1970 No. 1201 (L.26)

COUNTY COURTS

PROCEDURE

The County Court (Amendment No. 4) Rules 1970

Made - - -	30*th July* 1970
Coming into Operation	
Rules 1, 6(2) *and* (3), 7, 8, 11, 12	17*th August* 1970
Rules 3, 4, 9	1*st October* 1970
Rules 2, 5, 6(1), 10	15*th February* 1971

1.—(1) These Rules may be cited as the County Court (Amendment No. 4) Rules 1970.

(2) In these Rules an Order and Rule referred to by number means the Order and Rule so numbered in the County Court Rules 1936(**a**), as amended (**b**) ; Appendices A and E mean respectively Appendices A and E to those Rules, and a form referred to by number means the form so numbered in Appendix A.

(3) The Interpretation Act 1889(**c**) shall apply for the interpretation of these Rules as it applies for the interpretation of an Act of Parliament.

2. The following paragraph shall be added to Order 6, Rule 10 :—

"In relation to a sum expressed in decimal currency this Rule shall have effect as if for the reference to a penny there were substituted a reference to a new penny."

3. The following paragraph shall be inserted in Order 7, Rule 1, after paragraph (1) :—

"(1A) Where the particulars contain a claim for a sum of money which includes an amount expressed in shillings and pence, the equivalent of that sum in decimal currency must also be stated in the particulars."

4. The following paragraph shall be added to Order 9, Rule 9 :—

"(4) Order 7, Rule 1 (1A), shall apply to a counterclaim as it applies to particulars of a plaintiff's claim."

(a) S.R. & O. 1936/626 (1936 I, p. 282).

(b) The relevant amending instruments are S. R. & O. 1936/1312, 1938/18, S.I. 1950/1231, 1993, 1952/2198, 1953/1728, 1955/1799, 1956/1851, 1958/2226, 1961/1526, 1964/1974, 1965/2147, 1970/204, 673 (1936 I, p. 655; 1938 I, p. 977; 1950 I, pp. 400, 440; 1952 I, p. 635; 1953 I, p. 404; 1955 I, p. 530; 1956 I, p. 545; 1958 I, p. 372; 1961 II, p. 3177; 1964 III, p. 4477; 1965 III, p. 6292; 1970 I, p. 911; II, p. 2180).

(c) 1889 c. 63.

5. The following Rule shall be inserted in Order 24 after Rule 2 :—

"3. A judgment or order for the payment of a sum of money shall state that sum in decimal currency." Money judgment in decimal currency.

6. Order 25 shall be amended as follows :—

(1) The following Rule shall be inserted after Rule 7A :—

"7B. In any warrant, judgment summons or order issued or made to enforce a judgment or order for the payment of money, the amount to be recovered shall be stated in decimal currency." Process in decimal currency.

(2) In Rule 71(1), after the words "Form 200" there shall be added the words "or Form 399, whichever is appropriate", and in the marginal note for the words "Form 200" there shall be substituted the words "Forms 200, 399".

(3) At the beginning of Rule 72 there shall be inserted the words "Subject to the provisions of Order 26, Rule 6 (1),".

7. Rules 1 and 2 of Order 26 shall be added to Order 48 as Rules 24 and 25 respectively of that Order.

8. For Order 26 there shall be substituted the following Order :—

"ORDER 26

SUMMARY PROCEEDINGS FOR RECOVERY OF LAND

1.—(1) Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating application in accordance with the provisions of this Order. Proceedings to be by originating application.

(2) The originating application shall be in Form 396. Form 396.

(3) Where the applicant is unable, after taking reasonable steps, to identify every person occupying the land for the purpose of making him a respondent, the conclusion of Form 26 shall be in Form 397 instead of Form 3. Form 397.

2. The applicant shall file in support of the originating application an affidavit stating— Affidavit in support.

(*a*) his interest in the land ;

(*b*) the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises ; and

(*c*) in a case to which Rule 1(3) relates, that he has taken reasonable steps (describing them) to identify the persons occupying the land who are not named in the originating application.

Service of originating application.

3.—(1) Where the applicant has identified any person in occupation of the land, the originating application shall be served on him—

(*a*) by delivering to him personally a copy of the originating application, together with a notice in Form 26 and a copy of the affidavit in support, or

(*b*) by an officer of the court leaving the documents mentioned in sub-paragraph (*a*), or sending them to him, at the premises, or

(*c*) in accordance with Order 8, Rule 11, as applied to originating applications by Order 6, Rule 4(2), or

(*d*) in such other manner as the court may direct.

(2) Where the applicant has not identified every person in occupation of the land, the originating application shall, in addition to being served on any identified respondents in accordance with paragraph (1), be served by affixing a copy of it, together with a notice in Form 26, on the main door or other conspicuous part of the premises, unless the court directs service in some other manner.

Application by occupier to be made a party.

4. Without prejudice to Order 15, Rule 1, any person not named as a respondent who is in occupation of the land and wishes to be heard on the question whether an order for possession should be made may apply at any stage of the proceedings to be joined as a respondent.

Hearing of originating application.

5.—(1) Except in case of urgency and by leave of the court, the day fixed for the hearing of the originating application shall not be less than 7 clear days after the day of service.

(2) Notwithstanding anything in Order 23, Rules 4 and 5, no order for possession shall be made on the originating application except by the judge.

Form 398.

(3) An order for possession in proceedings under this Order shall be in Form 398.

Warrant of possession.

6.—(1) A warrant of possession to enforce an order for possession under this Order may be issued at any time after the making of the order.

Form 399.

