

# ENFORCEMENT

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## I GENERAL RULES

### 33.1 Application

- (1) The rules in this Part apply to an application made in the High Court and a county court to enforce an order made in family proceedings.
- (2) Part 50 of, and Schedules 1 and 2 to, the CPR apply, as far as they are relevant and with necessary modification (including the modifications referred to in rule 33.7), to an application made in the High Court and a county court to enforce an order made in family proceedings.

### SECTION 1

*Enforcement of orders for the payment of money*

### 33.2 Application of the Civil Procedure Rules

Part 70 of the CPR applies to proceedings under this Section as if –

- (a) in rule 70.1, in paragraph (2)(d), ‘but does not include a judgment or order for the payment of money into court’ is omitted; and
- (b) rule 70.5 is omitted.

### 33.3 How to apply

- (1) Except where a rule or practice direction otherwise requires, an application for an order to enforce an order for the payment of money must be made in a notice of application accompanied by a statement which must –
  - (a) state the amount due under the order, showing how that amount is arrived at; and
  - (b) be verified by a statement of truth.
- (2) The notice of application may either –
  - (a) apply for an order specifying the method of enforcement; or
  - (b) apply for an order for such method of enforcement as the court may consider appropriate.
- (3) If an application is made under paragraph (2)(b), an order to attend court will be issued and rule 71.2 (6) and (7) of the CPR will apply as if the application had been made under that rule.

### 33.4 Transfer of orders

- (1) This rule applies to an application for the transfer –
  - (a) to the High Court of an order made in a designated county court; and
  - (b) to a designated county court of an order made in the High Court.
- (2) The application must be –
  - (a) made without notice; and
  - (b) accompanied by a statement which complies with rule 33.3(1).
- (3) The transfer will have effect upon the filing of the application.
- (4) Where an order is transferred from a designated county court to the High Court –
  - (a) it will have the same force and effect; and
  - (b) the same proceedings may be taken on it, as if it were an order of the High Court.

- (5) This rule does not apply to the transfer of orders for periodical payments or for the recovery of arrears of periodical payments.

## **SECTION 2**

### *Committal and injunction*

#### **33.5 General rule – committal hearings to be in public**

- (1) The general rule is that proceedings in the High Court for an order of committal will be heard in public.
- (2) An order of committal may be heard in private where this is permitted by rule 6 of Order 52 of the RSC (cases in which a court may sit in private).

#### **33.6 Proceedings in the principal registry treated as pending in a designated county court**

- (1) This rule applies where an order for the warrant of committal of any person to prison has been made or issued in proceedings which are –
- (a) in the principal registry; and
- (b) treated as pending in a designated county court or a county court.
- (2) The person subject to the order will, wherever located, be treated for the purposes of section 122 of the County Courts Act 1984<sup>1</sup> as being out of the jurisdiction of the principal registry.
- (3) Where –
- (a) a committal is for failure to comply with the terms of an injunction(GL); or
- (b) an order or warrant for the arrest or committal of any person is made or issued in proceedings under Part 4 of the 1996 Act in the principal registry which are treated as pending in a county court,
- the order or warrant may, if the court so directs, be executed by the tipstaff within any county court.

#### **33.7 Specific modifications of the CCR**

- (1) CCR Order 29, rule 1 (committal for breach of an order or undertaking) applies to –
- (a) section 8 orders, except those referred to in paragraph (2)(a); and
- (b) orders under the following sections of the 1989 Act<sup>2</sup> –
- (i) section 14A (special guardianship orders);
- (ii) section 14B(2)(b) (granting of permission on making a special guardianship order to remove a child from the United Kingdom);
- (iii) section 14C(3)(b) (granting of permission to remove from the United Kingdom a child who is subject to a special guardianship order); and
- (iv) section 14D (variation or discharge of a special guardianship order),
- as if paragraph (3) of that rule were substituted by the following paragraph –
- ‘(3) In the case of a section 8 order (within the meaning of section 8(2) of the Children Act 1989) or an order under section 14A, 14B(2)(b), 14C(3)(b) or 14D of the Children

<sup>1</sup> Section 122 was amended by section 10 of and paragraph 2(2) of Schedule 2 to the Civil Procedure Act 1997 and sections 74(1) and (3) of the Courts and Legal Services Act 1990.

<sup>2</sup> Sections 14A, 14B, 14C and 14D were inserted by section 115(1) of the Adoption and Children Act 2002 and amended by section 38 of the Children and Young Persons Act 2008.

