STATUTORY INSTRUMENTS

2016 No. 355 (L. 4)

FAMILY PROCEEDINGS

SENIOR COURTS OF ENGLAND AND WALES

FAMILY COURT, ENGLAND AND WALES

The Family Procedure (Amendment) Rules 2016

Made - - - -	*10th March 2016*
Laid before Parliament	*15th March 2016*
Coming into force - -	*6th April 2016*

The Family Procedure Rule Committee makes the following rules in exercise of the powers conferred by sections 6(3), 9(3) and 14(4) of the Attachment of Earnings Act 1971(**a**) and sections 75 and 76 of the Courts Act 2003(**b**), after consulting in accordance with section 79 of the Courts Act 2003(**c**).

Citation and commencement

1.—(1) These Rules may be cited as the Family Procedure (Amendment) Rules 2016.

(2) These Rules come into force on 6th April 2016.

Amendment of the Family Procedure Rules 2010

2. The Family Procedure Rules 2010(**d**) are amended in accordance with rules 3 to 8.

Amendment of rule 4.4

3. In rule 4.4 (power to strike out a statement of case) after paragraph (1) insert—

(**a**) 1971 c. 32. Section 6 was amended by section 19(5) of the Administration of Justice Act 1977 (c. 38), paragraph 5 of Schedule 17 to the Courts and Legal Services Act 1990 (c. 41), paragraph 142 of Schedule 8 to the Courts Act 2003, paragraph 2 of Part 1 of Schedule 15 to the Tribunals, Courts and Enforcement Act 2007, paragraph 25 of Part 2 of Schedule 9 and paragraph 24 of Schedule 10 to the Crime and Courts Act 2013 and by S.I. 2006/1737. Section 9 was amended by paragraphs 1 and 4 of Part 1 of Schedule 15 to the Tribunals, Courts and Enforcement Act 2007 and by S.I. 2006/1737. Section 14 was amended by section 53(1) of the Administration of Justice Act 1982 (c. 53), paragraph 1 of Part 1 of and paragraphs 9 to 15 of Part 2 of Schedule 15 to the Tribunals, Courts and Enforcement Act 2007 (c. 15), paragraph 25 of Part 2 of Schedule 9 to the Crime and Courts Act 2013 and by S.I. 2006/1737.

(**b**) 2003 c.39. Section 75 was amended by paragraph 338 of Schedule 4 and Part 2 of Schedule 18 to the Constitutional Reform Act 2005 (c. 4) and by paragraph 91 of Schedule 10 to the Crime and Courts Act 2013 (c.22). Section 76 was amended by section 62(7) of the Children Act 2004 (c. 31), paragraph 172 of Schedule 27 to the Civil Partnership Act 2004 (c. 33), paragraph 29 of Schedule 1 to the Constitutional Reform Act 2005 and paragraph 92 of Schedule 10 to the Crime and Courts Act 2013.

(**c**) Section 79 was amended by paragraph 341 of Schedule 4 and Part 2 of Schedule 18 to the Constitutional Reform Act 2005.

(**d**) S.I. 2010/2955. Relevant amending instruments are S.I. 2013/3204, 2014/667 and 2015/1868.

"(1A) When the court is considering whether to exercise the power to strike out a statement of case, it must take into account any written evidence filed in relation to the application or answer.".

Substitution of rules 33.19 and 33.19A

4. For rules 33.19 (Application of CCR Order 27: enforcement of a judgment debt) and 33.19A (application of CCR Order 27: enforcement of a maintenance order) substitute—

"Enforcement by attachment of earnings order

33.19. Part 39 applies to applications for an attachment of earnings order to secure payments under a maintenance order.".

Amendment of rule 33.25

5. For rule 33.25 (application of the CPR) substitute—

"Application for a charging order, stop order or stop notice

33.25. Part 40 applies for the enforcement of a judgment or order made in family proceedings by way of a charging order, stop order or stop notice.".

Amendment of rule 37.30

6. In rule 37.30(3)(a) (discharge of a person in custody) omit "CCR Order 27 rule 8, or".

Amendment of rule 37.35

7. In rule 37.35 (notice to give evidence before or after a fine is imposed under section 55 of the Act) in the heading and in paragraph (1) for "section 55 of the Act" substitute "section 31G of the 1984 Act(**a**)".

