1980 No. 329 (L. 2)

COUNTY COURTS

PROCEDURE

The County Court (Amendment) Rules 1980

Made - - - -	*3rd March* 1980
Coming into Operation (except as to Rules 12 *to* 15 *inclusive)*	*15th April* 1980

Citation and interpretation

1.—(1) These Rules may be cited as The County Court (Amendment) Rules 1980.

(2) In these Rules, unless the context otherwise requires, an Order and Rule referred to by number means the Order and Rule so numbered in the County Court Rules 1936(**a**), and a form referred to by number means the form so numbered in Appendix A to those Rules.

Service abroad

2. Order 8 shall be amended as follows:—

(1) The definition, in Rule 40, of "A country" shall be amended by substituting for the words starting "or a part of His Majesty's Dominions" to the end, the words "or any country mentioned in Rule 46(6)".

(2) The definition, in Rule 40, of the words "A convention country" shall be amended by inserting, at the end, the words "and includes a country which is a party to the Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters signed at the Hague on 15th November 1965 ("the Hague Convention")".

(3) The following definition shall be added at the end of Rule 40:—

" 'The senior master' means the senior master of the Supreme Court (Queen's Bench Division)."

(4) For the words "British subject", wherever they appear in Rules 44 and 46 and in Forms 43 and 44, there shall be substituted the words "United Kingdom national".

(5) Rule 46(6) shall be amended by substituting, for the existing sub-paragraphs (*b*), (*c*) and (*d*), the following:—

(**a**) S.R. & O. 1936/626; relevant amending instruments are S.R. & O. 1947/1919, 2576; S.I. 1950/1231, 1993, 1952/2198, 1953/1728, 1955/1799, 1956/1243, 1851, 1957/174, 1136, 1960/1275, 1961/1526, 1963/403, 1964/353, 1974, 1965/2147, 1967/276, 1969/585, 1970/673, 1971/781, 836, 2127, 2152, 1972/208, 1973/847, 1412, 1974/636, 1138, 1975/285, 1345, 1977/604, 1978/682, 1943.

"(*b*) any independent Commonwealth country outside the United Kingdom, and any territory administered by the government of such a country;

(*c*) any associated state;

(*d*) any colony;".

(6) For the figure "3", wherever it appears in Rule 48, there shall be substituted the figure "2".

(7) For Rule 48(2) there shall be substituted the following paragraph:—

"(2) The praecipe shall indicate whether the applicant is willing for service to be effected

(*a*) through the authority designated under the Hague Convention,

(*b*) through the foreign judicial authority,

(*c*) through a British consular authority,

(*d*) through the foreign government, where it is willing for service to be effected."

(8) Rule 48(3) shall be omitted.

(9) Rule 48(4) shall be amended by omitting the opening words up to, and including, "the British Consul," and by inserting, at the end, a colon and the following paragraph:—

"Provided that this paragraph shall not apply where the official language or one of the official languages of the country of service is English, or service is to be effected on a United Kingdom national directly through the British Consul, unless the country of service is a convention country and the convention requires a translation".

(10) Rule 48(5) shall be amended by substituting, for the words "to the Lord Chancellor" to the end, the words "them and the praecipe to the senior master".

(11) Rule 48(6) shall be amended by inserting, after the words "the judicial authority", a comma and the words "central authority" and by substituting, for the words "the Lord Chancellor", the words "the senior master".

(12) After Rule 20, there shall be added the following Rule:—

"51. The powers conferred on the judge by Rules 41 to 50 inclusive may be exercised by the registrar."

3. Form 44 shall be amended as follows:—

(1) For the sentence starting "Whether service is desired" and the footnote thereto there shall be substituted the following sentence:—

"Service is desired—

(i) through the authority designated under the Hague Convention;

(ii) through the judicial authority of ;

(iii) through a British consular authority at ;

(iv) through the government of [*where the government is willing to effect service*].

[*Delete whichever methods are not desired and complete as appropriate.*]".

(2) The sentence at the end, starting "I/We personally undertake" shall be amended by substituting, for the word "Affairs", the words "and Commonwealth Affairs or by the senior master" and, for the words "I/We undertake

to pay the amount" to the end, the words "to pay them".

Time limits for acceptance

4. Order 9, Rule 1, shall be amended as follows:—

(1) In paragraphs (3) and (4), for the figure "8" there shall be substituted the figure "14", and after the words "notice of admission" there shall be inserted the words "but not less than 2 days before the return day".