Act 1989 enforceable by committal order under paragraph (1), the judge or the district judge may, on the application of the person entitled to enforce the order, direct that the proper officer issue a copy of the order, endorsed with or incorporating a notice as to the consequences of disobedience, for service in accordance with paragraph (2), and no copy of the order shall be issued with any such notice endorsed or incorporated save in accordance with such a direction.’

(2) CCR Order 29, rule 1 applies to –

- (a) contact orders to which a notice has been attached under section 11I of the 1989 Act( ) or under section 8(2) of the Children and Adoption Act 2006;
- (b) orders under section 11J of the 1989 Act (enforcement orders); and
- (c) orders under paragraph 9 of Schedule A1 to the 1989 Act (orders following breach of enforcement orders),  
as if paragraph (3) were omitted.

### **33.8 Section 118 County Courts Act 1984 and the tipstaff**

For the purposes of section 118 of the County Courts Act 1984( ) in its application to the hearing of family proceedings at the Royal Courts of Justice or the principal registry, the tipstaff is deemed to be an officer of the court.

## **II COMMITTAL BY WAY OF JUDGMENT SUMMONS**

### **33.9 Interpretation**

In this Chapter, unless the context requires otherwise –

‘order’ means an order made in family proceedings for the payment of money;

‘judgment creditor’ means a person entitled to enforce an order under section 5 of the Debtors Act 1869;

‘debtor’ means a person liable under an order; and

‘judgment summons’ means a summons under section 5 of the Debtor’s Act 1869<sup>1</sup> requiring a debtor to attend court.

### **33.10 Application**

(1) An application for the issue of a judgment summons may be made –

- (a) in the case of an order of the High Court –
  - (i) where the order was made in matrimonial proceedings, to the principal registry, a district registry or a divorce county court, whichever in the opinion of the judgment creditor is most convenient;
  - (ii) where the order was made in civil partnership proceedings, to the principal registry, a district registry or a civil partnership proceedings county court, whichever in the opinion of the judgment creditor is the most convenient; and
  - (iii) in any other case, to the principal registry, a district registry or a designated county court, whichever in the opinion of the judgment creditor is most convenient;
- (b) in the case of an order of a divorce county court, to whichever divorce county court is in the opinion of the judgment creditor most convenient; and

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<sup>1</sup> Section 118 was amended by the Statute Law (Repeals) Act 1986 and sections 17(3) and 101(1) of and paragraph 6 of Schedule 12 to the Criminal Justice Act 1991 and section 74(6) of the Courts and Legal Services Act 1990.

- (c) in the case of an order of a civil partnership proceedings county court, to whichever civil partnership proceedings county court is in the opinion of the judgment creditor most convenient, having regard (in any case) to the place where the debtor resides or carries on business and irrespective of the court or registry in which the order was made.
- (2) An application must be accompanied by a statement which –
  - (a) complies with rule 33.3(1);
  - (b) contains all the evidence on which the judgment creditor intends to rely; and
  - (c) has exhibited to it a copy of the order.

### **33.11 Judgment summons**

- (1) If the debtor is in default under an order of committal made on a previous judgment summons in respect of the same order, a judgment summons must not be issued without the court's permission.
- (2) A judgment summons must –
  - (a) be accompanied by the statement referred to in rule 33.10(2) and
  - (b) be served on the debtor personally not less than 14 days before the hearing.
- (3) A debtor served with the judgment summons under paragraph (2)(b) must be paid or offered a sum reasonably sufficient to cover the expenses of travelling to and from the court at which the debtor is summoned to appear.

### **33.12 Successive judgment summonses**

Subject to rule 33.11(1), successive judgment summonses may be issued even if the debtor has ceased to reside or carry on business at the address stated in the application for the issue of a judgment summons since the issue of the original judgment summons.

### **33.13 Requirement for personal service**

In proceedings for committal by way of judgment summons, the following documents must be served personally on the debtor –

- (a) where the court has summonsed the debtor to attend and the debtor has failed to do so, the notice of the date and time fixed for the adjourned hearing; and
- (b) copies of the judgment summons and the documents mentioned in rule 33.10(2).

