entered, together with a witness statement or affidavit made by the party entitled to enforce the judgment—

- (a) giving particulars of the judgment, stating the sum or aggregate of the sums (including any costs or expenses) payable and unsatisfied under the money provisions contained in the judgment, the rate of interest, if any, payable thereon and the date or time from which any such interest began to accrue;
- (b) verifying that the time for appealing against the judgment has expired, or that any appeal brought has been finally disposed of and that enforcement of the judgment is not stayed or suspended; and
- (c) stating 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.

Enforcement of United Kingdom judgments in other parts of the United Kingdom: non-money provisions

Rule 38.—(1) An application for registration in the High Court of a judgment which contains non-money provisions, being a judgment given in another part of the United Kingdom to which section 18 of the Act of 1982 applies, may be made without notice being served on any other party,

but the Court hearing the application may direct a claim form to be filed and served to which ^{F43} ... rule 2 shall apply.

(2) An application under paragraph (1) must be accompanied by a certified copy of the judgment issued under Schedule 7 to the Act of 1982 and a certificate in the appropriate form prescribed for the purposes of paragraph 4 (1)(b) of that Schedule issued not more than six months before the date of application.

(3) Rules 30 and 32 of this Order shall apply to judgments registered under Schedule 7 to the Act of 1982 as they apply to judgments registered under section 4 of that Act.

(4) Paragraphs (1) and (2) of rule 9 shall apply to applications to set aside registration of a judgment under Schedule 7 to the Act of 1982 as they apply to judgments registered under the Administration of Justice Act 1920 and the Foreign Judgments (Reciprocal Enforcement) Act 1933.

(5) A certified copy of a judgment of the High Court to which section 18 of the Act of 1982 applies and which contains any non-money provision may be obtained by an application on witness statement or affidavit to the Court.

(5A) An application referred to in paragraph (5) need not be served on any other party.

(6) The requirements in paragraph (3) of rule 37 shall apply with the necessary modifications to a witness statement or affidavit made in an application under paragraph (5) of this rule.

(7) A certified copy of a judgment shall be an office copy sealed with the seal of the Supreme Court to which shall be annexed a certificate in Form 112.

Textual Amendments

F43 Words in [Sch. 1 RSC Order 71 rule 38\(1\)](#) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, 38

Register of United Kingdom judgments

Rule 39 There shall be kept in the Central Office of the Supreme Court under the direction of the Senior Master a register of the certificates in respect of judgments and of the judgments ordered to be registered in the Central Office of the Supreme Court under Schedule 6, or, as the case may be, Schedule 7 to the Act.

Authentic Instruments and Court Settlements

Rule 39A Rules 27 to 35 inclusive (except rule 28 (1)(a)(ii)) shall apply to:

(1) an authentic instrument to which either article 50 of Schedule 1 to the Act of 1982 or article 50 of Schedule 3C to the Act applies; and

(2) a settlement to which either article 51 of Schedule 1 to the Act of 1982 or article 51 of Schedule 3C to that Act applies,

as they apply to a judgment subject to any necessary modifications.

IV. Enforcement of Recommendations etc. Under the Merchant Shipping (Liner Conferences) Act 1982(23)

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Exercise of powers

Rule 40 The powers conferred on the High Court under the Merchant Shipping (Liner Conferences) Act 1982 (in this Part of this Order referred to as “the Act of 1982”) may be exercised by a Commercial Judge.

Application for registration

Rule 41 An application under section 9 of the Act of 1982 for the registration of a recommendation, determination or award, shall be made by claim form.

Evidence in support of application

Rule 42.—(1) An application under section 9 of the Act of 1982 for the registration of a recommendation must be supported by a witness statement or affidavit—

- (a) exhibiting a verified or certified or otherwise duly authenticated copy of the recommendation and the reasons therefor and of the record of settlement;
- (b) where the recommendation and reasons or the record of settlement is not in the English language, a translation thereof into English certified by a notary public or authenticated by witness statement or affidavit;
- (c) exhibiting copies of the acceptance of the recommendation by the parties upon whom it is binding, where the acceptance was in writing, or otherwise verifying the acceptance;
- (d) giving particulars of the failure to implement the recommendation; and
- (e) verifying that none of the grounds which would render the recommendation unenforceable under section 9(2) of the Act of 1982 is applicable.

(2) An application under section 9 of the Act of 1982 for the registration of a determination or award as to costs must be supported by a witness statement or affidavit—

- (a) exhibiting a verified or certified or otherwise duly authenticated copy of the recommendation or other document containing the pronouncement on costs; and
- (b) stating that such costs have not been paid.

Order for registration

Rule 43.—(1) An order giving permission to register a recommendation, determination or award under section 9 of the Act of 1982 must be drawn up by or on behalf of the party making the application for registration.

(2) Such an order shall contain a provision that the reasonable costs of registration be taxed.

Register of recommendations etc.

Rule 44.—(1) There shall be kept in the Admiralty and Commercial Registry under the direction of the Senior Master a register of the recommendations, determinations and awards ordered to be registered under section 9 of the Act of 1982.

(2) There shall be included in such register particulars of the enforcement of a recommendation, determination or award so registered.

RSC ORDER 74

APPLICATIONS AND APPEALS UNDER THE MERCHANT SHIPPING ACT 1995(24)

Assignment of proceedings

Rule 1.—(1) Subject to paragraph (2), proceedings by which any application is made to the High Court under the Merchant Shipping Act 1995 shall be assigned to the Queen’s Bench Division and taken by the Admiralty Court.

Appeals and re-hearings

^{F44}**Rule 2**

Textual Amendments

F44 Sch. 1 RSC Order 74 rule 2 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by [S.I. 2000/940](#), rules 1, 2)

RSC ORDER 77

PROCEEDINGS BY AND AGAINST THE CROWN

Application and interpretation

Rule 1.—(1) These rules apply to civil proceedings to which the Crown is a party subject to the following rules of this Order.

(2) In this Order—

“civil proceedings by the Crown”, “civil proceedings against the Crown” and “civil proceedings by or against the Crown” have the same respective meanings as in Part II of the Crown Proceedings Act 1947(25), 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 Crown Proceedings Act 1947, by virtue of section 38 (4) of that Act;

“order against the Crown” means any order (including an order for costs) made in any civil proceedings by or against the Crown or in any proceedings on the Crown side of the Queen’s Bench Division, or in connection with any arbitration to which the Crown is a party, in favour of any person against the Crown or against a government department or against an officer of the Crown as such;

“order” includes a judgment, decree, rule, award or declaration.

Transfer of proceedings

Rule 2.—(1) Subject to paragraph (2) in civil proceedings by or against the Crown no order shall be made under CPR Part 30 for the transfer of the proceedings, or of any application therein, from the Royal Courts of Justice to a district registry, except with the consent of the Crown.

(24)
(25) 1947 c. 44.

1995 c. 21.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(2) In any civil proceedings against the Crown begun by the issue of a claim form out of a district registry the Crown may acknowledge service of the claim form either in the district registry or, at the option of the Crown, in the appropriate office of the Supreme Court at the Royal Courts of Justice, and where service is acknowledged in an office of the Supreme Court at the Royal Courts of Justice the claim shall thereafter proceed in the Royal Courts of Justice and no order shall be made under CPR Part 30 for the transfer of any proceedings before the trial from the Royal Courts of Justice to a district registry.

Particulars to be included in claim form

Rule 3.—(1) In the case of a claim form which begins civil proceedings against the Crown the contents of the claim form required by CPR rule 16.2 shall include a statement of the circumstances in which the Crown's liability is alleged to have arisen and as to the government department and officers of the Crown concerned.

(2) If in civil proceedings against the Crown a defendant considers that the claim form does not contain a sufficient statement as required by this rule, he may, before the expiration of the time limited for acknowledging service of the claim form, apply to the claimant by notice for a further and better statement containing such information as may be specified in the notice.

(3) Where a defendant gives a notice under this rule, the time limited for acknowledging service of the claim form shall not expire until 4 days after the defendant has notified the claimant in writing that the defendant is satisfied with the statement supplied in compliance with the notice or 4 days after the Court has, on the application of the claimant in accordance with CPR Part 23, decided that no further information as to the matters referred to in paragraph (1) is reasonably required.

(3A) An application notice under paragraph (3) shall be served on the defendant not less than 7 days before the hearing.

Service on the Crown

Rule 4.—(1) Order 11 and any other provision of these rules relating to service out of the jurisdiction shall not apply in relation to the service of any process by which civil proceedings against the Crown are begun.

(2) Personal service of any document required to be served on the Crown for the purpose of or in connection with any civil proceedings is not requisite; but where the proceedings are by or against the Crown service on the Crown must be effected—

- (a) by leaving the document at the office of the person who is in accordance with section 18 of the Crown Proceedings Act 1947, to be served, or of any agent whom that person 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 who is to be served as aforesaid or to any such agent as aforesaid.

(3) Any document (other than a claim form) service of which is effected under paragraph 2(a) between 12 noon on a Saturday and midnight on the following day or after 4 in the afternoon on any other weekday shall, for the purpose of computing any period of time after service of that document, be deemed to have been served on the Monday following that Saturday or on the day following that other weekday, as the case may be.

(4) Where by virtue of these rules any document is required to be served on any person but is not required to be served personally and at the time when service is to be effected that person is in default as to acknowledgment of service or has no address for service, the document need not be served on that person unless the Court otherwise directs or any of these rules otherwise provides.

- (a) (5) (a) No process shall be served or executed within the jurisdiction on a Sunday except, in case of urgency, with the permission of the Court.
- (b) For the purposes of this rule “process” includes a claim form, judgment, application or other notice, order, petition, or warrant.

Counterclaim and set-off

Rule 6.—(1) A person may not in any proceedings by the Crown make any counterclaim or claim a set-off in his statement of case if the proceedings are for the recovery of, or the counterclaim or set-off arises out of a right or claim to repayment in respect of, any taxes, duties or penalties.

(2) No counterclaim may be made, or set-off claimed in its statements of case, without the permission of the Court, by the Crown in proceedings against the Crown, or by any person in proceedings by the Crown—

- (a) if the Crown is sued or sues in the name of a Government department and the subject-matter of the counterclaim or set-off does not relate to that department; or
- (b) if the Crown is sued or sues in the name of the Attorney-General.

(3) Any application for permission under this rule must be made by in accordance with CPR Part 23.

Summary judgment

Rule 7.—(1) No application shall be made against the Crown—

- (a) under CPR Part 24 ^{F45}... in any proceedings against the Crown,
- (b) for summary judgment on a counterclaim under CPR Part 24 in any proceedings by the Crown.

(2) Where an application is made by the Crown under CPR Part 24 ^{F45}... the affidavit or witness statement required in support of the application must be made by—

- (a) the solicitor acting for the Crown, or
- (b) an officer duly authorised by the solicitor so acting or by the department concerned

and the witness statement or affidavit shall be sufficient if it states that in the belief of the witness the applicant is entitled to the relief claimed and there is no defence to the claim or part of a claim to which the application relates or no defence except as to the amount of any damages claimed.

Textual Amendments

F45 Words in [Sch. 1 RSC Order 77 rule 7](#) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **39(a)**

Summary applications to the Court in certain revenue matters

Rule 8.—(1) This rule applies to applications under section 14 of the Crown Proceedings Act 1947(**26**).

(2) An application to which this rule applies shall be made by claim form.

(3) The person from whom any account or information or payment is claimed or by whom any books are required to be produced must be made a defendant to the application.

(26) [1947 c. 44](#); section 14 was amended by the Finance Act [1975 \(c. 7\)](#), section 52(1), schedule 12, paragraph 28; by the Inheritance Tax Act [1984 \(c. 51\)](#), section 276, schedule 8, paragraph 2; and by the Finance Act [1972 \(c. 41\)](#), section 55.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- (4) A claim form under this rule—
- (a) must be entitled in the matter or matters out of which the need for the application arises and in the matter of the Crown Proceedings Act 1947; and
 - (b) must refer to the enactment under which the account or information or payment or the production of books is claimed and, where information is claimed, must show (by appropriate questions or otherwise) what information is required.
- (5) Upon any application to which this rule applies, a witness statement or affidavit by a duly authorised officer of the Government department concerned setting out the state of facts upon which the application is based and stating that he has reason to think that those facts exist shall be evidence of those facts; and if evidence is filed disputing any of those facts, further evidence may be filed and the Court may either decide the matter upon the witness statements or affidavits (after any cross-examination that may have been ordered) or may direct that it be decided by oral evidence in Court.
- (6) An order in favour of the Crown on an application to which this rule applies shall, unless the Court otherwise determines, name a time within which each of its terms is to be complied with.
- (8) Nothing in this rule shall, in relation to any case in which the only remedy claimed by the Crown is the payment of money, be construed as requiring the Crown to proceed by way of an application to which this rule applies or as preventing the Crown from availing itself of any other procedure which is open to it under these rules.

Joinder of Commissioners of Inland Revenue

Rule 8A Nothing in CPR rule 19.3 shall be construed as enabling the Commissioners of Inland Revenue to be added as a party to any proceedings except with their consent signified in writing or in such manner as may be authorised.

Judgment in default

Rule 9.—(1) Except with the permission of the Court, no judgment in default under CPR Part 12 shall be entered against the Crown in civil proceedings against the Crown.

(2) Except with the permission of the Court, a defendant shall not enter default judgment against the Crown as a third party.

(3) An application for permission under this rule may be made by an application in accordance with CPR Part 23 and the application notice must be served not less than 7 days before the return day.

Third party notices

Rule 10.—(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, and the application for the grant of such permission must be made by application in accordance with CPR Part 23, and the application notice must be served on the claimant and the Crown.

(2) Permission to issue such a claim for service on the Crown shall not be granted 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.

Interpleader: application for order against Crown

Rule 11 No order shall be made against the Crown under Order 17, rule 5 (3) except ^{F46}by application, notice of which must be served not less than 7 days before the return day.

Textual Amendments

F46 Words in [Sch. 1 RSC Order 77 rule 11](#) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **39(b)**

Disclosure and further information

Rule 12.—(3) 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.

(4) Where in any proceedings an order is made under the said section 28 for further information to be provided by the Crown, the Court shall direct by what officer of the Crown the further information is to be provided.

Place of trial

Rule 13.—(1) Civil proceedings by or against the Crown shall not, except with the consent of the Crown, be directed to be tried elsewhere than at the Royal Courts of Justice.

(2) Nothing in any of these rules shall prejudice the right of the Crown to demand a local venue for the trial of any proceedings in which the Attorney General has waived his right to a trial at bar.

Evidence

Rule 14.—(1) Civil proceedings against the Crown may be instituted to perpetuate any testimony in any case in which the Crown is alleged to have an interest or estate in the honour, title, dignity or office or property in question.

(2) For the avoidance of doubt it is hereby declared that any powers exercisable by the Court in regard to the taking of evidence are exercisable in proceedings by or against the Crown as they are exercisable in proceedings between subjects.

Execution and satisfaction of orders

Rule 15.—(1) Nothing in Orders 45 to 52 shall apply in respect of any order against the Crown.

(2) An application under the proviso to subsection (1) of section 25 of the Crown Proceedings Act 1947, for a direction that a separate certificate shall be issued under that subsection with respect to the costs (if any) ordered to be paid to the applicant, may be made to the Court without notice being served on any other party.

(3) Any such certificate must be in Form No. 95 or 96 in the relevant Practice Direction, whichever is appropriate.

Attachment of debts, etc.

Rule 16.—(1) No order—

- (a) for the attachment of debts under Order 49, or
- (b) for the appointment of a sequestrator under Order 45, or
- (c) for the appointment of a receiver under Order 30 or 51,

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.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(1A) No application shall be made under paragraph (2) unless the order of the court to be enforced is for a sum of money amounting in value to at least £50.

(2) Every application to the Court for an order under section 27 (1) of the Crown Proceedings Act 1947⁽²⁷⁾ restraining any person from receiving money payable to him by the Crown and directing payment of the money to the applicant or some other person must be made by claim form and, unless the Court otherwise directs, served—

- (a) on the Crown at least 15 days before the return day, and
- (b) on the person to be restrained or his solicitor at least 7 days after the claim form has been served on the Crown and at least 7 days before the return day.

(2A) An application under paragraph (2) must be supported by a witness statement or affidavit—

- (a) setting out the facts giving rise to the application;
- (b) stating the name and last known address of the person to be restrained;
- (c) identifying the order to be enforced and stating the amount of such order and the amount remaining unpaid under it at the time of the application, and
- (d) identifying the particular debt from the Crown in respect of which the application is made.

(2B) Where the debt from the Crown in respect of which the application is made is money payable by the Crown to a person on account of a deposit in the National Savings Bank, the witness statement or affidavit must state the name and address of the branch ^{F47}... at which the 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 not known to the witness.

(2C) A Master, the Admiralty Registrar and a district judge of the Family Division shall have power to hear an application under paragraph (2).

(3) Order 49, rules 5 and 6, shall apply in relation to such an application as is mentioned in paragraph (2) for an order restraining a person from receiving money payable to him by the Crown as those rules apply to an application under Order 49, rule 1, for an order for the attachment of a debt owing to any person from a garnishee, except that the Court shall not have power to order execution to issue against the Crown.

Textual Amendments

F47 Words in [Sch. 1 RSC Order 77 rule 16\(2B\)](#) revoked (26.3.2001) by [The Postal Services Act 2000 \(Consequential Modifications No. 1\) Order 2001 \(S.I. 2001/1149\)](#), art. 1(2), [Sch. 2](#) (with art. 4(11))

Proceedings relating to postal packets

Rule 17.—(1) An application by any person under [^{F48}section 92 of the Postal Services Act 2000], for permission to bring proceedings in the name of the sender or addressee of a postal packet or his personal representatives must be made by claim form in the Queen’s Bench Division.

(2) The Crown and the person in whose name the applicant seeks to bring proceedings must be made defendants to a claim under this rule.

Textual Amendments

F48 Words in [Sch. 1 RSC Order 77 rule 17](#) substituted (26.3.2001) by [The Postal Services Act 2000 \(Consequential Modifications No. 1\) Order 2001 \(S.I. 2001/1149\)](#), art. 1(2), [Sch. 1 para. 123\(2\)](#)

(27) [1947 c. 44](#); section 27(1) was amended by the Supreme Court Act [1981 \(c. 54\)](#), section 139(1) and schedule 7.

Applications under ss.17 and 29 of Crown Proceedings Act

Rule 18.—(1) Every application to the Court under section 17 (4) of the Crown Proceedings Act 1947, must be made by claim form.

(2) An application such as is referred to in section 29 (2) of the Crown Proceedings Act 1947, may be made to the Court at any time before trial in accordance with CPR Part 23, or may be made at the trial of the proceedings.

RSC ORDER 79

CRIMINAL PROCEEDINGS

Estreat of recognizances

Rule 8.—(1) No recognizance acknowledged in or removed into the Queen’s Bench Division shall be estreated without the order of a judge.

(2) Every application to estreat a recognizance in the Queen’s Bench Division must be made by claim form and will be heard by a judge ^{F49}...and must be supported by a witness statement or affidavit showing in what manner the breach has been committed and proving that the claim form was duly served.

(2A) When it issues the claim form the court will fix a date for the hearing of the application.

(3) A claim form under this rule must be served at least 2 clear days before the day named therein for the hearing.

(4) On the hearing of the application the judge may, and if requested by any party shall, direct any issue of fact in dispute to be tried by a jury.

(5) If it appears to the judge that a default has been made in performing the conditions of the recognizance, the judge may order the recognizance to be estreated.

Textual Amendments

F49 Words in Sch. 1 RSC Order 79 rule 8(2) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **62(f)**

Bail

Rule 9.—(1) Subject to the provisions of this rule, every application to the High Court in respect of bail in any criminal proceeding—

(a) where the defendant is in custody, must be made by claim form to a judge ^{F50}... to show cause why the defendant should not be granted bail;

(b) where the defendant has been admitted to bail, must be made by claim form to a judge ^{F50}... to show cause why the variation in the arrangements for bail proposed by the applicant should not be made.

(2) Subject to paragraph (5), the claim form (in Form No. 97 or 97A in the relevant practice direction) must, at least 24 hours before the day named therein for the hearing, be served—

(a) where the application was made by the defendant, on the prosecutor and on the Director of Public Prosecutions, if the prosecution is being carried on by him;

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Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- (b) where the application was made by the prosecutor or a constable under section 3 (8) of the Bail Act 1976⁽²⁸⁾, on the defendant.
- (3) Subject to paragraph (5), every application must be supported by witness statement or affidavit.
- (4) Where a defendant in custody who desires to apply for bail is unable through lack of means to instruct a solicitor, he may give notice in writing to the [^{F51}court] stating his desire to apply for bail and requesting that the official solicitor shall act for him in the application, and the [^{F52}court may] assign the official solicitor to act for the applicant accordingly.
- (5) Where the official solicitor has been so assigned the [^{F53}court may] dispense with the requirements of paragraphs (1) to (3) and deal with the application in a summary manner.
- (6) Where the [^{F54}court] grants the defendant bail, the order must be in Form No. 98 in the relevant Practice Direction and a copy of the order shall be transmitted forthwith—
- (a) where the proceedings in respect of the defendant have been transferred to the Crown Court for trial or where the defendant has been committed to the Crown Court to be sentenced or otherwise dealt with, to the appropriate officer of the Crown Court;
- (b) in any other case, to the [^{F55}justices' chief executive for] the court which committed the defendant.
- (6A) The recognizance of any surety required as a condition of bail granted as aforesaid may, where the defendant is in a prison or other place of detention, be entered into before the governor or keeper of the prison or place as well as before the persons specified in section 8 (4) of the Bail Act 1976.
- (6B) Where under section 3 (5) or (6) of the Bail Act 1976⁽²⁹⁾ [^{F56}the court] imposes a requirement to be complied with before a person's release on bail, [^{F57}it] may give directions as to the manner in which and the person or persons before whom the requirement may be complied with.
- (7) A person who in pursuance of an order for the grant of bail made by [^{F58}the court] under this rule proposes to enter into a recognizance or give security must, unless [^{F59}the court] otherwise directs, give notice (in Form No. 100 in the relevant Practice Direction) to the prosecutor at least 24 hours before he enters into the recognizance or complies with the requirements as aforesaid.
- (8) Where in pursuance of such an order as aforesaid a recognizance is entered into or requirement complied with before any person, it shall be the duty of that person to cause the recognizance or, as the case may be, a statement of the requirement complied with to be transmitted forthwith—
- (a) where the proceedings in respect of the defendant have been transferred to the Crown Court for trial or where the defendant has been committed to the Crown Court to be sentenced or otherwise dealt with, to the appropriate officer of the Crown Court;
- (b) in any other case, to the [^{F60}justices' chief executive for] the court which committed the defendant
- and a copy of such recognizance or statement shall at the same time be sent to the governor or keeper of the prison or other place of detention in which the defendant is detained, unless the recognizance was entered into or the requirement complied with before such governor or keeper.
- (10) An order ^{F61}... varying the arrangements under which the defendant has been granted bail shall be in Form 98A in the relevant practice direction and a copy of the order shall be transmitted forthwith—

⁽²⁸⁾ 1976 c. 63; section 3(8) was amended by the Criminal Law Act 1977 (c. 45), section 65(4), schedule 12.

⁽²⁹⁾ 1976 c. 63; section 3(6) was amended by the Criminal Justice and Public Order Act 1994 (c. 33), sections 27(2), 168(3), schedule 11.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- (a) where the proceedings in respect of the defendant have been transferred to the Crown Court for trial or where the defendant has been committed to the Crown Court to be sentenced or otherwise dealt with, to the appropriate officer of the Crown Court;
- (b) in any other case, to the [^{F62}justices' chief executive for] the court which committed the defendant.

(11) Where in pursuance of an order of [^{F63}the High Court or the Crown Court] a person is released on bail in any criminal proceeding pending the determination of an appeal to the High Court or House of Lords or an application for an order of certiorari, then, upon the abandonment of the appeal or application, or upon the decision of the High Court or House of Lords being given, any justice (being a justice acting for the same petty sessions area as the magistrates' court by which that person was convicted or sentenced) may issue process for enforcing the decision in respect of which such appeal or application was brought or, as the case may be, the decision of the High Court or House of Lords.

(12) If an applicant to the High Court in any criminal proceedings is refused bail ^{F64}..., the applicant shall not be entitled to make a fresh application for bail to any other judge or to a Divisional Court.

(13) The record required by section 5 of the Bail Act 1976(30) to be made by the High Court shall be made by including in the file relating to the case in question a copy of the relevant order of the Court and shall contain the particulars set out in Form No. 98 or 98A in the relevant Practice Direction, whichever is appropriate, except that in the case of a decision to withhold bail the record shall be made by inserting a statement of the decision on the Court's copy of the relevant claim form and including it in the file relating to the case in question.