(2) In paragraph (3), after the words "notice of acceptance" there shall be inserted the words "to the defendant and".

5. Order 10, Rule 4(2) and (3) shall be amended by substituting, for the figure "8", the figure "14".

6. Order 11, Rules 7(3) and 9(*a*) shall be amended by substituting, for the figure "7", the figure "14".

7. Forms 60 and 61 shall be amended by substituting, for the words "me notice of acceptance" in paragraph (3), the words "notice of acceptance to me and to the defendant".

8. Form 65 shall be amended by substituting for the figure "7" the figure "14".

Oral examination

9. Order 25, Rule 2, shall be amended as follows:—

(1) In paragraph (5), for the words "shall be in Form 150" to the end, substitute the words "shall be served personally where the registrar so directs but otherwise may be served—

(*a*) where the applicant gives a certificate for postal service in Form 149A, by an officer of the court sending it by first-class post to the debtor at the address stated in the application; or

(*b*) in accordance with Order 8, Rule 8(1)(*b*) or (3)."

(2) For paragraph (6) there shall be substituted the following paragraph:—

"(6) If the person named in the order fails to attend to be examined on the first occasion, the court may adjourn the examination and order that he shall attend at a specified time on another day and give him notice that he may be committed to prison if he fails to attend, and the provisions of Rule 43 of this Order shall apply, with the necessary modifications, to such an order as they apply to an order made under section 144 of the County Courts Act 1959 for the attendance of a debtor at an adjourned hearing of a judgment summons".

10. Order 25, Rule 68(1) shall be amended by omitting the words "for the oral examination of a judgment debtor or".

11. The following Form shall be inserted in Appendix A, after Form 149:—

"FORM 149A

CERTIFICATE FOR POSTAL SERVICE OF ORDER FOR ORAL EXAMINATION — Order 25, rule 2(5)

[*General Title—Form* 1]

I hereby request that the debtor [*here insert the full names where known, otherwise surname and initial*] be served with the order for oral examination in this action, by post, at [*here insert address*] and I hereby certify that I have reason to believe that the order, if sent to the debtor at that address, will come to his knowledge in time for him to attend on the day fixed for his oral examination."

Charging orders

12. Order 2, Rule 2, shall be amended by substituting, for the words "section 141 of the Act", the words "section 1 of the Charging Orders Act 1979"**(a)**.

13. Order 2 shall be amended by inserting, after Rule 16, the following Rule:—

"*Charging Orders*

17. Proceedings to obtain a charging order under section 1 of the Charging Orders Act 1979 shall be brought as follows:—

(*a*) where the order is sought in respect of a fund in court, in the court where the money is lodged;

(*b*) subject to (*a*), where the judgment or order to be enforced is that of a county court, in the court in which the judgment or order was obtained;

(*c*) subject to (*a*) and (*b*), in the court for the district in which the judgment debtor resides or carries on business, or, if there is no such district, in the court for the district in which the judgment creditor resides or carries on business."

14. Order 25 shall be amended by substituting, for the existing Rules 6A and 7, the following Rules:—

"*Charging orders*

6A.—(1) A judgment creditor who wishes to obtain a charging order under section 1 of the Charging Orders Act 1979 (referred to in this and the following Rule as "the Act") may apply *ex parte* by filing in the court office an affidavit

(*a*) identifying the judgment or order to be enforced and stating the amount unpaid at the date of the application;

(*b*) stating the name and address of the judgment debtor and, if known, of every creditor of his whom the applicant can identify;

(*c*) identifying the subject matter of the intended charge;

(*d*) either verifying the judgment debtor's beneficial ownership of the asset to be charged or, where the asset is held by a trustee, stating on which of the three grounds appearing in section 2(1)(*b*) of the Act the application is based and verifying the material facts;

(a) 1979 c. 53.

(*e*) stating, in the case of securities other than securities in court, the name and address of the person or body to be served for the purpose of protecting the intended charge;

(*f*) stating, where the subject matter is an interest under a trust, or held by a trustee, the names and addresses of such trustees and beneficiaries as are known to the applicant.

(2) Unless the court otherwise directs, an affidavit for the purposes of this Rule may contain statements of information or belief with the source and grounds thereof.

