1971 No. 835 (L.19)

SUPREME COURT OF JUDICATURE, ENGLAND
PROCEDURE
The Rules of the Supreme Court (Amendment No. 2) 1971

Made - - -	*13th May* 1971
Laid before Parliament	*27th May* 1971
Coming into Operation	*2nd August* 1971

We, the Rule Committee of the Supreme Court, being the authority having for the time being power under section 99(4) of the Supreme Court of Judicature (Consolidation) Act 1925(**a**) to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature, hereby exercise those powers and all other powers enabling us in that behalf as follows:—

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Amendment No. 2) 1971 and shall come into operation on 2nd August 1971.

(2) In these Rules a rule referred to by number means the rule so numbered in Order 104 of the Rules of the Supreme Court 1965(**b**), as amended (**c**), and a form referred to by number means the form so numbered in Appendix A to those Rules.

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

2. In rule 1, after the definition of "the Act of 1965" there shall be inserted the following definitions:—

" "the Act of 1970" means the Matrimonial Proceedings and Property Act 1970(**e**);

"the Act of 1971" means the Attachment of Earnings Act 1971(**f**)."

3. Rule 7 shall be amended as follows:—

(*a*) In the side-note for the words "Parts IV and V" there shall be substituted the words "Part IV".

(*b*) In paragraph (1) the words "and Part V thereof" shall be omitted.

(*c*) In paragraph (2) the words "and in Part V thereof" and the definition of "appropriate county court registrar" shall be omitted and in paragraph (*b*) of the definition of "proper officer" for the words "under any provision of sections 19 to 27 of the Matrimonial Causes Act 1950" there shall be substituted the words "or having effect as if made under Part II or III of the Act of 1965 or Part I of the Act of 1970".

(**a**) 1925 c. 49. (**b**) S.I. 1965/1776 (1965 III, p. 4995).
(**c**) The relevant amending instrument is S.I. 1968/1244 (1968 II, p. 3360).
(**d**) 1889 c. 63. (**e**) 1970 c. 45. (**f**) 1971 c. 32.

4. In rules 10(3), for sub-paragraph (*c*) there shall be substituted the following sub-paragraph:—

"(*c*) send notice of the variation or discharge to any registrar of a county court—

(i) who has given notice to the proper officer of proceedings taken in that court for the enforcement of the registered order, or

(ii) to whom any payment is to be made under an attachment of earnings order made by the High Court for the enforcement of the registered order."

5. In rule 11(1)(*b*) for the words "under any provision of sections 19 to 27 of the Matrimonial Causes Act 1950" there shall be substituted the words "or has effect as if made under Part II or III of the Act of 1965 or Part I of the Act of 1970".

6. In the title of Part V for the words "PART II OF THE ACT OF 1958" there shall be substituted the words "THE ACT OF 1971".

7. Rule 13 shall be amended as follows:—

(1) In the title after the word "*order*" there shall be inserted the words "*by person entitled to payments*".

(2) For paragraph (1) there shall be substituted the following paragraph:—

"(1) Where the person to whom payments are required to be made under a maintenance order desires to apply to the High Court under section 3 of the Act of 1971 for an attachment of earnings order to secure those payments, the application must be made by summons, which shall, if the maintenance order is registered in the High Court under Part I of the Act of 1958, be an ordinary summons.

The defendant or respondent to the summons (in this Part of this Order referred to as "the defendant") shall be the person liable to make payments under the maintenance order and any application under section 10 of the Act of 1970 for leave to enforce payment of any arrears which became due more than 12 months before the issue of the summons shall be made by the summons."

(3) In paragraph (2)(*f*), sub-paragraphs (ii) and (iii) shall be omitted and sub-paragraphs (iv) and (v) shall be renumbered accordingly.

8. For rule 14 there shall be substituted the following rule:—

"*Application for attachment of earnings order by person liable to make payments*

14. An application by the person liable to make payment under a maintenance order of the High Court for an attachment of earnings order to secure those payments may be made on the making of the maintenance order or an order of the High Court varying the maintenance order".

9. Rule 15 shall be amended as follows:—

(1) At the end of paragraph (1) there shall be added the words "and the particulars of the defendant required to be given in the first paragraph of that form shall, so far as they are known to the Court, be the prescribed particulars for the purposes of section 6(3) of the Act of 1971."

(2) The following paragraph shall be substituted for paragraph (5):—

"(5) The Court shall cause a certified copy of an attachment of earnings order and of any order varying or discharging such an order to be sent to the appropriate county court registrar and, in the case of an attachment of earnings order or an order varying such an order, the copy shall be indorsed with a statement of the amount of the arrears, if any, due and unpaid under the related maintenance order at the time when the attachment of earnings order was made or varied.

