

英国法と EU 法における債務者財産の透明化

日弁連民事裁判手続に関する委員会勉強会報告
(2014年3月27日)

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Senior Courts Act 1981

1981 CHAPTER 54

PART II

JURISDICTION

THE HIGH COURT

Powers

37 Powers of High Court with respect to injunctions and receivers.

- (1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.
- (2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just.
- (3) The power of the High Court under subsection (1) to grant an interlocutory injunction restraining a party to any proceedings from removing from the jurisdiction of the High Court, or otherwise dealing with, assets located within that jurisdiction shall be exercisable in cases where that party is, as well as in cases where he is not, domiciled, resident or present within that jurisdiction.
- (4) The power of the High Court to appoint a receiver by way of equitable execution shall operate in relation to all legal estates and interests in land; and that power—
 - (a) may be exercised in relation to an estate or interest in land whether or not a charge has been imposed on that land under section 1 of the ^{M1}Charging Orders Act 1979 for the purpose of enforcing the judgment, order or award in question; and
 - (b) shall be in addition to, and not in derogation of, any power of any court to appoint a receiver in proceedings for enforcing such a charge.
- (5) Where an order under the said section 1 imposing a charge for the purpose of enforcing a judgment, order or award has been, or has effect as if, registered under section 6



PART 25 - INTERIM REMEDIES AND SECURITY FOR COSTS

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I INTERIM REMEDIES

Orders for interim remedies

25.1

(1) The court may grant the following interim remedies –

(a) an interim injunction^(GL);

(b) an interim declaration;

(c) an order –

(i) for the detention, custody or preservation of relevant property;

(ii) for the inspection of relevant property;

(iii) for the taking of a sample of relevant property;

(iv) for the carrying out of an experiment on or with relevant property;

(v) for the sale of relevant property which is of a perishable nature or which for any other good reason it is desirable to sell quickly; and

(vi) for the payment of income from relevant property until a claim is decided;

(d) an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under sub-paragraph (c);

(e) an order under section 4 of the Torts (Interference with Goods) Act 1977¹ to deliver up goods;

(f) an order (referred to as a 'freezing injunction'^(GL)) –

(i) restraining a party from removing from the jurisdiction assets located there; or

(ii) restraining a party from dealing with any assets whether located within the jurisdiction or not;

(g) an order directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing injunction^(GL);

(h) an order (referred to as a 'search order') under section 7 of the Civil Procedure Act 1997² (order requiring a party to admit another party to premises for the purpose of preserving evidence etc.);

(i) an order under section 33 of the Supreme Court Act 1981³ or section 52 of the County Courts Act 1984⁴ (order for disclosure of documents or inspection of property before a claim has been made);

(j) an order under section 34 of the Supreme Court Act 1981⁵ or section 53 of the County Courts Act 1984⁶ (order in certain proceedings for disclosure of documents or inspection of property against a non-party);

(k) an order (referred to as an order for interim payment) under rule 25.6 for payment by a defendant on account of any damages, debt or other sum (except costs) which the court may hold the defendant liable to pay;

(l) an order for a specified fund to be paid into court or otherwise secured, where there is a dispute over a party's right to

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FREEZING INJUNCTION

IN THE HIGH COURT OF JUSTICE
[] DIVISION

Before The Honourable Mr Justice

[]

Claim No .

Dated

Applicant



Respondent

Name , address and reference of Respondent

PENAL NOTICE

IF YOU []¹ DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE RESPONDENT TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.

¹ Insert name of Respondent .

THIS ORDER

1. This is a Freezing Injunction made against [] ('the Respondent') on [] by Mr Justice [] on the application of [] ('the Applicant'). The Judge read the Affidavits listed in Schedule A and accepted the undertakings set out in Schedule B at the end of this Order.
2. This order was made at a hearing without notice to the Respondent. The Respondent has a right to apply to the court to vary or discharge the order – see paragraph 13 below.
3. There will be a further hearing in respect of this order on [] ('the return date').
4. If there is more than one Respondent –
 - (a) unless otherwise stated, references in this order to 'the Respondent' mean both or all of them; and
 - (b) this order is effective against any Respondent on whom it is served or who is given notice of it.

FREEZING INJUNCTION

[For injunction limited to assets in England and Wales]

5. Until the return date or further order of the court, the Respondent must not remove from England and Wales or in any way dispose of, deal with or diminish the value of any of his assets which are in England and Wales up to the value of £ .

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[For worldwide injunction]

5. Until the return date or further order of the court, the Respondent must not –

(1) remove from England and Wales any of his assets which are in England and Wales up to the value of £ ; or

(2) in any way dispose of, deal with or diminish the value of any of his assets whether they are in or outside England and Wales up to the same value.