Insertion of new Parts 39 and 40

8. After rule 38.15 (application under Article 14(2)) insert—

(a) new Part 39 (attachment of earnings) as set out in Schedule 1 to these Rules; and

(b) new Part 40 (charging order, stop order, stop notice) as set out in Schedule 2 to these sRules.

Transitional provision

9.—(1) Subject to paragraph (2), the Family Procedure Rules 2010 as amended by these Rules apply from 6th April 2016 to any proceedings which were commenced but not disposed of before that date, as they apply to proceedings commenced on or after that date.

(2) In any proceedings which were commenced but not disposed of before 6th April 2016, the court may give any directions for the purpose of ensuring that the proceedings are dealt with fairly and, in particular, may—

(a) apply any provision in rules of court which applied to the proceedings before 6th April 2016; or

(b) disapply provisions of the Family Procedure Rules 2010 as amended by these Rules.

(**a**) The Matrimonial and Family Proceedings Act 1984 (c. 42). Section 31G was inserted by paragraph 1 of Schedule 10 to the Crime and Courts Act 2013.

Marie Brock
Richard Burton
Melanie Carew
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Jane Harris
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Dylan Jones
Hannah Perry
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Lucy Theis, J
Will Tyler

I allow these Rules

Caroline Dinenage
Parliamentary Under-Secretary of State
Ministry of Justice

10th March 2016

SCHEDULE 1

Rule 8(a)

NEW PART 39 OF THE FAMILY PROCEDURE RULES 2010

"PART 39

ATTACHMENT OF EARNINGS

CHAPTER I

GENERAL

Application of this Part

39.1.—(1) Chapter 2 of this Part applies where an attachment of earnings order is sought in the family court to secure payments under a family court or High Court maintenance order whether or not arrears have accrued.

(2) Chapter 3 of this Part applies where an attachment of earnings order is sought in the High Court to secure payments under a High Court maintenance order whether or not arrears have accrued.

(Section 1 of the 1971 Act(**a**) makes provision for when the family court or the High Court may make an attachment of earnings order.)

Interpretation of this Part

39.2. In this Part—

"the 1971 Act" means the Attachment of Earnings Act 1971 and unless the context otherwise requires or this Part otherwise provides, expressions used in that Act, including the term "maintenance order", have the same meaning as in that Act;

"creditor" means the person who is entitled to enforce a maintenance order; and

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(**a**) Section 1 was amended by paragraph 6 of Part 1 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), paragraph 25 of Part 2 of Schedule 9 and paragraphs 20 and 21 of Part 2 of Schedule 10 to the Crime and Courts Act 2013 and S.I. 2006/1737.

"debtor" means the person against whom a maintenance order was made.

Search of court records

39.3. If requested to do so by any person having a maintenance order against a debtor, the court officer must—

(a) cause a search to be made in the court records to determine whether there is an attachment of earnings order in force in relation to that debtor; and

(b) issue a certificate of the result of the search.

CHAPTER 2

SECURING PAYMENTS UNDER A MAINTENANCE ORDER IN THE FAMILY COURT – ATTACHMENT OF EARNINGS ORDER

Where to apply

39.4. An application for an attachment of earnings order to which this Chapter applies must be sent to the family court.

(Her Majesty's Courts and Tribunals Service publishes information to identify the appropriate location to which an application for an attachment of earnings order should be sent.)

Application for an attachment of earnings order

39.5.—(1) Where an application is made for an attachment of earnings order on the making of the maintenance order or of an order varying the maintenance order, the remainder of this rule and rule 39.6 do not apply.

(2) A creditor who wishes to apply for an attachment of earnings order must file—

(a) an application in accordance with rule 33.3(1); and

(b) a copy of the sealed (GL) maintenance order.

(3) When the documents mentioned in paragraph (2) are filed with the court, the court officer must fix a day for the hearing of the application.

Service and reply

39.6.—(1) Notice of the application and a reply form must be served by the court on the debtor in accordance with Chapter 3 of Part 6.

(2) The notice of application must include an instruction to the debtor to file the reply form within 8 days after service, and that instruction constitutes a requirement imposed under section 14(4) of the 1971 Act.

