to have been set down under the provisions substituted therefor by these Rules, and any directions relating to any matters as to which directions can be made under the substituted provisions shall have effect as if they had been so made.

Dated the twenty-eighth day of July, 1958.

Kilmuir, C.
Goddard, C.J.
Evershed, M.R.
Merriman, P.
B. Ormerod, L.J.
Colin H. Pearson, J.
G. Raymond Hinchcliffe, J.
J. R. Cumming-Bruce.
L. S. Holmes.
W. Charles Norton.

EXPLANATORY NOTE

(This Note is not part of the Rules, but is intended to indicate their general purport.)

Part I of these Rules (which comes into force on the 1st September, 1958) replaces the existing provisions of Order 36 relating to setting down for trial and mode of trial, and makes new provision in regard to setting down for trial at assizes. The need to give notice of trial is abolished and actions will be set down with the district registrar (or, in the case of certain Home Counties towns, with the associate of the circuit) within the time fixed by the order made on the summons for directions. The keeping of separate lists for different classes of actions, both in London and elsewhere, will in future be a matter for directions under the new Rule 6 of Order 36.

Part II (which comes into force on the 5th August, 1958) makes miscellaneous amendments in the Rules of the Supreme Court, including provision for applications to the court under the Variation of Trusts Act, 1958, and for the closing of the offices of the Supreme Court on Saturdays.

1958 No. 2094 (L. 15)

The Rules of the Supreme Court (No. 3), 1958

Made - - - -	*8th December*, 1958
Laid before Parliament	*17th December*, 1958
Coming into Operation	*1st January*, 1959

We, the Rule Committee of the Supreme Court, hereby make the following Rules :—

PART I

PROCEEDINGS UNDER THE MAINTENANCE ORDERS ACT, 1958

1. After Order XLIC there shall be inserted the following Order :—

" ORDER XLID

MAINTENANCE ORDERS ACT, 1958

I. INTERPRETATION

1. In this Order, unless the context otherwise requires—
" the Act of 1958 " means the Maintenance Orders Act, 1958(a) ;

(a) 6 & 7 Eliz. 2. c. 39.

" proper officer " means—

(*a*) in the case of an order made by the High Court under section 3 (2), 5 (4) or 6 of the Guardianship of Infants Act, 1925(**a**), the Chief Registrar of the Chancery Division;

(*b*) in the case of an order made under any provision of sections 19 to 27 of the Matrimonial Causes Act, 1950(**b**), the Senior Registrar of the Principal Probate Registry or, where the order was made in a cause or matter proceeding in a district registry, the registrar of that district registry;

(*c*) in the case of an order registered in the High Court under Part II of the Maintenance Orders Act, 1950(**c**), or the Maintenance Orders (Facilities for Enforcement) Act, 1920(**d**), the officer who caused the order to be registered;

(*d*) in the case of a magistrates' court order which is to be or has been registered in the High Court under Part I of the Act of 1958, the officer to whom a certified copy of the order has been sent pursuant to section 2 (4) (*c*) of that Act;

" the register " means a register kept for the purposes of the Act of 1958;

" cause book " includes cause card;

" appropriate county court registrar ", in relation to a maintenance order made by or registered in the High Court, means—

(*a*) the registrar of a county court who has given notice to the proper officer of proceedings taken in that court for the enforcement of the order, and

(*b*) the registrar of a county court to whom any payment is to be made under an attachment of earnings order made by the High Court for the enforcement of the maintenance order;

expressions used in the Act of 1958 have the same meanings as in that Act.

II. Registration of Maintenance Orders

Registration of orders

2.—(1) An application for the registration of a maintenance order in a magistrates' court may be made—

(*a*) on the making of the maintenance order or an order varying the maintenance order; or

(*b*) at any other time by lodging with the proper officer a certified copy of the maintenance order (and, in the case of an order made under section 3 (2), 5 (4) or 6 of the Guardianship of Infants Act, 1925, the duplicate order) and an affidavit by the applicant, together with a copy thereof, stating—

(i) the address and occupation of the person liable to make payments under the order;

(ii) the date of service of the order on the person liable to make payments thereunder or, if the maintenance order has not been served, the reason why service has not been effected;

(iii) the reason why registration of the order in a magistrates' court is desired;

(iv) the amount of any arrears due to the applicant under the order;

(**a**) 15 & 16 Geo. 5. c. 45. (**b**) 14 Geo. 6. c. 25.
(**c**) 14 Geo. 6. c. 37. (**d**) 10 & 11 Geo. 5. c. 33.