(14) In the case of a person whose return or surrender is sought under the Extradition Act 1989(31), this rule shall apply as if references to the defendant were references to that person and references to the prosecutor were references to the State seeking the return or surrender of that person.

Textual Amendments

- F50** Words in Sch. 1 RSC Order 79 rule 9 omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **62(f)**
- F51** Word in Sch. 1 RSC Order 79 rule 9(4) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **40(a)**
- F52** Words in Sch. 1 Order 79 rule 9(4) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **40(b)**
- F53** Words in Sch. 1 Order 79 rule 9(5) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **40(b)**
- F54** Word in Sch. 1 RSC Order 79 rule 9(6) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **40(c)**
- F55** Words in Sch. 1 RSC Order 79 rule 9(6)(b) substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(b), **22**
- F56** Words in Sch. 1 RSC Order 79 rule 9(6B) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **40(d)(i)**
- F57** Word in Sch. 1 RSC Order 79 rule 9(6B) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **40(d)(ii)**
- F58** Words in Sch. 1 RSC Order 79 rule 9(7) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **40(e)(i)**

(30) 1976 c. 63; section 5 was amended by the Criminal Justice Act 1982 (c. 48), section 60; and by the Criminal Law Act 1977 (c. 45), section 65(4), schedule 12; and by the Criminal Justice and Public Order Act 1994 (c. 33), section 27(4), schedule 3, paragraph 1.

(31) 1989 c. 33.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- F59** Words in Sch. 1 RSC Order 79 rule 9(7) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **40(e)(ii)**
- F60** Words in Sch. 1 RSC Order 79 rule 9(8)(b) substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(b), **22**
- F61** Words in Sch. 1 RSC Order 79 rule 9(10) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **40(f)**
- F62** Words in Sch. 1 RSC Order 79 rule 9(10)(b) substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(b), **22**
- F63** Words in Sch. 1 RSC Order 79 rule 9(11) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **40(g)**
- F64** Words in Sch. 1 RSC Order 79 rule 9(12) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **40(h)**

Issue of witness summonses, etc.

^{F65}**Rule 10**

- Textual Amendments**
- F65** Sch. 1 RSC Order 79 rules 10, 11 omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **41**

Application for warrant to arrest witness

^{F65}**Rule 11**

- Textual Amendments**
- F65** Sch. 1 RSC Order 79 rules 10, 11 omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **41**

RSC ORDER 81

PARTNERS

Claims by and against firms within jurisdiction

Rule 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 the jurisdiction may sue, or be sued, in the name of the firm (if any) of which they were partners at the time when the cause of action accrued.

Disclosure of partners' names

Rule 2.—(1) Any defendant to a claim brought by partners in the name of a firm may serve on the claimant’s or their solicitor a notice requiring them or him forthwith to furnish the defendant with a written statement of the names and places of residence of all the persons who were partners in the firm at the time when the cause of action accrued; and if the notice is not complied with the Court may order the claimant’s or their solicitor to furnish the defendant with such a statement and to

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verify it on oath or otherwise as may be specified in the order, or may order that further proceedings in the claim be stayed on such terms as the Court may direct.

(2) When the names of the partners have been declared in compliance with a notice or order given or made under paragraph (1) the proceedings shall continue in the name of the firm but with the same consequences as would have ensued if the persons whose names have been so declared had been named as claimants in the claim form.

(3) Paragraph (1) shall have effect in relation to a claim brought against partners in the name of a firm as it has effect in relation to a claim brought by partners in the name of a firm but with the substitution, for references to the defendant and the claimants, of references to the claimant and the defendants respectively, and with the omission of the words “or may order” to the end.

Acknowledgment of service in a claim against firm

Rule 4.—(1) Where persons are sued as partners in the name of their firm, service may not be acknowledged in the name of the firm but only by the partners thereof in their own names, but the claim shall nevertheless continue in the name of the firm.

(2) Where in a claim against a firm the claim form by which the claim is begun is served on a person as a partner, that person, if he denies that he was a partner or liable as such at any material time, may acknowledge service of the claim form and state in his acknowledgment that he does so as a person served as a partner in the defendant firm but who denies that he was a partner at any material time.

An acknowledgment of service given in accordance with this paragraph shall, unless and until it is set aside, be treated as an acknowledgment by the defendant firm.

(3) Where an acknowledgment of service has been given by a defendant in accordance with paragraph (2) then—

- (a) the claimant may either apply to the Court to set it aside on the ground that the defendant was a partner or liable as such at a material time or may leave that question to be determined at a later stage of the proceedings;
- (b) the defendant may either apply to the Court to set aside the service of the claim form on him on the ground that he was not a partner or liable as such at a material time or may at the proper time serve a defence on the claimant denying in respect of the claimant’s claim either his liability as a partner or the liability of the defendant firm or both.

(4) The Court may at any stage of the proceedings in a claim in which a defendant has acknowledged service in accordance with paragraph (2) on the application of the claimant or of that defendant, order that any question as to the liability of that defendant or as to the liability of the defendant firm be tried in such manner and at such time as the Court directs.

^{F66}(5)

Textual Amendments

F66 Sch. 1 RSC Order 81 rule 4(5) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **42**

Enforcing judgment or order against firm

Rule 5.—(1) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may, subject to rule 6, issue against any property of the firm within the jurisdiction.

(2) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may, subject to rule 6 and to the next following paragraph, issue against any person who—

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- (a) acknowledged service of the claim form as a partner, or
- (b) having been served as a partner with the claim form, failed to acknowledge service of it, or
- (c) admitted in his statement of case that he is a partner, or
- (d) was adjudged to be a partner.

(3) Execution to enforce a judgment or order given or made against a firm may not issue against a member of the firm who was out of the jurisdiction when the claim form was issued unless he—

- (a) acknowledged service of the claim form as a partner, or
- (b) was served within the jurisdiction with the claim form as a partner, or
- (c) was, with the permission of the Court given under [^{F67}Section III of CPR Part 6], served out of the jurisdiction with the claim form, as a partner

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

(4) Where a party who has obtained a judgment or order against a firm claims that a person is liable to satisfy the judgment or order as being a member of the firm, and the foregoing provisions of this rule do not apply in relation to that person, that party may apply to the Court for permission to issue execution against that person, the application to be made in accordance with CPR Part 23 and the application notice must be served personally on that person.

(5) Where the person against whom an application under paragraph (4) is made does not dispute his liability, the Court hearing the application may, subject to paragraph (3) give permission to issue execution against that person, and, where that person disputes his liability, the Court may order that the liability of that person be tried and determined in any manner in which any issue or question in a claim may be tried and determined.

Textual Amendments

F67 Words in [Sch. 1 RSC Order 81 rule 5\(3\)\(c\)](#) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rules 1\(b\)](#), [23](#)

Enforcing judgment or order in actions between partners, etc.

Rule 6.—(1) Execution to enforce a judgment or order given or made in—

- (a) a claim by or against a firm in the name of the firm against or by a member of the firm, or
- (b) a claim 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 except with the permission of the Court.

(2) The Court hearing an application under this rule may give such directions, including directions as to the taking of accounts and the making of inquiries, as may be just.

Attachment of debts owed by firm

Rule 7.—(1) An order may be made under Order 49, rule 1, in relation to debts due or accruing due from a firm carrying on business within the jurisdiction notwithstanding that one or more members of the firm is resident out of the jurisdiction.

(2) An order to show cause under the said rule 1 relating to such debts as aforesaid must be served on a member of the firm within the jurisdiction or on some other person having the control or management of the partnership business.

(3) Where an order made under the said rule 1 requires a firm to appear before the Court, an appearance by a member of the firm constitutes a sufficient compliance with the order.

Application to person carrying on business in another name

Rule 9 An individual carrying on business within the jurisdiction in a name or style other than his own name, may whether or not he is within the jurisdiction be sued in that name or style as if it were the name of a firm, and rules 2 to 8 shall, so far as applicable, apply as if he were a partner and the name in which he carries on business were the name of his firm.

Applications for orders charging partner's interest in partnership property, etc.

Rule 10.—(1) Every application to the Court by a judgment creditor of a partner for an order under section 23 of the Partnership Act 1890⁽³²⁾ (which authorises the High Court or a judge thereof to make certain orders on the application of a judgment creditor of a partner, including an order charging the partner's interest in the partnership property) and every application to the Court by a partner of the judgment debtor made in consequence of the first mentioned application must be made [^{F68}in accordance with CPR Part 23].

(2) A Master or the Admiralty Registrar or a district judge may exercise the powers conferred on a judge by the said section 23.

(3) Every [^{F69}application notice] issued by a judgment creditor under this rule, and every order made on such [^{F70}an application], must be served on the judgment debtor and on such of his partners as are within the jurisdiction or, if the partnership is a cost book company, on the judgment debtor and the purser of the company.

(4) Every [^{F71}application notice] issued by a partner of a judgment debtor under this rule, and every order made on such [^{F72}an application], must be served—

- (a) on the judgment creditor, and
- (b) on the judgment debtor, and
- (c) on such of the other partners of the judgment debtor as do not join in the application and are within the jurisdiction or, if the partnership is a cost book company, on the purser of the company.

(5) [^{F73}An application notice] or order served in accordance with this rule on the purser of a cost book company or, in the case of a partnership not being such a company, on some only of the partners thereof, shall be deemed to have been served on that company or on all the partners of that partnership, as the case may be.

Textual Amendments

- F68** Words in Sch. 1 RSC Order 81 rule 10(1) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **43(a)**
- F69** Words in Sch. 1 RSC Order 81 rule 10(3) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **43(b)(i)**
- F70** Words in Sch. 1 RSC Order 81 rule 10(3) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **43(c)(i)**
- F71** Words in Sch. 1 RSC Order 81 rule 10(4) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **43(b)(ii)**

⁽³²⁾ 1890 c. 39; section 23 was amended by the Statute Law Revision Act 1908 (c. 49); and by the Courts Act 1971 (c. 23), section 56(4), schedule 11, Part II.

Status: Point in time view as at 01/04/2001.
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- F72** Words in Sch. 1 RSC Order 81 rule 10(4) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **43(c)(ii)**
- F73** Words in Sch. 1 RSC Order 81 rule 10(5) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **43(d)**

F74 RSC ORDER 82 DEFAMATION CLAIMS

Textual Amendments

F74 Sch. 1 RSC Order 82 revoked (28.2.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(a), **40**

Application

Rule 1 ^{F74}

Indorsement of claim in libel claim

Rule 2 ^{F74}

Obligation to give particulars

Rule 3 ^{F74}

Ruling on meaning

Rule 3A ^{F74}

Provisions as to payment into Court

Rule 4 ^{F74}

Statement in open Court

Rule 5 ^{F74}

Further information not allowed in certain cases

Rule 6 ^{F74}

Fulfilment of offer of amends under s.4 of the Defamation Act 1952

Rule 8 ^{F74}

RSC ORDER 85

ADMINISTRATION AND SIMILAR ACTIONS

Interpretation

Rule 1 In this Order “administration claim” means a claim for the administration under the direction of the Court of the estate of a deceased person or for the execution under the direction of the Court of a trust.

Determination of questions, etc., without administration

Rule 2.—(1) A claim may be issued for the determination of any question or for any remedy which could be determined or granted, as the case may be, in an administration claim and a claim need not be made for the administration or execution under the direction of the Court of the estate or trust in connection with which the question arises or the remedy is sought.

(2) Without prejudice to the generality of paragraph (1), a claim may be brought for the determination of any of the following questions:—

- (a) any question arising in the administration of the estate of a deceased person or in the execution of a trust;
- (b) any question as to the composition of any class of persons having a claim against the estate of a deceased person or a beneficial interest in the estate of such a person or in any property subject to a trust;
- (c) any question as to the rights or interests of a person claiming to be a creditor of the estate of a deceased person or to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust.

(3) Without prejudice to the generality of paragraph (1), a claim may be brought for any of the following remedies:—

- (a) an order requiring an executor, administrator or trustee to furnish and, if necessary, verify accounts;
- (b) an order requiring the payment into court of money held by a person in his capacity as executor, administrator or trustee;
- (c) an order directing a person to do or abstain from doing a particular act in his capacity as executor, administrator or trustee;
- (d) an order approving any sale, purchase, compromise or other transaction by a person in his capacity as executor, administrator or trustee;
- (e) an order directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust which the Court could order to be done if the estate or trust were being administered or executed, as the case may be, under the direction of the Court.

Parties

Rule 3.—(1) All the executors or administrators of the estate or trustees of the trust, as the case may be, to which an administration claim or such a claim as is referred to in rule 2 relates must be parties to the proceedings, and where the proceedings are made by executors, administrators or trustees, any of them who does not consent to being joined as a claimant must be made a defendant.

(2) Notwithstanding anything in CPR Rule 19.2 and without prejudice to the powers of the Court under that CPR Part, all the persons having a beneficial interest in or claim against the estate or having a beneficial interest under the trust, as the case may be, to which such a claim as is mentioned in paragraph (1) relates need not be parties to the proceedings; but the claimant may make such of

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Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

those persons, whether all or any one or more of them, parties as, having regard to the nature of the remedy claimed in the proceedings, he thinks fit.

(3) Where, in proceedings under a judgment or order given or made in a claim for the administration under the direction of the Court of the estate of a deceased person, a claim in respect of a debt or other liability is made against the estate by a person not a party to the proceedings, no party other than the executors or administrators of the estate shall be entitled to appear in any proceedings relating to that claim without the permission of the Court, and the Court may direct or allow any other party to appear either in addition to, or in substitution for, the executors or administrators on such terms as to costs or otherwise as it thinks fit.

Judgments and orders in administration claims

Rule 5.—(1) A judgment or order for the administration or execution under the direction of the Court of an estate or trust need not be given or made unless in the opinion of the Court the questions at issue between the parties cannot properly be determined otherwise than under such a judgment or order.

(2) Where an administration claim is brought by a creditor of the estate of a deceased person or by a person claiming to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust, and the claimant alleges that no or insufficient accounts have been furnished by the executors, administrators or trustees, as the case may be, then, without prejudice to its other powers, the Court may—

- (a) order that proceedings be stayed for a period specified in the order and that the executors, administrators or trustees, as the case may be, shall within that period furnish the claimant with proper accounts;
- (b) if necessary to prevent proceedings by other creditors or by other persons claiming to be entitled as aforesaid, give judgment or make an order for the administration of the estate to which the claim relates and include therein an order that no proceedings are to be taken under the judgment or order, or under any particular account or inquiry directed, without the permission of the judge in person.

Conduct of sale of trust property

Rule 6 Where in an administration claim an order is made for the sale of any property vested in executors, administrators or trustees, those executors, administrators or trustees, as the case may be, shall have the conduct of the sale unless the Court otherwise directs.

RSC ORDER 87

DEBENTURE HOLDERS' CLAIMS : RECEIVER'S REGISTER

Receiver's register

Rule 1 Every receiver appointed by the Court in proceedings to enforce registered debentures or registered debenture stock shall, if so directed by the Court, keep a register of transfers of, and other transmissions of title to, such debentures or stock (in this Order referred to as “the receiver’s register”).

Registration of transfers, etc.

Rule 2.—(1) Where a receiver is required by rule 1 to keep a receiver’s register, then, on the application made in accordance with CPR Part 23 of any person entitled to any debentures or

debenture stock by virtue of any transfer or other transmission of title, and on production of such evidence of identity and title as the receiver may reasonably require, the receiver shall, subject to the following provisions of this rule, register the transfer or other transmission of title in that register.

(2) Before registering a transfer the receiver must, unless the due execution of the transfer is proved by witness statement or affidavit, send by post to the registered holder of the debentures or debenture stock transferred at his registered address a notice stating—

- (a) that an application for the registration of the transfer has been made, and
- (b) that the transfer will be registered unless within the period specified in the notice the holder informs the receiver that he objects to the registration,

and no transfer shall be registered until the period so specified has elapsed. The period to be specified in the notice shall in no case be less than 7 days after a reply from the registered holder would in the ordinary course of post reach the receiver if the holder had replied to the notice on the day following the day when in the ordinary course of post the notice would have been delivered at the place to which it was addressed.

(3) On registering a transfer or other transmission of title under this rule the receiver must indorse a memorandum thereof on the debenture or certificate of debenture stock, as the case may be, transferred or transmitted, containing a reference to the proceedings and to the order appointing him receiver.

Application for rectification of receiver's register

Rule 3.—(1) Any person aggrieved by any thing done or omission made by a receiver under rule 2 may apply in accordance with CPR Part 23 to the Court for rectification of the receiver's register, the application to be made in the proceedings in which the receiver was appointed.

(2) The copy of the application notice shall in the first instance be served only on the claimant or other party having the conduct of the proceedings but the Court may direct a copy of the application notice to be served on any other person appearing to be interested.

(3) The Court hearing an application under this rule may decide any question relating to the title of any person who is party to the application to have his name entered in or omitted from the receiver's register and generally may decide any question necessary or expedient to be decided for the rectification of that register.

Receiver's register evidence of transfers, etc.

Rule 4 Any entry made in the receiver's register, if verified by a witness statement or affidavit made by the receiver or by such other person as the Court may direct, shall in all proceedings in which the receiver was appointed be evidence of the transfer or transmission of title to which the entry relates and, in particular, shall be accepted as evidence thereof for the purpose of any distribution of assets, notwithstanding that the transfer or transmission has taken place after the making of a certificate in the proceedings certifying the holders of the debentures or debenture stock certificates.

Proof of title of holder of bearer debenture, etc.

Rule 5.—(1) This rule applies in relation to proceedings to enforce bearer debentures or to enforce debenture stock in respect of which the company has issued debenture stock bearer certificates.

(2) Notwithstanding that judgment has been given in the proceedings and that a certificate has been made therein certifying the holders of such debentures or certificates as are referred to in paragraph (1), the title of any person claiming to be such a holder shall (in the absence of notice of any defect in the title) be sufficiently proved by the production of the debenture or debenture stock certificate, as the case may be, together with a certificate of identification signed by the person

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Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

producing the debenture or certificate identifying the debenture or certificate produced and certifying the person (giving his name and address) who is the holder thereof.

(3) Where such a debenture or certificate as is referred to in paragraph (1) is produced in Chancery Chambers, the solicitor of the claimant in the proceedings must cause to be indorsed thereon a notice stating—

- (a) that the person whose name and address is specified in the notice (being the person named as the holder of the debenture or certificate in the certificate of identification produced under paragraph (2)) has been recorded in Chancery Chambers as the holder of the debenture or debenture stock certificate, as the case may be, and
- (b) that that person will, on producing the debenture or debenture stock certificate, as the case may be, be entitled to receive payment of any dividend in respect of that debenture or stock unless before payment a new holder proves his title in accordance with paragraph (2), and
- (c) that if a new holder neglects to prove his title as aforesaid he may incur additional delay, trouble and expense in obtaining payment.

(4) The solicitor of the claimant in the proceedings must preserve any certificates of identification produced under paragraph (2) and must keep a record of the debentures and debenture stock certificates so produced and of the names and addresses of the persons producing them and of the holders thereof, and, if the Court requires it, must verify the record by witness statement or affidavit.

Requirements in connection with payments

Rule 6.—(1) Where in proceedings to enforce any debentures or debenture stock an order is made for payment in respect of the debentures or stock, the Accountant-General shall not make a payment in respect of any such debenture or stock unless either there is produced to him the certificate for which paragraph (2) provides or the Court has in the case in question for special reason dispensed with the need for the certificate and directed payment to be made without it.

(2) For the purpose of obtaining any such payment the debenture or debenture stock certificate must be produced to the solicitor of the claimant in the proceedings or to such other person as the Court may direct, and that solicitor or other person must indorse thereon a memorandum of payment and must make and sign a certificate certifying that the statement set out in the certificate has been indorsed on the debenture or debenture stock certificate, as the case may be, and send the certificate to the Accountant-General.

RSC ORDER 88

MORTGAGE CLAIMS

Application and Interpretation

Rule 1.—(1) This Order applies to any claim by a mortgagee or mortgagor or by any person having the right to foreclose or redeem any mortgage, being a claim in which there is a claim for any of the following remedies, namely—

- (a) payment of moneys secured by the mortgage,
- (b) sale of the mortgaged property,
- (c) foreclosure,
- (d) delivery of possession (whether before or after foreclosure or without foreclosure) to the mortgagee by the mortgagor or by any other person who is or is alleged to be in possession of the property,

- (e) redemption,
- (f) reconveyance of the property or its release from the security,
- (g) delivery of possession by the mortgagee.

(2) In this Order “mortgage” includes a legal and an equitable mortgage and a legal and an equitable charge, and references to a mortgagor, a mortgagee and mortgaged property shall be construed accordingly.

(3) A claim to which this Order applies is referred to in this Order as a mortgage claim.

(4) These rules apply to mortgage claims subject to the following provisions of this Order.

Assignment of certain actions to Chancery Division

Rule 2 Without prejudice to section 61 (1) of the Act (which provides for the assignment to the Chancery Division of proceedings for the purposes, among others, of the redemption or foreclosure of mortgages and the sale and distribution of the proceeds of property subject to any lien or charge) any claim in which there is a claim for—

- (a) payment of moneys secured by a mortgage of any real or leasehold property, or
- (b) delivery of possession (whether before or after foreclosure) to the mortgagee of any such property by the mortgagor or by any other person who is or is alleged to be in possession of the property,

shall be assigned to the Chancery Division.

Commencement of claim

Rule 3.—(1) A claim form by which a mortgage claim is begun may not be issued out of a district registry, which is not a Chancery district registry, unless the mortgaged property is situated in the district of the registry.

(3) The claim form by which a mortgage claim is begun shall be indorsed with or contain a statement showing—

- (a) where the mortgaged property is situated, and
- (b) if the claimant claims possession of the mortgaged property and it is situated outside Greater London, whether the property consists of or includes a dwelling house,

and a certificate that the claim is not one to which section 141 of the Consumer Credit Act 1974(33) applies.

Claim for possession: failure by a defendant to acknowledge service

Rule 4.—(1) Where in a mortgage claim in the Chancery Division being a claim in which the claimant is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both, any defendant fails to acknowledge service of the claim form, the following provisions of this rule shall apply, and references in those provisions to the defendant shall be construed as references to any such defendant.

(2) Not less than 4 clear days before the day fixed for the first hearing of the claim the claimant must serve on the defendant a copy of the notice of appointment for the hearing and a copy of the witness statement or affidavit in support of the claim.

(4) Where the hearing is adjourned, then, subject to any directions given by the Court, the claimant must serve notice of the appointment for the adjourned hearing, together with a copy of any further

(33) 1974 c. 39.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

witness statement or affidavit intended to be used at that hearing, on the defendant not less than 2 clear days before the day fixed for the hearing.

(5) Service under paragraph (2) or (4) and the manner in which it was effected, may be proved by a certificate signed by the claimant, if he sues in person, and otherwise by his solicitor.

The certificate may be indorsed on the witness statement or affidavit in support of the claim or, as the case may be, on any further witness statement or affidavit intended to be used at an adjourned hearing.

(6) A copy of any exhibit to a witness statement or affidavit need not accompany the copy of the witness statement or affidavit served under paragraph (2) or (4).

Claim in Chancery Division for possession or payment: evidence

Rule 5.—(1) The witness statement or affidavit in support of the claim (other than a claim to which rule 5A applies) to which this rule applies is begun must comply with the following provisions of this rule.

This rule applies to a mortgage claim in the Chancery Division in which the claimant is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both.

(2) The witness statement or affidavit must exhibit a true copy of the mortgage and the original mortgage or, in the case of a registered charge, the charge certificate must be produced at the hearing of the claim.

(2A) Unless the Court otherwise directs the witness statement or affidavit may contain statements of information or belief with the sources and grounds thereof.

(3) Where the claimant claims delivery of possession the witness statement or affidavit must show the circumstances under which the right to possession arises and, except where the Court in any case or class of case otherwise directs, the state of the account between the mortgagor and mortgagee with particulars of—

- (a) the amount of the advance,
- (b) the amount of the periodic payments required to be made,
- (c) the amount of any interest or instalments in arrear at the date of issue of the claim form and at the date of the witness statement or affidavit, and
- (d) the amount remaining due under the mortgage.

