

8. Enforcement of civil judgments

8.1 Introduction

Where a creditor has obtained judgment against a debtor, but the debtor does not satisfy that judgment, the creditor has to take steps to enforce it. A great deal of the work in the county court is concerned with enforcement in one form or another. The judge's part is usually confined to making orders which 'bite', for whilst most of the enforcement procedure is office work, only a judge can commit to prison for contempt in not complying with a court order. Only in the case of a judgment summons does that sanction apply to failure to pay. In all other cases it is confined to failure to comply with a previous order of the court, typically one to attend or to provide information. The Courts and Legal Services Act 1990 gave district judges certain powers to commit for contempt. Those powers extend to orders concerned with attachment of earnings. In other cases, the power is that of the circuit judge.

8.2 Human rights

The European Convention on Human rights incorporated into English Law by the Human Rights Act 1988 is primarily intended to protect the rights of the individual against the State. The Convention contains many examples of prohibition on interference with the individual's rights and some positive obligations to protect the individual. These obligations are imposed both upon the State and upon 'public authorities'. The civil courts are public authorities.

As 'public authorities' the civil courts may be required to apply the Convention even where the parties to the proceedings are private parties involved in a private dispute. The civil courts should therefore exercise their functions, including enforcement process, so as to comply with the terms of the Convention.

Article 6 provides the right to a fair trial. In the determination of his civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law with judgment pronounced in open court. All proceedings have to be in public; effectively the position under the Civil Procedure Rules 1998 (CPR) and reasons for making orders will have to be given. In enforcement matters there is no need for a detailed judgment, but there must be a statement of the order and the reasons why it was made.

In essence, Article 6 requires proceedings to be fair with clear rules and procedures; a level playing field and an impartial determination that can be seen to be impartial and fair on the facts.

Article 6 implies a right to effective access to the court and a right to an effective remedy. The right to a fair trial implies the right of a party to be present so that he can participate effectively in the conduct of the case. A party may however waive his right to be present either expressly or impliedly by failing to attend a hearing having been given effective notice of it. In the latter case there must be a right to a rehearing if the absence was not due to waiver but some other cause. Debtors have rights to be heard and to make applications to suspend or set aside.

Similarly the creditor has a right to an effective means of enforcement (see *Hornsby v Greece* [1997] 24 EHRR 250).

Article 6 gives a party to a hearing the right to put his case forward under conditions that do not put him at a disadvantage in relation to his opponent. This may require the judge to afford some assistance to creditors or debtors appearing in person. The court is under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties (see *Van den Hurk v Netherlands* [1984] 18 EHRR 481).

8.3 Enforcement in general

Enforcement applications are often listed by order number or abbreviation, which may add to the mystery. Some of the more common orders are referred to and where appropriate the usual abbreviation is included.

The main enforcement procedures are dealt with in this chapter. The less common enforcement applications can be located by reference to the list set out below.

8.3.1 Where to find the basic rules

Most relevant material can be found in the following CPR and relevant Practice Directions:

Part 70	General Rules about enforcement of Judgments
Part 71	Orders to obtain information from Judgment Debtors
Part 72	Third Party Debt Orders
Part 73	Charging Orders, Stop Orders and Stop Notices
Part 74	Enforcement of Judgments in different Jurisdictions
Part 75	Traffic Enforcement
CPR Schedule 1/ RSC Order 17	Interpleader
CPR Schedule 2/ CCR Order 39	Administration Orders
Attachment of Earnings Act 1971	Power to attach debtor's earnings
CCR Order 26	Warrants of Execution Delivery and Possession

8.4 Administration orders

Often listed as 'A/O' and reviews of administration orders as 'A/O Review'.

This order requires the debtor to make regular payment of a fixed sum in respect of his total indebtedness and apportions such sums amongst the creditors pro rata in accordance with the amounts owed. Like bankruptcy a schedule of creditors is prepared, the debtor makes regular payments and a dividend is paid to creditors. Unlike bankruptcy, the order is administered by the county court and an administration order carries none of the legal disabilities of bankruptcy. The order is registered at the Registry of County Court judgments. While in force, no interest can accrue on a county court judgment and it is not possible to issue enforcement proceedings. If the debtor fails to comply with the order it may be revoked.

A county court may make an administration order only if the debtor's total indebtedness does not exceed £5,000 *and* where the debtor is unable to pay the amount of a judgment obtained against him.

The procedure is governed by Ord. 39 in Sch. 2 of the CPR.

8.4.1 Key features

- The debtor is unable to pay *forthwith* the amount of a judgment against him (s.112(a) CCA 1984).
- The whole indebtedness including the debt for which the judgment has been obtained must not exceed the county court limit (currently for this purpose £5,000). However see s.112(5) CCA 1984 – the order shall not be invalid by reason only that the total amount of the debts is found to exceed the limit but in that case the court may, if it thinks fit, set aside the order.
- The effect of the order is a means to consolidate debts where there is a multiple debt problem thereby releasing the debtor from the burden of dealing the debts on an individual basis.
- The debtor makes regular payments under the order to the court which are distributed among the scheduled creditors.
- The order may be supported by an attachment of earnings order thereby ensuring regular payments.
- The order may provide for payment of the debts by instalments or otherwise and either in full or to such extent as appears practicable to the court under the circumstances of the case and subject to any conditions as to his future earnings or income as the court may think just (s.112(6) CCA 1984).