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

(4) Upon the filing of the affidavit in accordance with paragraph (1), the registrar shall

(*a*) enter the proceedings in the books of the court;

(*b*) fix a date for the further consideration of the matter by the court; and

(*c*) provided that, in the opinion of the court, a sufficient case for the making of a charging order nisi is made in the affidavit, make an order in Form 366.

(5) A copy of the order shall be sent to the judgment creditor and, where funds in court are to be charged, served on the Accountant-General at the Court Funds Office.

(6) Copies of the order and of the affidavit shall be served on the judgment debtor and on such of the judgment debtor's other creditors and, where a trust is involved, on such trustees and beneficiaries, as the registrar may direct.

(7) Where securities not in court are to be charged, copies of the order, including the appropriate notice, shall be served on the persons or bodies prescribed by Order 50 of the Rules of the Supreme Court as the persons or bodies on whom stop notices should in like circumstances be served.

(8) The documents required to be served by the preceding paragraph shall be served in accordance with Order 8, Rule 39, not less than 7 clear days before the day fixed for the further consideration of the matter.

Order made on further consideration

6B.—(1) On the day fixed for the further consideration of the matter the court shall either make the order absolute, with or without modification, in Form 366A, or shall discharge it.

(2) Copies of the order shall be served, in accordance with Order 8, Rule 39,

(*a*) on the judgment debtor;

(*b*) on the applicant for the order;

(*c*) where funds in court are charged on the Accountant-General at the Court Funds Office.

(3) Copies of the order including the appropriate notice shall be served, in accordance with Order 8, Rule 39, on any person or body on whom a copy of the order in Form 366 was served under Rule 6A(7), unless otherwise directed.

(4) The powers of the court under paragraph (1) may be exercised by the judge or by the registrar.

Effect of order, discharge and variation

7.—(1) Orders made and served in accordance with paragraphs (5), (6) or (7) of Rule 6A or paragraph (3) of Rule 6B shall have the same effect as orders made and served in like circumstances under Order 50 of the Rules of the Supreme Court.

(2) Any charging order made in accordance with these Rules may be varied or discharged in the same circumstances and according to the same procedure, with the necessary modifications, as a like order made in the High Court."

15. For the existing Form 366 there shall be substituted the following Forms:—

FORM NO. 366

CHARGING ORDER: NOTICE TO SHOW CAUSE

[*General Title—Form* 1]

Upon the application of and upon reading the affidavit of whereby it appears that by a judgment [*or order*] made on the [*date*] in this court [*or as the case may be*] the defendant was ordered to pay to the plaintiff the sum of £ , of which £ remains due and unpaid, and that the defendant has a beneficial interest in the asset specified in the schedule hereto:

IT IS ORDERED that unless sufficient cause to the contrary is shown before the county court [*insert the address of the court house*] on [*date*] at o'clock, when this matter will be further considered, the said asset shall, and it is ordered that in the meantime it do, stand charged with the payment of £ due on the said judgment [*or* order] together with the costs of this application.

AND TAKE NOTICE that if you do not attend at the time and place above mentioned such order will be made as the court thinks just.

Dated REGISTRAR

SCHEDULE

Notice under Order 25, *Rule* 6*A*(7)

To the Governor of the Bank of England [*or as the case may be*]:

Take notice that the securities specified in the schedule to this order stand charged until when the charge will be made absolute unless sufficient cause be shown to the contrary and that you may not in the meantime permit any transfer of the securities, or any payment to the judgment debtor of any dividend or income in respect thereof without the authority of the court.

FORM No. 366A

CHARGING ORDER: ABSOLUTE

[*General Title—Form* 1]

Upon the application of and upon reading the affidavits of and filed herein and the order to show cause made herein on the 19 :

IT IS ORDERED that the asset specified in the schedule hereto stand charged with the payment of £ , the amount due from the defendant to the plantiff on a judgment [*or* order] of this court [*or as the case may be*] dated the [*date*] together with £ the costs of this application, the said costs to be added to the judgment debt.

Dated REGISTRAR

SCHEDULE

Notice under Order 25, *Rule* 6*B*(3)

To the Governor of the Bank of England [*or as the case may be*]

Take notice that the securities specified in the schedule to this order stand charged in favour of [*name of the plaintiff*] and that you may not register any transfer of any of them, or take any other step in relation to them to which section 5(5) of the Charging Orders Act 1979 applies, without serving a notice of any request for such a transfer or other step on [*name of the plaintiff*] at [*his address for service*]

Registrar's jurisdiction

16. Order 27 shall be amended by substituting, for Rule 20, the following Rule:—

"20. The powers conferred by this Order on the judge may be exercised by the registrar."