### **33.14 Committal on application for judgment summons**

- (1) No person may be committed on an application for a judgment summons unless –
  - (a) where the proceedings are in the High Court, the debtor has failed to attend both the hearing that the debtor was summonsed to attend and the adjourned hearing;
  - (b) where the proceedings are in a county court, an order is made under section 110(2) of the County Courts Act 1984<sup>1</sup>; or
  - (c) the judgment creditor proves that the debtor –
    - (i) has, or has had, since the date of the order the means to pay the sum in respect of which the debtor has made default; and
    - (ii) has refused or neglected, or refuses or neglects, to pay that sum.

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<sup>1</sup> Section 110(2) was amended by articles 2 and 8 of the Civil Procedure (Modification of Enactments) Order 2002.

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

### **33.15 Orders for the benefit of different persons**

Where an applicant has obtained one or more orders in the same application but for the benefit of different persons –

- (a) where the judgment creditor is a child, the applicant may apply for the issue of a judgment summons in respect of those orders on behalf of the judgment creditor without seeking permission to act as the child's litigation friend; and
- (b) only one judgment summons need be issued in respect of those orders.

### **33.16 Hearing of judgment summons**

- (1) On the hearing of the judgment summons the court may –
  - (a) where the order is for lump sum provision or costs; or
  - (b) where the order is an order for maintenance pending suit, an order for maintenance pending outcome of proceedings or an order for other periodical payments and it appears to the court that the order would have been varied or suspended if the debtor had made an application for that purpose,  
make a new order for payment of the amount due under the original order, together with the costs of the judgment summons, either at a specified time or by instalments.
- (2) If the court makes an order of committal, it may direct its execution to be suspended on terms that the debtor pays to the judgment creditor –
  - (a) the amount due;
  - (b) the costs of the judgment summons; and
  - (c) any sums accruing due under the original order,  
either at a specified time or by instalments.
- (3) All payments under a new order or an order of committal must be made to the judgment creditor unless the court directs otherwise.
- (4) Where an order of committal is suspended on such terms as are mentioned in paragraph (2) –
  - (a) all payments made under the suspended order will be deemed to be made –
    - (i) first, in or towards the discharge of any sums from time to time accruing due under the original order; and
    - (ii) secondly, in or towards the discharge of a debt in respect of which the judgment summons was issued and the costs of the summons; and
  - (b) the suspended order must not be executed until the judgment creditor has filed a statement of default on the part of the debtor.

### **33.17 Special provisions as to judgment summonses in the High Court**

- (1) The court may summons witnesses to give evidence to prove the means of the debtor and may issue a witness summons for that purpose.
- (2) Where the debtor appears at the hearing, the court may direct that the travelling expenses paid to the debtor be allowed as expenses of a witness.
- (3) Where the debtor appears at the hearing and no order of committal is made, the court may allow the debtor's proper costs including compensation for any loss of earnings.
- (4) When the court makes –

- (a) a new order; or
  - (b) an order of committal,  
a court officer must send notice of the order to the debtor and, if the original order was made in another court, to that court.
- (5) An order of committal must be directed –
- (a) where the order is to be executed by the tipstaff, to the tipstaff; or
  - (b) where the order is to be executed by a deputy tipstaff, to the county court within the district of which the debtor is to be found.

### **33.18 Special provisions as to judgment summonses in designated county courts**

- (1) Rules 1, 2, 3(2), 5, 7(3) and 9(2) of Order 28 of the CCR (which deal with the issue of a judgment summons in a county court and the subsequent procedure) do not apply to judgment summons issued in a designated county court.
- (2) Rule 9(1) of Order 28 of the CCR (notification of order on judgment of High Court) applies to such a summons as if for the words ‘the High Court’ there were substituted the words –
  - (a) ‘any other court’ where they first appear; and
  - (b) ‘that other court’ where they next appear.
- (3) Rule 7(1) and (2) of Order 28 of the CCR (suspension of a committal order) apply to such a summons subject to rule 33.16(2) and (3).

## **III ATTACHMENT OF EARNINGS**

### **33.19 Proceedings in the Principal Registry**

The Attachment of Earnings Act 1971<sup>1</sup> and Order 27 of the CCR (attachment of earnings) apply to the enforcement of an order made in family proceedings in the principal registry which are treated as pending in a designated county court as if they were an order made by such a court.

## **IV WARRANT OF EXECUTION**

### **33.20 Applications to vary existing orders**

Where an application is pending for a variation of –

- (a) a financial order;
  - (b) an order under section 27 of the 1973 Act; or
  - (c) an order under Part 9 of Schedule 5 to the 2004 Act,
- no warrant of execution may be issued to enforce payment of any sum due under those orders, except with the permission of the district judge.