8.4.2 The forms required

- **N92** Request for Administration Order
- **N93** List of Creditors furnished under Attachment of Earnings Act 1971
- **N94** Administration Order
- **N95** Order revoking an Administration Order
- **N95A** Order suspending or varying an Administration Order
- **N270** Notes for guidance – Administration Order
- **N373** Notice of application for an Administration Order
- **N374** Notice of intention to review an Administration Order
- **N374A** Notice of intention to revoke an Administration Order
- **N375** Notice of further creditors claim
- **N376** Notice of hearing – Administration Order (by direction of the court)
- **N377** Notice of dividend

8.5 Exercise of powers by district judge

Any powers conferred on the county court by Pt VI of the CCA, s.4 Attachment of Earnings Act 1971 or CCR Ord. 39 r.1 may be exercised by the district judge or, in certain circumstances mentioned in the order by the proper officer.

8.6 How the system works

The debtor wishing for an administration order to be made under Pt VI of the CCA files a request made on oath in the court for the district in which he resides or carries on business (Ord. 39 r.2(1)).

The court may also proceed as if the debtor had so applied where on his examination under CPR 71, he had filed a sworn list of creditors and sufficient particulars of his resources and needs (Ord. 39 r.2(2)).

8.6.1 Orders made by a proper officer

In the majority of routine cases a proper officer will make the administration order (Ord. 39 r.5). However, where there is an objection from a creditor (in writing and within 14 days of service of the request) to the making of an order, to the proposed rate or to the inclusion of a particular debt in the order a date will be fixed for a hearing before the district judge to decide the issue.

Where the proper officer is unable to fix the rate of payments for any reason he must refer the matter to the district judge who may decide the matter without a hearing, if he feels able to do so without an attendance of the parties, and if not a hearing will be arranged.

If a hearing is necessary any creditor to whom notice is given of the hearing wishing to object to any debt included in the debtors' list must give notice of his objection to the court at least seven days before the hearing, the debtor and the creditor to whose debt he objects, and state the grounds of such an objection (CCR Ord. 39 r.6).

8.6.2 Procedure at hearing (CCR Ord. 39 r.7)

On the day of the hearing:

- Any creditor may attend whether listed by the debtor or not to prove his debt or (subject to r.6) object to any debt included in the list.
- Every debt included in the list shall be taken to be proved unless it is objected to by a creditor, disallowed by the court or required by the court to be supported by evidence.
- Any creditor whose debt is required by the court to be supported by evidence shall prove his debt.
- The court may adjourn proof of any debt and if it does so may either adjourn consideration of the application for the administration order, or make the order on the basis that the debt in question may be added when proved.
- Any creditor whose debt is admitted or proved shall be entitled to be heard and to adduce evidence on the question whether the administration order should be made and if so in what terms.

8.6.3 Reviews (CCR Ord. 39 r.8, r.13 and r.14)

The court may on making the administration order or at any subsequent time, direct that the order shall be reviewed. Where a review is to be undertaken the debtor and every creditor who appeared when the order was made is given not less than seven days' notice of the hearing (CCR Ord. 39 r.8). A proper officer may also review the order in the event of default under r.13A.

On the review the court may:

- If satisfied that the debtor is unable from any cause to pay any instalment due, suspend the operation of the order for such time and on such terms as it thinks fit.
- If satisfied that there has been a material change in any relevant circumstances since the order was made, vary any provision of the order.
- If satisfied that the debtor has without reasonable cause failed to comply with any provision of the order or that it is otherwise just and expedient to do so, revoke the order, either forthwith or on failure to comply with any condition specified by the court.

8.6.4 Subsequent objection by creditor (CCR Ord. 39 r.10)

After the order has been made a creditor who has not received notice under r.5 who wishes to object to a debt scheduled to the order, or to the manner in which payment is directed by instalments, must give notice to a proper officer of the objection setting out his grounds for so objecting. The court may allow or dismiss the objection or adjourn it for a hearing on notice

to such persons and on such terms as to security for costs or otherwise as the court thinks fit. The court may dismiss the application if it is not satisfied the objection has been made within a reasonable time of the creditor becoming aware of the order (r.10.3).

8.6.5 Subsequent proof by creditor (CCR Ord. 39 r.11)

Any creditor not scheduled to the order or any creditor who became a creditor of the debtor after the making of the order shall if he wishes prove his debt. He may send particulars of the debt to the proper officer who in turn gives notice to the debtor and to every scheduled creditor. If no objection is received within seven days after receipt of notice the claim shall be taken to be proved unless the court requires it to be supported by evidence. If objected to or evidence in support is required a day is fixed for consideration of the claim by the district judge.