(v) that the order is not already registered under the Act of 1958, and

(vi) whether any proceedings are pending, or any writ, warrant or other process is in force, for the enforcement of the order.

(2) Where the application is granted—

(*a*) the applicant shall, if he has not already done so, lodge with the proper officer a certified copy of the maintenance order and, in the case of an order made under section 3 (2), 5 (4) or 6 of the Guardianship of Infants Act, 1925, the duplicate order;

(*b*) no proceedings shall be begun, and no writ, warrant or other process shall be issued, for the enforcement of the maintenance order before the registration of the order or before the expiration of 14 days from the grant of the application, whichever first occurs;

(*c*) the proper officer shall, on being satisfied within the said period of 14 days that no such proceedings or process begun or issued before the grant of the application remain pending or in force, send a certified copy of the order endorsed with a note that the application has been granted, together with a copy of any affidavit lodged under paragraph (1) of this Rule, to the clerk of the magistrates' court acting for the petty sessions area in which the person liable to make payments under the order appears to be;

(*d*) on receipt of notice that the order has been duly registered in the magistrates' court, the proper officer shall—

(i) if he is the Chief Registrar of the Chancery Division, enter particulars of the registration on the original maintenance order and on the duplicate thereof;

(ii) if he is the Senior Registrar of the Principal Probate Registry or a district registrar, enter particulars of the registration in the court minutes.

(3) On receipt of a certified copy of a magistrates' court order sent to him pursuant to section 2 (4) (*c*) of the Act of 1958, the proper officer shall cause the order to be registered in the High Court by filing the copy and making an entry in the register or, where the proper officer is a district registrar, in the cause book, and shall send notice to the clerk of the magistrates' court that the order has been duly registered.

Variation or discharge of registered order

3.—(1) Where the High Court makes an order varying or discharging an order registered in a magistrates' court, the proper officer shall send a certified copy of the first-mentioned order to the clerk of the magistrates' court.

(2) Where a certified copy of an order varying a High Court order registered in a magistrates' court is received from the clerk of the magistrates' court, the proper officer shall file the copy and enter particulars of the variation in the places in which particulars of the registration are required by Rule 2 (2) (*d*) of this Order to be entered.

(3) Where a magistrates' court varies or refuses to vary a High Court or county court order registered in the magistrates' court, an appeal from the variation or refusal shall lie—

(*a*) in the case of an order made under section 3 (2), 5 (4) or 6 of the Guardianship of Infants Act, 1925, to a Judge of the Chancery Division as if the said order had been made by the magistrates' court, and

(*b*) in the case of an order made under any provision of sections 19 to 27 of the Matrimonial Causes Act, 1950, to a Judge of the Probate, Divorce and Admiralty Division,

and shall be heard by the Judge in chambers or in court as he shall direct.

(4) Where a certified copy of an order varying or discharging a magistrates' court order registered in the High Court is received from the clerk of the magistrates' court, the proper officer shall—

(*a*) file the copy;

(*b*) enter particulars of the variation or discharge in the register or, where the proper officer is a district registrar, in the cause book, and

(*c*) send notice of the variation or discharge to the appropriate county court registrar, if any.

Cancellation of registration

4.—(1) If a person entitled to receive payments under an order registered in the High Court desires the registration to be cancelled, he may give notice under section 5 (1) of the Act of 1958 by notifying the proper officer.

(2) Where the High Court, on varying or discharging an order registered in a magistrates' court, decides to give notice under section 5 (2) of the Act of 1958, the proper officer shall endorse the notice on the certified copy referred to in Rule 3 (1) of this Order.

(3) Where notice is given under section 5 of the Act of 1958 in respect of an order registered in the High Court, the proper officer, on being satisfied by an affidavit by the person entitled to receive payments under the order that no process for the enforcement of the order issued before the giving of the notice remains in force, shall—

(*a*) cancel the registration by entering particulars of the notice in the register or, where the proper officer is a district registrar, in the cause book, and

(*b*) send notice of the cancellation to the clerk of the magistrates' court by which the order was made, stating, if such be the case, that the cancellation is in consequence of a notice given under subsection (1) of the said section 5.