(4) Where the claimant claims delivery of possession the witness statement or affidavit must—

- (a) give particulars of every person who to the best of the claimant's knowledge is in possession of the mortgaged property; and
- (b) state, in the case of a dwelling house, whether—
 - (i) a land charge of Class F has been registered, or a notice or caution registered under s.2 (7) of the Matrimonial Homes Act 1967⁽³⁴⁾ or a notice registered under section 2 (8) of the Matrimonial Homes Act 1983⁽³⁵⁾ has been entered, and, if so, on whose behalf; and
 - (ii) he has served notice of the proceedings on the person on whose behalf the land charge is registered or the notice or caution entered.

(5) If the mortgage creates a tenancy other than a tenancy at will between the mortgagor and mortgagee, the witness statement or affidavit must show how and when the tenancy was determined and if by service of notice when the notice was duly served.

⁽³⁴⁾ 1967 c. 75.

⁽³⁵⁾ 1983 c. 19.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(6) Where the claimant claims payment of money secured by the mortgage the witness statement or affidavit must show how the claim is calculated including—

- (a) the amount of the advance and the amount and dates of any periodic repayments and any interest claimed;
- (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 the date of commencement of the proceedings and at a stated date not more than 14 days after the date of commencement of the proceedings, specifying the amount of the solicitor's costs and administrative charges which would be payable;
- (c) the dates between which a particular rate of interest applied, the number of days in that period, and the capital on which the interest was calculated.

(7) Where the claimant's claim includes a claim for interest to judgment, the witness statement or affidavit must state the amount of a day's interest.

Claim for the enforcement of charging order by sale

Rule 5A.—(1) This rule applies to a mortgage claim in the Chancery Division to enforce a charging order by sale of the property charged.

(2) The witness statement or affidavit in support of the claim must—

- (a) identify the charging order sought to be enforced and the subject matter of the charge;
- (b) specify the amount in respect of which the charge was imposed and the balance outstanding at the date of the witness statement or affidavit;
- (c) verify, so far as known, the debtor's title to the property charged;
- (d) identify any prior incumbrancer on the property charged stating, so far as is known, the names and addresses of the incumbrancers and the amounts owing to them;
- (e) set out the claimant's proposals as to the manner of sale of the property charged together with estimates of the gross price which would be obtained on a sale in that manner and of the costs of such a sale; and
- (f) where the property charged consists of land in respect of which the claimant claims delivery of possession—
 - (i) give particulars of every person who to the best of the claimant's knowledge is in possession of the property charged or any part of it; and
 - (ii) state, in the case of a dwelling house, whether a land charge of Class F has been registered, or a notice or caution pursuant to section 2 (7) of the Matrimonial Homes Act 1967, or a notice pursuant to section 2 (8) of the Matrimonial Homes Act 1983 has been entered and, if so, on whose behalf, and whether he has served notice of the proceedings on the person on whose behalf the land charge is registered or the notice or caution entered.

Foreclosure in redemption claim

Rule 7 Where foreclosure has taken place by reason of the failure of the claimant in a mortgage claim for redemption to redeem, the defendant in whose favour the foreclosure has taken place may apply in accordance with CPR Part 23 for an order for delivery to him of possession of the mortgaged property, and the Court may make such order thereon as it thinks fit.

*Status: Point in time view as at 01/04/2001.
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)*

RSC ORDER 91 REVENUE PROCEEDINGS

Assignment to Chancery Division, etc.

Rule 1 The following proceedings, namely—

- (a) any case stated for the opinion of the High Court under—
 - (i) section 13 [^{F75}and 13B] of the Stamp Act 1891(36), or
 - (ii) section 705A of the Income and Corporation Taxes Act 1988(37), or
 - (iii) regulation 22 of the General Commissioners (Jurisdiction and Procedure) Regulations 1994(38);
- (b) any appeal to the High Court under—
 - (i) section 53, 56A or 100C (4) of the Taxes Management Act 1970(39), or
 - (ii) section 222 (3), 225, 249 (3) or 251 of the Inheritance Tax Act 1984(40), or
 - (iii) regulation 8 (3) or 10 of the Stamp Duty Reserve Tax Regulations 1986(41);
- (c) any application for permission to appeal under the said section 222 (3) or the said regulation 8 (3); and
- (d) proceedings to which the provisions of section 56A of the Taxes Management Act 1970(42) apply under any enactment or regulation,

shall be assigned to the Chancery Division and heard and determined by a single judge.

Textual Amendments

F75 Words in Sch. 1 RSC Order 91 rule 1(a)(i) inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), 24

Appeal under section 222 of the Inheritance Tax Act 1984(43)

^{F76}**Rule 2**

Textual Amendments

F76 Sch. 1 RSC Order 91 rule 2 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), [Sch. 8](#) (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

Setting down case stated under Taxes Management Act 1970

^{F77}**Rule 3**

(36) 1891 c. 39; section 13 was amended by the Administration of Justice (Miscellaneous Provisions) Act 1933 (c. 36), section 10(3), schedule 3.
 (37) 1988 c. 1; section 705A was inserted by S.I. 1994/1813.
 (38) S.I. 1994/1812.
 (39) 1970 c. 9; sections 53 and 56A were substituted by S.I. 1994/1813. Section 100C was inserted by the Finance Act 1989 (c. 26).
 (40) 1984 c. 51; sections 225 and 251 were substituted by S.I. 1994/1813.
 (41) S.I. 1986/1711.
 (42) 1970 c. 9; section 56A was substituted by S.I. 1994/1813.
 (43) 1984 c. 51.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Textual Amendments

F77 Sch. 1 RSC Order 91 rule 3 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

Case stated: notice to be given of certain matters

^{F78}**Rule 4**

Textual Amendments

F78 Sch. 1 RSC Order 91 rule 4 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

Appeals under section 53 and 100C (4) of the Taxes Management Act 1970

^{F79}**Rule 5**

Textual Amendments

F79 Rule 5, Sch. 1 RSC Order 91 rule 5 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

Appeals under section 56A of the Taxes Management Act 1970, section 225 of the Inheritance Tax Act 1984 and regulation 10 of the Stamp Duty Reserve Tax Regulations 1986

^{F80}**Rule 5A**

Textual Amendments

F80 Sch. 1 RSC Order 91 rule 5A revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

Appeals from value added tax tribunals

^{F81}**Rule 6**

Textual Amendments

F81 Sch. 1 RSC Order 91 rule 6 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

RSC ORDER 92

LODGMET, INVESTMENT, ETC., OF FUNDS IN COURT: CHANCERY DIVISION

Payment into court by life assurance company

Rule 1.—(1) A company wishing to make a payment into court under the Life Assurance Companies (Payment into Court) Act, 1896⁽⁴⁴⁾ (hereinafter referred to as “the Act of 1896”) must file a witness statement or affidavit, made by its secretary or other authorised officer, setting out—

- (a) a short description of the policy in question and a statement of the persons entitled thereunder with their names and addresses so far as known to the company,
- (b) a short statement of the notices received by the company claiming an interest in or title to the money assured, or withdrawing any such claim, with the dates of receipt thereof and the names and addresses of the persons by whom they were given,
- (c) a statement that, in the opinion of the board of directors of the company, no sufficient discharge can be obtained otherwise than by payment into court under the Act of 1896,
- (d) the submission by the company to pay into court such further sum, if any, as the Court may direct and to pay any costs ordered by the Court to be paid by the company,
- (e) an undertaking by the company forthwith to send to the Accountant General any notice of claim received by the company after the making of the witness statement or affidavit with a letter referring to the title of the witness statement or affidavit, and
- (f) an address where the company may be served with any application, claim form, court order, or notice of any proceedings, relating to the money paid into court.

(2) The company shall not deduct from the money payable by them under the policy any costs of or incidental to the payment into court.

(3) No payment shall be made into court under the Act of 1896 where any proceedings to which the company is a party are pending in relation to the policy or moneys thereby assured except with the leave of the Court to be obtained by an application made in accordance with CPR Part 23.

(4) Unless the Court otherwise directs, a CPR Part 23 application by which a claim with respect to money paid into court under the Act of 1896 is made shall not, except where the application includes an application for payment of a further sum of costs by the company who made the payment, be served on that company, but it must be served on every person who appears by the witness statement or affidavit on which the payment into court was made to be entitled to, or interested in, the money in court or to have a claim upon it or who has given a notice of claim which has been sent to the Accountant General in accordance with the undertaking referred to in rule 1 (1)(e).

Payment into court under Trustee Act 1925

Rule 2.—(1) Subject to paragraph (2) any trustee wishing to make a payment into court under section 63 of the Trustee Act 1925⁽⁴⁵⁾, must make and file a witness statement or affidavit setting out—

- (a) a short 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) the names of the persons interested in or entitled to the money or securities to be paid into court with their addresses so far as known to him,

⁽⁴⁴⁾ 1896 c. 8.

⁽⁴⁵⁾ 1925 c. 19; section 63 was amended by the Administration of Justice Act 1965 (c. 2), section 36(4), schedule 3.

- (c) his submission to answer all such inquiries relating to the application of such money or securities as the Court may make or direct, and
- (d) an address where he may be served with any application notice or order, or notice of any proceedings, relating to the money or securities paid into court.

(2) Where the money or securities represents a legacy, or residue or any share thereof, to which an child or a person resident outside the United Kingdom is absolutely entitled, no witness statement or affidavit need be filed under paragraph (1) and the money or securities may be paid into court in the manner prescribed by the Supreme Court Funds Rules for the time being in force.

Payments into court under section 26, Banking Act 1987

Rule 3A Where the Bank of England, having sold shares in pursuance of an order under section 26 of the Banking Act 1987⁽⁴⁶⁾, pays the proceeds of sale, less the costs of the sale, into court, it shall cause a witness statement or affidavit to be made and filed setting out the names and, so far as known, the addresses of the persons beneficially entitled to the proceeds of sale and shall file a copy of the order.

Notice of lodgment

Rule 4 Any person who has lodged money or securities in court in accordance with rule 1, 2, or 3A must forthwith send notice of the lodgment to every person appearing from the witness statement or affidavit on which the lodgment was made to be entitled to, or to have an interest in, the money or securities lodged.

Applications with respect to funds in court

Rule 5.—(1) Where an application to the High Court—

- (a) for the payment or transfer to any person of any funds in court standing to the credit of any cause or matter or for the transfer of any such funds to a separate account or for the payment to any person of any dividend of or interest on any securities or money comprised in such funds;
- (b) for the investment, or change of investment, of any funds in court;
- (c) for payment of the dividends of or interest on any funds in court representing or comprising money or securities lodged in court under any enactment; or
- (d) for the payment or transfer out of court of any such funds as are mentioned in subparagraph (c),

is made in the Chancery Division the application may be disposed of by the court sitting in private.

(2) Subject to paragraph (3), any such application made in the Chancery Division must be made by the issue of a claim form, unless the application is made in pending proceedings or an application for the same purpose has previously been made by such a claim form.

(3) Where an application under paragraph (1)(d) is required to be made by a claim form, then, if the funds to which the application relates do not exceed £15,000 in value, and subject to paragraph (4), the application may be made to the chief master, or to such master as he may designate, and the master may dispose of the application or may direct it to be made by a claim form.

Unless otherwise directed, an application under this paragraph shall be made by witness statement or affidavit, and need not be served on any other person.

⁽⁴⁶⁾ 1987 c. 22; section 26 was amended by the Bank of England Act 1998 (c. 11), section 23(1), schedule 5, paragraphs 1,9.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(4) Where the application to which paragraph (3) applies relates to funds lodged in court in a Chancery district registry, the application may be made to, and the power conferred by paragraph (3) on a master may be exercised by, the district judge of that registry.

(5) This rule does not apply to any application for an order under CPR Part 36 and CPR Part 37.

RSC ORDER 93

APPLICATIONS AND APPEALS TO HIGH COURT UNDER VARIOUS ACTS: CHANCERY DIVISION

Notice of petition under section 55 of National Debt Act 1870(47)

Rule 1 Where a petition is presented under section 55 of the National Debt Act, 1870, the petitioner must, before the petition is heard, apply to a judge of the Chancery Division ^{F82}... for directions with respect to giving notice of the claim to which the petition relates, and the judge may direct that notice thereof be given by advertisement or in such other manner as he may direct or may dispense with the giving of such notice.

Textual Amendments

F82 Words in [Sch. 1 RSC Order 93 rule 1](#) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, [62\(g\)](#)

Application under Public Trustee Act 1906(48)

Rule 2 Without prejudice to sections 10 (2) and 13 (7) of the Public Trustee Act, 1906, the jurisdiction of the High Court under that Act shall be exercised by a judge of the Chancery Division sitting in private.

Proceedings under Trustee Act 1925(49)

Rule 4 All proceedings brought in the High Court under the Trustee Act, 1925, shall be assigned to the Chancery Division.

Application under section 2(3) of Public Order Act 1936(50)

Rule 5.—(1) Proceedings by which an application is made to the High Court under section 2 (3) of the Public Order Act 1936, shall be assigned to the Chancery Division.

(2) Such an application shall be made by claim form and the persons to be made defendants to the claim shall be such persons as the Attorney-General may determine.

(3) In the absence of other sufficient representation the Court may appoint the official solicitor to represent any interests which in the opinion of the Court ought to be represented on any inquiry directed by the Court under the said section 2 (3).

(47) [1870 c. 71.](#)

(48) [1906 c. 55.](#)

(49) [1925 c. 19.](#)

(50) [1936 c. 2.](#)

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Application under Variation of Trusts Act 1958(51)

Rule 6.—(1) Proceedings by which an application is made to the High Court under section 1 of the Variation of Trusts Act 1958, shall be assigned to the Chancery Division.

(2) Such an application shall be made by claim form and in addition to any other persons who are necessary and proper defendants to the claim, the settlor and any other person who provided property for the purposes of the trusts to which the application relates must, if still alive and not the claimant, be made a defendant unless the Court for some special reason otherwise directs.

Right of appeal under Law of Property Act

Rule 9 An appeal shall lie to the High Court against a decision of the Minister of Agriculture, Fisheries and Food under paragraph 16 of Schedule 15 to the Law of Property Act 1922(52).

Determination of appeal or case stated under various Acts

Rule 10.—(1) An appeal to the High Court against an order of a county court made under the Land Registration Act 1925(53), shall be heard and determined by a Divisional Court of the Chancery Division.

^{F83}(2)

^{F84}(3)

Textual Amendments

F83 Sch. 1 RSC Order 93 rule 10(2) revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rule 1\(b\)](#), [Sch. 8](#) (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), [rules 1, 2](#))

F84 Sch. 1 RSC Order 93 rule 10(3) revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rule 1\(b\)](#), [Sch. 8](#) (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), [rules 1, 2](#))

Appeal under section 17 of Industrial Assurance Act 1923(54)

^{F85}**Rule11**

Textual Amendments

F85 Sch. 1 RSC Order 93 rule 11 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rule 1\(b\)](#), [Sch. 8](#) (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), [rules 1, 2](#))

Appeals, etc., affecting industrial and provident societies, etc.

^{F86}**Rule12**

(51) [1958 c. 53](#).

(52) [1922 c. 16](#); Paragraph 16 was amended by the Law of Property (Amendment) Act [1924 \(c. 5\)](#), section 2, schedule 2.

(53) [1925 c. 21](#).

(54) [1923 c. 8](#); section 17 was amended by the Friendly Societies Act [1971 \(c. 66\)](#), sections 5(5), 14(2), schedule 3 and by the Friendly Societies Act [1992 \(c. 40\)](#), section 100, schedule 19, Part I, paragraphs 1, 5 and 6.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Textual Amendments

F86 Sch. 1 RSC Order 93 rule 12 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

Application under section 19 or 27 of Leasehold Reform Act 1967(55)

Rule 15 Proceedings by which an application is made to the High Court under section 19 or 27 of the Leasehold Reform Act 1967 shall be assigned to the Chancery Division.

Proceedings under the Commons Registration Act 1965(56)

Rule 16.—(1) Proceedings in the High Court under section 14 or 18 of the Commons Registration Act 1965 shall be assigned to the Chancery Division.

^{F87}(2)

^{F88}(3)

Textual Amendments

F87 Sch. 1 RSC Order 93 rule 16(2) revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

F88 Sch. 1 RSC Order 93 rule 16(3) revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

Proceedings under section 21 or 25 of the Law of Property Act 1969(57)

Rule 17 Proceedings in the High Court under section 21 or 25 of the Law of Property Act 1969 shall be assigned to the Chancery Division.

Proceedings under section 86 of the Civil Aviation Act 1982(58)

Rule 18.—(1) Proceedings in the High Court for the amendment of any register of aircraft mortgages kept pursuant to an Order in Council made under section 86 of the Civil Aviation Act 1982 shall be assigned to the Chancery Division.

(2) Such proceedings shall be brought by claim form and every person, other than the claimant, appearing in the register as mortgagee or mortgagor of the aircraft in question shall be made a defendant to the claim.

(3) A copy of the claim form shall also be sent to the Civil Aviation Authority and the Authority shall be entitled to be heard in the proceedings.

(55) [1967 c. 88](#); section 19 was amended by the [Local Land Charges Act 1975 \(c. 76\)](#), section 17(2), schedule 1.

(56) [1965 c. 65](#).

(57) [1969 c. 59](#); section 25 was amended by the [Limitation Act 1980 \(c. 58\)](#), section 40(2), schedule 3, paragraph 9; and by the [Land Charges Act 1972 \(c. 61\)](#), section 18, schedule 5.

(58) [1982 c. 16](#); section 86 was amended by the [Merchant Shipping Act 1995 \(c. 21\)](#), section 314(2), schedule 13, paragraph 64.

Proceedings under s.85 (7) of the Fair Trading Act 1973(59) and the Control of Misleading Advertisements Regulations 1988(60)

Rule 19.—(1) Proceedings to which this rule applies shall be assigned to the Chancery Division and may be begun by claim form.

(2) This rule applies to any application to the High Court for an order under s.85 (7) of the Fair Trading Act 1973, or under any provision to which that section applies or under the Control of Misleading Advertisements Regulations 1988.

Proceedings under section 50 of the Administration of Justice Act 1985(61)

Rule 20.—(1) Proceedings by which an application is made to the High Court under section 50 of the Administration of Justice Act 1985 for an order appointing a substituted personal representative or terminating the appointment of an existing personal representative shall be assigned to the Chancery Division.

(2) An application under the said section 50 shall be made by claim form or, if it is made in existing proceedings, by an application in accordance with CPR Part 23.

(3) All the existing personal representatives and, subject to any direction of the Court, such of the persons having a beneficial interest in the estate as the claimant thinks fit, must be made parties to the application.

(4) Such an application must be supported by:

- (a) a sealed or certified copy of the grant of probate or letters of administration, and
- (b) a witness statement or affidavit containing the grounds of the application and the following particulars so far as the claimant can gain information with regard to them:—
 - (i) short particulars of the property comprised in the estate, with an approximate estimate of its income, and capital value;
 - (ii) short particulars of the liabilities of the estate;
 - (iii) particulars of the persons who are in possession of the documents relating to the estate;
 - (iv) the names of the beneficiaries and short particulars of their respective interests; and
 - (v) the name, address and occupation of any proposed substituted personal representative;
- (c) where the application is for the appointment of a substituted personal representative:—
 - (i) a signed or (in the case of the Public Trustee or a corporation) sealed consent to act, and
 - (ii) a witness statement or affidavit as to the fitness of the proposed substituted personal representative, if an individual, to act.

(5) On the hearing of an application under the said section 50 the personal representative shall produce to the Court the grant of representation to the deceased's estate and, if an order is made under the said section, the grant (together with a sealed copy of the order) shall be sent to and remain in the custody of the principal registry of the Family Division until a memorandum of the order has been endorsed on or permanently annexed to the grant.

(59) 1973 c. 41.

(60) S.I. 1988/915.

(61) 1985 c. 61.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Proceedings under section 48 of the Administration of Justice Act 1985

Rule 21 Proceedings by which an application is made to the High Court under section 48 of the Administration of Justice Act 1985 shall be assigned to the Chancery Division and shall be begun by claim form but the claim need not be served on any other party.

Proceedings under the Financial Services Act 1986(62)

Rule 22.—(1) In this rule “the Act” means the Financial Services Act 1986 and a section referred to by number means the section so numbered in that Act.

(2) Proceedings in the High Court under the Act (other than application for mandamus) and actions for damages for breach of a statutory duty imposed by the Act shall be assigned to the Chancery Division.

(3) Such proceedings and actions shall be begun by claim form except for applications by petition by the Secretary of State or a designated agency under section 72.

(4) No order shall be made under sections 6, 61, 71, 91, 104, 131, 184 or paragraph 22 of Schedule 11 against any person unless he is a party to the relevant proceedings.

Where there is a question of the construction of any of the rules or regulations referred to in section 61 (1)(a) of the Act, the Secretary of State, designated agency, or any person referred to in section 61 (1)(a)(iv) may make representations to the Court.

Proceedings under the Banking Act 1987(63)

Rule 23.—(1) In this rule “the Act” means the Banking Act 1987 and a section referred to by number means the section so numbered in the Act.

(2) Proceedings in the High Court under the following sections of the Act shall be assigned to the Chancery Division and shall be begun—

- (a) as to applications under section 26 (3), 71 (3) and (5) and 77 (3) and (5), by claim form;
- (b) as to appeals under section 31 (1), by notice of appeal;
- (c) as to applications under sections 48 (1), 49 (1) and 93 (1) and (2), by claim form.

(3) No order shall be made under section 48 (1) against any person unless he is a party to the proceedings.

(4) Where an application has been made under section 71 (3) or (5) or section 77 (3) or (5) the Bank of England shall within 28 days after service on it of copies of the claimant’s witness statement or affidavit evidence cause a witness statement or affidavit to be made, filed and served on the claimant setting out the reasons for its objection to the claimant’s name.

RSC ORDER 94

APPLICATIONS AND APPEALS TO HIGH COURT UNDER VARIOUS ACTS: QUEEN'S BENCH DIVISION

Jurisdiction of High Court to quash certain orders, schemes, etc.

Rule 1.—(1) Where by virtue of any enactment the High Court has jurisdiction, on the application of any person, to quash or prohibit any order, scheme, certificate or plan, any amendment or approval

(62) 1986 c. 60.

(63) 1987 c. 22.

of a plan, any decision of a Minister or government department or any action on the part of a Minister or government department, the jurisdiction shall be exercisable by a single judge of the Queen's Bench Division.

(2) The application must be made by claim form which must state the grounds of the application.

Filing and service of claim form

Rule 2.—(1) A claim form under rule 1 must be filed at the Crown Office, and served, within the time limited by the relevant enactment for making the application.

(2) Subject to paragraph (4) the claim form must be served on the appropriate Minister or government department, and—

- (a) if the application relates to a compulsory purchase order made by an authority other than the appropriate Minister or government department, or to a clearance order under the Housing Act 1985(64), on the authority by whom the order was made;
- (b) if the application relates to a scheme or order to which Schedule 2 to the Highways Act 1980(65), applies made by an authority other than the Secretary of State, on that authority;
- (c) if the application relates to a structure plan, local plan or other development plan within the meaning of the Town and Country Planning Act 1990(66), on the local planning authority who prepared the plan;
- (d) if the application relates to any decision or order, or any action on the part of a Minister of the Crown to which section 21 of the Land Compensation Act 1961(67), or section 288 of the Town and Country Planning Act 1990, applies, on the authority directly concerned with such decision, order or action or, if that authority is the applicant, on every person who would, if he were aggrieved by the decision, order or action, be entitled to apply to the High Court under the said section 21 or the said section 245, as the case may be;
- (e) if the application relates to a scheme to which Schedule 32 to the Local Government, Planning and Land Act 1980(68) applies, on the body which adopted the scheme.

(3) In paragraph (2) “the appropriate Minister or government department” means the Minister of the Crown or government department by whom the order, scheme, certificate, plan, amendment, approval or decision in question was or may be made, authorised, confirmed, approved or given or on whose part the action in question was or may be taken.

(4) Where the application relates to an order made under the Road Traffic Regulation Act 1984(69), the claim form must be served—

- (a) if the order was made by a Minister of the Crown, on that Minister;
- (b) if the order was made by a local authority with the consent, or in pursuance of a direction, of a Minister of the Crown, on that authority and also on that Minister;
- (c) in any other case, on the local authority by whom the order was made.

Filing of witness statement or affidavits, etc.

Rule 3.—(1) Evidence at the hearing of an application under rule 1 shall be by witness statement or affidavit.

(64) 1985 c. 68.

(65) 1980 c. 66.

(66) 1990 c. 8.

(67) 1961 c. 33.

(68) 1980 c. 65.

(69) 1984 c. 27.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(2) Any witness statement or affidavit in support of the application must be filed by the applicant in the Crown Office within 14 days after service of the claim form and the applicant must, at the time of filing, serve a copy of the witness statement or affidavit and of any exhibit thereto on the respondent.