(3) No proceedings may be brought for an alleged offence under section 23(2)(c) or (f) of the 1971 Act(**a**) in relation to the requirement to reply unless—

(a) the notice of application and reply form have been served personally on the debtor; or

(b) the court is satisfied that those documents came to the debtor's knowledge in sufficient time to comply with the requirement.

(**a**) Section 23 was amended by paragraph 6 of Part III of Schedule 2 to the Contempt of Court Act 1981 (c. 49), section 53 of the Administration of Justice Act 1982, sections 37 and 38 of the Criminal Justice Act 1982 (c. 48), paragraph 41 of Schedule 2 to the County Courts Act 1984 (c. 28), paragraph 6 of Schedule 17 to the Courts and Legal Services Act 1990 (c. 41), Part 1 of Schedule 4 and paragraph 6 of Schedule 12 to the Criminal Justice Act 1991 (c. 53), paragraph 1 of Part 1 of and paragraphs 19 to 22 of Part 2 of Schedule 15 to the Tribunals, Courts and Enforcement Act 2007 and paragraph 25 of Schedule 9 and paragraph 33 of Schedule 10 to the Crime and Courts Act 2013.

(4) The court officer must send to the creditor a copy of any reply form received from the debtor.

Notice to the debtor's employer

39.7.—(1) Without prejudice to the power conferred by section 14(1) of the 1971 Act, a court officer may, at any stage of the proceedings, send to any person appearing to be the debtor's employer a notice requesting that person to give to the court a statement of the debtor's earnings.

(2) The statement of the debtor's earnings must—

(a) state the debtor's earnings;

(b) state the debtor's anticipated earnings;

(c) include such particulars as requested in the notice from the court; and

(d) be given to the court within such period as is specified in the notice.

Attachment of earnings order

39.8. An application for an attachment of earnings order to secure payments under a maintenance order must be heard in private, unless the court directs otherwise.

(Rule 39.21 modifies this rule and sets out steps for a court officer of the family court to take when an attachment of earnings order made by the High Court designates the court officer of the family court as the collecting officer.)

Failure by debtor

39.9.—(1) If the debtor has failed to comply with rule 39.6(2) or to make payment to the creditor, the court officer may issue an order under section 14(1) of the 1971 Act which must, in addition to meeting the requirements of rule 39.18(1), direct that any payments made after the date of service of the order must be paid to the court and not direct to the creditor.

(2) Without prejudice to rule 39.19, if the person served with an order referred to in paragraph (1) fails—

(a) to obey the order;

(b) to complete and file the form of reply, including the statement of means; or

(c) make payment,

the court officer must issue a notice to the person to attend a hearing at which the court will consider whether an offence has been committed under section 23(2)(c) of the 1971 Act and whether the person should be imprisoned or fined as a result.

(3) A notice of a type referred to in paragraph (2) must be served on the debtor personally not less than 5 days before the hearing.

(4) In this rule, "statement of means" means a statement given under section 14(1) of the 1971 Act.

Enforcement under section 23(1) of the 1971 Act

39.10.—(1) An order under section 23(1) of the 1971 Act for the attendance of the debtor at an adjourned hearing for an attachment of earnings order to secure payments under a maintenance order—

(a) must be served on the debtor personally not less than 5 days before the day fixed for the adjourned hearing; and

(b) may direct that any future payments made after the date of service of the order under section 23(1) of the 1971 Act must be paid into the court and not direct to the creditor.

(2) An application by a debtor for the revocation of an order committing the debtor to prison and (if already in custody) for discharge under section 23(7) of the 1971 Act must—

(a) be made to court in writing without notice to any other party, stating the reasons for the debtor's failure to attend the court or 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 be sworn or to give evidence when required to do so; and

(b) 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 rank of principal officer), and in any other case be made in a witness statement or affidavit,

and before dealing with the application the court may, if it thinks fit, cause notice to be given to the creditor that the application has been made and of a date and time when the creditor may attend and be heard.

Suspended committal order

39.11.—(1) If the debtor fails to attend an adjourned hearing of an application for an attachment of earnings order and a committal order is made, the court making the committal order may direct that its execution be suspended for such period or on such terms or conditions as it may specify.

(2) Unless the court otherwise directs, the creditor must serve on the debtor personally a copy of any order made under paragraph (1).

