

# SCHEDULE

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## CCR ORDER 1

### CITATION, APPLICATION AND INTERPRETATION

#### APPLICATION OF RSC TO COUNTY COURT PROCEEDINGS

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##### 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 4

### VENUE FOR BRINGING PROCEEDINGS

#### PROCEEDINGS RELATING TO LAND

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##### Rule 3

Proceedings –

- (b) for the foreclosure or redemption of any mortgage or, subject to CPR rule 73.10, 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

#### 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.

## 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.
- (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 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 –
    - (i) it is intended to enforce the judgement or order by execution against goods; or
    - (ii) the judgement or order to be enforced is an order for possession of land made in a possession claim against trespassers; 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.
- (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

## WARRANT OF POSSESSION

### Rule 6

- (1) Subject to paragraphs (2) and (3), a warrant of possession to enforce an order for possession 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.

## 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.

## 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<sup>1</sup>) and section 326 of the Companies Act 1948<sup>2</sup>), send the money to the judgment creditor in the manner prescribed by the Court Funds Rules 1987<sup>3</sup>) 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 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).

<sup>1</sup> 1986 c.45.

<sup>2</sup> 1948 c.38.

<sup>3</sup> S.I. 1987/821, as amended by S.I. 1988/817, 1990/518, 1991/227 and 1997/177.



- (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 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 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 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 set out in CPR rule 6.2 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.

## 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.

## 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 –
  - (a) by execution against goods; or
  - (b) where the judgement or order to be enforced is an order for possession of land made in a possession claim against trespassers,
 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 or the person against whom the possession order was made 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, 4 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<sup>1</sup>).

## 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;
    - (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.

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<sup>1</sup> 1928 c.43.

- (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<sup>1</sup>) 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 –
- 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
  - 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,
- the court shall send notice to the execution creditor and, if the warrant issued out of another court, to that court.

<sup>1</sup> 1986 c.45.

- (2) 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 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.
- (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<sup>1</sup>) 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.
- (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.

<sup>1</sup> 1971 c.32.

## 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 justices' chief executive for the magistrates' court, a certificate by that 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.

## SERVICE AND REPLY

### Rule 5

- (1) Notice of the application together with a form of reply in the appropriate form, shall be served on the debtor in the manner set out in CPR rule 6.2.
- (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.

## 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.

## 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<sup>1</sup>) 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.
- (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 –

<sup>1</sup> 1971 c.32; section 23(1) was amended by the Administration of Justice Act 1982 (c.53), section 53(2).

- (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 justices' chief executive for the magistrates' court.

## 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<sup>1</sup>) 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.

<sup>1</sup> 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.

- (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.

## 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<sup>1</sup>).

<sup>1</sup> 1984 c.28.

## 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<sup>1</sup>).

## 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<sup>2</sup>) 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.
- (3A) Notice of the application together with a form of reply in the appropriate form, shall be served on the debtor in the manner set out in CPR rule 6.2. (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. (3C) 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.’

<sup>1</sup> 1984 c.28.

<sup>2</sup> 1973 c.18.

- (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<sup>1</sup>) or otherwise, the court may discharge or vary the attachment of earnings order.’

## 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 –

<sup>1</sup> 1973 c.18; section 28(1) was amended by the Matrimonial and Family Proceedings Act 1984 (c.42), section 5.

- (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.
- (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.
- (3) The judgment creditor must file with the request all written evidence on which he intends to rely.

## 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) it is made under section 110(2) of the Act.

- (4) The written evidence on which the judgment creditor intends to rely must be served with the judgment summons.

## TIME FOR SERVICE

### Rule 3

- (1) The judgment summons and written evidence must 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 Earnings Act 1971<sup>1</sup>) for the attendance of the debtor at an adjourned hearing of an application for an attachment of earnings order.
- (1A) An order made under section 110(1) of the Act must be served personally on the judgment debtor.
- (1B) Copies of–
  - (a) the judgment summons; and
  - (b) the written evidence,
 must be served with the 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

### Rule 5

- (1) No person may be committed on an application for a judgment summons unless–
  - (a) the order is made under section 110(2) of the Act; or
  - (b) the judgment creditor proves that the debtor–
    - (i) has or has had since the date of the judgment or order the means to pay the sum in respect of which he has made default; and
    - (ii) has refused or neglected or refuses or neglects to pay that sum.

<sup>1</sup> 1971 c.32; section 23(1) was amended by the Administration of Justice Act 1982 (c.53), section 53(2).



- (2) The debtor may not be compelled to give evidence.

## 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 in the county court shall be deemed to be a judgment or order of the court in which the judgment summons is heard.