(3) Any witness statement or affidavit in opposition to the application must be filed by the respondent in the Crown Office within 21 days after the service on him under paragraph (2) of the applicant’s witness statement or affidavit and the respondent must, at the time of filing, serve a copy of his witness statement or affidavit and of any exhibit thereto on the applicant.

(4) When filing a witness statement or affidavit under this rule a party must leave a copy thereof and of any exhibit thereto at the Crown Office for the use of the Court.

(5) Unless the Court otherwise orders, an application under rule 1 shall not be heard earlier than 14 days after the time for filing a witness statement or affidavit by the respondent has expired.

Rectification of register of deeds of arrangement

Rule 4.—(1) Every application to the Court under section 7 of the Deeds of Arrangement Act, 1914(70), for an order—

- (a) that any omission to register a deed of arrangement within the time prescribed by that Act be rectified by extending the time for such registration, or
- (b) that any omission or mis-statement of the name, residence or description of any person be rectified by the insertion in the register of his true name, residence or description,

must be made by witness statement or affidavit without notice being served on any other party to a master of the Queen’s Bench Division.

(2) The witness statement or affidavit must set out particulars of the deed of arrangement and of the omission or mis-statement in question and must state the grounds on which the application is made.

Exercise of jurisdiction under Representation of the People Acts

Rule 5.—(1) Proceedings in the High Court under the Representation of the People Acts shall be assigned to the Queen’s Bench Division.

(2) Subject to paragraphs (3) and (4) the jurisdiction of the High Court under the said Acts in matters relating to parliamentary and local government elections shall be exercised by a Divisional Court.

(3) Paragraph (2) shall not be construed as taking away from a single judge or a master any jurisdiction under the said Acts which, but for that paragraph, would be exercisable by a single judge or, as the case may be, by a Master.

(4) Where the jurisdiction of the High Court under the said Acts is by a provision of any of those Acts made exercisable in matters relating to parliamentary elections by a single judge, that jurisdiction in matters relating to local government elections shall also be exercisable by a single judge.

^{F89}(5)

Textual Amendments

F89 Sch. 1 RSC Order 94 rule 5(5) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **47(a)**

(70) 1914 c. 47.

Appeal to High Court where Court's decision is final

^{F90}Rule 6

Textual Amendments

F90 Sch. 1 RSC Order 94 rule 6 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

Reference of question of law by Agricultural Land Tribunal

^{F91}Rule 7

Textual Amendments

F91 Sch. 1 RSC Order 94 rule 7 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

Tribunals and Inquiries Act 1992(71): appeal from tribunal

[^{F92}**Rule 8.**—(1) A person who was a party to proceedings before any such tribunal as is mentioned in section 11(1) of the Tribunals and Inquiries Act 1992 and is dissatisfied in point of law with the decision of the tribunal may appeal to the High Court.

(2) The appellant's notice must be served—

- (a) on the chairman of the tribunal;
- (b) in the case of a tribunal which has no chairman or member who acts as a chairman, on the member or members of that tribunal; or
- (c) in the case of any such tribunal as is specified in paragraph 16 of Schedule 1 to the said Act of 1992, on the secretary of the tribunal.

(3) Where an appeal is against the decision of a tribunal constituted under section 46 of the National Health Service Act 1977 the appellants's notice must be filed at the High Court within 14 days after the date of that decision.

(4) Where an appeal is against the decision of a tribunal established under section 1 of the Employment Tribunals Act 1996 the appellant's notice must be filed at the High Court within 42 days after the date of that decision.]

Textual Amendments

F92 Sch. 1 RSC Order 94 rule 8 substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **25(a)**

Tribunals and Inquiries Act 1992: case stated by tribunal

Rule 9.—(1) Any such tribunal as is mentioned in section 11 (1) of the Tribunals and Inquiries Act 1992 may, of its own initiative or at the request of any party to proceedings before it, state in the course of proceedings before it in the form of a special case for the decision of the High Court any question of law arising in the proceedings.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(2) Any party to proceedings before any such tribunal who is aggrieved by the tribunal’s refusal to state such a case may apply to the High Court for an order directing the tribunal to do so.

(3) A case stated by any such tribunal which has no chairman or member who acts as a chairman must be signed by the member or members of the tribunal.

Tribunals and Inquiries Act 1971(72): appeal from Minister of Transport

^{F93}**Rule 10**

Textual Amendments

F93 Sch. 1 RSC Order 94 rule 10 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rule 1\(b\)](#), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), [rules 1, 2](#))

Consumer Credit Act 1974(73): appeal from Secretary of State

^{F94}**Rule 10A**

Textual Amendments

F94 Sch. 1 RSC Order 94 rule 10A omitted (2.5.2000) by virtue of [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rule 1\(b\)](#), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), [rules 1, 2](#))

Case stated by Mental Health Review Tribunal

^{F95}**Rule 11**

Textual Amendments

F95 Sch. 1 RSC Order 94 rule 11 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rule 1\(b\)](#), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), [rules 1, 2](#))

Applications for permission under section 289 (6) of the Town and Country Planning Act 1990(74) and section 65 (5) of the Planning (Listed Buildings and Conservation Areas) Act 1990(75)

Rule 12.—(1) An application for permission to appeal to the High Court under section 289 of the Town and Country Planning Act 1990 or section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990 shall be made within 28 days after the date on which notice of the decision was given to the applicant.

(2) An application shall—

- (a) include, where necessary, any application to extend the time for applying,
- (b) be in writing setting out the reasons why permission should be granted, and if the time for applying has expired, the reasons why the application was not made within that time,

(72) [1971 c. 62.](#)
(73) [1974 c. 39.](#)
(74) [1990 c. 8.](#)
(75) [1990 c. 9.](#)

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- (c) be made by filing it in the Crown Office together with the decision, a draft [F96appellant's notice], and a witness statement or affidavit verifying any facts relied on,
 - (d) before being filed under sub-paragraph (c), be served together with the draft [F96appellant's notice] and a copy of the witness statement or affidavit to be filed with the application, upon the persons who are referred to in rule 13 (5), and
 - (e) be accompanied by a witness statement or affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the application and, if any person who ought to be served has not been served, the witness statement or affidavit must state that fact and the reason for it.
- (3) An application shall be heard—
- (a) by a single judge F97 ...;
 - (b) unless the Court otherwise orders, not less than 21 days after it was filed at the Crown Office.

Any person served with the application shall be entitled to appear and be heard.

(4) If on the hearing of an application the Court is of opinion that any person who ought to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the application may be served on that person.

- (5) If the Court grants permission—
- (a) it may impose such terms as to costs and as to giving security as it thinks fit;
 - (b) it may give directions; and
 - (c) the [F96appellant's notice] by which the appeal is to be brought shall be served and filed within 7 days of the grant.

(6) Any respondent who intends to use a witness statement or affidavit at the hearing shall file it in the Crown Office and serve a copy thereof on the applicant as soon as is practicable and in any event, unless the Court otherwise allows, at least 2 days before the hearing. The Court may allow the applicant to use a further witness statement or affidavit.

Textual Amendments

F96 Words in [Sch. 1 RSC Order 94](#) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rules 1\(b\)](#), [25\(b\)](#)

F97 Words in [Sch. 1 RSC Order 94 rule 12\(3\)\(a\)](#) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), [rules 1](#), [63\(d\)](#)

Proceedings under sections 289 and 290 of the Town and Country Planning Act 1990 and under section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990

Rule 13.—(1) In this rule a reference to “section 65” is a reference to section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990, but, save as aforesaid, a reference to a section by number is a reference to the section so numbered in the Town and Country Planning Act 1990.

(2) An appeal shall lie to the High Court on a point of law against a decision of the Secretary of State under subsection (1) or (2) of section 289 or under subsection (1) of section 65 at the instance of any person or authority entitled to appeal under any of those subsections respectively.

(3) In the case of a decision to which section 290 applies, the person who made the application to which the decision relates, or the local planning authority, if dissatisfied with the decision in point of law, may appeal against the decision to the High Court.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(4) Any appeal under section 289 (1) or (2), section 65 (1) or section 290, and any case stated under section 289 (3) or section 65 (2), shall be heard and determined by a single judge unless the Court directs that the matter shall be heard and determined by a Divisional Court.

(5) The persons to be served with the [F98 appellant’s notice] by which an appeal to the High Court is brought by virtue of section 289 (1) or (2), section 65 (1) or section 290 are—

- (a) the Secretary of State;
- (b) the local planning authority who served the notice or gave the decision, as the case may be, or, where the appeal is brought by that authority, the appellant or applicant in the proceedings in which the decision appealed against was given;
- (c) in the case of an appeal brought by virtue of section 289 (1) or section 65 (1), any other person having an interest in the land to which the notice relates, and;
- (d) in the case of an appeal brought by virtue of section 289 (2), any other person on whom the notice to which those proceedings related was served.

(6) The Court hearing any such appeal may remit the matter to the Secretary of State to the extent necessary to enable him to provide the Court with such further information in connection with the matter as the Court may direct.

(7) Where the Court is of opinion that the decision appealed against was erroneous in point of law, it shall not set aside or vary that decision but shall remit the matter to the Secretary of State with the opinion of the Court for re-hearing and determination by him.

F99(8)

(9) The Court may give directions as to the exercise, until an appeal brought by virtue of section 289 (1) is finally concluded and any re-hearing and determination by the Secretary of State has taken place, of the power to serve, and institute proceedings (including criminal proceedings) concerning—

- (a) a stop notice under section 183, and;
- (b) a breach of condition notice under section 187A.

Textual Amendments

F98 Words in Sch. 1 RSC Order 94 rule 13(5) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **25(c)(i)**

F99 Sch. 1 RSC Order 94 rule 13(8) revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

Applications under section 13 Coroners Act 1988(76)

Rule 14.—(1) Any application under section 13 of the Coroners Act 1988 shall be heard and determined by a Divisional Court.

(2) The application must be made by claim form and the claim form must state the grounds of the application and, unless the application is made by the Attorney General, shall be accompanied by his fiat.

(3) The claim form must be filed in the Crown Office and served upon all persons directly affected by the application within six weeks after the grant of the fiat.

Applications under section 42, Supreme Court Act 1981(77)

Rule 15.—(1) Every application to the High Court by the Attorney General under section 42 of the Supreme Court Act 1981 shall be heard and determined by a Divisional Court.

(2) The application must be made by claim form which, together with a witness statement or affidavit in support, shall be filed in the Crown Office and served on the person against whom the order is sought.

[^{F100}Proceedings under the Protection from Harassment Act 1997

Rule 16.—(1) In this rule, “the Act” means the Protection from Harassment Act 1997.

(2) This rule shall apply to injunctions granted on or after 1st September 1998 and injunctions granted before that date shall be treated as if this rule had not come into force.

(3) Proceedings in the High Court under section 3 of the Act shall be assigned to the Queen’s Bench Division.

(4) An application for the issue of a warrant for the arrest of the defendant under section 3(3) of the Act shall—

- (a) state that it is an application for the issue of a warrant for the arrest of the defendant;
- (b) set out the grounds for making the application and be supported by an affidavit or evidence on oath;
- (c) state whether the claimant has informed the police of the defendant’s conduct as described in sub-paragraph (b); and
- (d) state whether, to the claimant’s knowledge, criminal proceedings are being pursued.

(5) The Court before whom a person is brought following his arrest may—

- (a) determine whether the facts, and the circumstances which led to the arrest, amounted to disobedience of the injunction, or
- (b) adjourn the proceedings and, where such an order is made, the arrested person shall be released and—
 - (i) may be dealt with within 14 days of the day on which he was arrested; and
 - (ii) be given not less than 2 days’ notice of the adjourned hearing.

(6) This rule applies to proceedings under section 3 of the Act in a county court with the following modifications—

- (a) Such proceedings in a county court shall be begun—
 - (i) in the court for the district in which the claimant resides or carries on business; or
 - (ii) in the court for the district in which the defendant resides or carries on business.
- (b) Where a county court—
 - (i) grants an injunction under section 3 of the Act; or
 - (ii) issues a warrant for the arrest of the defendant, the injunction or warrant shall be issued in the appropriate prescribed form.]

Textual Amendments

F100 Sch. 1 RSC Order 94 rule 16 inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, 48

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

RSC ORDER 95

BILLS OF SALE ACTS 1878(78) AND 1882(79) AND THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT 1967(80)

Rectification of register

Rule 1.—(1) Every application to the Court under section 14 of the Bills of Sale Act 1878, for an order—

- (a) that any omission to register a bill of sale or a witness statement or affidavit of renewal thereof within the time prescribed by that Act be rectified by extending the time for such registration, or
- (b) that any omission or mis-statement of the name, residence or occupation of any person be rectified by the insertion in the register of his true name, residence or occupation,

must be made by witness statement or affidavit to a master of the Queen’s Bench Division, and a copy of the witness statement or affidavit need not be served on any other person.

(2) Every application for such an order as is described in paragraph (1) shall be supported by a witness statement or affidavit setting out particulars of the bill of sale and of the omission or mis-statement in question and stating the grounds on which the application is made.

Entry of satisfaction

Rule 2.—(1) Every application under section 15 of the Bills of Sale Act 1878, to a master of the Queen’s Bench Division for an order that a memorandum of satisfaction be written on a registered copy of a bill of sale must [^{F101}be made by claim form.]

^{F102}(a)

^{F102}(b)

[^{F103}(1A) If a consent to the satisfaction signed by the person entitled to the benefit of the bill of sale can be obtained, from claim form and the documents set out in paragraph (2) must not be served on any other person.]

(2) [^{F104}Where paragraph (1A) applies, the claim form] must be supported by—

- (a) particulars of the consent referred to in that paragraph; and
- (b) a witness statement or affidavit by a witness who attested the consent verifying the signature on it.

(3) [^{F105}Where paragraph (1A) does not apply, the claim form] must be served on the person entitled to the benefit of the bill of sale and must be supported by evidence that the debt (if any) for which the bill of sale was made has been satisfied or discharged.

Textual Amendments

F101 Words in Sch. 1 RSC Order 95 rule 2(1) inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, [49\(a\)\(ii\)](#)

F102 Sch. 1 RSC Order 95 rule 2(1)(a)(b) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, [49\(a\)\(i\)](#)

(78)
(79)
(80)

1878 c. 31.
1882 c. 43.
1967 c. 48.
112

F103 Sch. 1 RSC Order 95 rule 2(1A) inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **49(b)**

F104 Words in Sch. 1 RSC Order 95 rule 2(2) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **49(c)**

F105 Words in Sch. 1 RSC Order 95 rule 2(3) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **49(d)**

Restraining removal on sale of goods seized

Rule 3 An application to the Court under the proviso to section 7 of the Bills of Sale Act (1878) Amendment Act 1882 must be made by the issue of a claim form.

Search of register

Rule 4 Any master of the Queen’s Bench Division shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the register of bills of sale and issue a certificate of the result of the search.

Application under section 1 (5) of the Industrial and Provident Societies Act 1967(81)

Rule 5 Every application to the Court under section 1 (5) of the Industrial and Provident Societies Act 1967 for an order—

- (a) that the period for making an application for recording a charge be extended, or
- (b) that any omission from or misstatement in such an application be rectified,

must be made to a Master of the Queen’s Bench Division by witness statement or affidavit setting out particulars of the charge and of the omission or misstatement in question and stating the grounds of the application, and need not be served on any other person.

Assignment of book debts

Rule 6.—(1) There shall continue to be kept in the Central Office, under the supervision of the registrar, a register of assignments of book debts.

(2) Every application for registration of an assignment of a book debt under section 344 of the Insolvency Act 1986(82) shall be made by producing at the Filing and Record Department of the Central Office—

- (a) a true copy of the assignment, and of every schedule thereto, and
- (b) a witness statement or affidavit verifying the date and the time, and the due execution of the assignment in the presence of the witness, and setting out the particulars of the assignment and the parties thereto.

(3) On an application being made in accordance with the preceding paragraph, the documents there referred to shall be filed, and the particulars of the assignment, and of the parties to it, shall be entered in the register.

(4) In this rule, “the registrar” has the meaning given in section 13 of the Bills of Sale Act 1878.

(81) 1967 c. 48.

(82) 1986 c. 45.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

RSC ORDER 96

THE MINES (WORKING FACILITIES AND SUPPORT) ACT 1966(83), ETC.

Assignment to Chancery Division

Rule 1 Any proceedings in which the jurisdiction conferred on the High Court by section 1 of the Railway and Canal Commission (Abolition) Act 1949(84), is invoked shall be assigned to the Chancery Division and be begun by claim form which need not be served on any other party.

Reference by Secretary of State of certain applications

Rule 2 Where under any provision of the Mines (Working Facilities and Support) Act 1966, the Secretary of State refers any application to the High Court, he shall—

- (a) file the reference, signed by him or by an officer authorised by him for the purpose, in Chancery Chambers, together with all documents and plans deposited with him by the applicant, and
- (b) within 3 days after doing so give notice to the applicant of the filing of the reference.

Issue of claim form

Rule 3 Within 10 days after receipt of the notice mentioned in rule 2 (b) the applicant must issue a claim form which need not be served on any other party which must state the application of the applicant under the said Act of 1966 and any other relief sought.

Appointment for directions

Rule 4.—(1) Within 7 days after issue of the claim form the applicant, having applied at Chancery Chambers for the name of the master assigned to hear the claim, must take an appointment before that master for the hearing of the claim and must forthwith serve notice of the appointment on the Secretary of State.

(2) Not less than 2 clear days before the day appointed for the first hearing of the claim, the applicant must leave at Chancery Chambers—

- (a) a witness statement or affidavit of facts in support of the claim, giving particulars of all persons known to the applicant to be interested in or affected by the application, and
- (b) a draft of any proposed advertisement or notice of the application.

(3) On the appointment the master shall—

- (a) fix a time within which any notice of objection under rule 5 must be given,
- (b) fix a date for the further hearing of the claim, and
- (c) direct what, if any, advertisements and notices of the application and of the date fixed for the further hearing of the claim are to be inserted and given, and what persons, if any, are to be served with a copy of the application and of any other document in the proceedings.

(4) Any such advertisement or notice must include a statement of the effect of rule 5.

Objections to application

Rule 5.—(1) Any person wishing to oppose the application must, within the time fixed by the master under rule 4 (3), serve on the applicant a notice of objection stating—

(83)

1966 c. 4.

(84) 1949 c. 11.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- (a) his name and address and the name and address of his solicitor, if any,
 - (b) the grounds of his objection and any alternative methods of effecting the objects of the application which he alleges may be used, and
 - (c) the facts on which he relies.
- (2) Any notice required to be served on a person who has given notice of objection (hereafter in this Order referred to as “the objector”) may be served by delivering it or sending it by prepaid post—
- (a) where the name and address of a solicitor is stated in the notice of objection, to the solicitor at that address, and
 - (b) in any other case, to the objector at his address stated in the notice of objection.
- (3) An objector shall be entitled to appear in person or by a solicitor or counsel at the further hearing of the claim and to take such part in the proceedings as the master or judge thinks fit; but if he does not so appear his notice of objection shall be of no effect and he shall not be entitled to take any part in the proceedings unless the master or judge otherwise orders.

List of objectors

Rule 6 Not less than 2 clear days before the day fixed for the further hearing of the claim, the applicant must leave at Chancery Chambers any notices of objection served on the applicant together with a list arranged in 3 columns stating—

- (a) in column 1, the names and addresses of the objectors,
- (b) in column 2, the names and addresses of their respective solicitors, if any, and
- (c) in column 3, short summaries of their respective grounds of objection.

Directions on further hearing

Rule 7 At the further hearing of the claim the master shall—

- (a) give directions as to the procedure to be followed before the claim is set down for hearing, including, if he thinks fit, a direction—
 - (i) that further particulars be given of any of the grounds or facts relied on in support of or in opposition to the application made by the claim,
 - (ii) that the applicant may serve a reply to any notice of objection,
 - (iii) that any particular fact be proved by witness statement or affidavit,
 - (iv) that statements of case or points of claim or defence be served, and
- ^[F106](b) adjourn the claim for hearing before the judge in such manner as he shall think best adapted to secure the just, expeditious and economical disposal of the proceedings]

Textual Amendments

F106 Sch. 1 RSC Order 96 rule 7(b) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), [rules 1](#), [50](#)

Other applications

Rule 8 Rules 2 to 7 shall, so far as applicable and with the necessary adaptations, apply in relation to any other application to the High Court falling within rule 1 as they apply in relation to an application under the Mines (Working Facilities and Support) Act 1966.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

RSC ORDER 97

THE LANDLORD AND TENANT ACTS 1927(85), 1954(86) AND 1987(87)

Interpretation

Rule 1.—(1) In this Order, “the Act of 1927” means the Landlord and Tenant Act 1927, “the Act of 1954” means the Landlord and Tenant Act 1954 and “the Act of 1987” means the Landlord and Tenant Act 1987.

(2) In relation to any proceedings under Part II of 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.

Assignment of proceedings to Chancery Division, etc.

Rule 2 All proceedings in the High Court under Part I of the Act of 1927 or Part II of the Act of 1954 or the Act of 1987 shall be assigned to the Chancery Division and, subject to rules 9A and 12, be begun by claim form.

Issue, etc., of claim form

Rule 3.—(1) Any claim or application under Part I of the Act of 1927 or Part II of the Act of 1954 or the Act of 1987 may be issued out of the district registry for the district in which the premises to which the claim or application relates are situated instead of Chancery Chambers.

(3) The court will set a day for the hearing of such a claim which shall be a day which will allow an interval of at least 14 days between the date of service of the claim form and the day so fixed.

Claim for compensation in respect of improvement

Rule 4.—(1) A claim under section 1 of the Act of 1927 for compensation in respect of any improvement, and a claim by a mesne landlord under section 8 of that Act, must be a written claim, signed by the claimant or his solicitor or agent, containing—

- (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 is made 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 thereof, 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 must forthwith serve on his immediate superior landlord a copy of the document, together with a notice in writing stating the date on which he received the document, and if the last-mentioned landlord is himself a mesne landlord he must accordingly comply with this paragraph.

(85) 1927 c. 36; section 1 was amended by the Landlord and Tenant Act 1954 (c. 56), section 47(5). Section 8 was amended by the 1954 Act, sections 45, 68(1) and schedule 7.

(86) 1954 c. 56.

(87) 1987 c. 31.

Proceedings under Part I of Act of 1927

Rule 5.—(1) The claim form by which any claim or application under Part I of the Act of 1927 is made must state—

- (a) the nature of the claim or application or the matter to be determined,
- (b) the holding in respect of which the claim or application is made 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) The claimant's immediate landlord shall be made a defendant.

(3) No witness statement or affidavit shall be filed in the first instance in support of or in answer to any such claim form.

(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.

Application for new tenancy under section 24 of Act of 1954

Rule 6.—(1) The claim form by which an application under section 24 of the Act of 1954⁽⁸⁸⁾ for a new tenancy is made must state—

- (a) the premises to which the application relates and where a business is carried on there, the nature of such business,
- (b) particulars of the claimant'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, and
- (c) the claimant'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.

(2) The person who, in relation to the claimant's current tenancy, is the landlord as defined by section 44 of the Act of 1954⁽⁸⁹⁾ shall be made a defendant.

(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 rules 7.5(2) and 7.5(3) will not apply

Application to authorise agreement

Rule 6A.—(1) An application under section 38 (4) of the Act of 1954 for the authorisation of an agreement shall be made without notice being served on any other party by claim form and may be heard and determined in private.

(2) Notwithstanding that the application must be made jointly by the landlord or proposed landlord and the tenant or proposed tenant and the claim form is accordingly issued by one solicitor on behalf of both of them, they may appear and be heard at any hearing by separate solicitors or counsel or, in the case of an individual applicant, in person; and where at any stage of the proceedings it appears to the Court that one of the applicants is not but ought to be separately represented, the Court may adjourn the proceedings until he is.

⁽⁸⁸⁾ Section 24 was amended by the Law of Property Act 1969 (c. 59), sections 3(2) and 4(1).

⁽⁸⁹⁾ Section 44 was amended by the Law of Property Act 1969 (c. 59), section 14(1).

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Evidence on application under section 24 of Act of 1954

Rule 7.—(1) Not less than 14 days before the day fixed for the first hearing in an application under section 24 of the Act of 1954 for a new tenancy the claimant must file a witness statement or affidavit verifying the statements of fact made in the claim form.