8.7 Composition orders

These are sometimes called ‘poundage orders’ or ‘percentage orders’ and were introduced by s.13 of the Courts and Legal Services Act 1990, **but to date are not in force and may never be**. Section 112B of the CCA 1984 will give power to add a composition order if it is a more satisfactory way to deal with the case. It may be made at the time when the administration order is made or, more likely, may be added to an administration order along the way.

As matters stand at present you need to refer to s.112(6) of the CCA 1984 which gives power to you to order payment of the debts by instalments or otherwise ‘...and either in full or to such extent as appears practicable to the court under the circumstances of the case...’

This will reduce the amount of the debt that the debtor has to pay back to a lower sum thereby effectively writing off some of it. It is a matter for careful exercise of discretion whether or not to make a composition order. Such orders are frequently made particularly in very low instalment cases where the likelihood of the debtor's financial circumstances changing for the better is remote. One way to view such matters is to see whether the debtor has demonstrated proper commitment to the order by paying regularly over (say) a couple of years. If so you may feel it appropriate to make a composition order giving the debtor a realistic goal to aim at to become free of the order.

8.8 Discharge of attachment of earnings order (CCR Ord. 39 r.16)

If the administration order is supported by an attachment of earnings order then do not forget to discharge the attachment of earnings order upon revocation or otherwise bring to an end the order.

8.9 Third party debt orders (CPR 72)

Put simply, if a judgment debtor is owed money by a third party, the judgment creditor can obtain an order that the third party should pay the judgment creditor. The order is obtained without notice on an interim basis. A hearing follows when the court decides whether or not to make a final third party debt order.

A bank account in credit is a debt due by the bank to its customer and so a judgment creditor can obtain a third party debt order against a bank. The judgment creditor can obtain a hardship payment order under CPR 72.7.

The procedure requires the third party bank or building society to search and disclose information to the court and judgment creditor (CPR 72.6).

Any third party, or judgment debtor, who objects to the making of the order must file and serve written evidence stating the grounds for the objection (CPR 72.8).

8.9.1 Forms required

- **N349** Application for Third Party Debt Order
- **N84** Interim Third Party Debt Order
- **N85** Final Third Party Debt Order

8.9.2 How the system works

The judgment creditor applies without notice for a third party debt order in the court which made the judgment or order being enforced except where the proceedings have since been transferred to a different court – then the application is made to that court (CPR 72.3).

The application must be verified by a statement of truth and be made in the form and contain the information required by CPR 72 PD 1.

The order made is an interim third party debt order. A date is fixed to consider whether to make a final third party debt order and directing that until the hearing the third party must not make any payment which reduces the amount he owes the judgment debtor to less than the amount specified in the order (CPR 72.4).

The amount specified in the order will be the total of:

- (a) the amount remaining due to the judgment creditor under the judgment or order, and
- (b) an amount for the judgment creditors' fixed costs of the application.

An interim third party debt order becomes binding on a third party when it is served on him (CPR 72.4.4).

The hearing date is not less than 28 days after the interim third party debt order is made (CPR 72.4.5).

8.9.3 Service of the order (CPR 72.5)

Copies of the interim order, application notice and any document filed in support of it must be served on the third party not less than 21 days before the return date on the judgment debtor, not less than seven days after a copy has been served on the third party and seven days before the return date.

If the judgment creditor serves the order, he must either file a certificate of service not less than two days before the hearing or produce a certificate of service at the hearing.

As to service in general see CPR 6. Where serving a bank the usual practice is for the judgment creditor to serve the registered office of the bank as well as any branch where it is known or suspected that the debtor has an account. (Useful notes to CPR 72.5.1 and 72.5.2 are contained in the White Book.)

8.9.4 Obligations of third party when served with an interim order

CPR 72.6 provides that a bank or building society when served must carry out a search to identify all accounts held with it by the debtor. It must disclose to the court and the creditor within seven days of service in respect of each account it may hold:

- (a) the number of the account
- (b) whether it is in credit and if so whether there is sufficient money to cover the amount specified in the order
- (c) the amount of the balance at the date it was served with the order if it is less than the amount specified in the order
- (d) whether it asserts any right of set off or otherwise and if so the grounds of such assertion.

If the judgment debtor does not hold an account with the bank or building society or is unable to comply with the order for any reason it must inform the court and the judgment creditor within seven days of service.

Any third party other than a bank or building society served with an interim order must notify the court and the judgment creditor in writing within seven days of service if he claims not to owe any money to the judgment creditor or to owe less than the amount specified in the order.

In the event that a third party other than a bank or building society does not comply with CPR 72.6.4 then the court will be entitled to assume that the debt is not disputed and to make a final third party debt order.