(3) Where a committal order is suspended under paragraph (1) and the debtor fails to attend at the time and place specified in the committal order, a certificate to that effect given by the court officer is sufficient authority for the issue of a warrant of committal.

(4) If execution of a committal order is suspended under paragraph (1), the debtor may apply for a further suspension.

(5) The debtor may apply for a further suspension by attending at, or writing to, the court office and explaining why they have been unable to comply with the terms of the original suspension.

(6) If the debtor applies for a further suspension in accordance with paragraph (5), the court must—

(a) fix a date for the hearing of the application; and

(b) give the debtor and creditor at least 3 days' notice of the hearing.

(7) The court may suspend execution of the committal order pending the hearing of the application under paragraph (5).

Costs

39.12.—(1) Where costs are allowed to the creditor on an application for an attachment of earnings order, there may be allowed—

(a) a charge of a legal representative for preparing the application, attending the hearing and, if applicable, for serving the application; and

(b) the court fee for issuing the application.

(2) The costs may be fixed and allowed without detailed assessment under CPR Part 47(**a**).

(**a**) S.I 1998/3132. Relevant amending instruments are S.I. 2013/262, 407, 534, 1695 and 1974, 2014/3299 and 2015/1569.

Contents and service of the order

39.13.—(1) An attachment of earnings order must contain such of the following information about the debtor as is known to the court—

(a) the debtor's full name and address;

(b) the debtor's place of work;

(c) the nature of the debtor's work and works number, if any.

(2) That information will be the prescribed particulars for the purposes of section 6(3) of the 1971 Act.

(3) An attachment of earnings order and any order varying or discharging such an order must be served on the parties and on the person to whom the order is directed.

(4) Where—

(a) the order is directed to a corporation; and

(b) that corporation has requested that the court serve on the corporation documents relating to the debtor or to the class of persons to whom the debtor belongs at a particular address,

service may be effected on the corporation at that address, if the court thinks fit.

(5) Where an attachment of earnings order is made by the family court to secure payments under a maintenance order made by the High Court, a copy of the attachment of earnings order and of any order discharging or varying it must be sent by the court officer of the family court to the court officer of the High Court.

Application to determine whether particular payments are earnings

39.14.—(1) An application to the court under section 16 of the 1971 Act to determine whether payments to the debtor of a particular class or description are earnings for the purposes of an attachment of earnings order may be made to the court in accordance with Part 18.

(2) If such an application is made, the court officer must fix a date for the hearing of the application by the court and give notice of that hearing to the persons mentioned in section 16(2)(a), (b) and (c) of the 1971 Act(**a**).

Notice that an order has ceased to have effect

39.15. Where an attachment of earnings order made by the family court to secure payments under a maintenance order ceases to have effect under section 8(3) of the 1971 Act(**b**) and—

(a) the related maintenance order was made by that court; or

(b) the related maintenance order was made by the High Court; and—

(i) the court officer has received notice of the cessation from the court officer of the High Court; or

(ii) a committal order has been made in the family court for the enforcement of the related maintenance order,

the court officer of the family court must give notice of the cessation to the person to whom the attachment of earnings order was directed.

(**a**) Section 16 was amended by paragraph 29 of Part 2 of Schedule 10 to the Crime and Courts Act 2013.

(**b**) Section 8 was amended by paragraph 25 of Part 2 of Schedule 9 and paragraph 25 of Part 2 of Schedule 10 to the Crime and Courts Act 2013 and by S.I. 2006/1737.

Variation and discharge by the court of its own initiative

39.16.—(1) The powers conferred by section 9(1) of the 1971 Act may be exercised by the court of its own initiative in the circumstances specified in this rule.

(2) Where it appears to the court that a person served with an attachment of earnings order does not employ the debtor, the court must discharge the order.

(3) Where an attachment of earnings order which has lapsed under section 9(4) of the 1971 Act is again directed to a person who appears to the court to employ the debtor, the court may make such consequential variations in the order as it thinks fit.

(4) Where the court has made an attachment of earnings order and it appears to the court 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 1973 Act(**a**) or otherwise), the court may discharge or vary the attachment of earnings order.