(2) Not less than 4 days before the day fixed for the first hearing the defendant must file a witness statement or affidavit stating—

- (a) whether he opposes the grant of a new tenancy and, if he does, on what grounds;
- (b) whether, if a new tenancy is granted, he objects to any of the claimant’s proposals as to the terms thereof and, if he does, the terms to which he objects and the terms he proposes in so far as they differ from the terms proposed by the claimant;
- (c) whether he is a tenant under a lease having less than 14 years unexpired at the date of the termination of the claimant’s current tenancy, and, if he is, the name and address of his immediate landlord.

Parties to certain proceedings

Rule 8.—(1) Any person affected by any proceedings under rule 5, 6, 14, 15, 16 or 17 may apply ^{F107}... to be made a party to the proceedings and the Court may give such directions on the application as appear necessary.

(2) An application under paragraph (1) must in the first instance be made without notice being given to any other party but the Court may require notice thereof to be given to the parties to the proceedings before making any order.

(3) The foregoing provisions are without prejudice to the power of the Court, either with or without an application by any party, to order notice of the proceedings to be given to any person or any person to be made a party to the proceedings, but nothing in this rule shall be construed as requiring the Court to make any such order and, if it appears that any person though he is affected by the proceedings is not sufficiently affected for it to be necessary for him to be made a party to the proceedings or given notice thereof, the Court may refuse to make him a party or, as the case may be, to require him to be given notice of the proceedings.

Textual Amendments

F107 Words in [Sch. 1 RSC Order 97 rule 8\(1\)](#) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, [51\(a\)](#)

Order dismissing application under section 24 which is successfully opposed

Rule 9 Where the Court hearing an application under section 24 of the Act of 1954 is precluded by section 31 of that Act from making an order for 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.

Application to determine interim rent

Rule 9A.—(1) An application under section 24A of the Act of 1954 to determine an interim rent shall—

- (a) if the tenant has begun proceedings for a new tenancy under section 24 of the Act, be made by an application in accordance with CPR Part 23 in those proceedings, and
- (b) in any other case, be made by claim form

^{F108}(2)

Textual Amendments

F108 Sch. 1 RSC Order 97 rule 9A(2) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **51(b)**

Other applications under Part II of Act of 1954

Rule 10.—(1) 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 thereof, an application for a certificate under section 37 (4) of that Act [^{F109}may] be made without notice being served on any other party ^{F110}....

(2) The mesne landlord to whose consent an application for the determination of any question arising under paragraph 4 (3) of Schedule 6 to the Act of 1954 relates shall be made a defendant to the claim.

Textual Amendments

F109 Word in Sch. 1 RSC Order 97 rule 10(1) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **51(c)(i)**

F110 Words in Sch. 1 RSC Order 97 rule 10(1) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **51(c)(ii)**

Transfer of proceedings from county court

Rule 11.—(2) Any proceedings under Part I of the Act of 1927 or Part II of the Act of 1954 that have been transferred from a county court shall proceed in the High Court as if they had been begun by claim form issued out of Chancery Chambers, and within 7 days after receipt of notification of the transfer the claimant must apply [^{F111}in the High Court] for the appointment of a day and time for the attendance of the parties before the Court.

(3) If the claimant fails to apply for an appointment within the period prescribed by paragraph (2) the defendant may do so.

Textual Amendments

F111 Words in Sch. 1 RSC Order 97 rule 11(2) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **51(d)**

Application for relief under section 16, etc., of the Act of 1954

Rule 12 In any such proceedings as are mentioned in section 16 (1) of the Act of 1954, paragraph 9 (1) of Schedule 5 to that Act or paragraph 10 (1) of that Schedule, an application for relief under that section or paragraph, as the case may be, may be made—

- (a) in the applicant’s statement of case, or
- (b) in accordance with CPR Part 23 at any time before the trial, or
- (c) at the trial.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Evidence of rateable value

Rule 13 Where any dispute as to the rateable value of any holding has been referred under section 37 (5) of the Act of 1954 to the Commissioners of Inland Revenue for decision by a valuation officer, any document purporting to be a statement by the valuation officer of his decision shall be admissible as evidence of the matters contained in it.

Application under section 19 of the Act of 1987

Rule 14 A copy of the notice served under section 19 (2)(a) of the Act of 1987 shall be appended to the claim form issued 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

^{F112}**Rule 15**

<p>Textual Amendments</p> <p>F112 Sch. 1 RSC Order 97 rule 15 omitted (26.4.1999) by virtue of The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, 51(e)</p>

Application for acquisition order under section 29 of the Act of 1987

- Rule 16.**—(1) An application for an acquisition order under section 29 of the Act of 1987 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 thereto,
 - (b) give such details of the applicants as are necessary to show that they constitute the requisite majority of qualifying tenants,
 - (c) state the name and address 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 tenant’s 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 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 defendants 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 claim form 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 8 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 17.—(1) An application for an order under section 38 or section 40 of the Act of 1987 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 and parties to 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 flats contained in the premises of which the demised premises form a part, 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 defendants 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 defendant 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 8 to be made a party to the proceedings.

(4) Any application under section 36 of the Act of 1987 shall be contained in the defendant's witness statement or affidavit, and paragraphs (1) to (3) shall apply to such an application as if the defendant were an applicant.

Service of notices in proceedings under the Act of 1987

Rule 18 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 19 In rules 15, 16 and 17 a reference to a tenants' association is a reference to a recognised tenants' association within the meaning of section 29 of the Landlord and Tenant Act 1985(90) which represents tenants of the flats of which the demised premises form a part.

RSC ORDER 98

LOCAL GOVERNMENT FINANCE ACT 1982(91), PART III

Interpretation

Rule 1 In this Order “the Act” means the Local Government Finance Act 1982 and a section referred to by number means the section so numbered in that Act.

(90) 1985 c. 70.

(91)

1982 c. 32.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Application by auditor for declaration

Rule 2.—(1) Any application for a declaration under section 19 (1) of the Act that an item of account is contrary to law shall be made by claim form.

(2) The claim form shall be served on the body to whose accounts the application relates and on any person against whom an order is sought under section 19 (2).

(3) Not later than seven days after filing the claim form in the Crown Office ^{F113}... the applicant shall file in that office a witness statement or affidavit stating the facts on which he intends to rely at the hearing of the application.

(4) The claim shall be entered for hearing within six weeks after the claim form has been filed in the Crown Office but, unless the Court otherwise directs, the application shall not be heard sooner than 28 days after service of the claim form.

Textual Amendments

F113 Words in [Sch. 1 RSC Order 98 rule 2\(3\)](#) omitted (2.10.2000) by virtue of [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), [rules 1, 26](#)

Appeal against decision of auditor

^{F114}**Rule 3**

Textual Amendments

F114 [Sch. 1 RSC Order 98 rule 3](#) revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rule 1\(b\)](#), [Sch. 8](#) (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), [rules 1, 2](#))

General provisions

Rule 4.—(1) Any proceedings in which the jurisdiction conferred on the High Court by section 19 or section 20 of the Act is invoked shall be assigned to the Queen’s Bench Division and be heard by a single judge, unless the Court directs that the matter shall be heard by a Divisional Court; and the Court may, at any stage direct that any officer or member of the body to whose accounts the application of appeal relates be joined as a respondent.

(2) Except in so far as the Court directs that the evidence on any such application or appeal shall be given orally, it shall be given by witness statement or affidavit.

(3) The applicant or appellant must forthwith after filing any witness statement or affidavit under rule 2 (3) or 3 (3) serve a copy thereof on every respondent and any person intending to oppose the application or appeal must, not less than four days before the hearing, serve on the applicant or appellant a copy of any witness statement or affidavit filed by him in opposition ^{F115}....

(4) Except by permission of the Court, no witness statement or affidavit may be used at the hearing unless a copy thereof was served in accordance with paragraph (3).

Textual Amendments

F115 Words in [Sch. 1 RSC Order 98 rule 4\(3\)](#) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), [rules 1, 52](#)

RSC ORDER 99

INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975(92)

Order to apply to High Court and County Court

Rule A1 This Order applies to proceedings both in the High Court and the county court.

Interpretation

Rule 1 In this Order “the Act” means the Inheritance (Provision for Family and Dependents) Act 1975 and a section referred to by number means the section so numbered in that Act.

Assignment to Chancery or Family Division if proceedings in High Court

Rule 2 Proceedings in the High Court under the Act may be assigned to the Chancery Division or to the Family Division.

Application for financial provision

Rule 3.—(1) An application under section 1 is made by the issue of a claim form.

(3) There shall be filed with the Court a witness statement or affidavit by the applicant in support of the claim, exhibiting an official copy of the grant of representation to the deceased’s estate and of every testamentary document admitted to proof, and a copy of the witness statement or affidavit shall be served on every defendant with the claim form.

Powers of Court as to parties

Rule 4.—(1) The Court may at any stage of proceedings under the Act direct that any person be added as a party to the proceedings or that notice of the proceedings be served on any person.

(2) [^{F116}CPR rule 19.7], shall apply to proceedings under the Act as it applies to the proceedings mentioned in paragraph (1) of that rule.

Textual Amendments

F116 Words in [Sch. 1 RSC Order 99 rule 4\(2\)](#) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rules 1\(b\)](#), [26](#)

Witness statement or affidavit in answer

Rule 5.—(1) A defendant to an application under section 1 who is a personal representative of the deceased shall and any other defendant may, within 21 days after service of the claim form on him, inclusive of the day of service, file with the Court a witness statement or affidavit in answer to the application.

(2) The witness statement or affidavit filed by a personal representative pursuant to paragraph (1) shall state to the best of the witness’s ability—

- (a) full particulars of the value of the deceased’s net estate, as defined by section 25 (1);

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- (b) the person or classes of persons beneficially interested in the estate, giving the names and (in the case of those who are not already parties) the addresses of all living beneficiaries, and the value of their interests so far as ascertained;
- (c) if such be the case, that any living beneficiary (naming him) is a child or patient within the meaning of CPR rule 21.1(2); and
- (d) any facts known to the witness which might affect the exercise of the Court’s powers under the Act.

(3) Every defendant who lodges a witness statement or affidavit shall at the same time serve a copy on the claimant and on every other defendant who is not represented by the same solicitor.

Separate representation

Rule 6 Where an application under section 1 is made jointly by two or more applicants and the claim form is accordingly issued by one solicitor on behalf of all of them, they may, if they have conflicting interests, appear on any hearing of the claim by separate solicitors or counsel or in person, and where at any stage of the proceedings it appears to the Court that one of the applicants is not but ought to be separately represented, the Court may adjourn the proceedings until he is.

Endorsement of memorandum on grant

Rule 7 On the hearing of an application under section 1 the personal representative shall produce to the Court the grant of representation to the deceased’s estate and, if an order is made under the Act, the grant shall remain in the custody of the Court until a memorandum of the order has been endorsed on or permanently annexed to the grant in accordance with section 19 (3).

Disposal of proceedings in private

^{F117}**Rule 8**

Textual Amendments

F117 Sch. 1 RSC Order 99 rule 8 omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **53**

Subsequent applications in proceedings under section 1

Rule 9 Where an order has been made on an application under section 1, any subsequent application under the Act, whether made by a party to the proceedings or by any other person, shall be made by the issue of an application notice in accordance with CPR Part 23.

Drawing up and service of orders

Rule 10 The provisions of the Family Proceedings Rules relating to the drawing up and service of orders shall apply to proceedings in the Family Division under this Order as if they were proceedings under those Rules. In this rule “Family Proceedings Rules” means rules made under section 40 of the Matrimonial and Family Proceedings Act 1984.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

RSC ORDER 101

THE PENSIONS APPEAL TRIBUNALS ACT 1943

Assignment to Queen’s Bench Division

F118 **Rule 1**

.....
Textual Amendments

F118 Sch. 1 RSC Order 101 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000](#) (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

F118

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Textual Amendments

F118 Sch. 1 RSC Order 101 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000](#) (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

F118

.....
Textual Amendments

F118 Sch. 1 RSC Order 101 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000](#) (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

F118

.....
Textual Amendments

F118 Sch. 1 RSC Order 101 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000](#) (S.I. 2000/221), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

RSC ORDER 106

PROCEEDINGS RELATING TO SOLICITORS: THE SOLICITORS ACT 1974(93)

Interpretation

Rule 1.—(1) In this Order—

“the Act” means the Solicitors Act 1974 and a section referred to by number means the section so numbered in that Act;

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

“appeal” means an appeal to the High Court against an order made by the Tribunal on an application or complaint under the Act.

(2) Expressions used in this Order which are used in the Act have the same meanings in this Order as in the Act.

Jurisdiction under Part III of Act

Rule 2.—(2) The jurisdiction of the High Court under Part III of the Act may be exercised by

- (a) A judge ^{F119} ...
- (b) A master, a taxing master or a district judge of the Family Division, or
- (c) A district judge if the costs are for contentious business done in proceedings in the district registry of which he is the district judge or for non contentious business.

Textual Amendments

F119 Words in [Sch. 1 RSC Order 106 rule 2\(2\)\(a\)](#) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, [62\(h\)](#)

Power to order solicitor to deliver cash account, etc.

Rule 3.—(1) Where the relationship of solicitor and client exists or has existed the court may, on the application of the client or his personal representatives, make an order for—

- (a) the delivery by the solicitor of a cash account;
- (b) the payment or delivery up by the solicitor of money or securities;
- (c) the delivery to the claimant of a list of the moneys or securities which the solicitor has in his possession or control on behalf of the claimant;
- (d) the payment into or lodging in court of any such moneys or securities.

(2) An application for an order under this rule must be made by the issue of a claim form, or if in proceedings by an application in accordance with CPR Part 23.

(3) If the defendant alleges that he has a claim for costs, the Court may make such order for detailed assessment in accordance with CPR Part 47 and payment, or securing the payment, thereof and the protection of the defendant’s lien, if any, as the Court thinks fit.

Certificate to be submitted with solicitor’s application for detailed assessment

Rule 5A A solicitor who applies for an order under the Act for the detailed assessment in accordance with CPR Part 47 of his bill of costs shall lodge with his application a certificate that all the relevant requirements of the Act have been satisfied.

Applications under Schedule 1 to Act

Rule 6.—(1) Proceedings in the High Court under Schedule 1 to the Act shall be assigned to the Chancery Division.

(2) The claim form by which an application for an order under the said Schedule is made must be entitled in the matter of a solicitor, or a deceased solicitor, as the case may be (without naming him) and in the matter of the Act.

(3) Where an order has been made under paragraph 9 (4), 9 (5) or 10 of the said Schedule an application for an order under paragraph 9 (8) or 9 (10) may be made in accordance with CPR Part 23 in the proceedings in which the first mentioned order was made.

Defendants to applications under Schedule 1 to Act

Rule 7 The defendant to a claim by which an application for an order under Schedule 1 to the Act is made shall be—

- (a) if the application is for an order under paragraph 5 thereof, the solicitor or, as the case may be, every member of the firm, on whose behalf the money in respect of which the order is sought is held;
- (b) if the application is for an order under paragraph 6 (4) or 9 (8) thereof, the Law Society;
- (c) if the application is for an order under paragraph 8, 9 (4) or 9 (5) thereof, the person against whom the order is sought;
- (d) if the application is for an order under paragraph 9 (10) thereof, the person from whom the Law Society obtained possession of the documents by virtue of paragraph 9 or 10;
- (e) if the application is for an order under paragraph 10 thereof for the re-direction of postal packets addressed to a solicitor or his firm, the solicitor or, as the case may be, every member of the firm;
- (f) if the application is for an order under paragraph 11 thereof, the solicitor or personal representative in substitution for whom the appointment of a new trustee is sought and, if he is a co-trustee, the other trustee or trustees.

Interim order restricting payment out of banking account

Rule 8 At any time after the issue of a claim form by which an application for an order under paragraph 5 of Schedule 1 to the Act is made, the Court may, on the application of the claimant made without notice in accordance with CPR Part 23 make an interim order under that paragraph to have effect until the hearing of the application and include therein a further order requiring the defendant to show cause at the hearing why an order under that paragraph should not be made.

Adding parties, etc.

Rule 9 The Court may, at any stage of proceedings under Schedule 1 to the Act, order any person to be added as a party to the proceedings or to be given notice thereof.

Service of documents

Rule 10.—(1) Any document required to be served on the Law Society in proceedings under this Order shall be served by sending it by prepaid post to the secretary of the Law Society.

(2) Subject to paragraph (1) a claim form by which an application under Schedule 1 to the Act is made, an order under paragraph 5 of that Schedule or rule 8 and any other document not required to be served personally which is to be served on a defendant to proceedings under the said Schedule shall, unless the Court otherwise directs, be deemed to be properly served by sending it by prepaid post to the defendant at his last known address.

Constitution of Divisional Court to hear appeals

Rule 11 Every appeal shall be heard by a Divisional Court of the Queen's Bench Division consisting, unless the Lord Chief Justice otherwise directs, of not less than three judges.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Title, service, etc., of notice of appeal

Rule 12.—(1) The [F120 appellant’s notice] by which an appeal is brought must be entitled in the matter of a solicitor, or, as the case may be, a solicitor’s clerk, without naming him, and in the matter of the Act.

(2) Unless the Court otherwise orders, the persons to be served with such notice are every party to the proceedings before the Tribunal and the Law Society.

[F121(3) The appellant’s notice must be filed at the court within 14 days after the date on which a statement of the tribunal’s findings was filed pursuant to section 48(1) of the Act.]

F122(4)

Textual Amendments

F120 Words in Sch. 1 RSC Order 106 rule 12(1) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), [27\(a\)\(i\)](#)

F121 Sch. 1 RSC Order 106 rule 12(3) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), [27\(a\)\(ii\)](#)

F122 Sch. 1 RSC Order 106 rule 12(4) omitted (2.5.2000) by virtue of [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), [27\(a\)\(iii\)](#)

Law Society to produce certain documents

Rule 13.—(1) Within 7 days after being served with the [F123 appellant’s notice] the Law Society must lodge in the Crown Office three copies of each of the following documents:—

- (a) the order appealed against, together with the statement of the Tribunal’s findings required by section 48 (1) of the Act,
- (b) any document lodged by a party with the Tribunal which is relevant to a matter in issue on the appeal, and
- (c) the transcript of the shorthand note, or, as the case may be, the note taken by the chairman of the Tribunal of the evidence in the proceedings before the Tribunal.

(2) At the hearing of the appeal the Court shall direct by whom the costs incurred in complying with paragraph (1) are to be borne and may order them to be paid to the Law Society by one of the parties notwithstanding that the Society does not appear at the hearing.

Textual Amendments

F123 Words in Sch. 1 RSC Order 106 rule 13(1) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), [27\(b\)](#)

Restriction on requiring security for costs

Rule 14 No person other than an appellant who was the applicant in the proceedings before the Tribunal, shall be ordered to give security for the costs of an appeal.

Disciplinary committee’s opinion may be required

Rule 15 The Court may direct the Tribunal to furnish the Court with a written statement of their opinion on the case which is the subject-matter of an appeal or on any question arising therein, and where such a direction is given, the clerk to the Tribunal must as soon as may be lodge three copies

of such statement in the Crown Office and at the same time send a copy to each of the parties to the appeal.

Persons entitled to be heard on appeal

Rule 16 A person who has not been served with the [^{F124}appellant's notice] but who desires to be heard in opposition to the appeal shall, if he appears to the Court to be a proper person to be so heard, be entitled to be so heard.

Textual Amendments

F124 Words in [Sch. 1 RSC 106 rule 16](#) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rules 1\(b\)](#), [27\(c\)](#)

Discontinuance of appeal

Rule 17.—(1) An appellant may at any time discontinue his appeal by serving notice of discontinuance on the clerk to the Tribunal and every other party to the appeal and, if the appeal has been entered, by lodging a copy of the notice in the Crown Office.

(2) Where an appeal has been discontinued in accordance with paragraph (1) it shall be treated as having been dismissed with an order for payment by the appellant of the costs of and incidental to the appeal, including any costs incurred by the Law Society in complying with rule 13 (1).

RSC ORDER 108

PROCEEDINGS RELATING TO CHARITIES: THE CHARITIES ACT 1993(94)

Interpretation

Rule 1 In this Order—

“the Act” means the Charities Act 1993;

“certificate” means a certificate that a case is a proper one for an appeal;

“charity proceedings” means proceedings in the High Court under the Court’s jurisdiction with respect to charities or under the Court’s jurisdiction with respect to trusts in relation to the administration of a trust for charitable purposes;

“the Commissioners” means the Charity Commissioners for England and Wales.

Assignment to Chancery Division

Rule 2 Charity proceedings and proceedings brought in the High Court by virtue of the Act shall be assigned to the Chancery Division.

Application for permission to appeal or to take charity proceedings

Rule 3.—(1) An application shall not be made under section 16 (13) of the Act for permission to appeal against an order of the Commissioners unless the applicant has requested the Commissioners to grant a certificate and they have refused to do so.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(2) An application under section 33 (5) of the Act for permission to start charity proceedings must be made within 21 days after the refusal by the Commissioners of an order authorising proceedings.

(3) The application must be made by lodging in Chancery Chambers a statement showing—

- (a) the name, address and description of the applicant;
- (b) particulars of the order against which it is desired to appeal or of the proceedings which it is desired to take;
- (c) the date of the Commissioners' refusal to grant a certificate or an order authorising the taking of proceedings;
- (d) the grounds on which the applicant alleges that it is a proper case for an appeal or for taking proceedings.

(4) The application may be made without notice in the first instance and if it is made with the consent of any other party to the proposed appeal or proposed proceedings that fact shall be mentioned in the statement.

(5) If the judge on considering the application so directs, the Commissioners shall furnish him with a written statement of their reasons for refusing a certificate or, as the case may be, an order authorising the taking of proceedings, and a copy of any such statement shall be sent from Chancery Chambers to the applicant.

(6) Unless, after considering the applicant's statement and the statement (if any) of the Commissioners, the judge decides to give the permission applied for without a hearing, the application shall be set down for hearing, and the hearing may be in private if the judge so directs.

(7) Where the application is determined without a hearing, a copy of the judge's order shall be sent from Chancery Chambers to the applicant and the Commissioners; and where the application is to be set down for hearing, notice of the day and time fixed for the hearing shall be sent from that Office to the applicant.

Application for enforcement of order or direction of Commissioners

Rule 4 Order 52 rule 1 (4), shall apply in relation to an application under section 88 of the Act as if for the reference in that rule to a single judge of the Queen's Bench Division there was substituted a reference to a single judge of the Chancery Division.

Appeal against order, etc., of Commissioners

Rule 5.—(1) An appeal against an order or decision of the Commissioners shall be heard and determined by a single judge.

(2) Such an appeal must be brought by a [^{F125}appellant's notice] to which the Attorney-General, unless he is the appellant, shall be made a [^{F126}respondent] in addition to any other person who is a proper [^{F126}respondent] thereto.

(3) A [^{F125}appellant's notice] under this rule must state the grounds of the appeal and, except with the permission of the judge hearing the appeal, the appellant shall not be entitled to rely on any ground not so stated.

Textual Amendments

F125 Words in Sch. 1 RSC Order 108 rule 5 substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **28(a)**

F126 Words in Sch. 1 RSC Order 105 rule 5(2) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **28(b)**

Service on Commissioners

Rule 6 Any document required or authorised to be served on the Commissioners in proceedings to which this Order relates must be served on the Treasury Solicitor in accordance with Order 77, rule 4 (2).

RSC ORDER 109

THE ADMINISTRATION OF JUSTICE ACT 1960(95)

Applications under Act

Rule 1.—(1) Any of the following applications, that is to say—

- (a) an application under section 2 of the Administration of Justice Act 1960, or under that section as applied by section 13 of that Act, to extend the time within which an application may be made to a Divisional Court for permission to appeal to the House of Lords under section 1 of that Act, or section 13 thereof, from an order or decision of that Court, and
- (b) an application by a defendant under section 9 (3) of that Act to a Divisional Court for permission to be present on the hearing of any proceedings preliminary or incidental to an appeal to the House of Lords under section 1 of that Act from a decision of that Court

must be made to a Divisional Court except in vacation when it may be made to a judge ^{F127}...

(2) Any such application to a Divisional Court, if not made in the proceedings before the Divisional Court from whose order or decision the appeal in question is brought, must be made by the issue of a claim form ^{F128}....

(3) Any such application to a judge ^{F129}... must, in the case of such an application as is referred to in paragraph (1)(a) be made by the issue of a claim form and, in the case of such an application as is referred to in paragraph (1)(b) need not be served on any other person unless, in the latter case, the judge otherwise directs.

(4) No application notice or copy of the claim form (as the case may be) by which such an application as is referred to in paragraph (1)(b) is made, need be given to any party affected thereby unless the Divisional Court otherwise directs.