(2) The warrant of possession shall be in Form 399.

Setting aside order.

7. The judge may, on such terms as he thinks just, set aside or vary any order made in proceedings under this Order."

9. The following Rule shall be added to Order 49 :—

"4. In these Rules "decimal currency" means the new currency provided for by the Decimal Currency Act 1967(**a**), and where it is necessary for the purposes of these Rules to calculate the amount in decimal currency corresponding to an amount in shillings and pence, the calculation shall be made in accordance with Schedule 1 to the Decimal Currency Act 1969(**b**)."

10. In the Forms in Appendix A for the expression "£ s. d." or "£ : :" wherever it appears there shall be substituted the expression "£ ".

(**a**) 1967 c. 47. (**b**) 1969 c. 19.

11. The following forms shall be added to Appendix A :—

"396 Order 26, Rule 1(2).

ORIGINATING APPLICATION FOR POSSESSION UNDER ORDER 26

In the County Court
No. of Matter

IN THE MATTER OF

[BETWEEN *A.B.* *Applicant*

and *C.D.* *Respondent whose name is known to the Applicant*]

I, , of [*state address and occupation of Applicant*] apply to the Court for an order for recovery of possession of [*here describe the property*] on the ground that I am entitled to possession and that the person[s] in occupation of the premises is [are] in occupation without licence or consent.

The person[s] in occupation who is [are] intended to be served individually with this application is [are] :—

[*here state the name of every person in occupation whom the applicant has indentified*]. [*Add where appropriate*: There are other persons in occupation whom I have been unable to identify.]

[*Or* It is not intended to serve any person individually with notice of this application.]

My address for service is : — [*here state the Applicant's address for service*].

Dated this day of , 19 .

(Signed)

Applicant

397 Order 26, Rule 1(3).

CONCLUSION OF FORM 26 IN PROCEEDINGS FOR POSSESSION UNDER ORDER 26

Any person occupying the premises mentioned in the application who is not named as a Respondent may apply to the Court to be joined as a Respondent.

Dated this day of , 19 .

REGISTRAR

To all persons concerned

Order 26, Rule 5(3).

398

ORDER FOR POSSESSION UNDER ORDER 26

[*Title as in Form* 396] Seal

UPON HEARING [and upon reading the affidavit of of]
IT IS ORDERED that the Applicant do recover possession of the land mentioned in the originating application in this matter, that is to say [*here describe the property*].

[AND IT IS ORDERED that the Applicant do recover against the Respondent the sum of £ for costs [*or* his costs of this matter to be taxed on scale]

AND IT IS FURTHER ORDERED that the said Respondent do pay the sum above-mentioned to the Registrar of this Court on the day of , 19 , [*or* do pay the costs, when taxed, to the Registrar of this Court on the day of , 19 , or, if the costs have not been taxed before the expiration of that day, within 3 days after taxation.]]

Order 26, Rule 6(2).

399

WARRANT OF POSSESSION UNDER ORDER 26

[*Title as in Form* 396] Seal

WHEREAS on the day of 19 , it was ordered that the Applicant do recover possession of [*describe the land as set out in the order*] [and it was ordered that the Applicant do recover against the Respondent the sum of £ for costs, which the said Respondent was ordered to pay to the Registrar of this Court on the day of , 19]
YOU ARE THEREFORE REQUIRED to give possession of the said land to the Applicant.

[And, the Respondent not having obeyed the said order for the payment of costs, you are ordered forthwith to levy the amount due to the Applicant under the order, together with the costs of this Warrant and the costs of executing the same [*continue as in Form* 200, *substituting* "Respondent" *for* "defendant"]]."

12. In the Table set out in Appendix E, after the item relating to Scale 3 there shall be inserted the following item :—

Column 1	*Column* 2
"Scale 4	£15 to £40".

We, the undersigned members of the Rule Committee appointed by the Lord Chancellor under section 102 of the County Courts Act 1959(**a**), having by virtue of the powers vested in us in this behalf made the foregoing Rules, do hereby certify the same under our hand and submit them to the Lord Chancellor accordingly.

D. O. McKee.
Connolly H. Gage.
Hugh Mais.
H. S. Ruttle.
David Pennant.
W. Ralph Davies.
E. A. Everett.
Arthur Figgis.
K. W. Mellor.
A. F. Stapleton Cotton.
D. A. Marshall.

I allow these Rules, of which Rules 1, 6(2) and (3), 7, 8, 11 and 12 shall come into operation on 17th August 1970, Rules 3, 4 and 9 on 1st October 1970 and Rules 2, 5, 6(1) and 10 on 15th February 1971.

Dated 30th July 1970.

Hailsham of St. Marylebone, C.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules make provision with regard to the use of decimal currency in county court proceedings. The decimal equivalent will have to be stated of all sums, other than whole £s, claimed in particulars of claim and counterclaims filed on or after 1st October 1970 (Rules 3 and 4), and to avoid fractions of a new penny the "whole penny" conversion table in Schedule 1 to the Decimal Currency Act 1969 will have to be used (Rule 9). All judgments given and enforcement process issued on and after the introduction of decimal currency on 15th February 1971 will have to be expressed in the new currency (Rules 5 and 6(1)). Other changes connected with decimalization are made in Rules 2 and 10. The second main object of these Rules is to introduce a rapid new procedure for the recovery of possession of land from trespassers on the lines of the procedure now available in the High Court (Rules 6(2) and (3), 8 and 11). Rule 12 prescribes the minimum and maximum sums which may be allowed where costs are assessed on the recently introduced Higher Scale 4.

(**a**) 1959 c. 22.

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