(4) Where notice is received from the clerk of a magistrates' court that the registration in that court of a High Court order has been cancelled, the proper officer shall enter particulars of the cancellation in the places in which particulars of the registration are required by Rule 2 (2) (*d*) of this Order to be entered.

III. Attachment of Earnings Orders

Application for attachment of earnings order

5.—(1) An application for an attachment of earnings order by a person entitled to receive payments under a maintenance order shall be made to the court or a judge by summons and the respondent to the application (in this part of this Order called the defendant) shall be the person liable to make payments under the maintenance order.

(2) The summons shall be supported by an affidavit by the applicant stating—

(*a*) particulars of the maintenance order;

(*b*) the date of the service of the maintenance order on the defendant or, if the maintenance order has not been served, the reason why service has not been effected;

(*c*) the amount of any arrears due to the applicant under the maintenance order;

(*d*) particulars of any proceedings which have been taken for the enforcement of the maintenance order;

(*e*) the name and address of any person believed to be the defendant's employer;

(*f*) such of the following particulars relating to the defendant as are known to the applicant, that is to say—

(i) his full name and address,

(ii) his age;

(iii) his national insurance number;

(iv) his place of work,

(v) the nature of his work and his works number, if any;

(*g*) such other facts relevant to the means of the defendant as are known to the applicant.

(3) Unless otherwise directed, the summons, together with a copy of the affidavit in support, shall be served on the defendant at least 14 days before the return date and the defendant may, within 10 days after service, file an affidavit in answer and in that case shall deliver a copy of his affidavit to the applicant within twenty-four hours after filing it.

Particulars of defendant

6. An order made under section 11 (1) (*a*) of the Act of 1958 (which empowers the court to order a defendant to give particulars for the purpose of enabling him to be identified) may specify any of the particulars referred to in paragraph (2) (*f*) of the last foregoing Rule, and an attachment of earnings order shall contain such of those particulars as are known to the court.

Form and service of order

7.—(1) An attachment of earnings order shall be in Form No. 86 in Appendix K.

(2) The court shall cause a copy of every attachment of earnings order and of every order varying or discharging such an order to be served on the defendant and on the person to whom the attachment of earnings order is directed.

(3) Service on a person other than a corporation shall be effected by sending the copy of the order to him at his last known place of residence or, where he is the person to whom the attachment of earnings order is directed, at his place of business.

(4) Service on a corporation shall be effected by sending the copy of the order to the registered office of the corporation or, if the corporation has no registered office, to any place where it resides or carries on business:

Provided that where the corporation has requested that any communication relating to the defendant or to the class or description of persons to which he belongs shall be directed to the corporation at a particular address, service may be effected at that address instead of at the registered office of the corporation or a place where it resides or carries on business.

(5) The court shall also cause a certified copy of every attachment of earnings order and of every order varying or discharging such an order to be sent to the appropriate county court registrar, if any.

(6) A certified copy of an attachment of earnings order sent to a county court registrar pursuant to the last foregoing paragraph shall have indorsed thereon a statement of the amount of the arrears due and unpaid under the related maintenance order at the time when the application for the attachment of earnings order was made.

Notice of cessation of order

8. Where an attachment of earnings order ceases to have effect and the related maintenance order—

(*a*) was made by the High Court and is not registered in a magistrates' court under Part I of the Act of 1958 ;

(*b*) was made by a magistrates' court and is registered in the High Court under the said Part I, or

(*c*) has ceased to be registered in the High Court under Part II of the Maintenance Orders Act, 1950,

the proper officer shall—

(i) if the attachment of earnings order was made by the High Court, give notice of the cessation to the person to whom the order was directed and to the registrar of any county court to whom any payment was directed to be made under the order ;

(ii) if the attachment of earnings order was made by a county court and has ceased to have effect otherwise than upon the making of an order of commitment in that court for the enforcement of the related maintenance order, give notice of the cessation to the registrar of that court.

Appropriate variation

9.—(1) The officer to whom any payment is directed to be made under an attachment of earnings order made by the High Court shall give notice under section 9 (4) of the Act of 1958 (which requires the prescribed notice to be given where the arrears under the related maintenance order have been discharged) by sending notice in Form No. 42 in Part II of Appendix B to the person to whom he is required to pay sums received under the attachment of earnings order and to the defendant ; and where the officer is the registrar of a county court, he shall at the same time send a copy of the notice to the proper officer of the High Court or, where the related maintenance order was made under section 3 (2), 5 (4) or 6 of the Guardianship of Infants Act, 1925, to the Chief Chancery Master.