(5) Where any application to which this rule applies is made in vacation to a single judge and the judge refuses the application, the applicant shall be entitled to have the application determined by a Divisional Court.

Textual Amendments

F127 Words in Sch. 1 RSC Order 109 rule 1(1) omitted (26.4.1999) by virtue of The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **62(i)**

F128 Words in Sch. 1 RSC Order 109 rule 1(2) omitted (26.4.1999) by virtue of The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **55**

F129 Words in Sch. 1 RSC Order 109 rule 1(3) omitted (26.4.1999) by virtue of The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **62(i)**

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Appeals under section 13 of Act

Rule 2.—(1) An appeal to a Divisional Court of the High Court under section 13 of the Administration of Justice Act 1960, shall be heard and determined by a Divisional Court of the Queen’s Bench Division.

^{F130}(3)

(4) Unless the Court gives permission, there shall be not more than 4 clear days between the date on which the order or decision appealed against was made and the day named in the notice of appeal for the hearing of the appeal.

(5) The notice must be served, and the appeal entered, not less than one clear day before the day named in the notice for the hearing of the appeal.

Textual Amendments

F130 Sch. 1 RSC Order 109 rule 2(3) omitted (2.5.2000) by virtue of [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rules 1\(b\)](#), [29\(a\)](#)

Release of appellant on bail

Rule 3.—(1) Where, in the case of an appeal under section 13 of the Administration of Justice Act 1960, to a Divisional Court or to the House of Lords from a Divisional Court, the appellant is in custody, the High Court may order his release on his giving security (whether by recognizance, with or without sureties, or otherwise and for such reasonable sum as the Court may fix) for his appearance, within 10 days after the judgment of the Divisional Court or, as the case may be, of the House of Lords, on the appeal before the court from whose order or decision the appeal is brought unless the order or decision is reversed by that judgment.

(2) Order 79, rule 9 (1) to (6) and (8) shall apply in relation to an application to the High Court for bail pending an appeal under the said section 13 to which this rule applies, and to the admission of a person to bail in pursuance of an order made on the application, as they apply in relation to an application to that Court for bail in criminal proceedings, and to the admission of a person to bail in pursuance of an order made on the application, but with the substitution, for references to the defendant, of references to the appellant, and, for references to the prosecutor, of references to the court officer of the court from whose order or decision the appeal is brought and to the parties to the proceedings in that court who are directly affected by the appeal.

[^{F131}Release of appellant on bail by the Court of Appeal

Rule 4.—(1) Where, in the case of an appeal under section 13 of the Administration of Justice Act 1960 to the Court of Appeal or to the House of Lords from the Court of Appeal, the appellant is in custody, the Court of Appeal may order his release on his giving security (whether by recognizance, with or without sureties, or otherwise and for such reasonable sum as that court may fix) for his appearance within 10 days after the judgment of the Court of Appeal or, as the case may be, of the House of Lords on the appeal shall have been given, before the court from whose order or decision the appeal is brought unless the order or decision is reversed by that judgment.

(2) An application for the release of a person under paragraph (1) pending an appeal to the Court of Appeal or House of Lords under the said section 13 must be made in accordance with CPR Part 23, and the application notice must, at least 24 hours before the day named therein for the hearing, be served on the court from whose order or decision the appeal is brought and on all parties to the proceedings in that court who are directly affected by the appeal.

(3) Order 79, rules 9(6), (6A), (6B) and (8) shall apply in relation to the grant of bail under this rule by the Court of Appeal in a case of criminal contempt of court as they apply in relation to the

grant of bail in criminal proceedings by the High Court, but with the substitution for references to a judge of references to the Court of Appeal and for references to the defendant of references to the appellant.

(4) When granting bail under this rule in a case of civil contempt of court, the Court of Appeal may order that the recognisance or other security to be given by the appellant or the recognisance of any surety shall be given before any person authorised by virtue of section 119(1) of the Magistrates' Courts Act 1980 to take a recognisance where a magistrates' court having power to take it has, instead of taking it, fixed the amount in which the principal and his sureties, if any, are to be bound. An order by the Court of Appeal granting bail as aforesaid must be in Form 98 in the relevant practice direction with the necessary adaptations.

(5) Where in pursuance of an order of the Court of Appeal under paragraph (4) of this rule a recognisance is entered into or other security given before any person, it shall be the duty of that person to cause the recognisance of the appellant or any surety or, as the case may be, a statement of the other security given, to be transmitted forthwith to the [^{F132}justices' chief executive for] the court which committed the appellant; and a copy of such recognisance or statement shall at the same time be sent to the governor or keeper of the prison or other place of detention in which the appellant is detained, unless the recognisance or security was given before such governor or keeper.

(6) The powers conferred on the Court of Appeal by paragraphs (1), (3) and (4) of this rule may be exercised by a single judge.]

Textual Amendments

F131 Sch. 1 RSC Order 109 rule 4 inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), [Sch. 7](#)

F132 Words in Sch. 1 RSC Order 109 rule 4(5) substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(b), [23](#)

RSC ORDER 110

ENVIRONMENTAL CONTROL PROCEEDINGS

Injunctions to prevent environmental harm

Rule 1.—(1) An injunction under—

- (a) section 187B or 214A of the Town and Country Planning Act 1990([96](#));
- (b) section 44A of the Planning (Listed Buildings and Conservation Areas) Act 1990([97](#)); or
- (c) section 26AA of the Planning (Hazardous Substances) Act 1990([98](#))

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 defendant”.

(2) An applicant for an injunction under paragraph (1) shall, in the [^{F133}claim form], describe the defendant by reference to—

- (a) a photograph,
- (b) a thing belonging to or in the possession of the defendant, or

[\(96\)](#) 1990 c. 8.

[\(97\)](#) 1990 c. 9.

[\(98\)](#) 1990 c. 10.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(c) any other evidence,
with sufficient particularity to enable service to be effected..

(3) An applicant for an injunction under paragraph (1) shall file in support of the application evidence by witness statement or affidavit—

- (a) verifying that he was unable to ascertain, within the time reasonably available to him, the defendant’s identity,
- (b) setting out the action taken to ascertain the defendant’s identity, and
- (c) verifying the means by which the defendant has been described in the application 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 for service by an alternative method or dispensing with service.

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Textual Amendments

F133 Words in [Sch. 1 RSC Order 110 rule 1\(2\)](#) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), [rules 1, 56](#)

RSC ORDER 111

THE SOCIAL SECURITY ADMINISTRATION ACT 1992

Judge by whom appeals and references to be heard

^{F134}**Rule 1**

.....

Textual Amendments

F134 [Sch. 1 RSC Order 111](#) revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rule 1\(b\)](#), [Sch. 8](#) (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), [rules 1, 2](#))

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Textual Amendments

F134 [Sch. 1 RSC Order 111](#) revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rule 1\(b\)](#), [Sch. 8](#) (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), [rules 1, 2](#))

^{F134}

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Textual Amendments

F134 [Sch. 1 RSC Order 111](#) revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rule 1\(b\)](#), [Sch. 8](#) (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), [rules 1, 2](#))

F134

Textual Amendments

F134 Sch. 1 RSC Order 111 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

F134

Textual Amendments

F134 Sch. 1 RSC Order 111 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

RSC ORDER 112

[^{F135}APPLICATIONS FOR USE OF SCIENTIFIC TESTS IN DETERMINING PARENTAGE]

Textual Amendments

F135 Sch. 1 RSC Order 112 heading substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(c), **24(a)**

Interpretation

Rule 1 In this Order—

“the Act” means Part III of the Family Law Reform Act 1969⁽⁹⁹⁾;

“[^{F136}bodily samples]” and “[^{F137}scientific tests]” have the meanings assigned to them by section 25 of the Act;

“direction” means a direction for the use of [^{F137}scientific tests] under section 20 (1) of the Act;

“the court officer” means the officer of the court who draws up a direction.

Textual Amendments

F136 Words in Sch. 1 RSC Order 112 substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(c), **24(b)**

F137 Words in Sch. 1 RSC Order 112 substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(c), **24(e)**

⁽⁹⁹⁾ 1969 c. 46.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Application for direction

Rule 2.—(1) Except with the permission of the court, an application in any proceedings for a direction shall be in accordance with CPR Part 23 and a copy of the application notice shall be served on every party to the proceedings (other than the applicant) and on any other person from whom the direction involves the taking of [^{F136}bodily samples].

(3) Any notice required by this rule to be served on a person who is not a party to the proceedings shall be served on him personally.

Textual Amendments

F136 Words in [Sch. 1 RSC Order 112](#) substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(c), **24(b)**

Applications involving children under 16 and patients

Rule 3 Where an application is made for a direction in respect of a person who is either—

- (a) under 16 , or
- (b) suffering from a mental disorder within the meaning of the Mental Health Act 1983(**100**) and incapable of understanding the nature and purpose of [^{F137}scientific tests],

the application notice ^{F138}... 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.

Textual Amendments

F137 Words in [Sch. 1 RSC Order 112](#) substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(c), **24(e)**

F138 Words in [Sch. 1 RSC Order 112 rule 3](#) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **57**

Addition as a party of person to be tested

Rule 4 Where an application is made for a direction involving the taking of [^{F136}bodily samples] from a person who is not a party to the proceedings in which the application is made, the court may at any time direct that person to be made a party to the proceedings.

Textual Amendments

F136 Words in [Sch. 1 RSC Order 112](#) substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(c), **24(b)**

Service of direction and adjournment of proceedings

Rule 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 taking of [^{F136}bodily samples] and, unless otherwise ordered, further consideration of the proceedings shall be adjourned until the court receives a report pursuant to the direction.

Textual Amendments

F136 Words in Sch. 1 RSC Order 112 substituted (1.4.2001) by The Civil Procedure (Amendment) Rules 2001 (S.I. 2001/256), rules 1(c), **24(b)**

Service of copy report

Rule 6 On receipt by the court of a report made pursuant to a direction, the proper officer shall send a copy to every party to the proceedings and to every other person from whom the direction involved the taking of [^{F136}bodily samples].

Textual Amendments

F136 Words in Sch. 1 RSC Order 112 substituted (1.4.2001) by The Civil Procedure (Amendment) Rules 2001 (S.I. 2001/256), rules 1(c), **24(b)**

RSC ORDER 113

SUMMARY PROCEEDINGS FOR POSSESSION OF LAND

Proceedings to be brought 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 shall 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.

Jurisdiction of Masters

Rule 1A Proceedings under this Order may be heard and determined by a master, who may refer them to a judge if he thinks they should properly be decided by the judge.

Forms of claim form

Rule 2.—(1) The claim form shall be as set out in the relevant practice direction and no acknowledgment of service of it shall be required.

(2) The claim form shall be endorsed with or contain a statement showing whether possession is claimed in respect of residential premises or in respect of other land.

Witness statement or affidavit in support

Rule 3 The claimant 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

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- (c) that he does not know the name of any person occupying the land who is not named in the claim form;

and, unless the Court directs, any such witness statement or affidavit may contain statements of information or belief with the sources and grounds thereof.

Service of claim form

Rule 4.—(1) Where any person in occupation of the land is named in the claim form, the claim form together with a copy of the witness statement or affidavit in support shall be served on him—

- (a) personally; or
- (b) by leaving a copy of the claim form and of the witness statement or affidavit or sending them to him, at the premises; or
- (c) in such other manner as the Court may direct.

(2) Where any person not named as a defendant 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 the claim form and a copy of the witness statement or affidavit 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 claim form and a copy of the witness statement or affidavit 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 the claim form and a copy of the witness statement or affidavit.

(2A) Every copy of a claim form for service under paragraph (1) or (2) shall be sealed with the seal of the Office of the Supreme Court out of which the claim form was issued.

Application by occupier to be made a party

Rule 5 Any person not named as a defendant 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 a defendant.

Order for possession

Rule 6.—(1) A final order for possession in proceedings under this Order shall, except in case of emergency and by permission of the court, not be made—

- (a) in the case of residential premises, less than five clear days after the date of service, and
- (b) in the case of other land, less than two clear days after the date of service.

(2) An order for possession in proceedings under this Order shall be in Form No. 42A.

(3) Nothing in this Order shall prevent the Court from ordering possession to be given on a specified date, in the exercise of any power which could have been exercised if possession had been sought [^{F139}otherwise than in accordance with this Order].

Textual Amendments

F139 Words in [Sch. 1 RSC Order 113 rule 6\(3\)](#) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **58**

Writ of possession

Rule 7.—(1) Order 45, rule 3 (2) shall not apply in relation to an order for possession under this Order but no writ of possession to enforce such an order shall be issued after the expiry of three months from the date of the order without the permission of the Court.

An application for permission may be made without notice being served on any other party unless the Court otherwise directs.

(2) The writ of possession shall be in Form No. 66A.

Setting aside order

Rule 8 The court may, on such terms as it thinks just, set aside or vary any order made in proceedings under this Order.

RSC ORDER 114

REFERENCES TO THE EUROPEAN COURT

Interpretation

Rule 1 In this Order—

“the Court” means the court by which an order is made and includes the Court of Appeal;

“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 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 or for a ruling on the interpretation of any of the Brussels Conventions (within the meaning of s.1 (1) of the Civil Jurisdiction and Judgments Act 1982⁽¹⁰¹⁾) or any of the instruments referred to in s.1 of the Contracts (Applicable Law) Act 1990⁽¹⁰²⁾.

Making of order

Rule 2.—(1) An order may be made by the Court of its own initiative at any stage in proceedings, or on application by a party before or at the trial or hearing thereof.

(2) Where an application is made before the trial or hearing, it shall be made [^{F140}in accordance with CPR Part 23].

(3) In the High Court no order shall be made except by a judge in person.

Textual Amendments

F140 Words in Sch. 1 RSC Order 114 rule 2(2) substituted (26.4.1999) by The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, 59

⁽¹⁰¹⁾ 1982 c. 27.

⁽¹⁰²⁾ 1990 c. 36.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Schedule to order to set out request for ruling

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

Stay of proceedings pending ruling

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

Transmission of order to the European Court

Rule 5 When an order has been made, the Senior Master shall send a copy thereof to the Registrar of the European Court; but in the case of an order made by the High Court, he shall not do so, unless the Court otherwise orders, until the time for appealing against the order has expired or, if an appeal is entered within that time, until the appeal has been determined or otherwise disposed of.

Appeals from orders made by High Court

Rule 6 On an appeal to the Court of Appeal from an order made by the High Court [^{F141}an appellant's notice must be filed at the Court of Appeal within 14 days after the date the order was made.]

Textual Amendments

F141 Words in [Sch. 1 RSC Order 114 rule 6](#) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rules 1\(b\)](#), [30](#)

RSC ORDER 115

CONFISCATION AND FORFEITURE IN CONNECTION WITH CRIMINAL PROCEEDINGS

I. Drug Trafficking Act 1994(103) and Criminal Justice (International Co-operation) Act 1990(104)

Interpretation

Rule 1.—(1) In this Part of this Order, “The Act” means the Drug Trafficking Act 1994 and a section referred to by number means the section so numbered in the Act.

(2) Expressions used in this Part of this Order which are used in the Act have the same meanings in this Part of this Order as in the Act and include any extended meaning given by the Criminal Justice (Confiscation) (Northern Ireland) Order 1990.

(103) 1994 c. 37.

(104) 1990 c. 5.

Assignment of proceedings

Rule 2 Subject to rule 12, the jurisdiction of the High Court under the Act shall be exercised by a judge of the Chancery Division or of the Queen’s Bench Division ^{F142}

Textual Amendments

F142 Words in Sch. 1 RSC Order 115 rule 2 omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, [62\(j\)](#)

Title of proceedings

Rule 2A An application made in accordance with CPR Part 23, or a claim form issued in relation to proceedings under this Part of this Order shall be entitled in the matter of the defendant, naming him, and in the matter of the Act, and all subsequent documents in the matter shall be so entitled.

Application for confiscation order

Rule 2B.—(1) An application by the prosecutor for a confiscation order under section 19 shall be made in accordance with CPR Part 23 where there have been proceedings against the defendant in the High Court, and shall otherwise be made by the issue of a claim form.

(2) The application shall be supported by a witness statement or affidavit giving full particulars of the following matters—

- (a) the grounds for believing that the defendant has died or absconded;
- (b) the date or approximate date on which the defendant died or absconded;
- (c) where the application is made under section 19 (2), the offence or offences of which the defendant was convicted, and the date and place of conviction;
- (d) where the application is made under section 19 (4), the proceedings which have been initiated against the defendant (including particulars of the offence and the date and place of institution of those proceedings); and
- (e) where the defendant is alleged to have absconded, the steps taken to contact him.

(3) The prosecutor’s statement under section 11 shall be exhibited to the witness statement or affidavit and shall include the following particulars—

- (a) the name of the defendant;
- (b) the name of the person by whom the statement is given;
- (c) such information known to the prosecutor as is relevant to the determination whether the defendant has benefited from drug trafficking and to the assessment of the value of his proceeds of drug trafficking.

(4) Unless the Court otherwise orders, a witness statement or affidavit under paragraph (2) may contain statements of information and belief, with their sources and grounds.

(5) The application and the witness statement or affidavit in support shall be served not less than 7 days before the date fixed for the hearing of the application on—

- (a) the defendant (or on the personal representatives of a deceased defendant);
- (b) any person who the prosecutor reasonably believes is likely to be affected by the making of a confiscation order; and
- (c) the receiver, where one has been appointed in the matter.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Application for restraint order or charging order

Rule 3.—(1) An application for a restraint order under section 26 or for a charging order under section 27 (to either of which may be joined an application for the appointment of a receiver) may be made by the prosecutor by the issue of a claim form, notice of which need not be served on any other party.

(2) An application under paragraph (1) shall be supported by a witness statement or affidavit, which shall—

- (a) give the grounds for the application; and
- (b) to the best of the witness's ability, give full particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property.

(3) Unless the Court otherwise directs, a witness statement or affidavit under paragraph (2) may contain statements of information or belief with the sources and grounds thereof.

Restraint order and charging order

Rule 4.—(1) A restraint order may be made subject to conditions and exceptions, including but not limited to conditions relating to the indemnifying of third parties against expenses incurred in complying with the order, and exceptions relating to living expenses and legal expenses of the defendant, but the prosecutor shall not be required to give an undertaking to abide by any order as to damages sustained by the defendant as a result of the restraint order.

(2) Unless the Court otherwise directs, a restraint order made where notice of it has not been served on any person shall have effect until a day which shall be fixed for the hearing where all parties may attend on the application and a charging order shall be an order to show cause, imposing the charge until such day.

(3) Where a restraint order is made the prosecutor shall serve copies of the order and of the witness statement or affidavit in support on the defendant and on all other named persons restrained by the order and shall notify all other persons or bodies affected by the order of its terms.

(4) Where a charging order is made the prosecutor shall serve copies of the order and of the witness statement or affidavit in support on the defendant and, where the property to which the order relates is held by another person, on that person and shall serve a copy of the order on such of the persons or bodies specified in Order 50, rule 2 (1)(b) to (d) as shall be appropriate.

Discharge or variation of order

Rule 5.—(1) Any person or body on whom a restraint order or a charging order is served or who is notified of such an order may make an application in accordance with CPR Part 23 to discharge or vary the order.

(2) The [^{F143}application notice] and any witness statement or affidavit in support shall be lodged with the court and served on the prosecutor and, where he is not the applicant, on the defendant, not less than two clear days before the date fixed for the hearing of the [^{F144}application].

(3) Upon the court being notified that proceedings for the offences have been concluded or that the amount, payment of which is secured by a charging order has been paid into court, any restraint order or charging order, as the case may be, shall be discharged.

(4) The Court may also discharge a restraint order or a charging order upon receiving notice from the prosecutor that it is no longer appropriate for the restraint order or the charging order to remain in place.

Textual Amendments

F143 Words in Sch. 1 RSC Order 115 rule 5(2) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **60(a)(i)**

F144 Word in Sch. 1 RSC Order 115 rule 5(2) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **60(a)(ii)**

Further application by prosecutor

Rule 6.—(1) Where a restraint order or a charging order has been made the prosecutor may apply by an application in accordance with CPR Part 23 with notice or, where the case is one of urgency or the giving of notice would cause a reasonable apprehension of dissipation of assets, without notice—

- (a) to vary such order, or
- (b) for a restraint order or a charging order in respect of other realisable property, or
- (c) for the appointment of a receiver.

(2) An application under paragraph (1) shall be supported by a witness statement or affidavit which, where the application is for a restraint order or a charging order, shall to the best of the witness's ability give full particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property.

(3) The application and witness statement or affidavit in support shall be lodged with the court and served on the defendant and, where one has been appointed in the matter, on the receiver, not less than two clear days before the date fixed for the hearing of the [F145]application].

(4) Rule 4 (3) and (4) shall apply to the service of restraint orders and charging orders respectively made under this rule on persons other than the defendant.

Textual Amendments

F145 Word in Sch. 1 RSC Order 115 rule 6(3) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **60(b)**

Realisation of property

Rule 7.—(1) An application by the prosecutor under section 29 shall, where there have been proceedings against the defendant in the High Court, be made by an application in accordance with CPR Part 23 and shall otherwise be made by the issue of a claim form

(2) The application notice or claim form, as the case may be, shall be served with the evidence in support not less than 7 days before the date fixed for the hearing of the application or claim on:—

- (a) the defendant,
- (b) any person holding any interest in the realisable property to which the application relates, and
- (c) the receiver, where one has been appointed in the matter.

(3) The application shall be supported by a witness statement or affidavit, which shall, to the best of the witness's ability, give full particulars of the realisable property to which it relates and specify the person or persons holding such property, and a copy of the confiscation order, of any certificate issued by the Crown Court under section 5 (2) and of any charging order made in the matter shall be exhibited to such witness statement or affidavit.

(4) The Court may, on an application under section 29—

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- (a) exercise the power conferred by section 30 (2) to direct the making of payments by a receiver;
- (b) give directions in respect of the property interests to which the application relates; and
- (c) make declarations in respect of those interests.

Receivers

Rule 8.—(1) Subject to the provisions of this rule, the provisions of Order 30, rules 2 to 8 shall apply where a receiver is appointed in pursuance of a charging order or under sections 26 or 29.

(2) Where the receiver proposed to be appointed has been appointed receiver in other proceedings under the Act, it shall not be necessary for a witness statement or affidavit of fitness to be sworn or for the receiver to give security, unless the Court otherwise orders.

(3) Where a receiver has fully paid the amount payable under the confiscation order and any sums remain in his hands, he shall make an application to the court for directions in accordance with CPR Part 23, as to the distribution of such sums.

(4) An application under paragraph (3) shall be served with any evidence in support not less than 7 days before the date fixed for the hearing of the application on:—

- (a) the defendant, and
- (b) any other person who held property realised by the receiver.

(5) A receiver may apply for an order to discharge him from his office by making an application in accordance with CPR Part 23, which shall be served, together with any evidence in support, on all persons affected by his appointment not less than 7 days before the day fixed for the hearing of the application.

Certificate of inadequacy

Rule 9.—(1) The defendant or a receiver appointed under section 26 or 29 or in pursuance of a charging order may apply in accordance with CPR Part 23 for a certificate under section 17 (1).

(2) An application under paragraph (1) shall be served with any supporting evidence not less than 7 days before the date fixed for the hearing of the application on the prosecutor and, as the case may be, on either the defendant or the receiver (where one has been appointed).

Certificate under section 16

Rule 9A An application under section 16 (2) (increase in realisable property) shall be served with any supporting evidence not less than 7 days before the date fixed for the hearing of the application on the defendant and, as the case may be, on either the prosecutor or (where one has been appointed in the matter) on the receiver.

Compensation

Rule 10 An application for an order under section 18 shall be made in accordance with CPR Part 23, which shall be served, with any supporting evidence, on the person alleged to be in default and on the relevant authority under section 18 (5) not less than 7 days before the date fixed for the hearing of the application.

Disclosure of information

Rule 11.—(1) An application by the prosecutor under section 59 shall be made in accordance with CPR Part 23 and the application notice shall state the nature of the order sought and whether

material sought to be disclosed is to be disclosed to a receiver appointed under section 26 or 29 or in pursuance of a charging order or to a person mentioned in section 59 (8).

(2) The application notice and witness statement or affidavit in support shall be served on the authorised Government Department in accordance with Order 77, rule 4 not less than 7 days before the date fixed for the hearing of the application.

(3) The witness statement or affidavit in support of an application under paragraph (1) shall state the grounds for believing that the conditions in section 59 (4) and, if appropriate, section 59 (7) are fulfilled.