### **33.21 Section 103 County Courts Act 1984**

Where a warrant of execution has been issued to enforce an order made in family proceedings pending in the principal registry which are treated as pending in a designated county court, the goods and chattels against which the warrant has been issued must, wherever they are located,

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

be treated for the purposes of section 103 of the County Courts Act 1984<sup>1</sup> as being out of the jurisdiction of the principal registry.

## V COURT'S POWER TO APPOINT A RECEIVER

### 33.22 Application of the CPR

Part 69 of the CPR applies to proceedings under this Part.

## VI ORDERS TO OBTAIN INFORMATION FROM JUDGMENT DEBTORS

### 33.23 Application of the CPR

Part 71 of the CPR applies to proceedings under this Part.

## VII THIRD PARTY DEBT ORDERS

### 33.24 Application of the CPR

- (1) Part 72 of the CPR applies to proceedings under this Part with the following modifications.
- (2) In rule 72.4 –
  - (a) in paragraph (1), for 'a judge' there is substituted 'the court'; and
  - (b) in paragraph (2), for 'judge' there is substituted 'court'.
- (3) In rule 72.7, in paragraph (2)(a), after 'the Royal Courts of Justice' insert ', or the principal registry'.
- (4) Rule 72.10 is omitted.

## VIII CHARGING ORDER, STOP ORDER, STOP NOTICE

### 33.25 Application of the CPR

- (1) Part 73 of the CPR applies to proceedings under this Part with the following modifications.
- (2) In rule 73.1, paragraph (2), sub-paragraphs (b) and (c) are omitted.
- (3) For rule 73.2, there is substituted 'This Section applies to an application by a judgment creditor for a charging order under section 1 of the 1979 Act<sup>2</sup>'.
- (4) In rule 73.3, paragraph (2), sub-paragraphs (b) and (c) are omitted.
- (5) In rule 73.4 –
  - (a) in paragraph (1), for 'a judge' there is substituted 'the court'; and
  - (b) in paragraph (2), for 'judge' there is substituted 'court'.
- (6) In rule 73.9, in the parenthesis after paragraph (1) –
  - (a) 'and regulation 51.4 of the 1992 Regulations' is omitted;
  - (b) for 'provides' there is substituted 'provide', and
  - (c) ', or (where the 1992 Regulations apply) of the authority,' is omitted.

<sup>1</sup> Section 103 has been amended by section 74(1) and (3) and 125(2) and paragraph 16 of Schedule 17 to the Courts and Legal Services Act 1990 and section 10 of and paragraph 2(2) of Schedule 2 to the Civil Procedure Act 1997.

<sup>2</sup> 1979 c. 53. Section 1 was amended by sections 34 and 37 of and paragraphs 2, 3 and 6 of Schedule 3 to the Administration of Justice Act 1982 (c.53) and section 148(1) of and paragraph 71 of Schedule 2 to the County Courts Act 1984. Subsections (6) to (8) of that section were inserted by section 93(1) and (2) of the Tribunals, Courts and Enforcement Act 2007 (c.15).



- (7) In rule 73.10 –
- (a) in paragraph (1), for ‘a claim’ there is substituted ‘an application’;
  - (b) in paragraph (2) and the parenthesis following it, for ‘A claim’ each time it appears there is substituted ‘An application’;
  - (c) in paragraph (3), for ‘claimant’ there is substituted ‘applicant’;
  - (d) in paragraph (4), for ‘claim form’ there is substituted ‘application’; and
  - (e) in paragraph (5), for ‘claimant’s’ there is substituted ‘applicant’s’.
- (8) In rule 73.11, ‘funds in court or’ is omitted.
- (9) In rule 73.12 –
- (a) paragraph (1)(a) is omitted;
  - (b) in paragraph (1)(b) ‘other than securities held in court’ is omitted;
  - (c) in paragraph (2), in sub-paragraph (b), for ‘claim form’ there is substituted ‘application notice’; and
  - (d) in paragraph (3) –
    - (i) ‘or claim form’ is omitted; and
    - (ii) for sub-paragraph (b) there is substituted ‘the person specified in rule 73.5(1)(d)’.
- (10) Rule 73.13 is omitted.
- (11) In rule 73.14, in paragraph (1), ‘other than securities held in court’ is omitted.
- (12) In rule 73.16 –
- (a) in paragraph (a) for ‘; and’ there is substituted ‘.’; and
  - (b) paragraph (b) is omitted.