In the case of a bank or building society who has not complied with CPR 72.6.2 it is less clear whether a final order should be made. Much depends upon the particular facts of the case and the other evidence before the court. The court could if it wished telephone to ascertain the position.

A third party debt order does not operate as a transfer of the property of the debt but is an equitable charge on the debt. The third party, once served with the interim order, cannot pay the debt to anybody else without incurring the risk of having to pay it over again (*Galbraith v Grimshaw* [1910] A.C. 508).

8.9.5 Obligations of the third party

The order must name the debtor so as to establish his identity as the third party's creditor or it will not bind the third party (*Kock v Mineral Ore Syndicate* (1910) 54 S.J. 600 CA).

The debtor should not pay the creditor merely on the strength of an interim order. He must inform the court of a lien or claim upon the debt and if with knowledge thereof he pays the judgment creditor he will still have to pay the person with a lien or claim (*The Leader* (1868) L.R.2 A.&E. 314).

As all debts 'due or accruing' are attached the third party must not appropriate any part of his debt to any other purpose even though he owes more to the debtor than the latter's liability to the judgment creditor. Thus a banker served with an interim order may dishonour any cheque drawn upon him by the judgment debtor (*Rogers v Whiteley* [1892] A.C. 118).

8.9.6 Joint accounts

All account holders must be judgment debtors for the account to be successfully attached. A bank is under no obligation to disclose or freeze an account in the name of the judgment debtor and another (such as a spouse) (CPR 72.2.15).

8.9.7 Hardship

If the judgment debtor is an individual and is prevented from withdrawing money from his account with a bank or building society as a result of an interim order and he or his family is suffering hardship in meeting ordinary living expenses then he may apply to the court for an order permitting the bank or building society to make a payment/payments out of the account (CPR 72.7).

Such an application must be supported by detailed evidence as to why the debtor needs a payment of the amount requested verified by a statement of truth. Unless otherwise directed the judgment creditor must be served with the application at least two days before the hearing.

The application can be made in the High Court at the RCJ or any district registry; alternatively, in county court proceedings to any county court. It does not have to be made to the court which made the interim order (72 PD 5.2 and CPR 72.7.2).

8.9.8 The hearing

See generally CPR 72.8. The hearing must be at least 28 days after the interim order is made (CPR 72.4.5). At the final hearing the court may make a final order or discharge the interim

order and dismiss the application. It may decide any issue in dispute between the parties or between any of the parties and any other person who has a claim to the money specified in the interim order or direct a trial of any such issues and if necessary give directions.

In particular the court will refuse to make a final order where it would be inequitable (*Roberts Petroleum Ltd v Bernard Kenny Ltd* [1983] AC 192).

It may for example prefer one creditor to another where the judgment debtor is clearly insolvent (*Pritchard v Westminster Bank Ltd* [1969] 1 WLR 547). On the other hand it may not be inequitable to prefer one creditor who is actively pursuing his debt when others are not.

In a nutshell the court must bear in mind not only the position of the judgment debtor creditor and third party but also the position of other creditors.

If there is doubt about whether the estate of a deceased judgment debtor is solvent then the money specified in the interim order can be ordered to be paid into court pending an enquiry (*George Lee & Sons (Builders) Ltd v Olink* [1972] 1 WLR 214).

8.9.9 Money in court

If money is standing to the credit of a judgment debtor in court, the judgment creditor may not apply for a third party debt order in respect of that money but may apply for an order that the money in court or so much of it as will satisfy the judgment and costs of the application be paid to him. Such an application must be served on the judgment debtor and the Accountant General at the Court Funds Office. Once the application has been issued the money in court must not be paid out until the application has been disposed of (CPR 72.10).

8.9.10 Costs

See CPR 45.6. Fixed costs apply.

8.10 Charging orders, stop orders and stop notices (CPR 73)

8.10.1 Charging orders

Broadly there are three kinds of charging order:

- a charging order on land (the most common)
- a charging order on securities
- a charge over the debtor's interest in partnership property.

A charging order on land gives the judgment creditor security equivalent to a mortgage over the land specified in the order. It is subject to prior mortgages and charges. It does not affect the accrual of judgment interest on High Court or county court judgments (Judgments Act 1838: County Courts (Interest on Judgment Debts) Order 1991). Subsequently the judgment creditor can apply for an order for sale.

The jurisdiction of a county court to make a charging order over land is unlimited.

The order is obtained in a two-stage process. An 'interim order' is obtained without notice. A hearing follows where the interim order is made final or discharged.

8.10.2 Forms

- **N379** Application for Charging Order on land or property
- **N380** Application for Charging Order on securities
- **N86** Interim Charging Order
- **N87** Final Charging Order
- **N79** Stop Order on capital and income of funds in court
- **N80** Witness statement and Stop Notice
- **N81** Order on claim to restrain transfer of stock

CPR 73.2 deals with charging orders under s.1 Charging Orders Act 1979 or reg. 50 Council Tax (Administration and Enforcement) Regulations 1992.