(5) The court may discharge the attachment of earnings order where an attachment of earnings order has been made to secure payments under a maintenance order and—

(a) the court makes an order for another form of enforcement for the recovery of payments under the maintenance order; or

(b) there is no further sum payable under the maintenance order.

(6) Before varying or discharging an attachment of earnings order of its own initiative under any of the paragraphs of this rule, the court must, 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 of whether the order should be varied or discharged.

(7) The court officer must give those people mentioned in paragraph (6) notice of the date, time and place fixed for the hearing.

Change of Designated Family Judge area

39.17. If, in the opinion of the family court sitting in a Designated Family Judge area in which an attachment of earnings order has been made, the matter could more conveniently proceed in another Designated Family Judge area (whether by reason of the debtor having become resident in that other Designated Family Judge area or otherwise), the court may order that the matter should proceed in that other area.

Exercise of power to obtain statement of earnings etc.

39.18.—(1) An order under section 14(1) of the 1971 Act must—

(a) be endorsed with or incorporate a notice warning the person to whom it is directed of the consequences of disobeying the order; and

(b) be served on that person personally.

(2) Rule 37.35 applies, with the necessary modifications in relation to any penalty for failure to comply with an order under section 14(1) of the 1971 Act as it applies in relation to a fine under section 31G of the 1984 Act.

Offences

39.19.—(1) Paragraph (2) applies where—

(**a**) The Matrimonial Causes Act 1973 (c. 18). Section 28 was amended by section 5 of the Matrimonial and Family Proceedings Act 1984, paragraph 43 of Schedule 27 to the Civil Partnership Act 2004 and paragraph 7 of Schedule 2, paragraph 14 of Schedule 8 and Schedule 10 to the Family Law Act 1996 (c. 27). Those provisions in Schedules 8 and 10 of the Family Law Act 1996 were repealed by section 18 of the Children and Families Act 2014 (c. 6).

(a) it is alleged that a person has committed any offence mentioned in section 23(2)(a), (b), (d), (e) or (f) of the 1971 Act in relation to proceedings in, or to an attachment of earnings order made by, the family court; and

(b) the alleged offender is not being proceeded against summarily.

(2) The court may issue a notice to the alleged offender to attend a hearing at which the court will consider whether the alleged offence has been committed and whether the alleged offender should be imprisoned or fined as a result.

(3) The notice must be served on the alleged offender personally not less than 14 days before the hearing.

(4) Rules 37.36 and 37.37 apply to proceedings for an offence under section 23(2) of the 1971 Act as they apply to proceedings for offences under the County Courts Act 1984.

(5) Where a person other than a debtor is committed for an offence under section 23(2) of the 1971 Act, rule 37.30 applies to an application by that person to be discharged from custody.

Permission to enforce arrears

39.20.—(1) This rule applies where a creditor applies for an attachment of earnings order to enforce the payment of arrears which became due more than 12 months before the date of the application for an attachment of earnings order.

(2) Where the creditor requires the permission of the court under—

(a) section 32 of the 1973 Act(**a**);

(b) section 32(4) of the 1978 Act(**b**); or

(c) paragraph 63 of Schedule 5 to the 2004 Act(**c**),

to enforce the payment of such arrears, the permission application must be made in the application for the attachment of earnings order.

(3) Notice of the application, together with a form of reply in the appropriate form, must be served on the debtor in the manner set out in rule 6.23 and the notice must be served not less than 14 days before the hearing.

CHAPTER 3

SECURING PAYMENTS UNDER A MAINTENANCE ORDER IN THE HIGH COURT – ATTACHMENT OF EARNINGS ORDER

39.21. Where an application is made to the High Court under this Chapter, the rules in Chapter 2 apply with the following modifications—

(a) for rule 39.4 there is substituted—

"(1) Subject to paragraph (2), an application for an attachment of earnings order must be sent to the District Registry of the High Court for the district in which the debtor resides.

(2) If the debtor resides outside of England and Wales, or if the debtor's place of residence is not known to the creditor, an application for an attachment of earnings order must be sent to the District Registry of the High Court for the district in which the proceedings which resulted in the maintenance order being made took place.";

(b) for rule 39.8 there is substituted—

(**a**) Section 32 was amended by paragraph 60 of Schedule 11 to the Crime and Courts Act 2013.