In this paragraph and in rule 16(2) "the appropriate county court registrar" means—

(*a*) the registrar of the county court within the district of which the debtor resides, and

(*b*) any registrar of another county court who is specified in the attachment of earnings order as the collecting officer for the purposes of the order or who has given notice to the proper officer of proceedings taken in that court for the enforcement of the related maintenance order."

10. Rule 16 shall be amended as follows:—

(1) In paragraph (1)—

(*a*) for the words "section 9(2) of the Act of 1958" there shall be substituted the words "section 8 or 11 of the Act of 1971",

(*b*) for the words "the said section 9(2)" there shall be substituted the words "section 12(1) of the said Act", and

(*c*) after sub-paragraph (*c*) there shall be added the following sub-paragraph:—

"(*d*) was made by a divorce county court and has been removed into the High Court for enforcement."

(2) In paragraph (2)(*a*) for the words "the registrar of any county court to whom any payment was directed to be made by the order" there shall be substituted the words "the appropriate county court registrar".

11. Rule 17 shall be amended as follows:—

(1) In the title after the word "*order*" there shall be added the words "*under section* 10(2) *of the Act of* 1971".

(2) Paragraph (1) shall be omitted and paragraph (2) and (3) shall stand as paragraphs (1) and (2) respectively.

(3) In paragraph (1) as so re-numbered for the words from "section 9(4)" to "thereof by" there shall be substituted the words "section 10(2) of the Act of 1971 to be given by the collecting officer under" and for the words "the said section 9(4)" there shall be substituted the words "the said section 10(2)".

(4) In paragraph (2) as so re-numbered for the words "the said section 9(4)" there shall be substituted the words "the said section 10(2)".

12. For rule 18 there shall be substituted the following rule:—

"*Discharge or variation by court of own motion*

18.—(1) Subject to paragraph (7), the powers conferred by section 9(1) of the Act of 1971 may be exercised by the Court of its own motion in the circumstances mentioned in the following paragraphs.

(2) Where it appears to the Court that a person served with an attachment of earnings order directed to him has not the defendant in his employment, the Court may discharge the order.

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

(4) Where, after an attachment of earnings order has been made, a writ of fieri facias is issued to enforce the related maintenance order, the Court may discharge or vary the attachment of earnings order.

(5) Where, after an attachment of earnings order has been made, 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 21 of the Act of 1970 or otherwise, the Court may discharge or vary the attachment of earnings order.

(6) Where an attachment of earnings order has been made by the High Court under Part II of the Act of 1958, the Court may vary the order so as to bring it into conformity with the provisions of the Act of 1971 or replace it by an attachment of earnings order having effect as if made under the corresponding power in that Act.

(7) Before discharging or varying an order of its own motion under any of the foregoing paragraphs, the Court shall, unless it thinks it unnecessary in the circumstances to do so, give the defendant and the person entitled to payments under the related maintenance order an opportunity of being heard on the question whether the order should be varied or discharged, and for that purpose the proper officer may give them notice of a date, time and place at which the question will be considered."

13. In rule 19 for the words "section 12(1) of the Act of 1958" there shall be substituted the words "section 16(1) of the Act of 1971".

14. The following rule shall be added after rule 19:—

"*Interpretation of Part V*

20. In this Part of this Order expressions used in the Act of 1971 have the same meaning as in that Act and "proper officer" has the same meaning as in Part IV of this Order."

15. Form 104 shall be amended as follows:—

(*a*) For the words "Maintenance Orders Act 1958", wherever they appear, there shall be substituted the words "Attachment of Earnings Act 1971".

(*b*) In the first paragraph the words "aged years, whose national insurance number is and" shall be omitted.

(*c*) In the second paragraph the words from "at the time" to "and that" shall be omitted.

(*d*) The note shall be deleted.

16. In the title of Form 105 for the words "section 9(4) of the Maintenance Orders Act 1958" there shall be substituted the words "section 10(2) of the Attachment of Earnings Act 1971".

17. Form 106 shall be revoked.

Dated 13th May 1971.

Hailsham of St. Marylebone, C.
Widgery, C. J.
Denning, M. R.
George Baker, P.
Cyril Salmon, L. J.
John Pennycuick, V-C.
John R. Willis, J.
Nigel Bridge, J.
James Fox-Andrews.
Oliver Lodge.
W. O. Carter.
H. Montgomery-Campbell.

EXPLANATORY NOTE

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

These Rules amend Order 104 of the Rules of the Supreme Court, which deals with the enforcement of maintenance orders, so as to take account of the relevant provisions of the Attachment of Earnings Act 1971. Appropriate amendments are also made in the prescribed forms.