1965 No. 2147 (L.29)

COUNTY COURTS

PROCEDURE

The County Court (Amendment) Rules 1965

Made - - - *20th December* 1965

Coming into Operation—

Rules 1, 11, 12 - - *1st January* 1966

Remainder - - *1st February* 1966

1.—(1) These Rules may be cited as the County Court (Amendment) Rules 1965.

(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**), and a Form referred to by number means the Form so numbered in Appendix A to those Rules.

2. Order 3, Rule 1, shall be amended as follows:—

(1) At the beginning of paragraph (1) there shall be inserted the words " Subject to the next following paragraph ".

(2) The following paragraphs shall be inserted after paragraph (1):—

" (2) On the ex parte application of the plaintiff the registrar may dispense with the giving of security under the foregoing paragraph if in all the circumstances of the case he thinks it reasonable to do so, and he shall dispense therewith if satisfied that to require security would be contrary to the provisions of an international convention to which the United Kingdom is a party.

(3) Where under the last foregoing paragraph the registrar dispenses with the giving of security, he shall indorse a note to that effect on the summons, originating application or petition."

(3) Paragraph (2) shall stand as paragraph (4).

3. Order 5, Rule 19, shall be amended as follows:—

(1) Paragraphs (8) and (9) shall stand as paragraphs (7) and (8) respectively.

(2) At the end of the Rule there shall be added the following paragraph:—

" (9) In relation to proceedings in which, by virtue of section 19 of the Administration of Justice Act 1965, money recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a widow in satisfaction of a claim made by her or on her behalf under the Fatal Accidents Acts 1846 to 1959 is subject to be dealt with in like manner as money recovered in proceedings brought by an infant is subject to be dealt with, this Rule shall have effect as if for the reference in paragraph (1)(*b*) to the next friend or guardian *ad litem* of any party and for the reference in paragraph (5)(*b*) to any party to the proceedings who is a person under disability there were substituted in each case a reference to the widow or any person making the claim on her behalf."

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

(**b**) The relevant amending Instruments are S.R. & O. 1938/1475, 1944/63, S.I. 1950/1231, 1993, 1952/2198, 1953/1728, 1955/1799, 1956/1243, 1851, 1957/1136, 1958/2226, 1959/1251, 1960/1275, 1964/1974 (1938 I, p.990; 1940 I, p.50; 1950 I, pp.400, 440; 1952 I, p.635; 1953 I, p.404; 1955 I, p.530; 1956 I, pp.541, 545; 1957 I, p.517; 1958 I, p.372; 1959 I, p.795; 1960 I, p.809; 1964 III, p.4477).

4. The following amendments shall be made in Order 8:—

(1) Rule 2, shall be amended as follows:—

(*a*) At the end of paragraph (*d*) there shall be added the words " and the registrar of the court of which he is a bailiff shall send to the person at whose instance the document was issued notice of non-service in Form 36 ".

(*b*) The following paragraph shall be inserted after paragraph (*d*):—

" (*e*) Where a document or copy thereof has been filed in the court office pursuant to paragraph (*c*)(i) or (*d*) of this Rule, the registrar shall, if the document was received from another court, return the document or copy to the registrar of that court."

(*c*) Paragraph (*e*) shall stand as paragraph (*f*).

(2) Rule 7 shall stand as paragraph (1) of that Rule and the following paragraph shall be added at the end:—

" (2) Where personal service of any process is required, every copy sent to a foreign court pursuant to the foregoing paragraph shall be indorsed with a note of the name and address of the solicitor of the person at whose instance the process was issued or, if he is acting in person, a note of his address."

(3) In Rules 34 and 37 of Order 8, and the marginal notes thereto, for the words " Form 39 " wherever they appear there shall be substituted the words " Form 36 ".

5. At the end of Order 16, Rule 13(4), there shall be inserted the following words:—

" Provided that in the case of a widow this paragraph shall apply only so long as any other person for whose benefit the proceedings were brought remains an infant ".

6. In Order 24, Rule 32, for the words " any duty " there shall be substituted " any estate duty " and the words " for legacy, succession or estate duty " shall be omitted.

7. The following amendments shall be made in Order 25:—

(1) The following Rule shall be substituted for Rule 8:—

Application to registrar for suspension of judgment etc.

" 8. The registrar of any court shall have power with the leave of the judge to suspend or stay any judgment or order of that court and to stay execution of any warrant issued by that court or sent to that court for execution."

(2) Rule 43, shall be amended as follows:—

(*a*) In paragraph (4) for the words " on affidavit " there shall be substituted the words " in writing ".

(*b*) After paragraph (4) there shall be inserted the following paragraphs:—

" (5) 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 affidavit.

(6) Before dealing with the application the 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."

(*c*) Paragraph (5) shall stand as paragraph (7).