8.10.3 Key features

These are as follows:

- Charging orders must be issued in the court which made the judgment or order being enforced (subject to the exceptions set out in CPR 73.3(2)).
- The application notice must be in the form and contain the information required by the relevant PD and be verified by a statement of truth.
- The interim charging order is obtained without notice to the judgment debtor.
- The judgment debtor's beneficial interest in the land is charged.
- The judge making the interim order does so exercising his discretion.
- To be effective it is essential that the charging order be registered (CPR 73.4.3).
- The court has power to make a charging order even where the judgment debt is payable by instalments (but note carefully the heavy qualification in CPR 73.4.4).

8.10.4 General principles

The general principles governing the exercise of the discretion to make a final order is summarised in CPR 73.4.5. They are:

- The burden of showing cause why an interim order ought not be made final is upon the judgment debtor.
- The court must take into account all the relevant circumstances whether they arose before or after the interim order.
- The court must exercise its discretion equitably having regard to the interests of all parties involved including other unsecured creditors.

- A final order ought not be made in the event of a liquidation or personal bankruptcy after an interim order has been made (see CPR 73.4.5(6) and *Roberts Petroleum Ltd v Bernard Kenny Ltd* [1983] A.C. 192HL).
- It would not normally be a proper exercise of discretion to make a charging order on an asset of substantial value in respect of a small debt (see *Robinson v Bailey* [1942] Ch.268 at p.271).
- Where execution has been stayed on payment by instalments or where the court has ordered payment by instalments which are being paid with no arrears, no charging order ought be made (see CPR 73.4.5(9) and *Mercantile Court Co Ltd v Ellis* (1987) *The Times* April 1, CA and s.86(1) County Courts Act 1984).

8.10.5 Interest and costs

Even though a charging order may not expressly provide for interest and costs it does extend to both (see *Ezekiel v Orakpo* [1997] 1 WLR 340).

8.10.6 Service of interim order

Copies of the interim order, the application notice and any documents filed in support must be served on the judgment debtor and all others as may be appropriate to the case as set out in CPR73.5 not less than 21 days before the hearing. A certificate of service must be filed by the judgment creditor not less than two days before the hearing or produced at the hearing.

8.10.7 Further consideration of the application

Any person wishing to object to the making of a final order must file and serve on the applicant written evidence stating the grounds of such objection not less than seven days before the hearing (CPR 73.8(1) and note the word 'must').

The court may make a final order confirming that the charge imposed by the interim order shall continue with or without modification, discharge the interim order and dismiss the application, decide any issue in dispute between the parties or between any of the parties and any other person who objects to the making of a final order, or direct a trial of any such issue.

Where the court makes a final order charging order which charges securities other than securities held in court, the order will include a stop notice unless the court orders otherwise.

8.10.8 Costs

See CPR 45.6. The costs allowed are usually fixed costs (currently £110) plus reasonable disbursements in respect of search fees and the registration fee at HM Land Charges Registry. Only one registration fee should be allowed (CPR 73.4.3).

8.10.9 Enforcement of charging order

This is by means of a claim for an order for sale made to the court where the charging order was made unless that court does not have jurisdiction to make an order for sale (CPR 73.10).

The Claimant must use the CPR Part 8 procedure.

The court has discretion as to whether or not to order sale. All the circumstances of the case have to be taken into account. Where the debtor's home is concerned the court will also have to take into account Article 8 of the European Convention on Human Rights.

Watch out for the county court jurisdictional limit of £30,000. This sum is the value of the charge not the value of the property. Cases where the charge is over £30,000 must proceed in the High Court.

Where what has been charged is the beneficial interest of the debtor the creditor chargee will have sufficient standing to make application for an order for sale under s.14 of the Trusts of Land and Appointment of Trustees Act 1996.

8.10.10 Stop orders

See generally CPR 73.11. A stop order is an order of the High Court not to take, in relation to funds in court or securities specified in the order, any of the steps listed in s.5(5) Charging Orders Act 1979.

Application is made in the High Court and CPR 73.12 applies.

A stop order relating to funds in court prohibits the transfer sale and delivery out, payment or other dealing with the funds or any part of them or any income on the funds (CPR 73.13).

A stop order relating to securities other than those held in court may prohibit the registration of any transfer of the securities, the making of any payment by way of dividend interest or otherwise and, 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 (CPR 73.14).

8.10.11 Stop notices

This is 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 s.5(5) of the 1979 Act, without first giving notice to the person who obtained the notice (CPR 73.16).

The request for such notice is made to the High Court by any person claiming to be beneficially entitled to an interest in such securities.

8.11 Warrants of execution, delivery and possession (CCR Order 26)

County court warrants are enforced by the court's own bailiffs not by the Sheriff's officers as in the High Court.

Where the order is for payment by instalments, the warrant can be (subject to Order 26 r.1(3)) for the arrears of the instalments or the whole outstanding sum.

