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STATUTORY INSTRUMENTS

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**2002 No. 439**

**SUPREME COURT OF ENGLAND AND WALES  
COUNTY COURTS, ENGLAND AND WALES**

**The Civil Procedure (Modification of Enactments) Order 2002**

*Made* - - - - 28th February 2002  
*Laid before Parliament* 1st March 2002  
*Coming into force* - - 25th March 2002

The Lord Chancellor, in exercise of the power conferred upon him by section 4(1) of the Civil Procedure Act 1997(1), makes the following Order—

1. This Order may be cited as the Civil Procedure (Modification of Enactments) Order 2002 and shall come into force on 25th March 2002.
2. The amendments set out in this Order shall have effect.
3. In section 5 of the Debtors Act 1869(2), for the sentence after the second proviso, substitute—  
“Proof of the means of the person making default may be given in such manner as the court thinks just.  
For the purpose of considering whether to commit a debtor to prison under this section, the debtor may be summoned in accordance with the prescribed rules.”.
4. For section 10 of the Debtors Act 1869, substitute—  
“In this part of this Act—  
“prescribed”, where it appears other than as part of the expression “the prescribed rules”, means prescribed by rules of court; and  
“the prescribed rules” means rules of court.”.
5. In section 5 of the Charging Orders Act 1979(3)—
  - (a) for subsection (2), substitute—  
“(2) The power to make rules of court under section 1 of, and Schedule 1 to, the Civil Procedure Act 1997 shall include power by any such rules to make provision—

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(1) 1997 c. 12.  
(2) 1869 c. 62 (32 & 33 Vict).  
(3) 1979 c. 53.

- (a) for the High Court to make a stop order on the application of any person claiming to be entitled to an interest in prescribed securities; and
  - (b) for the service of a stop notice by any person claiming to be entitled to an interest in prescribed securities.”;
  - (b) omit subsection (3); and
  - (c) in subsection (4), omit “or (3)”.
- 6.** In section 40A of the Supreme Court Act 1981(4), in subsections (1) and (1A), for “order nisi”, in each place that it occurs, substitute “interim third party debt order”.
- 7.** In section 109 of the County Courts Act 1984(5), in subsections (1) and (1A), for “order nisi”, in each place that it occurs, substitute “interim third party debt order”.
- 8.** In section 110(2) of the County Courts Act 1984—
- (a) at the end of sub-paragraph (a), omit “or”; and
  - (b) omit sub-paragraph (b).
- 9.** In section 147(1) of the County Courts Act 1984, in the definition of “judgment summons”, for “to appear and be examined on oath as to his or their means” substitute “to attend court”.
- 10.** In regulation 3 of the County Court Remedies Regulations 1991(6)—
- (a) in paragraph (3)(d), for “the Central London County Court Business List”, substitute “the Central London County Court Mercantile List”; and
  - (b) in paragraph (3A), for the definition of “the Central London County Court Business List” substitute—
    - ““the Central London County Court Mercantile List” means the Mercantile Court established at the Central London County Court pursuant to Part 59 of the Civil Procedure Rules 1998(7);”.
- 11.** In article 5 of the High Court and County Courts (Allocation of Arbitration Proceedings) Order 1996(8)—
- (a) for “the Central London County Court Business List”, in each place that it occurs, substitute “the Central London County Court Mercantile List”; and
  - (b) after paragraph (5), insert—
    - “(6) In this article “the Central London County Court Mercantile List” means the Mercantile Court established at the Central London County Court pursuant to Part 59 of the Civil Procedure Rules 1998.”
- 12.** In article 4 of the Access to Justice Act 1999 (Destination of Appeals) Order 2000(9), in paragraph (b), at the end insert “or to which any of Parts 57 to 62 of those Rules applies”.

28th February 2002

*Irvine of Lairg, C.*

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(4) 1981 c. 54.

(5) 1984 c. 28.

(6) S.I. 1991/1222, as amended by S.I. 1995/206.

(7) S.I. 1998/3132. The only relevant amending instrument is S.I. 2001/4015, which adds Part 59 (Mercantile Courts) to the Civil Procedure Rules with effect from 25th March 2002.

(8) S.I. 1996/3215, as amended by S.I. 1999/1010.

(9) S.I. 2000/1071.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

Article 3 of this Order amends section 5 of the Debtors Act 1869 removing the provision enabling a debtor to be cross-examined on oath as to his means following the issue of a judgment summons. In consequence of this amendment article 8 amends section 110 of the County Courts Act 1984 removing the power of the court to commit a judgment debtor for refusing to be sworn or give evidence, and article 9 amends the definition of “judgment summons” in section 147 of the County Courts Act 1984. These amendments are consequential on rule 39 of the Civil Procedure (Amendment No. 5) Rules 2001 (S.I.2001/4015) which makes amendments to CCR Order 38 (judgment summonses) requiring a creditor to prove his case against a debtor following the issue of a judgment summons and providing that such a debtor may not be compelled to give evidence.

Article 4 amends the definition of “prescribed” in section 10 of the Debtors Act 1869 to revoke obsolete references to rules under the Common Law Procedure Act 1852, the Court of Chancery Act 1852 and the County Courts Act 1856, and to substitute a reference to rules of court.

Article 5 amends section 5 of the Charging Orders Act 1979—

- to set out the extent to which rules of court made under section 1 of and Schedule 1 to the Civil Procedure Act 1997 may make provision for the making of stop orders and the service of stop notices; and
- to revoke obsolete references to powers to make rules of court under section 84 of the Supreme Court Act 1981 and section 75 of the County Courts Act 1984, which have been superseded by the power to make rules of court under the Civil Procedure Act 1997.

Articles 6 and 7 of this Order amend section 40A of the Supreme Court Act 1981 and section 109 of the County Courts Act 1984 in consequence of changes to terminology made by new rules of court contained in the Civil Procedure (Amendment No. 4) Rules 2001 (S.I. 2001/2792) relating to attachment of debts.

Articles 10 and 11 amend the County Courts Remedies Regulations 1991 and the High Court and County Courts (Allocation of Arbitration Proceedings) Order 1996 in consequence of new rules of court enacted by the Civil Procedure (Amendment No. 5) Rules 2001 relating to Mercantile Courts, which, among other things, designate the Central London County Court Business List as a Mercantile Court and rename it the Central London County Court Mercantile List.

Article 12 amends the Access to Justice Act 1999 (Destination of Appeals) Order 2000, in consequence of amendments enacted by the Civil Procedure (Amendment No. 2) Rules 2001 (S.I. 2001/1388) and the Civil Procedure (Amendment No. 5) Rules 2001 to the rules of court relating to certain types of specialist proceedings.