(**b**) The Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22). Section 32 was amended by sections 37 and 46 of the Criminal Justice Act 1982, paragraph 195 of Schedule 8 to the Courts Act 2003 and paragraph 83 of Schedule 11 to the Crime and Courts Act 2013.

(**c**) The Civil Partnership Act 2004 (c. 33). Paragraph 63 of Schedule 5 was amended by paragraph 170 of Schedule 11 to the Crime and Courts Act 2013.

"(1) An application for an attachment of earnings order to secure payments under a maintenance order must be heard in private, unless the court directs otherwise.

(2) Where an attachment of earnings order made by the High Court designates the court officer of the family court as the collecting officer, that officer must, 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.";

(c) rule 39.13(5) is omitted;

(d) for rule 39.15 there is substituted—

"Where an attachment of earnings order made by the High Court to secure payments under a High Court maintenance order ceases to have effect under section 8(3) of the 1971 Act, the court officer of the High Court must give notice of the cessation to the person to whom the attachment of earnings order was directed.";

(e) for rule 39.17, including the heading to that rule, there is substituted—

"Change of District Registry

39.17. If, in the opinion of the High Court sitting in a District Registry in which an attachment of earnings order has been made, the matter could more conveniently proceed in another District Registry (whether by reason of the debtor having become resident in the area of that District Registry or otherwise), the court may order that the matter should proceed in that other District Registry.";

(f) in rule 39.19(1)(a), for "family court" there is substituted "High Court"; and

(g) in rule 39.20(2), sub-paragraph (b) is omitted."

SCHEDULE 2

Rule 8(b)

NEW PART 40 OF THE FAMILY PROCEDURE RULES 2010

"PART 40

CHARGING ORDER, STOP ORDER, STOP NOTICE

CHAPTER 1

GENERAL

Application of this Part

40.1. This Part contains rules which provide for a creditor to enforce a judgment or order by obtaining—

(a) a charging order (Chapter 2);

(b) a stop order (Chapter 3); or

(c) a stop notice (Chapter 4),

over or against the debtor's interest in an asset.

Interpretation of this Part

40.2. In this Part—

"the 1979 Act" means the Charging Orders Act 1979(**a**);

(**a**) 1979 c. 53.

"creditor" means the person to whom payment of a sum of money is due under a judgment or order or a person who is entitled to enforce such a judgment or order;

"debtor" means the person against whom a judgment or other order for payment of a sum of money was given, made or ordered, as the case may be;

"interim charging order" means an interim charging order made in accordance with rule 40.5; and

"securities" means securities of any of the kinds specified in section 2(2)(b) of the 1979 Act.

CHAPTER 2

CHARGING ORDERS

Scope of this Chapter

40.3. This Chapter applies to an application by a creditor for a charging order under section 1 of the 1979 Act(**a**).

Application for a charging order

40.4.—(1) An application for a charging order may be made without notice.

(2) An application must be made to the family court or to the High Court, as appropriate and as specified in section 1 of the 1979 Act.

(Her Majesty's Courts and Tribunals Service publishes information to identify the appropriate location of the family court or High Court to which an application for a charging order should be sent.)

(3) A creditor may apply for a single charging order in respect of more than one judgment or order against the same debtor.

(4) The application must—

(a) be in the form and contain the information required by Practice Direction 40A; and

(b) be verified by a statement of truth.

Interim charging order

40.5.—(1) An application for a charging order will initially be dealt with by the court without a hearing.

(2) The court may make an interim charging order—

(a) imposing a charge over the debtor's interest in the asset to which the application relates; and

(b) fixing a hearing to consider whether to make a final charging order as provided by rule 40.8.

Service of an interim charging order

40.6.—(1) Copies of the interim charging order, the application and any documents filed in support of it must, not less than 21 days before the hearing, be served by the creditor on the persons listed in paragraph (3).

(2) The creditor must either—

(**a**) Section 1 was amended by section 34 of and paragraphs 2, 3 and 6 of Part II of Schedule 3 to the Administration of Justice Act 1982, paragraph 71 of Part V of Schedule 2 to the County Courts Act 1984, section 93 of the Tribunals, Courts and Enforcement Act 2007, paragraph 52 of Schedule 9 and paragraph 38 of Schedule 10 to the Crime and Courts Act 2013 and S.I. 2014/605.