A warrant of delivery up of goods and a warrant of possession of land may also be issued as appropriate to seize goods or to obtain possession of land. In all cases the procedure is simple: the appropriate request form and prescribed fee are delivered to the court which made the order.

8.11.1 Main forms

- **N42** Warrant of Execution
- **N46** Warrant of Delivery and of execution for damages and costs
- **N48** Warrant of Delivery, where, if goods are not returned, levy is to be made for their value
- **N49** Warrant of Possession of Land
- **N245** Application for suspension of warrant

8.11.2 Execution of judgments for payment of money

The court has the power to stay any execution issued in the proceedings for such time and on such terms as the court thinks fit and from time to time. The discretion to stay is exercised by the district judge if satisfied that the paying party is unable from any cause to pay any sum recovered against him, whether by way of satisfaction of the claim or counterclaim or by way of costs or otherwise (Sch. 2 CCR Order 25.8).

8.11.3 What can be seized

The bailiff may seize any of the person's goods *except*:

- such tools, books, vehicles and other items of equipment as are necessary to that person for use personally by him in his employment, business or vocation;
- such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of that person and his family.

The bailiff may also seize any money, banknotes, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to that person.

The most commonly encountered situations concern the seizure of goods. You will need to consider the rules carefully concerning such items as securities and the like, which are not covered here.

Goods seized of a value above £20 including legal incidental expenses must be sold by public auction unless the court orders otherwise (Sch. 2 CCR Order 26.12–15).

Subject to s.99(2) and s.103(2) CCA 1984 a warrant of execution against goods issued from a county court binds the property in the goods of the execution debtor as from the time at which application for the warrant was made. The first exception concerns goods acquired by a person in good faith and for valuable consideration unless he had notice of the issue of the warrant. The second exception deals with the warrant binding from the time it is received by another county court from the home county court where it was first issued.

Any rival claims to goods are determined by way of an interpleader (s.101 CCA 1984). In county court warrants the determination is by circuit judge given the district judge's anomalous position as 'High Bailiff'. As to High Court writs of *fi fa* see CPR Sch. 1 RSC Ord. 17.

The warrant remains valid in the first instance for 12 months beginning with its date of issue but if not wholly executed may be renewed from time to time by order of the court for a period of 12 months at any one time.

8.11.4 Permission to issue certain warrants

Generally permission is not required. However in the following cases it is:

- where six years or more have elapsed since the date of the judgment or order
- where any change has taken place, whether by death or otherwise in the parties entitled to enforce the judgment or order, or liable to have it enforced against them
- where any goods to be seized under a warrant of execution are in the hands of a receiver appointed by the court.

Such application for permission must be supported by a witness statement establishing the applicant's right to relief and can be made without notice in the first instance but the court can direct the application notice to be served on such persons as it thinks fit (CCR Ord. r 26.5).

Although an action cannot be brought upon a judgment after the expiration of six years from the date that the judgment became enforceable by virtue of s.24 Limitation Act 1980, an application for permission is not an action on the judgment. The right to sue on a judgment is distinct from the right to issue execution on a judgment, which is a procedural matter.

8.11.5 Walking possession

Walking possession is an agreement made between the bailiff and the debtor, allowing the debtor's goods to remain on the premises for the time being, but leaving it open to the bailiff to return and remove the goods specified in the agreement if the debt remains unpaid. 'Rescuing' goods (i.e. removing them from the premises when they are subject to a walking possession agreement) can be punished by imprisonment for a term not exceeding one month or by a fine of an amount not exceeding level 4 on the standard scale, or both (but see *Newman v Modern Bookbinders Ltd* [2000] 2 All ER 814 and Procedural Guides Execution D1-039).

8.11.6 Interpleader proceedings under execution

By interpleader proceedings under Ord. 33 in Sch. 2 of the Civil Procedure Rules 1988 any person making a claim to or in respect of goods seized in execution or the proceeds or value of those goods may make claim by delivering a notice of that claim to the bailiff or the court for the district in which the goods were seized.

The notice must state the grounds of the claim and the claimant's full name and address. On receipt of a claim the court must notify the execution creditor and, except where the claim is for the proceeds or value of the goods, send notice to the claimant requiring him to deposit in court either security for the amount of the value of the goods claimed, or the sum which the bailiff is allowed to charge as costs for keeping possession of the goods. The execution creditor must give notice to the court indicating whether he disputes the claim or admits the claim and requests the district judge, as chief bailiff, to withdraw from possession. If the claim is admitted the creditor is not liable to the district judge for any fees or expenses incurred after receipt of the notice. The district judge must then withdraw from possession and he may apply to the circuit judge for an order restraining the bringing of any action against him for or in respect of his having taken possession of the goods or money.

Where the execution creditor gives notice disputing a claim or where the execution creditor fails to reply to a claim within four days after receiving notice the district judge must issue an interpleader summons in Form N88. The court then fixes a date for a hearing by the circuit judge and serves the summons both on the execution creditor and the claimant not less than 14 days before the return day. The issue is then determined by the circuit judge.