## 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.

## 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, 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, 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;
  - (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).

## 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<sup>1</sup>.
- (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.

<sup>1</sup> 1971 c.32.

- (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 Acts 1869 and 1878<sup>1</sup>) 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;

<sup>1</sup> 1869 c.62; 1878 c.54.

- (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.
  - (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<sup>1</sup>), 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.

<sup>1</sup> 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 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 set out in CPR rule 6.2.
- (4) Service shall be effected not less than 14 days before the return day.

## 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

### 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 rule 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, forever 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 SECTION 14, 92 OR 124 OF THE ACT

##### Rule 1 | Where –

- (a) it is alleged that any person has committed an offence under section 14, 92 or 118 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, or by wilfully insulting a judge, juror, witness or any officer of the court 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,

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 SECTION 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 SECTION 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 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

## 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 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.

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 –

- 4
- (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.

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**

Amount of charges	£
(a) Where service is not by solicitor	30.75
(b) Where service is by solicitor	35.00

**TABLE II**

**Where claim exceeds £250 but does not exceed £600**

Amount of charges	£
(a) Where service is not by solicitor	41.00
(b) Where service is by solicitor	48.50

**TABLE III**

**Where claim exceeds £600 but does not exceed £2,000**

Amount of charges	£
(a) Where service is not by solicitor	69.50
(b) Where service is by solicitor	77.00

**TABLE IV****Where claim exceeds £2,000**

Amount of charges	£
(a) Where service is not by solicitor	75.50
(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 paragraphs (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

Column 1	Column 2		
	Sum of money		
	A exceeding £25 but not exceeding £600 £	B exceeding £600 but not exceeding £3,000 £	C exceeding £3,000 £
(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, where one of the grounds for possession is arrears of rent (whether or not the order for possession is suspended on terms) and the defendant has neither delivered a defence, admission or counterclaim, nor otherwise denied liability	38.50	57.25	70.75

(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.

Amount to be allowed		£
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 swear and file affidavits and to obtain order, and the fees paid for oaths	£25.00
6	For each attendance on the hearing of an application for an attachment of earnings order of a judgment summons where costs are allowed under Order 27, rule 9, or Order 28, rule 10	£ 8.50
10	Where an order for possession is made under Section II of CPR Part 55 (Possession claims) 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

## 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<sup>1</sup>) 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 CPR Part 71, 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 particulars of his resources and needs, the court may proceed as if the debtor had filed a request under paragraph (1).

<sup>1</sup> 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.



- (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.
- (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<sup>1</sup>) 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.

<sup>1</sup> Section 112 was amended by the Insolvency Act 1985 (c.65), section 220(2).

- (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<sup>1</sup>) 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.
  - (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<sup>2</sup>);
    - ‘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.

<sup>1</sup> Section 113 was amended by the Administration of Justice Act 1985 (c.61), section 67(2), Schedule 8, Part II.  
<sup>2</sup> 1947 c.44.

## 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.
  - (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) 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.

## 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.

## 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–
  - (a) CPR Parts 69 to 73; or
  - (b) Orders 25 to 29
 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.

## ATTACHMENT OF DEBTS ETC.

### Rule 14

- (1) No order for the attachment of a debt under CPR Part 72 or for the appointment of a receiver under CPR Part 69 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<sup>1</sup>) 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.

<sup>1</sup> 1947 c.44; section 27(1) was amended by the Supreme Court Act 1981 (c.54), section 139(1) and Schedule 7.

- (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) CPR rule 72.8 shall apply, with the necessary modifications, in relation to an application under the said section 27, as it applies in relation to an application under CPR rule 72.2 for a third party debt order, except that the court shall not have the power to order enforcement to issue against the Crown.

## 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<sup>1</sup>) 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.
- (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.

<sup>1</sup> 1986 c.5.

## 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<sup>1</sup>) 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 set out in CPR rule 6.2.

<sup>1</sup> 1983 c.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.

## 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.
- (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<sup>1</sup>) for a declaration of legitimation by virtue of the Legitimacy Act 1976<sup>2</sup>) shall be made by claim form stating –
  - (a) the grounds on which the applicant relies;

<sup>1</sup> 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.

<sup>2</sup> 1976 c.31.

- (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 –
 

‘bodily samples’ and ‘scientific tests’ have the meanings assigned to them by section 25 of the Family Law Reform Act 1969<sup>1</sup>); and

‘direction’ means a direction for the use of 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 bodily samples.
- (3) Where an application is made for a direction involving the taking of 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<sup>2</sup>) and incapable of understanding the nature and purpose of 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 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 bodily samples.