(a) file a certificate of service in relation to each person served not less than 2 days before the hearing; or

(b) produce a certificate of service at the hearing.

(3) The persons to be served in accordance with paragraph (1) are—

(a) the debtor;

(b) if the order relates to an interest in land, any co-owner;

(c) the debtor's spouse or civil partner (if known);

(d) such other creditors as are identified in the application or as the court directs;

(e) if the order relates to an interest under a trust, on such of the trustees as the court directs; and

(f) if the interest charged is securities, then—

(i) in the case of stock for which the Bank of England keeps the register, the Bank of England;

(ii) in the case of government stock to which sub-paragraph (f)(i) does not apply, the keeper of the register;

(iii) in the case of stock of any body incorporated within England and Wales, that body;

(iv) in the case of stock of any body incorporated outside England and Wales or of any state or territory outside the United Kingdom, which is registered in a register kept in England and Wales, the keeper of that register; and

(v) in the case of units of any unit trust in respect of which a register of the unit holders is kept in England and Wales, the keeper of that register.

Effect of interim charging order in relation to securities

40.7.—(1) If a debtor disposes of their interest in any securities while they are subject to an interim charging order which has been served on them, that disposition will not, so long as that order remains in force, be valid as against the creditor.

(2) A person served under rule 40.6(3)(f) with an interim charging order relating to securities must not, unless the court gives permission—

(a) permit any transfer of any of the securities; or

(b) pay any dividend, interest or redemption payment relating to them.

(3) If a person acts in breach of paragraph (2), that person will be liable to pay to the creditor—

(a) the value of the securities transferred or the amount of the payment made (as the case may be); or

(b) if less, the amount necessary to satisfy the debt in relation to which the interim charging order was made.

Further consideration of the application

40.8.—(1) If any person objects to the court making a final charging order, that person must—

(a) file; and

(b) serve on the creditor,

written evidence stating the grounds of objection, not less than 7 days before the hearing.

(2) At the hearing, the court may—

(a) make a final charging order confirming that the charge imposed by the interim charging order continues, with or without modification;

(b) discharge the interim charging order and dismiss the application;

(c) decide any issues in dispute between the parties, or between any of the parties and any other person who objects to the court making a final charging order;

(d) direct a trial of any such issues, and if necessary give directions; or

(e) make such other order as the court considers appropriate.

(3) If the court makes a final charging order which charges securities, the order must include a stop notice unless the court otherwise orders.

(Chapter 4 of this Part contains provision about stop notices.)

(4) Any order made at the hearing must be served by the creditor on all the persons on whom the interim charging order was served.

Discharge or variation of order

40.9.—(1) Where an application is made to discharge or vary a charging order, the court may direct that—

(a) any interested person be joined as a party to such an application; or

(b) the application be served on any such person.

(2) An order discharging or varying a charging order must be served, by the person who applied for that order, on all the persons on whom the charging order was required to be served.

CHAPTER 3

STOP ORDERS

Interpretation

40.10. In this Chapter, "stop order" means an order of the High Court not to take, in relation to securities specified in the order, any of the steps listed in section 5(5) of the 1979 Act(**a**).

Application for a stop order

40.11.—(1) The High Court may make a stop order relating to securities, on the application of any person claiming to be beneficially entitled to an interest in the securities.

(2) An application for a stop order must be made—

(a) by application in existing proceedings; or

(b) by a Part 19 application if there are no existing proceedings in the High Court.

(3) The application must be served on—

(a) every person whose interest may be affected by the order applied for; and

(b) the person specified in rule 40.6(3)(f).

Stop order relating to securities

40.12.—(1) A stop order relating to securities may prohibit all or any of the following steps—

(a) the registration of any transfer of the securities;

(b) the making of any payment by way of dividend, interest or otherwise in respect of the securities; and

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(**a**) Section 5 was amended by S.I. 2002/439.

(c) in the case of units of a unit trust, any acquisition of, or other dealing with, the units by any person or body exercising functions under the trust.

(2) The order must specify—

(a) the securities to which it relates;

(b) the name in which the securities stand;

(c) the steps which may not be taken; and

(d) whether the prohibition applies to the securities only or to the dividends or interest as well.