It is possible to claim damages in interpleader proceedings under an execution. Thus a claimant may claim damages from the execution creditor or from the district judge (e.g. where goods are sold at a gross undervalue), and an execution creditor may claim damages from the district judge (e.g. where the wrong goods are seized). The party claiming must give notice of his claim stating the amount and the grounds of the claim.

8.11.7 Article 1 of the First Protocol (Protection of Property)

Everyone is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided by law.

Deprivation of property will only be justified if the 'conditions provided for by law' are met. Thus all methods of enforcement that involve deprivation of property will be subject to a requirement that the procedures attaching to them are strictly followed. All enforcement procedures potentially involving deprivation of property already contain provisions for notice and rights for the debtor to be heard or make application to the court to be heard. Such hearings will have to meet the aims of Article 6.

8.11.8 Warrant of delivery

If the judgment or order does not give an alternative of paying the value of the goods then it may be enforced by a warrant of specific delivery. If payment of the value of the goods is permissible under the order then the warrant is for delivery of the goods or their value.

Like other warrants the court has discretion to suspend it (CCR Ord. 26.16).

8.11.9 Warrants of possession

Where a warrant for possession is issued the judgment creditor is entitled by the same or a separate warrant, to execution against the debtor's goods for any money payable under the judgment or order.

For the circumstances in which a warrant for possession may be suspended or set aside see *Leicester City Council v Aldwinkle* [1991] 24 HLR 40 CA.

As to staying execution of a warrant of possession, see CCR 26.17.2.

Amongst other things it is worth noting that:

- Where a mortgagee has obtained a warrant of possession to enforce their security, on the application of a mortgagor a county court has no jurisdiction to stay the execution of the warrant (*Cheltenham and Gloucester Building Society v Krausz* [1997] 1 All ER 21 CA).
- Where the court has power under s.36 of the Administration of Justice Act 1970 and s.8 of the Administration of Justice Act 1973 to allow the mortgagor a 'reasonable period' to pay sums due under the mortgage, in the absence of unusual circumstances, the outstanding term of the mortgage is the starting point in determining how long it would be reasonable to keep a mortgage (*Western Bank Ltd v Schindler* [1977] Ch.1; *Cheltenham and Gloucester Building Society v Norgan* [1996] 1 WLR 343)
- A warrant can only be suspended if a sale is to take place within a short period of time (but see *National and Provincial Building Society v Lloyd* [1996] 1 All ER 630 where a reasonable period was held to be six to nine months).

8.12 Attachment of earnings (CCR Order 27)

By the Attachment of Earnings Act 1971 the High Court can make an attachment of earnings order only to secure payments under a High Court maintenance order. The county court can make such orders to secure payments under a High Court or county court maintenance order, the payment of a judgment debt or payments under an administration order.

The procedure from the creditor's point of view is simple. He completes a request for an attachment of earnings order, pays the prescribed fee and the court does the rest.

8.12.1 Main forms

There are 26 prescribed forms and the more relevant to you are set out below.

- **N55** Notice of application for attachment of earnings
- **N56** Reply to attachment of earnings application – statement of means
- **N59** Warrant of committal under Section 23 (1) AEA 1971
- **N60** Attachment of earnings order – judgment debt
- **N61** Order for production of Statement of Means
- **N61A** Notice to employer for production of statement of earnings
- **N62** Summons for offence under AEA 1971
- **N63** Notice to show cause under Section 23 AEA 1971
- **N64** Suspended attachment of earnings order
- **N66** Consolidated attachment of earnings order
- **N118** Notice to defendant where committal order made but suspended
- **N339** Discharge of attachment of earnings order

8.12.2 How it works

In general terms, the judgment creditor applies using the prescribed form of application. Notice of the application is served upon the debtor in accordance with CPR 6.2 who then has eight days following service to file a reply in the form provided. He can pay the creditor and if he does he is not obliged to file a reply. The creditor must inform the court of the payment.

Upon filing his reply the creditor is provided with a copy and the court officer may, if he has sufficient information, make an attachment of earnings order. He may also refer the application to a district judge to determine and if appropriate make an order.

A copy of the order is served upon the parties and the debtor's employer. The parties have 14 days to have the order reconsidered if they wish and if they do a hearing is fixed before the district judge.

The debt or balance remaining under the judgment or order must be not less than £50.

The court fixes a normal deduction rate (NDR) and protected earnings rate (PER). In this way the debtor will not be liable for deduction in the event his earnings fall below the PER in any pay period.

For the meaning of 'earnings' see s.24 AEA 1971.

8.12.3 Power of court to obtain statement of earnings

By s.14 AEA 1971 where the court has power to make an attachment of earnings order it may order the debtor to give to the court a statement signed by him giving the name and address of any person by whom earnings are paid to him (with relevant information to enable the employer to identify him), specifying his earnings and anticipated earnings and giving information as to his resources and needs.

The section also extends to any person appearing to the court to be an employer of the debtor to give specified particulars of his earnings and anticipated earnings.