(3) The following Rule shall be inserted after Rule 62:—

Application by debtor for discharge

" 62A.—(1) Where a debtor who has been lodged in prison desires to apply for an order for his discharge under section 160 of the Act, the application shall be made to the judge ex parte in writing, attested by the governor of the prison (or any other

officer of the prison not below the rank of principal officer), showing the reasons why the debtor alleges that he is unable to pay the amount due and ought to be discharged and stating any offer which he desires to make as to the terms upon which his discharge may be ordered.

(2) Before dealing with the application the 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."

8. Order 28, Rule 10, shall be revoked.

9. In Order 34, Rule 7A, for the words " Order 25, Rule 43(5) " there shall be substituted the words " Order 25, Rule 43(7) ".

10. Order 46, Rule 10, shall be amended as follows:—

(1) In paragraph (1) after the word " applies " there shall be inserted the words " the hirer or " and for the words " the guarantor " there shall be substituted the words " the hirer or guarantor, as the case may be ".

(2) The following paragraph shall be inserted after paragraph (1):—

" (1A) Where such an action is brought by a person to whom a former owner's property in the goods or any of the rights or liabilities of a former owner have passed by assignment or by operation of law, the requirement that all the parties to the agreement shall be made parties to the action shall not apply to the former owner unless the court so directs."

11. In Order 47, Rule 21(3), after the word " paragraph " there shall be inserted the words " or the scale of costs falls to be determined by reference to a sum of money exceeding £400 ".

12. In each of the following Rules and Forms, for the figure "£400 " wherever it appears there shall be substituted the figure " £500 ":—

Order 7, Rules 1(2) and 2;
Order 15, Rule 8;
Order 27, Rules 2 and 3;
Order 28, Rule 16(3)(*d*);
Form 205 (paragraph 4);
Form 222 (paragraph 1).

13. In relation to any hire-purchase agreement, credit sale agreement or conditional sale agreement made on or after 1st January 1965 each of the Rules and forms specified in the first column of the Schedule to these Rules shall be amended by substituting for the words specified in the second column the words specified in the third column.

14. For the table in Form 30 there shall be substituted the following table:—

	£ *s.* *d.*	£ *s.* *d.*
"Amount of claim		
Court fees entered on summons		
Solicitor's costs (if any) entered on summons ..		
Solicitor's costs (if any) on entering judgment ..		
	Total	
Amount (if any) since received by plaintiff		
Balance payable by defendant		"

15. The following form shall be substituted for Form 36:—

" 36

NOTICE OF NON-SERVICE (GENERAL)

Order 8,
Rules 8(2)(*d*), 28, 34, 37

[*General title—Form* 1]

TAKE NOTICE that the summons [*or as the case may be*] in this action has not been served for the following reason:—

[*Add, if so* The summons [*or as the case may be*] has been returned to the Registrar of the Home Court.] "

16. Form 39 shall be revoked.

17. In Forms 113 and 114 for the words " on the application of the [plaintiff *or* defendant] " there shall be substituted the words " on the application of the plaintiff [*or* defendant] [*or* the plaintiff's [*or* defendant's] solicitor] whose address is ".

18. In Form 115 after the words " Signature of Party or Solicitor " there shall be inserted the words " *whose address is* ".

19. Form 179B shall be amended as follows:—

(1) For the words " Rule 43(5) " there shall be substituted the words " Rule 43(7) ".

(2) After the words " the affidavit " there shall be inserted the words " [*or* statement] ".

20. Notwithstanding anything in Rule 14, Form 30 may continue to be used in the form hitherto prescribed until the Lord Chancellor otherwise directs.

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 hands and submit them to the Lord Chancellor accordingly.

Alun Pugh.
D. O. McKee.
O. Temple-Morris.
S. Granville Smith.
Connolly H. Gage.
Philip J. Cox.
Arthur Figgis.
Arthur J. Driver.
A. F. Stapleton Cotton.

I allow these Rules and I direct that Rules 1, 11 and 12 shall come into operation on 1st January 1966 and the remainder on 1st February 1966.

Gardiner, C.

Dated 20th December 1965.

(a) 7 & 8 Eliz. 2. c. 22.