(2) Where notice is given under the last foregoing paragraph, the defendant may request the court to proceed under paragraph (ii) of the said section 9 (4) by applying, within 14 days after the date of the notice, for an order discharging or varying the attachment of earnings order ; and such an application shall be made to the court or a judge by summons returnable not less than four days after service on the person in whose favour the attachment of earnings order was made.

Notice under section 10 (4)

10.—(1) A person to whom an attachment of earnings order made by the High Court is directed shall give notice under section 10 (4) of the Act of 1958 (which relates to cases in which such a person is not the defendant's employer) by sending a notice in Form No. 43 in Part II of

Appendix B to the proper officer or where the related maintenance order was made under section 3 (2), 5 (4) or 6 of the Guardianship of Infants Act, 1925, to the Chief Chancery Master.

(2) Where, on receipt of a notice under the last foregoing paragraph, the court discharges the attachment of earnings order in pursuance of section 9 (3) of the Act of 1958, the court shall cause the person in whose favour the order was made to be notified of the discharge.

Application for determination under section 12 (1)

11. Where an attachment of earnings order has been made by the High Court, an application under section 12 (1) of the Act of 1958 (which enables the court to determine whether payments of a particular class or description are earnings) by the person to whom the order is directed, by the defendant or by the person in whose favour the order was made (in this Rule called the parties to the order) shall be made to the court or a judge by summons returnable not less than four days after service on the parties to the order other than the applicant."

2. In paragraph (2) of Rule 29 of Order LIX (which provides for certain appeals from justices being heard by a Divisional Court of the Probate, Divorce and Admiralty Division), after the words "Maintenance Orders Act, 1950" there shall be inserted the words—

"or (*c*) an order for alimony, maintenance or other payments made under any provision of sections 19 to 27 of the Matrimonial Causes Act, 1950, which has been registered in a magistrates' court under the Maintenance Orders Act, 1958."

3. The following forms shall be added to Part II of Appendix B:—

"No. 42

Notice under section 9 (4) *of the Maintenance Orders Act,* 1958

In the High Court of Justice, Division 19 . [*Here put the letter and number, if any*]
[District Registry]

In the matter of the Maintenance Orders Act, 1958

[*Full title*]

Whereas by an attachment of earnings order dated the day of , 19 , was required, out of earnings falling to be paid by him to , to make payments to me in or towards satisfaction of the payments due to under a maintenance order made by the High Court of Justice [*or as the case may be*] on the day of , 19 ;

And Whereas it appears that—

(*a*) the aggregate of the payments made for the purposes of the maintenance order exceeds the aggregate of the payments required by that order; and

(*b*) the normal deduction rate specified by the attachment of earnings order exceeds the rate of payments required by the maintenance order; and

(*c*) no proceedings for the variation or discharge of the attachment of earnings order are pending:

Take notice that unless the said applies to the High Court of Justice, within 14 days after the date of this notice, for an order discharging the attachment of earnings order or varying it in some other manner, the court will make an order varying the attachment of earnings order by reducing the normal deduction rate to the rate of payments required by the maintenance order or to such lower rate as the court thinks fit having regard to the amount of the excess mentioned in paragraph (*a*) of this notice.

Dated this day of , 19 .

Signed [*to be signed by the officer of the High Court or the county court registrar to whom payments under the attachment of earnings order are directed to be made.*]

To of and to of ."

"No. 43

Notice under section 10 (4) *of the Maintenance Orders Act,* 1958

In the High Court of Justice, 19 . [*Here put the letter and number, if any*]
Division
[District Registry]

In the matter of the Maintenance Orders Act, 1958

[*Title as in attachment of earnings order*]

Whereas by an attachment of earnings order made by the above-named court on the day of , 19 , I was directed to make payments to the Accountant-General of the Supreme Court [*or* to the District Registrar of the High Court of Justice at] [*or* to the Registrar of the County Court] out of earnings falling to be paid by me to the defendant, :

I hereby give notice under section 10 (4) of the Maintenance Orders Act, 1958, that on no occasion during the period of four weeks immediately preceding the day of , 19 , [*insert date of service of attachment of earnings order or such later date as may be appropriate*] was I the defendant's employer within the meaning of that Act.

Signed [*to be signed by the person to whom the attachment of earnings order was directed*].