Variation or discharge of order

40.13.—(1) The court may, on the application of any person claiming to have a beneficial interest in the securities to which a stop order relates, make an order discharging or varying the order.

(2) An application seeking the variation or discharge of a stop order must be served on the person who obtained the order.

CHAPTER 4

STOP NOTICES

General

40.14. In this Chapter, "stop notice" means a notice issued by the court which requires a person or body not to take, in relation to securities specified in the notice, any of the steps listed in section 5(5) of the 1979 Act(**a**), without first giving notice to the person who obtained the notice.

(Her Majesty's Courts and Tribunals Service publishes information to identify the appropriate court location to which to send a request under rule 40.15 or rule 40.18 or an application under rule 40.19.)

Request for a stop notice

40.15.—(1) The High Court may, on the request of any person claiming to be beneficially entitled to an interest in securities, issue a stop notice.

(A stop notice may also be included in a final charging order, by either the High Court or the family court under rule 40.8(3).)

(2) A request for a stop notice must be made by filing—

(a) a draft stop notice; and

(b) written evidence which—

(i) identifies the securities in question;

(ii) describes the applicant's interest in the securities; and

(iii) gives an address for service for the applicant.

(A sample form of stop notice is annexed to Practice Direction 40A.)

(3) If a court officer considers that the request complies with paragraph (2), the court officer must issue a stop notice.

(4) The applicant must serve copies of the stop notice and the applicant's written evidence on the person to whom the stop notice is addressed.

(**a**) Section 5 was amended by S.I. 2002/439.

Effect of a stop notice

40.16.—(1) A stop notice—

(a) takes effect when it is served in accordance with rule 40.15(4); and

(b) remains in force unless it is withdrawn or discharged in accordance with rule 40.18 or 40.19.

(2) While a stop notice is in force, the person on whom it is served—

(a) must not—

(i) register a transfer of the securities described in the notice; or

(ii) take any other step restrained by the notice,

without first giving 14 days' notice to the person who obtained the stop notice; but

(b) must not, by reason only of the notice, refuse to register a transfer or to take any other step, after the person has given 14 days' notice under paragraph (2)(a) and that period has expired.

Amendment of a stop notice

40.17.—(1) If any securities are incorrectly described in a stop notice which has been obtained and served in accordance with rule 40.15, the applicant may request an amended stop notice in accordance with that rule.

(2) The amended stop notice takes effect when it is served.

Withdrawal of a stop notice

40.18.—(1) A person who has obtained a stop notice may withdraw it by serving a request for its withdrawal on—

(a) the person or body on whom the stop notice was served; and

(b) the court which issued the stop notice.

(2) The request must be signed by the person who obtained the stop notice, and that person's signature must be witnessed by a practising solicitor.

Discharge or variation of a stop notice

40.19.—(1) The court may, on the application of any person claiming to be beneficially entitled to an interest in the securities to which a stop notice relates, make an order varying or discharging the notice.

(2) An application to discharge or vary a stop notice must be made to the court which issued the notice.

(3) The application must be served on the person who obtained the stop notice.

Practice Direction

40.20. Practice Direction 40A makes provision for the procedure to be followed when applying for an order under section 23 of the Partnership Act 1890(**a**).”

(**a**) 1890 c. 39. Section 23 was amended by Part II of Schedule 11 to the Courts Act 1971 (c. 23), Part X of Schedule 1 to the Statute Law (Repeals) Act 1998 (c. 43) and paragraph 118 of Schedule 9 to the Crime and Courts Act 2013.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Family Procedure Rules 2010 (S.I. 2010/2955) ("the FPR").

Rule 3 amends rule 4.4 of the FPR to clarify that written evidence must be taken into account if the court is considering striking out a statement of case.

Rule 8, and Schedules 1 and 2, insert new Parts 39 and 40 into the FPR, which set out the procedure to be followed in respect of applications for attachment of earnings orders, charging orders, stop orders and stop notices.

Rules 4 to 6 make amendments to the FPR which are consequential upon the introduction of the new Parts 39 and 40 of the FPR.

Rule 7 amends an out of date cross-reference in the FPR.

Rule 9 makes transitional provision.

No impact assessment has been produced for these Rules as no, or minimal, impact is anticipated to result from their provisions.

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