Compensation for, discharge and variation of confiscation order

Rule 11A.—(1) An application under section 21, 22 or 23 shall be made in accordance with CPR Part 23 which, together with any evidence in support, shall be lodged with the Court and served on the prosecutor not less than 7 days before the day fixed for the hearing of the application.

(2) Notice shall also be served on any receiver appointed in pursuance of a charging order or under section 26 or 29.

(3) An application for an order under section 22 shall be supported by a witness statement or affidavit giving details of—

- (a) the confiscation order made under section 19 (4);
- (b) the acquittal of the defendant;
- (c) the realisable property held by the defendant; and
- (d) the loss suffered by the applicant as a result of the confiscation order.

(4) An application for an order under section 23 shall be supported by a witness statement or affidavit giving details of—

- (a) the confiscation order made under section 19 (4);
- (b) the date on which the defendant ceased to be an absconder;
- (c) the date on which proceedings against the defendant were instituted and a summary of the steps taken in the proceedings since then; and
- (d) any indication given by the prosecutor that he does not intend to proceed against the defendant.

(5) An application made under section 21 shall be supported by a witness statement or affidavit giving details of—

- (a) the confiscation order made under section 19(4);
- (b) the circumstances in which the defendant ceased to be an absconder; and
- (c) the amounts referred to in section 21 (2).

(6) Where an application is made for an order under section 23 (3) or 24 (2)(b), the witness statement or affidavit shall also include—

- (a) details of the realisable property to which the application relates; and
- (b) details of the loss suffered by the applicant as a result of the confiscation order.

(7) Unless the Court otherwise orders, a witness statement or affidavit under paragraphs (3) to (6) may contain statements of information and belief, with the sources and grounds thereof.

Exercise of powers under sections 37 and 40

Rule 12 The powers conferred on the High Court by sections 37 and 40 may be exercised by a judge [^{F146}or] a master of the Queen's Bench Division.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Textual Amendments

F146 Word in [Sch. 1 RSC Order 115 rule 12](#) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **60(c)**

Application for registration

Rule 13 An application for registration of an order specified in an Order in Council made under section 37 or of an external confiscation order under section 40 (1) must be made in accordance with CPR Part 23, and may be made without notice.

Evidence in support of application under section 37

Rule 14 An application for registration of an order specified in an Order in Council made under section 37 must be made in accordance with CPR Part 23, and be supported by a witness statement or affidavit—

- (i) exhibiting the order or a certified copy thereof, and
- (ii) stating, to the best of the witness's knowledge, particulars of what property the person against whom the order was made holds in England and Wales, giving the source of the witness's knowledge.

Evidence in support of application under section 40 (1)

Rule 15.—(1) An application for registration of an external confiscation order must be made in accordance with CPR Part 23, and be supported by a witness statement or affidavit—

- (a) exhibiting the order or a verified or certified or otherwise duly authenticated copy thereof and, where the order is not in the English language, a translation thereof into English certified by a notary public or authenticated by witness statement or affidavit, and
- (b) stating—
 - (i) that the order is in force and is not subject to appeal,
 - (ii) where the person against whom the order was made did not appear in the proceedings, that he received notice thereof in sufficient time to enable him to defend them,
 - (iii) in the case of money, either that at the date of the application the sum payable under the order has not been paid or the amount which remains unpaid, as may be appropriate, or, in the case of other property, the property which has not been recovered, and
 - (iv) to the best of the witness's knowledge, particulars of what property the person against whom the order was made holds in England and Wales, giving the source of the witness's knowledge.

(2) Unless the Court otherwise directs, a witness statement or affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

Register of orders

Rule 16.—(1) There shall be kept in the Central Office under the direction of the Master of the Crown Office a register of the orders registered under the Act.

(2) There shall be included in such register particulars of any variation or setting aside of a registration and of any execution issued on a registered order.

Notice of registration

Rule 17.—(1) Notice of the registration of an order must be served on the person against whom it was obtained by delivering it to him personally or by sending it to him at his usual or last known address or place of business or in such other manner as the Court may direct.

[^{F147}(2) Permission is not required to serve such a notice out of the jurisdiction and CPR rules 6.24, 6.25 and 6.29 shall apply in relation to such notice as they apply in relation to a claim form.]

Textual Amendments

F147 Sch. 1 RSC Order 115 rule 17(2) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rules 1\(b\)](#), [31](#)

Application to vary or set aside registration

Rule 18 An application made in accordance with CPR Part 23 by the person against whom an order was made to vary or set aside the registration of an order must be made to a judge and be supported by witness statement or affidavit.

Enforcement of order

Rule 19.—(2) If an application is made under rule 18, an order shall not be enforced until after such application is determined.

Variation, satisfaction and discharge of registered order

Rule 20 Upon the court being notified by the applicant for registration that an order which has been registered has been varied, satisfied or discharged, particulars of the variation, satisfaction or discharge, as the case may be, shall be entered in the register.

Rules to have effect subject to Orders in Council

Rule 21 Rules 12 to 20 shall have effect subject to the provisions of the Order in Council made under section 37 or, as the case may be, of the Order in Council made under section 39.

Criminal Justice (International Co-operation) Act 1990: external forfeiture orders

Rule 21A The provisions of this Part of this Order shall, with such modifications as are necessary and subject to the provisions of any Order in Council made under section 9 of the Criminal Justice (International Co-operation) Act 1990(**105**), apply to proceedings for the registration and enforcement of external forfeiture orders as they apply to such proceedings in relation to external confiscation orders.

For the purposes of this rule, an external forfeiture order is an order made by a court in a country or territory outside the United Kingdom which is enforceable in the United Kingdom by virtue of any such Order in Council.

II. Part VI of the Criminal Justice Act 1988(**106**)

(**105**) 1990 c. 5.

(**106**) 1988 c. 33.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Interpretation

Rule 22.—(1) In this Part of this Order, “the 1988 Act” means the Criminal Justice Act 1988 and a section referred to by number means the section so numbered in that Act.

(2) Expressions which are used in this Part of this Order which are used in the 1988 Act have the same meanings in this Part of this Order as in the 1988 Act and include any extended meaning given by the Criminal Justice (Confiscation) (Northern Ireland) Order 1990.

Application of Part I of Order 115

Rule 23 Part I of Order 115 (except rule 11) shall apply for the purposes of proceedings under Part VI of the 1988 Act with the necessary modifications and, in particular,—

- (a) references to drug trafficking offences and to drug trafficking shall be construed as references to offences to which Part VI of the 1988 Act applies and to committing such an offence;
- (b) references to the Drug Trafficking Act 1994 shall be construed as references to the 1988 Act and references to sections 5 (2), 26, 27, 29, 30 (2), 17 (1), 18, 18 (5), 39 and 40 of the 1994 Act shall be construed as references to sections 73 (6), 77, 78, 80, 81, 81 (1), 83 (1), 89, 89 (5), 96 and 97 of the 1988 Act respectively;
- (c) rule 3 (2) shall have effect as if the following sub-paragraphs were substituted for sub-paragraphs (a) and (b)—
 - “(a) state, as the case may be, either that proceedings have been instituted against the defendant for an offence to which Part VI of the 1988 Act applies (giving particulars of the offence) and that they have not been concluded or that, whether by the laying of an information or otherwise, a person is to be charged with such an offence;
 - (b) state, as the case may be, either that a confiscation order has been made or the grounds for believing that such an order may be made;”
- (d) rule 7 (3) shall have effect as if the words “certificate issued by a magistrates' court or the Crown Court” were substituted for the words “certificate issued by the Crown Court”;
- (e) rule 8 shall have effect as if the following paragraph were added at the end—
 - “(6) Where a receiver applies in accordance with CPR Part 23 for the variation of a confiscation order, the application notice shall be served, with any supporting evidence, on the defendant and any other person who may be affected by the making of an order under section 83 of the 1988 Act, not less than 7 days before the date fixed for the hearing of the application.”
- (f) rule 11 shall apply with the necessary modifications where an application is made under section 93J of the 1988 Act for disclosure of information held by government departments.

III: Prevention of Terrorism (Temporary Provisions) Act 1989(107)

Interpretation

Rule 24 In this Part of this Order—

- (a) “the Act” means the Prevention of Terrorism (Temporary Provisions) Act 1989;
- (b) “Schedule 4” means Schedule 4 to the Act; and

- (c) expressions used have the same meanings as they have in Part III of, and Schedule 4 to, the Act.

Assignment of proceedings

Rule 25.—(1) Subject to paragraph (2), the jurisdiction of the High Court under the Act shall be exercised by a judge of the Queen’s Bench Division or of the Chancery Division ^{F148} ...

(2) The jurisdiction conferred on the High Court by paragraph 9 of Schedule 4 may also be exercised by a master of the Queen’s Bench Division.

Textual Amendments

F148 Words in Sch. 1 RSC Order 115 rule 25(1) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **62(j)**

Application for restraint order

Rule 26.—(1) An application for a restraint order under paragraphs 3 and 4 of Schedule 4 may be made by the prosecutor by a claim form, which need not be served on any person.

(2) An application under paragraph (1) shall be supported by a witness statement or affidavit, which shall:—

- (a) state, as the case may be, either that proceedings have been instituted against a person for an offence under Part III of the Act and that they have not been concluded or that, whether by the laying of an information or otherwise, a person is to be charged with such an offence; and, in either case, give particulars of the offence;
- (b) state, as the case may be, that a forfeiture order has been made in the proceedings or the grounds for believing that such an order may be made;
- (c) to the best of the witness’s ability, give full particulars of the property in respect of which the order is sought and specify the person or persons holding such property and any other persons having an interest in it;
- (d) where proceedings have not been instituted, verify that the prosecutor is to have the conduct of the proposed proceedings;
- (e) where proceedings have not been instituted, indicate when it is intended that they should be instituted.

(3) A claim form under paragraph (1) shall be entitled in the matter of the defendant, naming him, and in the matter of the Act, and all subsequent documents in the matter shall be so entitled.

(4) Unless the Court otherwise directs, a witness statement or affidavit under paragraph (2) may contain statements of information or belief with the sources and grounds thereof.

Restraint order

Rule 27.—(1) A restraint order may be made subject to conditions and exceptions, including but not limited to conditions relating to the indemnifying of third parties against expenses incurred in complying with the order, and exceptions relating to living expenses and legal expenses of the defendant, but the prosecutor shall not be required to give an undertaking to abide by any order as to damages sustained by the defendant as a result of the restraint order.

(2) Unless the Court otherwise directs, a restraint order made without notice of it being served on any person shall have effect until a day which shall be fixed for the hearing where all parties may attend on the application.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(3) Where a restraint order is made the prosecutor shall serve copies of the order and of the witness statement or affidavit in support on the defendant and on all other persons affected by the order.

Discharge or variation of order

Rule 28.—(1) Subject to paragraph (2), an application to discharge or vary a restraint order shall be made in accordance with CPR Part 23.

(2) Where the case is one of urgency, an application under this rule by the prosecutor may be made without notice.

(3) The application and any witness statement or affidavit in support shall be lodged with the court and, where the application is made in accordance with CPR Part 23 the application notice shall be served on the following persons (other than the applicant)—

- (a) the prosecutor;
- (b) the defendant; and
- (c) all other persons restrained or otherwise affected by the order;

not less than two clear days before the date fixed for the hearing of the application.

(4) Where a restraint order has been made and has not been discharged, the prosecutor shall notify the court when proceedings for the offence have been concluded, and the court shall thereupon discharge the restraint order.

(5) Where an order is made discharging or varying a restraint order, the applicant shall serve copies of the order of discharge or variation on all persons restrained by the earlier order and shall notify all other persons affected of the terms of the order of discharge or variation.

Compensation

Rule 29 An application for an order under paragraph 7 of Schedule 4 shall be made in accordance with CPR Part 23, and the application notice, shall be served, with any supporting evidence, on the person alleged to be in default and on the relevant authority under paragraph 7 (5) not less than 7 days before the date fixed for the hearing of the application.

Application for registration

Rule 30 An application for registration of a Scottish order, a Northern Ireland order or an Islands order must be made in accordance with CPR Part 23 and may be made without notice.

Evidence in support of application

Rule 31.—(1) An application for registration of any such order as is mentioned in rule 30 must be supported by a witness statement or affidavit—

- (a) exhibiting the order or a certified copy thereof, and
- (b) which shall, to the best of the witness's ability, give particulars of such property in respect of which the order was made as is in England and Wales, and specify the person or persons holding such property.

(2) Unless the Court otherwise directs, a witness statement or affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

Register of orders

Rule 32.—(1) There shall be kept in the Central Office under the direction of the Master of the Crown Office a register of the orders registered under the Act.

(2) There shall be included in such register particulars of any variation or setting aside of a registration, and of any execution issued on a registered order.

Notice of registration

Rule 33.—(1) Notice of the registration of an order must be served on the person or persons holding the property referred to in rule 31(1)(b) and any other persons appearing to have an interest in that property.

[^{F149}(2) Permission is not required to serve such a notice out of the jurisdiction and CPR rules 6.24, 6.25 and 6.29 shall apply in relation to such notice as they apply in relation to a claim form.]

Textual Amendments

F149 Sch. 1 RSC Order 115 rule 33(2) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **31**

Application to vary or set aside registration

Rule 34 An application to vary or set aside the registration of an order must be made to a judge in accordance with CPR Part 23 and be supported by a witness statement or affidavit.

This rule does not apply to a variation or cancellation under rule 36.

Enforcement of order

Rule 35.—(2) If an application is made under rule 34, an order shall not be enforced until after such application is determined.

(3) This rule does not apply to the taking of steps under paragraph 5 or 6 of Schedule 4, as applied by paragraph 9 (6) of that Schedule.

Variation and cancellation of registration

Rule 36 If effect has been given (whether in England or Wales or elsewhere) to a Scottish, Northern Ireland or Islands order, or if the order has been varied or discharged by the court by which it was made, the applicant for registration shall inform the court and—

- (a) if such effect has been given in respect of all the money or other property to which the order applies, or if the order has been discharged by the court by which it was made, registration of the order shall be cancelled;
- (b) if such effect has been given in respect of only part of the money or other property, or if the order has been varied by the court by which it was made, registration of the order shall be varied accordingly.

[^{F150}RSC ORDER 116

THE CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996

Textual Amendments

F150 Sch. 1 RSC Order 116 inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **61**, Appendix 1

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Application

1. This Order shall apply in relation to acquittals in respect of offences alleged to be committed on or after 15th April 1997.

Interpretation

2. In this Order, unless the context otherwise requires—

“the Act” means the Criminal Procedure and Investigations Act 1996;

“acquitted person” means a person whose acquittal of an offence is the subject of a certification under section 54(2) of the Act, and “acquittal” means the acquittal of that person of that offence;

“magistrates' court” has the same meaning as in section 148 of the Magistrates' Courts Act 1980;

“prosecutor” means the individual or body which acted as prosecutor in the proceedings which led to the acquittal;

“record of court proceedings” means—

- (a) (where the proceedings took place in the Crown Court) a transcript of the evidence, or
- (b) a note of the evidence made by the justices' clerk,

in the proceedings which led to the conviction for the administration of justice offence referred to in section 54(1)(b) of the Act or, as the case may be, the proceedings which led to the acquittal;

“single judge” means a judge of the Queen’s Bench Division;

“witness” means a witness whose evidence is contained in a witness statement or affidavit filed under rule 5, 7, 8 or 9.

Assignment of proceedings

3. The jurisdiction of the High Court under section 54(3) of the Act shall be exercised by a single judge.

Time limit for making application

4. An application under section 54(3) of the Act shall be made not later than 28 days after—

(a) the expiry of the period allowed for appealing (whether by case stated or otherwise), or making an application for leave to appeal, against the conviction referred to in section 54(1)(b) of the Act; or

(b) where notice of appeal or application for leave to appeal against the conviction is given, the determination of the appeal or application for leave to appeal and, for this purpose, “determination” includes abandonment (within the meaning of rule 10 of the Criminal Appeal Rules 1968 or, as the case may be, rule 11 of the Crown Court Rules 1982).

Application

5.—(1) An application under section 54(3) of the Act shall be made by claim form which shall be issued out of the Crown Office by the prosecutor.

(2) The application shall be accompanied by—

- (a) a witness statement or affidavit which deals with the conditions in section 55(1), (2) and (4) of the Act and which exhibits any relevant documents (which may include a copy of any record of court proceedings);

- (b) a copy of the certification under section 54(2) of the Act.

Notice to the acquitted person

6.—(1) The prosecutor shall, within 4 days of the issue of the application, serve written notice on the acquitted person that the application has been issued.

(2) The notice given under paragraph (1) shall—

- (a) specify the date on which the application was issued;
- (b) be accompanied by a copy of the application and of the documents which accompanied it;
- (c) inform the acquitted person that—
 - (i) the result of the application may be the making of an order by the High Court quashing the acquittal, and
 - (ii) if he wishes to respond to the application, he must, within 28 days of the date of service on him of the notice, file in the Crown Office any witness statement or affidavit on which he intends to rely.

Witness statement or affidavit of service on an acquitted person

7. The prosecutor shall, as soon as practicable after service of the notice under rule 6, file at the Crown Office a witness statement or affidavit of service which exhibits a copy of the notice.

Response of acquitted person

8.—(1) If the acquitted person wishes to respond to the application, he shall, within 28 days of service on him of notice under rule 6, file in the Crown Office a witness statement or affidavit which—

- (a) deals with the conditions in section 55(1), (2) and (4) of the Act; and
- (b) exhibits any relevant documents (which may include a copy of any record of court proceedings).

(2) The acquitted person shall, within 4 days of the filing of the documents mentioned in paragraph (1), serve copies of them on the prosecutor.

Evidence

9.—(1) A witness statement or affidavit filed under rule 5, 7, 8 or this rule may contain statements of information or belief with the sources and grounds thereof.

(2) The prosecutor may, not later than 10 days after expiry of the period allowed under rule 8(1), apply for an order granting permission to file further evidence without notice being served on any other party.

(3) If the single judge grants permission, the order shall specify a period within which further evidence or records are to be filed, and the Crown Office shall serve a copy of the order on the prosecutor and on the acquitted person.

(4) The prosecutor shall, within 4 days of filing further evidence in the Crown Office, serve a copy of that evidence on the acquitted person.

Determination of the application

10.—(1) Subject to paragraph (3), the single judge shall determine whether or not to make an order under section 54(3) of the Act on the basis of the written material provided under rules 5, 7, 8 and 9 in the absence of the prosecutor, the acquitted person, or of any witness.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(2) The determination shall not be made, and any hearing under paragraph (3) shall not take place, before the expiry of—

- (a) 10 days after the expiry of the period allowed under rule 8(1), or
- (b) 10 days after the expiry of the period allowed by any order made under rule 9(3).

(3) The single judge may, of his own initiative or on the application of the prosecutor or acquitted person, order a hearing of the application if he thinks fit.

(4) An application under paragraph (3) shall state whether a hearing is desired in order for a deponent for the other party to attend and be cross-examined, and, if so, the reasons for wishing the witness to attend.

(5) An application under paragraph (3) shall be made no later than 7 days after the expiry of the period allowed—

- (a) under rule 8(1), or
- (b) by any order made under rule 9(3).

(6) Where a hearing is ordered, the single judge may, of his own initiative or on the application of the prosecutor or acquitted person, order a witness to attend in order to be cross-examined.

(7) The prosecutor or the acquitted person, as the case may be, shall within 4 days after filing the application under paragraph (3), serve a copy of it on the other party, and file in the Crown Office a witness statement or affidavit of service.

(8) A party served under paragraph (7) shall, within 5 days of service, file any representations he wishes to make as to whether or not a hearing should be ordered.

(9) Subject to paragraph (10) below—

- (a) the single judge shall not determine an application for a hearing under paragraph (3) unless—
 - (i) a witness statement or affidavit of service has been filed as required by paragraph (7), and
 - (ii) the period for filing representations allowed under paragraph (8) has elapsed, or
 - (iii) representations have been filed under paragraph (8).
- (b) The requirements imposed by sub-paragraph (a)(i) and (iii) are satisfied even though the witness statement or affidavit of service or, as the case may be, the representations are filed outside the time limits allowed.

(10) Where after an application for a hearing has been made—

- (a) no witness statement or affidavit of service has been filed, and
- (b) no representations under paragraph (8) have been received after the expiry of 7 days from the filing of the application,

the single judge may reject the application.

(11) Where after a hearing is ordered, either the prosecutor or the acquitted person desires a witness for the other party to attend the hearing in order to be cross-examined, he must apply for an order under paragraph (5) giving his reasons without notice being served on any other party.

(12) The Crown Office shall serve notice on the prosecutor and the acquitted person of any order made under the foregoing paragraphs of this rule and, where a hearing is ordered, the notice shall—

- (a) set out the date, time and place of the hearing, and
- (b) give details of any witness ordered to attend for cross-examination.

(13) A hearing ordered under paragraph (3) above shall be in public unless the single judge otherwise directs.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(14) the Crown Office shall serve notice of any order made under section 54(3) of the Act quashing the acquittal or of a decision not to make such an order on the prosecutor, the acquitted person and—

- (a) where the court before which the acquittal or conviction occurred was a magistrates' court, on the [^{F151}justices' chief executive];
- (b) where the court before which the acquittal or conviction occurred was the Crown Court, on the appropriate officer of the Crown Court sitting at the place where the acquittal or conviction occurred.]

Textual Amendments

F151 Words in [Sch. 1 RSC Order 116 rule 10\(14\)\(a\)](#) substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(b), [26](#)

SCHEDULE 2

Rule 50(4)

Commencement Information

I2 [Sch. 2](#) in force at 26.4.1999, see [Signature](#)

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

^{F152}**Rule 6**

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Textual Amendments

F152 Sch. 2 CCR Order 3 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by S.I. 2000/940, rules 1, 2)

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

^{F153}**Rule 5**

Textual Amendments

F153 Sch. 2 CCR Order 5 rules 5-8 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by S.I. 2000/940, rules 1, 2)

Representation of person or class

^{F153}**Rule 6**

Textual Amendments

F153 Sch. 2 CCR Order 5 rules 5-8 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by S.I. 2000/940, rules 1, 2)

Representation of estate where no personal representative

^{F153}**Rule 7**

Textual Amendments

F153 Sch. 2 CCR Order 5 rules 5-8 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), rules 1, 2)

Proceedings against estates

^{F153}**Rule 8**

Textual Amendments

F153 Sch. 2 CCR Order 5 rules 5-8 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), rules 1, 2)

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

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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(108) or under section 138 (9C) of the County Courts Act 1984(109), the

(108) 1925 c. 20.

(109) 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.

particulars 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(110);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(111) 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;

(110) 1992 c. 4.

(111) 1974 c. 39.

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Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- (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⁽¹¹²⁾.

(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⁽¹¹³⁾ 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).

⁽¹¹²⁾ 1992 c. 4.
⁽¹¹³⁾ 1983 c. 19.

Hire-purchase

Rule 6.—(1) Where a claimant claims the delivery of goods let under a hire-purchase agreement [^{F154}or a conditional sale 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 [^{F155}or a conditional sale 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.

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Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Textual Amendments

F154 Words in Sch. 2 CCR Order 6 rule 6(1) inserted (26.4.1999) by The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **64(a)**

F155 Words in Sch. 2 CCR Order 6 rule 6(2) inserted (26.4.1999) by The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **64(b)**

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

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Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(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

^{F156}Rule 1

Textual Amendments

F156 Sch. 2 CCR Order 13 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), rules 1, 2)

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.

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Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(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.

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(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
- (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

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- (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 [^{F157}in the exercise of any power which could have been exercised if possession had been sought otherwise than in accordance with this Order].

Textual Amendments

F157 Words in Sch. 2 CCR Order 24 rule 5(4) inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **66**

Warrant of possession

Rule 6.—(1) Subject to paragraphs (2) and (3), a warrant of possession to enforce an order for possession [^{F158}in a possession claim against trespassers under Part 55] 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.

Textual Amendments

F158 Words in Sch. 2 CCR Order 27 rule 4(1)(b) substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(b), **28(a)**

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(114); 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 [^{F159}a possession claim against trespassers under Part 55], 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;
- (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.

Textual Amendments

F159 Words in [Sch. 2 CCR Order 27 rule 10\(3\)](#) substituted (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), [rules 1\(b\)](#), [27\(b\)](#)

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,

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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”.

(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—

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- (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

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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(**115**);
- (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
- (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(**116**), 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

(115) 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.

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

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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.

[^{F160}(3) The order shall be served—

- (a) by the judgment creditor delivering the order to the debtor personally; or
- (b) by the court sending it by first-class post to the debtor—
 - (i) at his address for service; or
 - (ii) where CPR rule 6.5(5) applies, at the place of service specified in that rule.]