17. Order 30 shall be amended by adding the following Rule:—

"13. The powers conferred by this Order on the judge may be exercised by the registrar."

Exchange Controls

18. Order 11, Rule 10(1)(*e*) shall be amended by omitting the words "or Rule 12 of Order 46" and Order 46, Rule 12 shall be revoked.

Reciprocal enforcement of maintenance orders

19. Order 46, Rule 25 shall be amended as follows:—

(1) At the head of the Rule there shall be inserted the words—
"MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT) ACT 1972"

(2) Between paragraph (8) and paragraph (9), there shall be inserted the words "*Enforcement in the Republic of Ireland*".

(3) After paragraph (9) there shall be added the following paragraph:—

"*Enforcement in the Hague Convention countries*

(10) In relation to the Hague Convention countries paragraphs (3) to (8) of this rule shall have effect subject to the following modifications:—

(i) The following words shall be inserted after sub-paragraph 3(*a*)(ii):—

"and (iii) whether the time for appealing against the order has expired and whether an appeal is pending."

(ii) The following sub-paragraphs shall be inserted after paragraph 3(*d*)—

"(*e*) a statement as to whether or not the payer appeared in the proceedings in which the maintenance order was made, and, if he did not, the original or a copy certified by the applicant or his solicitor to be a true copy of a document which establishes that notice of the institution of proceedings, including notice of the substance of the claim, was served on the payer;

(*f*) a document which establishes that notice of the order was sent to the payer;

(*g*) a written statement as to whether or not the payee received legal aid in the proceedings in which the order was made, or in connection with the application under section 2 of the 1972 Act and, if he did, a copy certified by the applicant or his solicitor to be a true copy of the legal aid certificate."

(iii) Paragraphs (4) and (5) shall not apply.

(iv) For paragraphs (7) and (8) there shall be substituted the following paragraphs—

"(7) (*a*) Where a county court makes an order varying or revoking a maintenance order to which section 5 of the Act of 1972, as modified, applies and the time for appealing has expired without an appeal having been entered, the registrar shall send to the Secretary of State such documents that are required by subsection (7) of that section, as it applies to the Hague Convention countries, including a certificate that the order of variation or revocation is enforceable and that it is no longer subject to ordinary forms of review.

(*b*) Where either party enters an appeal against the order or revocation he shall, at the same time, inform the registrar thereof by notice in writing.

(8) Any document required to be sent to a court in a Hague Convention country shall be sent to the Secretary of State for transmission to that court."

Description of parties

20. Form 7 shall be amended by omitting the whole of paragraph 2 and the words "and if female, whether Mrs. or Miss" from paragraph 9, and by renumbering paragraphs 3 onwards.

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.

Henry Ruttle.
W. Granville Wingate.
T. Richard Nevin.
A. C. Goodall.
David Peck.
E. A. Everett.
M. A. W. Grundy.
Arnold Russell Vick.
Fielding Hatton.
Norman Cooper.

I allow these Rules, which shall come into operation on 15th April 1980, except for Rules 12 to 15 inclusive which shall come into operation on the day appointed for the coming into operation of the Charging Orders Act 1979(b).

Dated 3rd March 1980.

Hailsham of St. Marylebone, C.

(a) 1959 c. 22. (b) 1979 c. 53.

EXPLANATORY NOTE

(*This Note is not part of the Rules.*)

These Rules amend the County Court Rules so as—

(*a*) to simplify the procedure for serving proceedings abroad (Rules 2 and 3);

(*b*) to increase the time permitted for the acceptance of admissions and payments into court (Rules 4 to 8);

(*c*) to expedite the enforcement of orders for oral examination (Rules 9 to 11);

(*d*) to provide for the making of charging orders under the Charging Orders Act 1979 (Rules 12 to 15);

(*e*) to increase the powers of the registrar in respect of garnishee proceedings and the appointment of a receiver (Rules 16 and 17);

(*f*) to remove provisions concerned with exchange controls (Rule 18);

(*g*) to provide for the enforcement of maintenance orders against persons resident in Hague Convention countries (Rule 19); and

(*h*) to amend the formal requirements regarding the status of the parties (Rule 20).