<sup>1</sup> 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.

<sup>2</sup> 1983 c.20.

**CCR ORDER 48D****ENFORCEMENT OF FIXED PENALTIES UNDER THE ROAD TRAFFIC (VEHICLE EMISSIONS) (FIXED PENALTY) REGULATIONS 1997****APPLICATION AND INTERPRETATION****Rule 1**

- (1) This Order applies for the recovery of fixed penalties as defined in regulation s2(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(a);
  - ‘respondent’ means the person on whom the fixed penalty notice was served;
  - ‘specified debts’ means the debts specified in article 2(1)(a) of the Order;
  - ‘the 1997 Regulations’ mean 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 TRAFFIC ENFORCEMENT CENTRE****Rule 2**

The traffic 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****Rule 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.
- (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

### Rule 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

### Rule 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
- (c) the authority shall forthwith inform any bailiff instructed to levy execution of the withdrawal of the warrant.

## CCR ORDER 49

### MISCELLANEOUS STATUTES

#### APPLICATIONS UNDER SECTION 114, 204 AND 231 OF THE COPYRIGHT, DESIGNS AND PATENTS ACT 1988

##### 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

##### 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).
- (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 1996: INJUNCTIONS

### Rule 6B

- (1) An application for an injunction under section 152 of the Housing Act 1996 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 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.
- (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.

- (7A) An application for a warrant of arrest under section 155(3) of the Housing Act 1996 must be made in accordance with Part 23 and may be made without notice.
- (Section 155(4) of the Housing Act 1996 provides that a warrant shall not be issued unless the application is substantiated on oath.)
- (8) The judge before whom a person is brought following his arrest may –
- (a) deal with the matter; or
  - (b) adjourn the proceedings.
- (8A) Where the proceedings are adjourned the judge may remand the arrested person in accordance with section 155 (2)(b) or (5) of the Housing Act 1996.
- (8B) Where the proceedings are adjourned and the arrested person is released –
- (a) the matter must be dealt with (whether by the same or another judge) within 14 days of the day on which he was arrested; and
  - (b) the arrested person must be given not less than 2 days' notice of the hearing.
- (8C) An application notice under Order 29, rule 1(4) may be issued even if the arrested person is not dealt with within the period mentioned in paragraph (8B)(a).
- (9) Order 29, rule 1 shall apply where an application is made to commit a person for breach of an injunction as if references in that rule to the judge included references to a district judge.
- (10) A person against whom a committal order has been made may apply to the court under Order 29, rule 3 for his discharge and, if he does so, must, not less than 1 day before the hearing, serve the application notice on the person who made the application for committal.
- (11) Where, in accordance with paragraph 2(2)(b) of Schedule 15 to the Housing Act 1996, the court fixes the amount of any recognizance with a view to it being taken subsequently, the recognizance may be taken by –
- (a) a judge;
  - (b) a justice of the peace;
  - (c) a justices' clerk;
  - (d) a police officer of the rank of inspector or above or in charge of a police station; or
  - (e) where the arrested person is in his custody, the governor or keeper of a prison,
- with the same consequences as if it had been entered into before the court.

- (11A) The person having custody of an applicant for bail must release him if satisfied that the required recognizances have been taken.
- (11B) In paragraph (8) 'arrest' means the arrest of a person pursuant to –
  - (a) 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; or
  - (b) a warrant of arrest issued under section 155 of that Act.
- (12) The jurisdiction of the court under sections 152 to 157 of the Housing Act 1996 may be exercised by a district judge.

## 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;
  - (b) section 44A of the Planning (Listed Buildings and Conservation Areas) Act 1990; or
  - (c) section 26AA of the Planning (Hazardous Substances) Act 1990, 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'.
- (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.

## MENTAL HEALTH ACT 1983

### 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.



## POSTAL SERVICES ACT 2000

### Rule 15

- (1) An application under 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 universal service provider and the person in whose name the applicant seeks to bring proceedings.

## SEX DISCRIMINATION ACT 1975, RACE RELATIONS ACT 1976, DISABILITY DISCRIMINATION ACT 1995 AND DISABILITY RIGHTS COMMISSION ACT 1999

### Rule 17

- (1) In this rule –
  - (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 1975, section 57 of the Act of 1976 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.
- (4) Proceedings under section 66, 71 or 72 of the Act of 1975, section 57, 62 or 63 of the Act of 1976, 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 1975, section 59 of the Act of 1976 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 1975, section 66 of the Act of 1976 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 1975, section 72(2) of the Act of 1976 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.

## TELECOMMUNICATIONS ACT 1984

### Rule 18A

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

### 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

### 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.