[^{F161}(3A) Unless the judgment creditor otherwise requests, service shall be effected in accordance with paragraph (3)(b).

(3B) Where an order is served in accordance with paragraph (3)(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 debtor.

(3C) Where—

- (a) an order has been sent by post in accordance with paragraph (3)(b) to the debtor's address for service; and
- (b) the order has been returned to the court office undelivered, the court shall send notice of non-service to the judgment creditor pursuant to CPR rule 6.11 together with a notice informing him that he may request bailiff service at that address.

(3D) If the appellant requests bailiff service under paragraph (3C), it shall be effected by a bailiff of the court—

- (a) inserting the order, enclosed in an envelope addressed to the debtor, through the letter-box at the debtor's address for service;
- (b) delivering the order to some person, apparently not less than 16 years old, at the debtor's address for service; or
- (c) delivering the order to the debtor personally.]

(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(**117**) 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.

(**117**) 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.

Textual Amendments

F160 Sch. 1 CCR Order 25 rule 3 substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **32(a)(i)**

F161 Sch. 2 CCR Order 25 rule 3(3A)-(3D) inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **32(a)(ii)**

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.

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Interest on judgment debts

Rule 5A Where the judgment creditor claims interest pursuant to the County Courts (Interest on Judgment Debts) Order 1991(**118**) 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;
- (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(**119**) and section 326 of the Companies Act 1948(**120**), send the money to the judgment creditor in the manner prescribed by the Court Funds Rules 1987(**121**) 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

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

(119) 1986 c. 45.

(120) 1948 c. 38.

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

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—

(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

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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 ^{F162}permission of the court under CPR rule 6.20] 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 ^{F163}an order under Order 25, rule 3] 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.

Textual Amendments

F162 Words in Sch. 2 CCR Order 25 rule 9(2)(b) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **32(b)(i)**

F163 Words in Sch. 2 CCR Order 25 rule 9(4) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **32(b)(ii)**

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)—

- (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.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

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 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(122).

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;

(122)1928 c. 43.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- (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.

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(**123**) 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,

(123) 1986 c. 45.

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 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

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Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

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.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(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(**124**) 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.

(124)1971 c. 32.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(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.

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 [F158]justices' chief executive for] the magistrates' court, a certificate by that [F158]chief executive] 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.

Textual Amendments

F158 Words in Sch. 2 CCR Order 27 rule 4(1)(b) substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), [rules 1\(b\)](#), [28\(a\)](#)

Service and reply

Rule 5.—[F164(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 an order under Order 25, rule 3.]

(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.

Textual Amendments

F164 Sch. 2 CCR Order 27 rule 5(1) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **33(a)**

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.

(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.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

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(125) 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.

(125) 1971 c. 32; section 23(1) was amended by the Administration of Justice Act 1982 (c. 53), section 53(2).

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(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
- (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 [^{F159}justices' chief executive for] the magistrates' court.

Textual Amendments

F159 Words in Sch. 2 CCR Order 27 rule 10(3) substituted (15.10.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(b), **27(b)**

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

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(126) 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.

(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.

(126) 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.

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(127).

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.

(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(128).

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(129) 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.

(127) 1984 c. 28.

(128) 1984 c. 28.

(129) 1973 c. 18.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

[^{F165}(3A) 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 an order under Order 25, rule 3.]

[^{F166}(3B) Service of the 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 applicant satisfying the court by witness statement or affidavit that the respondent is about to remove from his address for service.]

[^{F167}(3C)] ^{F168}... 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 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(**130**) or otherwise, the court may discharge or vary the attachment of earnings order.”

(130) 1973 c. 18; section 28(1) was amended by the Matrimonial and Family Proceedings Act 1984 (c. 42), section 5.

Textual Amendments

- F165** Sch. 2 CCR Order 27 rule 17(3A) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **33(b)(i)**
- F166** Sch. 2 CCR Order 27 rule 17(3B) inserted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **33(b)(iii)**
- F167** Sch. 2 CCR Order 27 rule 17(3B) renumbered as Sch. 2 CCR Order 27 rule 17(3C) (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **33(b)(ii)**
- F168** Words in Sch. 2 CCR Order 27 rule 17(3B) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **67**

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.

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Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(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.

(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

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Earnings Act 1971(**131**) 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.

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

(131)1971 c. 32; section 23(1) was amended by the Administration of Justice Act 1982 (c. 53), section 53(2).

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, [^{F169}the court officer] 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, [^{F170}and the court officer at the foreign court shall make] and sign a certificate of payment and send it by post or otherwise to the gaoler;

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Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(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).

Textual Amendments

F169 Words in Sch. 2 CCR Order 28 rule 13(1)(a) substituted (26.4.1999) by The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **68(a)**

F170 Words in Sch. 2 CCR Order 28 rule 13(1)(b) substituted (26.4.1999) by The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008), rules 1, **68(b)**

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.

(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(**132**).

(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

(132)1971 c. 32.

Acts 1869 and 1878(133) 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:—

- (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.

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Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(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(134),

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.

(134) 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).

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 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 [F171 an order under Order 25, rule 3] at least 15 days before the return day;

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(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.

Textual Amendments

F171 Words in [Sch. 2 CCR Order 30 rule 3\(2\)\(a\)](#) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rules 1\(b\)](#), [34](#)

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,

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.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

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(**135**) 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(**136**) 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;
- (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

(135) 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.

(136) 1992 c. 14.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

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.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

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 [^{F172}an order under Order 25, rule 3.]

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

Textual Amendments

F172 Words in [Sch. 2 CCR Order 33 rule 4\(3\)](#) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rules 1\(b\)](#), [35](#)

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

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

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,

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

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

(137) 1933 c. 13; section 10 was substituted by the Civil Jurisdiction and Judgments Act 1982 (c. 27), section 35(1), schedule 10, paragraph 3.

1982(138) 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;
- (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.

(138) 1982 c. 27; section 12 was amended by the Civil Jurisdiction and Judgments Act 1991 (c. 12), section 3, schedule 2, paragraph 7.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

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—

“the Act of 1982” means the Civil Jurisdiction and Judgments Act 1982(**139**),

“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.

(139)1982 c. 27.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- (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.

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.

Status: Point in time view as at 01/04/2001.
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(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

^{F173}**Rule 6**

Textual Amendments
F173 Sch. 2 CCR Order 37 rule 6 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with [rule 39\(b\)](#)) (as amended by [S.I. 2000/940](#), rules 1, 2)

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

Status: Point in time view as at 01/04/2001.

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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

Status: Point in time view as at 01/04/2001.
Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

<i>Amount of charges</i>	<i>£</i>
(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.

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>
	<i>£</i>	<i>£</i>	<i>£</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	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>
	£	£	£
of rent, whether claimed or not, in addition to current rent, and the defendant has neither delivered a defence, admission or counterclaim, nor otherwise 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>
3. For filing a request for the issue of a warrant of execution for a sum exceeding £25	£2.25
4. 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
5. For service by an alternative method, including attendances, making appointments to serve claim forms, preparing and attending to	£25.00

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

<i>Amount to be allowed</i>	<i>£</i>
swear and file affidavits and to obtain order, and the fees paid for oaths	
6. 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
7. 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
8. For the costs of the judgment creditor when allowed on an application for a charging order	£71.00
9. For obtaining a certificate of judgment where costs allowed under Order 35, rule 5(3)(d)	£8.00
10. 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
11. 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(140) 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

(140) 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.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

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—

- (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.

Status: Point in time view as at 01/04/2001.

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(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;
- (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(141) 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.

(141) Section 112 was amended by the Insolvency Act 1985 (c. 65), section 220(2).

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(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
 - (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(142) 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.

(142)Section 113 was amended by the Administration of Justice Act 1985 (c. 61), section 67(2), schedule 8, Part II.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(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(**143**);

“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.

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.

(143)1947 c. 44.

(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) [^{F174}Section III of CPR Part 6] 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.

Textual Amendments

F174 Words in [Sch. 2 CCR Order 42 rule 7\(1\)](#) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), [rules 1\(b\)](#), [36](#)

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.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

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 [F175Orders 25 to 31 or RSC Order 30 (in so far as it applies to proceedings in the county court)] 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.

Textual Amendments

F175 Words in Sch. 2 CCR Order 42 rule 13(1) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **69**

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(**144**) 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.

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(**145**), “the Act of 1954” means the Landlord and Tenant Act 1954(**146**), “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.

(144) 1947 c. 44; section 27(1) was amended by the Supreme Court Act 1981 (c. 54), section 139(1) and schedule 7.

(145) 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.

(146) 1954 c. 56.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

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—

- (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⁽¹⁴⁷⁾ 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⁽¹⁴⁸⁾ for a new tenancy shall state—

- (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.

⁽¹⁴⁷⁾Section 7 was amended by the Leasehold Reform Act 1967 (c. 88), section 39(2), schedule 5, paragraph 3(1)(b).

⁽¹⁴⁸⁾Section 24 was amended by the Law of Property Act 1969 (c. 59), sections 3(2) and 4(1).

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(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⁽¹⁴⁹⁾ 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.

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⁽¹⁵⁰⁾ 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⁽¹⁵¹⁾, any document

⁽¹⁴⁹⁾Section 44 was amended by the Law of Property Act 1969 (c. 59), section 14(1).

⁽¹⁵⁰⁾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.

⁽¹⁵¹⁾Section 63 was amended by S.I. 1991/724.

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(152), 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(153) for the authorisation of an agreement may be heard and determined by the district judge and may be dealt with in private.

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(154) 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.

(152) 1984 c. 28; section 63 was amended by S.I. 1998/2940.

(153) Section 38 was amended by the Law of Property Act 1969 (c. 59), section 5.

(154) 1985 c. 70. section 31C was inserted by the Housing Act 1996 (c. 52), section 83(3).

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Application for order under section 24 of the Act of 1987

^{F176}Rule 18

Textual Amendments
F176 Sch. 2 CCR Order 43 rule 18 omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **70(a)**

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**(155)** 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**(156)** 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**(157)** 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;

(155) 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.

(156) Section 27 was amended by the Leasehold Reform Housing and Urban Development Act 1993 (c. 28), section 85.

(157) Section 40 was amended by the Housing Act 1988 (c. 50), section 119, schedule 13, paragraph 6.

- (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 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 ^{F177} ... 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.

Textual Amendments

F177 Words in [Sch. 2 CCR Order 43 rule 20\(3\)](#) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **70(b)**

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(**158**) 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.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(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.

(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(159) 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 notice shall be served on the claimant in the manner required for service of [F178an order under Order 25, rule 3.]

(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.

Textual Amendments

F178 Words in [Sch. 2 CCR Order 45 rule 1\(3\)](#) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), 37

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.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(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;

(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(**160**) for a declaration of legitimation by virtue of the Legitimacy Act 1976(**161**) shall be made by claim form stating—

(**160**) 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.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- (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.

(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—

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

“^{F179}bodily samples]” and “^{F180}scientific tests]” have the meanings assigned to them by section 25 of the Family Law Reform Act 1969⁽¹⁶²⁾; and

“direction” means a direction for the use of ^{F180}scientific 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 ^{F179}bodily samples].

(3) Where an application is made for a direction involving the taking of ^{F179}bodily 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⁽¹⁶³⁾ and incapable of understanding the nature and purpose of ^{F180}scientific 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 taking of ^{F179}bodily 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 ^{F179}bodily samples].

Textual Amendments

F179 Words in Sch. 2 CCR Order 47 rule 5 substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(c), **30(a)**

F180 Words in Sch. 2 CCR Order 47 rule 5 substituted (1.4.2001) by [The Civil Procedure \(Amendment\) Rules 2001 \(S.I. 2001/256\)](#), rules 1(c), **30(b)**

CCR ORDER 48B

ENFORCEMENT OF PARKING PENALTIES UNDER THE ROAD TRAFFIC ACT 1991⁽¹⁶⁴⁾

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

⁽¹⁶²⁾ 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.

⁽¹⁶³⁾ 1983 c. 20.

⁽¹⁶⁴⁾

1991 c. 40.

(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(165) 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.

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—

(165)S.I. 1993/2073.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- (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.

(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 [^{F181}an order] 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.

Textual Amendments

F181 Words in Sch. 2 CCR Order 48B rule 2(6G) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, 71

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;

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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.

(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.

[^{F182}CCR ORDER 48D

ENFORCEMENT OF FIXED PENALTIES UNDER THE ROAD TRAFFIC (VEHICLE EMISSIONS) (FIXED PENALTY) REGULATIONS 1997

Textual Amendments

F182 Sch. 2 CCR Order 48D inserted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, 72, Appendix 2

Application and interpretation

1.—(1) This Order applies for the recovery of fixed penalties as defined in regulations 2(1)(b) and 9 of the 1997 Regulations.

(2) In this order, unless the context otherwise requires—

“authority” means a participating authority as defined in regulation 2(1)(f) of the 1997 Regulations;

“order” means an order made under regulation 10(1) of the 1997 Regulations;

“the Order” means the Enforcement of Road Traffic Debts Order 1993;

“respondent” means the person on whom the fixed penalty notice was served;

“specified debts” means the Part II debts specified in article 2(1)(a) of the Order;

“the 1997 Regulations” means the Road Traffic (Vehicle Emissions) (Fixed Penalty) Regulations 1997.

(3) Unless the context otherwise requires, expressions which are used in the 1997 Regulations have the same meaning in this Order as they have in those Regulations.

The Parking Enforcement Centre

2. The parking enforcement centre established in rule 1A of Order 48B shall have such functions relating to proceedings under this Order and other related matters as the Lord Chancellor may direct.

Requests for Orders and Warrants of Execution

3.—(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, a combined request for an order and a warrant of execution may be made, and such an order may be enforced and a warrant executed in accordance with the following provisions of this Order.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(2) An authority shall file a combined request for an order and a warrant of execution in the appropriate form or in another manner approved by the court officer scheduling the fixed penalties in respect of which an order and warrant of execution are sought.

(3) The authority shall in the request or in another manner approved by the court officer—

(a) certify—

(i) that 56 days have elapsed since the issue of the fixed penalty notice,

(ii) the amount due under the fixed penalty notice and the date on which it was issued,
and

(iii) that the amount due remains unpaid;

(b) give the number of the fixed penalty notice;

(c) specify (whether by reference to the appropriate code or otherwise) the grounds stated in the fixed penalty notice and in regulation 2(1)(d) of the 1997 Regulations on which the authorised person who issued the fixed penalty notice believed that a fixed penalty was payable with respect to that 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 fixed penalty notice number or otherwise) the authority's address for service;

(iv) the court fee.

(4) If satisfied that the combined request is in order, the court officer shall order that the fixed penalty (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 shall, within 7 days of the sealing of the request, prepare the warrant in the appropriate form.

Documents

4.—(1) Rule 3 of Order 48B shall apply to this Order with the modification referred to in paragraph (2).

(2) The reference to rule 2(2) in rule 3(1) of Order 48B shall be a reference to rule 3(2) of this Order.

Enforcement of Orders

5.—(1) Rule 5 of Order 48B shall apply to this Order with the modifications referred to in paragraphs (2), (3) and (4).

(2) Paragraphs (3), (4) and (7) of rule 5 shall not apply.

(3) Sub-paragraphs (c) and (d) of rule 5(9) shall not apply.

(4) In paragraph (11) of rule 5, the references to the words “charge certificate” shall be references to the words “fixed penalty notice”.

(5) Where a fixed penalty notice is withdrawn under regulation 12 of the 1997 Regulations—

(a) any order made or warrant issued in respect of that fixed penalty notice is deemed to be revoked;

(b) any execution issued on the order shall cease to have effect, and

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- (c) the authority shall forthwith inform any bailiff instructed to levy execution of the withdrawal of the warrant.]

CCR ORDER 49

MISCELLANEOUS STATUTES

Access to Neighbouring Land Act 1992(166)

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.

(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 ^{F183}....

Textual Amendments

F183 Words in [Sch. 2 CCR Order 49 rule 1\(7\)](#) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, [73\(a\)](#)

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Administration of Justice Act 1970(167)

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(168)

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—
 - (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.

(167)1970 c. 31.

(168)1932 c. 20.

(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(169)

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.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(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(170)

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(171)

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.

(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).

(170) 1988 c. 48.

(171) 1973 c. 41.

(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

^{F184}**Rule 6**

Textual Amendments

F184 Sch. 2 CCR Order 49 rule 6 revoked (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, 27

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(172) to recover possession of a dwelling-house let on an assured shorthold tenancy on the expiry or 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(173);
 - (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(174), 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.

(172)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.

(173)1977 c. 42.

(174)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.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(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).

(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

[^{F185}(i) the first written tenancy agreement and 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).

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- (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).

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- (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 [F186 paragraphs [F187(3C) and (3D) of Order 25, rule 3]] 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.
- (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.
- [F188(17A) Where the defendant seeks postponement of possession on the ground of exceptional hardship under section 89 of the Housing Act 1980, the judge may direct a hearing of that issue.
- (17B) Where the judge directs a hearing under paragraph (17A) it must be held before the date on which possession is to be given up.
- (17C) Where the judge is satisfied, on a hearing directed under paragraph (17A), that exceptional hardship would be caused by requiring possession to be given up by the date in the order of possession, he may vary the date on which possession must be given up.]
- (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.

Textual Amendments

- F185** Sch. 2 CCR Order 49 rule 6A(7)(i) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **73(c)(i)**
- F186** Words in Sch. 2 CCR Order 49 rule 6A(11) substituted (26.4.1999) by [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **73(c)(ii)**
- F187** Words in Sch. 2 CCR Order 49 rule 6A(11) substituted (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rules 1(b), **38**
- F188** Sch. 2 CCR Order 49 rule 6A(17A)-(17C) inserted (2.10.2000) by [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, **28**

Housing Act 1996: injunctions and powers of arrest

Rule 6B.—(1) An application for an injunction under section 152 of the Housing Act 1996(**175**) 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 [^{F189}witness statement or] 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”)—

- (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.

(175)1996 c. 52.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(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

Textual Amendments

F189 Words in *Sch. 2 CCR Order 49 rule 6B(4)* inserted (26.4.1999) by *The Civil Procedure (Amendment) Rules 1999 (S.I. 1999/1008)*, rules 1, **73(d)**

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(**176**),
- (b) section 44A of the Planning (Listed Buildings and Conservation Areas) Act 1990(**177**), or
- (c) section 26AA of the Planning (Hazardous Substances) Act 1990(**178**),

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”.

(176) 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.

(177) 1990 c. 9; section 44A was amended by the Planning and Compensation Act 1991 (c. 34), section 25, schedule 3, Part 1, paragraph 7.

(178) 1990 c. 10; section 26AA was inserted by the Planning and Compensation Act 1991 (c. 34), section 25, schedule 3, Part I, paragraph 15.

(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(179)

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—

(179) 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).

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- (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(180)

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—

(180)1993 c. 28; section 26 was amended by the Housing Act 1996 (c. 52).

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- (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(181)

^{F190}Rule 10

Textual Amendments

F190 Sch. 2 CCR Order 49 rule 10 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

Local Government (Miscellaneous Provisions) Act 1976(182)

^{F191}Rule 11

Textual Amendments

F191 Sch. 2 CCR Order 49 rule 11 revoked (2.5.2000) by [The Civil Procedure \(Amendment\) Rules 2000 \(S.I. 2000/221\)](#), rule 1(b), **Sch. 8** (with rule 39(b)) (as amended by S.I. 2000/940, rules 1, 2)

(181) [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](#).

(182) [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](#).

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Mental Health Act 1983(183)

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.

(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(184)

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(185).

(183) 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.

(184) 1983 c. 34.

(185) 1968 c. 52; section was amended by the Criminal Justice Act 1982 (c. 48), sections 38, 46.

^{F192}(3)

Textual Amendments

F192 Sch. 2 CCR Order 49 rule 13(3) omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, [73\(e\)](#)

[^{F193}Postal Services Act 2000]

Rule 15.—(1) An application under [^{F194}section 92 of the Postal Services Act 2000] 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 [^{F195}universal service provider] and the person in whose name the applicant seeks to bring proceedings.

Textual Amendments

F193 Sch. 2 CCR Order 49 rule 15 heading substituted (26.3.2001) by [The Postal Services Act 2000 \(Consequential Modifications No. 1\) Order 2001 \(S.I. 2001/1149\)](#), art. 1(2), [Sch. 1 para. 123\(3\)\(a\)](#)

F194 Words in Sch. 2 CCR Order 49 rule 15(1) substituted (26.3.2001) by [The Postal Services Act 2000 \(Consequential Modifications No. 1\) Order 2001 \(S.I. 2001/1149\)](#), art. 1(2), [Sch. 1 para. 123\(3\)\(b\)](#)

F195 Words in Sch. 2 CCR Order 49 rule 15(2) substituted (26.3.2001) by [The Postal Services Act 2000 \(Consequential Modifications No. 1\) Order 2001 \(S.I. 2001/1149\)](#), art. 1(2), [Sch. 1 para. 123\(3\)\(c\)](#)

Rentcharges Act 1977(186)

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.

[^{F196}Sex Discrimination Act 1975, Race Relations Act 1976, Disability Discrimination Act 1995 and Disability Rights Commission Act 1999]

Rule 17.—(1) In this rule—

^{F197}(a) “the Act of 1975”, “the Act of 1976 ”, “the Act of 1995” and “the Act of 1999” mean respectively the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995 and the Disability Rights Commission Act 1999;]

(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 [^{F198}1975,] section 57 of the Act of 1976 [^{F199}or section 25 of the Act of 1995] shall forthwith give notice to the Commission of the commencement of the proceedings and file a copy of the notice.

(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.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

(4) Proceedings under section 66, 71 or 72 of the Act of [^{F200}1975,] section 57, 62 or 63 of the Act of 1976 [^{F201}, section 25 of the Act of 1995 or section 6 of the Act of 1999] 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 [^{F202}1975,] section 59 of the Act of 1976 [^{F203} or paragraph 10 of Schedule 3 to the Act of 1999] 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 [^{F204}1975,] section 66 of the Act of 1976 [^{F205} or section 7 of the Act of 1999] —

- (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 [^{F206}1975,] section 72 (2) of the Act of 1976 [^{F207} or section 26 of the Act of 1995] 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.

Textual Amendments

F196 Sch. 2 CCR Order 49 rule 17 heading substituted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(a)** (with rule 39)

F197 Sch. 2 CCR Order 49 rule 17(1)(a) substituted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(b)** (with rule 39)

F198 Word in Sch. 2 CCR Order 49 rule 17(2) substituted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(c)(i)** (with rule 39)

F199 Words in Sch. 2 CCR Order 49 rule 17(2) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(c)(ii)** (with rule 39)

F200 Word in Sch. 2 CCR Order 49 rule 17(4) substituted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(d)(i)** (with rule 39)

F201 Words in Sch. 2 CCR Order 49 rule 17(4) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(d)(ii)** (with rule 39)

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

- F202** Word in Sch. 2CCR Order 49 rule 17(5) substituted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(e)(i)** (with rule 39)
- F203** Words in Sch. 2CCR Order 49 rule 17(5) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(e)(ii)** (with rule 39)
- F204** Word in Sch. 2CCR Order 49 rule 17(7) substituted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(f)(i)** (with rule 39)
- F205** Words in Sch. 2CCR Order 49 rule 17(7) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(f)(ii)** (with rule 39)
- F206** Word in Sch. 2CCR Order 49 rule 17(8) substituted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(g)(i)** (with rule 39)
- F207** Words in Sch. 2CCR Order 49 rule 17(8) inserted (3.7.2000) by [The Civil Procedure \(Amendment No. 3\) Rules 2000 \(S.I. 2000/1317\)](#), rules 1, **38(g)(ii)** (with rule 39)

Solicitors Act 1974(187)

^{F208}**Rule 18**

Textual Amendments

- F208** Sch. 2 CCR Order 49 rule 18 omitted (26.4.1999) by virtue of [The Civil Procedure \(Amendment\) Rules 1999 \(S.I. 1999/1008\)](#), rules 1, **73(f)**

Telecommunications Act 1984(188)

Rule 18A.—(1) CPR Rule 35.15 applies to proceedings under paragraph 5 of Schedule 2 to the Telecommunications Act 1984.

Applications under section 19 of the Trade Marks Act 1994(189)

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(190)

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.

(187) 1974 c. 47.

(188) 1984 c. 12.

(189) 1994 c. 26.

(190) 1992 c. 52.

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998. (See end of Document for details)

Trustee Act 1925, s.63(191)

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.

(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.

Status:

Point in time view as at 01/04/2001.

Changes to legislation:

There are currently no known outstanding effects for the The Civil Procedure Rules 1998.