To the Chief Chancery Master [*or* the Senior Master, Queen's Bench Division] [*or* the Senior Registrar of the Principal Probate Registry] [*or* the District Registrar of the High Court at].

4. The following form shall be added to Appendix K:—

"No. 86

Attachment of earnings order under the Maintenance Orders Act, 1958

In the High Court of Justice, 19 . [*Here put the letter and number, if any*]
Division
[District Registry]

In the matter of the Maintenance Orders Act, 1958

[*Full title*]

Whereas of , aged years, whose national insurance number is and who works at as a (Works no.) (hereinafter called the defendant) is required under a maintenance order made on the day of , 19 , by the High Court of Justice [*or as the case may be*] to make payments of a week [*or as the case may be*] to :

And Whereas on the application of the said it appears that at the time the application was made there was due under the maintenance order and unpaid an amount equal to not less than four of the weekly payments required by the order [*or if the maintenance order is not for weekly payments*, not less than two of the payments required by the order] and that earnings fall to be paid by to the defendant:

It is hereby ordered that the said do make payments out of those earnings in accordance with the Maintenance Orders Act, 1958, to the Accountant-General of the Supreme Court [*or* to the District Registrar of the High Court of Justice at] [*or* to the Registrar of the County Court] for transmission to the said ;

And it is further ordered that for the purpose of calculating the said payments the normal deduction rate shall be a week [*or as the case may be*] and that the protected earnings rate shall be a week [or as the case may be].

Dated this day of , 19 .

To of ,
and to of .

Note: This order does not come into force until one week after its service on the said ."

PART II

MISCELLANEOUS

5. The following amendments shall be made in Order XXXVI:—

(1) For Rule 6 there shall be substituted the following Rule:—

"6. Nothing in this Order shall prejudice any powers of—

(*a*) the Lord Chief Justice, as respects actions in the Queen's Bench Division;

(*b*) the senior judge of the Chancery Division, as respects actions in that Division;

(*c*) the President of the Probate, Divorce and Admiralty Division, as respects probate actions;

to give directions—

(i) specifying the lists in which actions, or actions of any class of description, are to be set down for trial and providing for the keeping and publication of the lists;

(ii) providing for the determination of a date for the trial of any action which has been set down or a date before which the trial thereof is not to take place; and

(iii) as to the making of applications (whether to a court or a judge or to an officer of the court) to fix, vacate or alter any such date and, in particular, requiring any such application to be supported by an estimate of the length of the trial and any other relevant information."

(2) For paragraphs (6) and (7) of Rule 7 there shall be substituted the following paragraph:—

"(6) Any party to an action set down for trial at Birmingham, Leeds, Liverpool or Manchester may, after giving notice to all other parties, apply to the district registrar for the postponement of the trial, and the district registrar may postpone or refuse to postpone the trial as seems just:

Provided that an application made after the commencement of the assizes for the postponement of the trial of any action included in the list referred to in the last preceding paragraph or in any subsequent list of actions likely to be tried at those assizes shall be made to the judge going the circuit."

(3) In paragraph (2) of Rule 11 for the word "notified" there shall be substituted the word "satisfied".

6. In paragraph (3) of Rule 72A of Order LV for the words "Form No. 36" there shall be substituted the words "Form No. 26".

7.—(1) These Rules may be cited as the Rules of the Supreme Court (No. 3), 1958.

(2) Part II of these Rules shall come into operation on the first day of January, 1959, and Part I of these Rules shall come into operation on the sixteenth day of February, 1959.

Dated the eighth day of December, 1958.

Kilmuir, C.
Parker of Waddington, C.J.
Merriman, P.
B. Ormerod, L.J.
H. B. Vaisey, J.
Colin H. Pearson, J.
Reginald W. Goff.
J. R. Cumming-Bruce.
L. S. Holmes.
W. Charles Norton.

EXPLANATORY NOTE

(This Note is not part of the Rules, but is intended to indicate their general purport.)

Part I of these Rules (which comes into force on the 16th February, 1959) prescribes the procedure to be followed in the High Court under the Maintenance Orders Act, 1958.

Part II (which comes into force on the 1st January, 1959) substitutes a new rule 6 of Order 36 relating to the giving of directions in regard to the lists in which actions are to be set down for trial and as to the fixing of dates for trial, and amends rule 7 of that Order in regard to the powers of the district registrars at Birmingham, Leeds, Liverpool and Manchester to deal with applications for postponement of the trial of actions for hearing at those towns.