8.12.4 Administration orders

No – it's not a mistake to include this topic again! Under s.4 AEA 1971 when dealing with an attachment of earnings application the court *shall consider* whether it should make an administration order if it appears that the debtor has other debts so long as the total indebtedness does not exceed £5,000.

8.12.5 Enforcement provisions

Section 23 AEA 1971 provides the teeth by which enforcement against debtor and employer may be undertaken. The debtor faces up to 14 days in prison if he fails to attend a hearing or adjourned hearing of an application for attachment of his earnings or a variation of such order, or fails to comply with an order under s.14(2) AEA 1971. This is also true if he attends but then refuses to give sworn evidence.

The judge may make an order in lieu of or in addition to making such order, or order the debtor to be arrested and brought before the court either forthwith or at such time as the judge may direct (s.23 (1A) AEA 1971).

Whatever you do before exercising your discretion look carefully at s.23 AEA 1971 for its full terms and effect. The last thing you will want to do is deprive someone of his liberty wrongly.

As to an employer, a breach of his obligations under the Act may on summary conviction be liable to a fine of not more than level 2 on the standard scale or he may be ordered to be brought before a judge of the High Court or county court (as the case may be) to pay a fine of not more than £250.

In the case of an offence specified in subsection 4 he may be imprisoned for not more than 14 days. Note the defences set out in subsection 5.

8.12.6 Failure by debtor

If the debtor has failed to reply under r.5(2) or to pay the creditor then the proper officer may make an order under s.14(1) AEA 1971. This order (N61) must be *served personally* upon the debtor and be endorsed with or incorporate a notice warning the debtor of the consequences of disobedience to the order.

If the debtor fails to obey it, file a statement of his means or make payment the proper officer shall issue a notice calling upon him to show good reason why he should not be imprisoned. This notice (N63) must also be *served personally* not less than five days before the hearing.

8.12.7 Suspended committal order

If the debtor fails to attend the hearing a committal order may be made. The judge may direct that the committal order be suspended (N118) so long as the debtor attends at the time and place specified in the committal order. Where the committal order is suspended and the debtor fails to attend a certificate to that effect given by the court officer is sufficient authority for the issue of a warrant of committal.

8.12.8 Maintenance orders

Maintenance orders can be enforced by attachment of earnings order (CCR Ord. 27.17).

Application to enforce a county court maintenance order is made to the court that made the order. An application for permission to enforce arrears more than 12 months old can be included. Where the debtor fails to comply with a s.23(1) AEA 1971 order the procedure is governed by CCR Ord.27.8. Also see s.10 AEA 1971 as to how the normal deduction rate may be reduced in certain circumstances.

8.12.9 Consolidated orders

Section 17 AEA 1971 gives the court power to make a consolidated order to secure any number of judgment debts.

8.12.10 Judgment summonses

The power to commit for non-payment of a debt is severely curtailed and under s.110 Administration of Justice Act 1970 can only be used for the enforcement of High Court or county court maintenance orders or judgment and orders for payment of income tax or national insurance contributions (see generally Ord. 28 and Sch. 2 of the Civil Procedure Rules 1998 and s.5 Debtors Act 1869).

8.12.11 Register of county court judgments

Note that a district judge has no power to deal with a judgment summons other than suspension of the execution of a committal order pending hearing of an application order under CCR Order 28 (7)(4) (CCR Order 28 (7)(5)).

The Register of County Court Judgments Regulations 1985 (as amended by the County Court Judgment (amendment) Regulations 1999) require every county court to send a return of every judgment entered in a county court, except judgments after a contested hearing (unless an instalment order is made or enforcement is pursued) and judgments made in family proceedings – and every administration order and every order restricting enforcement made under s.112A County Courts Act 1984 – to the Keeper of the Register. This applies unless notice of an application for a new trial or notice of appeal to a superior court has been given and

proceedings on the judgment have been stayed by order, or a deposit has been made or security given. This also includes registration of orders for the payment of costs where an order for costs has been made following an uncontested hearing.

Unless the judgment is satisfied within one month the Register records the name and address of the debtor, the amount of the judgment including costs, the county court entering the judgment and the case number. The Register is open to public attendance for the purpose of obtaining copies of any information contained in an entry in the Register. A request in writing is necessary and a fee is payable.

An entry must be cancelled where the court notifies that a judgment has been set aside or reversed and is marked 'satisfied' where a debtor produces a certificate of satisfaction of the judgment debt accompanied by a fee.

In practice, a significant number of applications to set aside judgment are made by debtors simply on the basis that they have paid the creditor. Such applications are often not opposed or consented to. It is suggested that such applications should not generally be granted unless the debtor satisfies the court that the judgment is irregular. If it is a regular judgment and has since been satisfied then the debtor should obtain a certificate to this effect. If the whole of the claim was satisfied before judgment was entered then the case must be transferred to the debtor's home court and upon application the judgment must be set aside.