Rule 13. SCHEDULE

Rule or Form	Words to be Omitted	Words to be Substituted
Order 7, Rule 7A(1)(vii)	section 15 of the Hire-Purchase Act, 1964	section 25 of the Hire-Purchase Act 1965
Order 25, Rule 68(1), proviso	sub-section (4)(*b*) of section 12 of the Hire-Purchase Act, 1938	section 35(4)(*b*) of the Hire-Purchase Act 1965
Order 46, Rule 10 (heading)	Acts, 1938 to 1964	Act 1965
Order 46, Rule 10(1)	section 12 of the Hire-Purchase Act, 1938 (in this Rule referred to as " the Act of 1938 ")	section 35 of the Hire-Purchase Act 1965 (in this Rule referred to as " the Act ")
Order 46, Rule 10(2)	section 12(3) of the Act of 1938	section 35(3) of the Act
Order 46, Rule 10(3)	section 12 of the Act of 1938	section 35 of the Act
Order 46, Rule 10(3)(*b*)	subsection (4)(*b*) of the said section 12	subsection (4)(*b*) of the said section 35
Order 46, Rule 10(4)	section 12(4) of the Act of 1938	section 35(4) of the Act
Order 46, Rule 10 (4)	section 13 of that Act or section 18 of the Hire-Purchase Act, 1964 (in this Rule referred to as " the Act of 1964 ")	section 38, 39 or 42 of the Act
Order 46, Rule 10(5)	section 17(7) of the Act of 1964	paragraph 8(1) of Schedule 3 to the Act
Order 46, Rule 10(6)	section 12(4) of the Act of 1938	section 35(4) of the Act
Order 46, Rule 10(6)	section 19(1) of the Act of 1964	section 44(1) of the Act
Order 49, Rule 2	section 21 of the Hire-Purchase Act, 1938	section 1(1) of the Hire-Purchase Act 1965
Order 49, Rule 3	section 21(5) of the Hire-Purchase Act, 1964	section 1(1) of the Hire-Purchase Act 1965
Order 49, Rule 3	paragraph 2(1) of Schedule 1 to that Act	section 45(2) of that Act
Form 18A	section 12 of the Hire-Purchase Act, 1938	section 35 of the Hire-Purchase Act 1965
Form 61 (title)	Section 12 of the Hire-Purchase Act, 1938	Section 35 of the Hire-Purchase Act 1965

Rule or Form	Words to be Omitted	Words to be Substituted
Form 61	section 12(4)(*b*) of the Hire-Purchase Act, 1938	section 35(4)(*b*) of the Hire-Purchase Act 1965
Form 61	the proviso to section 2(3) of the Hire-Purchase Act, 1954	section 36(3) of the Hire-Purchase Act 1965
Form 139(2) (title)	Section 12(4) of the Hire-Purchase Act, 1938	Section 35(4) of the Hire-Purchase Act 1965
Form 139(3) (title)	Section 12(4) of the Hire-Purchase Act, 1938	Section 35(4) of the Hire-Purchase Act 1965
Form 139(4) (title)	Section 12(4) of the Hire-Purchase Act, 1938	Section 35(4) of the Hire-Purchase Act 1965
Form 139(5) (title)	Section 13 of the Hire-Purchase Act, 1938	Section 38 or 39 of the Hire-Purchase Act 1965
Form 139(6) (title)	Section 18 of the Hire-Purchase Act, 1964	Section 42 of the Hire-Purchase Act 1965
Form 158B	s. 12(4)(*b*) of the Hire-Purchase Act, 1938	s. 35(4)(*b*) of the Hire-Purchase Act 1965
Form 203A (title)	Section 12(4)(*b*) of the Hire-Purchase Act, 1938	Section 35(4)(*b*) of the Hire-Purchase Act 1965

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules amend the County Court Rules in the following main respects:—

(1) The registrar is given power to dispense with the giving of security for costs by a plaintiff resident outside England and Wales (Rule 2).

(2) Changes necessitated or authorised by the Administration of Justice Act 1965 are made in the rules relating to the administration of money recovered by a widow under the Fatal Accidents Acts 1846 to 1959 (Rules 3 and 5) and the registrar's power to stay execution of a warrant (Rule 7(1)). The rule enabling the registrar to postpone the sale of goods seized in execution where a person claiming the goods fails to make the required deposit is revoked in consequence of its having been superseded by section 22(3) of the Act of 1965 (Rule 8).

(3) Where a bailiff is unable to serve a document requiring personal service, the registrar of his court is required to send notice of non-service to the person at whose instance the document was issued (Rules 4, 15 and 16), and for this purpose the praecipe for, and the forms of, witness summons are to contain the address of the person applying for the summons or of his solicitor (Rules 17 and 18).

(4) A simplified procedure is prescribed for cases in which a debtor confined to prison for failure to attend the hearing of a judgment summons, or in consequence of non-payment of a judgment debt, desires to apply for his discharge (Rules 7(2), (3) and 19).

(5) Changes necessitated by the Hire-Purchase Act 1965 are made in the relevant rules and forms (Rule 13 and Schedule) and the requirement that all parties to the agreement must be made parties to an action for the return of the goods where one-third of the hire-purchase price has been paid is relaxed in cases where the hirer has not been served with the summons or the proceedings are brought by the assignee of a former owner (Rule 10).

(6) In consequence of the raising of the limit of the general jurisdiction from £400 to £500 by the County Courts Jurisdiction Order 1965, (S.I. 1965/2141) the rules and forms mentioning the sum of £400 are amended (Rule 12) and the registrar is given power in cases within the extended jurisdiction to allow larger sums than those appearing in scale 4 in respect of the principal items of costs (Rule 11).