[For either form of injunction]

6. Paragraph 5 applies to all the Respondent's assets whether or not they are in his own name and whether they are solely or jointly owned. For the purpose of this order the Respondent's assets include any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The Respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions.

7. This prohibition includes the following assets in particular –

(a) the property known as [title/address] or the net sale money after payment of any mortgages if it has been sold;

(b) the property and assets of the Respondent's business [known as [name]] [carried on at [address]] or the sale money if any of them have been sold; and

(c) any money standing to the credit of any bank account including the amount of any cheque drawn on such account which has not been cleared.

[For injunction limited to assets in England and Wales]

8. If the total value free of charges or other securities ('unencumbered value') of the Respondent's assets in England and Wales exceeds £ , the Respondent may remove any of those assets from England and Wales or may dispose of or deal with them so long as the total unencumbered value of his assets still in England and Wales remains above £ .

[For worldwide injunction]

8.

(1) If the total value free of charges or other securities ('unencumbered value') of the Respondent's assets in England and Wales exceeds £ , the Respondent may remove any of those assets from England and Wales or may dispose of or deal with them so long as the total unencumbered value of the Respondent's assets still in England and Wales remains above £ .

(2) If the total unencumbered value of the Respondent's assets in England and Wales does not exceed £ , the Respondent must not remove any of those assets from England and Wales and must not dispose of or deal with any of them. If the Respondent has other assets outside England and Wales, he may dispose of or deal with those assets outside England and Wales so long as the total unencumbered value of all his assets whether in or outside England and Wales remains above £ .

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PROVISION OF INFORMATION

9.

(1) Unless paragraph (2) applies, the Respondent must [immediately] [within hours of service of this order] and to the best of his ability inform the Applicant's solicitors of all his assets [in England and Wales] [worldwide] [exceeding £ in value] whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets.

(2) If the provision of any of this information is likely to incriminate the Respondent, he may be entitled to refuse to provide it, but is recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information is contempt of court and may render the Respondent liable to be imprisoned, fined or have his assets seized.

10. Within [] working days after being served with this order, the Respondent must swear and serve on the Applicant's solicitors an affidavit setting out the above information.

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EXCEPTIONS TO THIS ORDER

11.

(1) This order does not prohibit the Respondent from spending £ a week towards his ordinary living expenses and also £ [or a reasonable sum] on legal advice and representation. [But before spending any money the Respondent must tell the Applicant's legal representatives where the money is to come from.]

(2) This order does not prohibit the Respondent from dealing with or disposing of any of his assets in the ordinary and proper course of business.]

(3) The Respondent may agree with the Applicant's legal representatives that the above spending limits should be increased or that this order should be varied in any other respect, but any agreement must be in writing.

(4) The order will cease to have effect if the Respondent –

(a) provides security by paying the sum of £ into court, to be held to the order of the court; or

(b) makes provision for security in that sum by another method agreed with the Applicant's legal representatives.

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COSTS

12. The costs of this application are reserved to the judge hearing the application on the return date.

VARIATION OR DISCHARGE OF THIS ORDER

13. Anyone served with or notified of this order may apply to the court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform the Applicant's solicitors. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the Applicant's solicitors in advance.

INTERPRETATION OF THIS ORDER

14. A Respondent who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.

15. A Respondent which is not an individual which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

PARTIES OTHER THAN THE APPLICANT AND RESPONDENT

16. Effect of this order

It is a contempt of court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned, fined or have their assets seized.

17. Set off by banks

This injunction does not prevent any bank from exercising any right of set off it may have in respect of any facility which it gave to the respondent before it was notified of this order.

18. Withdrawals by the Respondent

No bank need enquire as to the application or proposed application of any money withdrawn by the Respondent if the withdrawal appears to be permitted by this order.

[For worldwide injunction]

19. Persons outside England and Wales

(1) Except as provided in paragraph (2) below, the terms of this order do not affect or concern anyone outside the jurisdiction of this court.

(2) The terms of this order will affect the following persons in a country or state outside the jurisdiction of this court –

(a) the Respondent or his officer or agent appointed by power of attorney;

(b) any person who –

(i) is subject to the jurisdiction of this court;

(ii) has been given written notice of this order at his residence or place of business within the jurisdiction of this court; and

(iii) is able to prevent acts or omissions outside the jurisdiction of this court which constitute or assist in a breach of the terms of this order; and

(c) any other person, only to the extent that this order is declared enforceable by or is enforced by a court in that country or state.

[For worldwide injunction]

20. Assets located outside England and Wales

Nothing in this order shall, in respect of assets located outside England and Wales, prevent any third party from complying with –

(1) what it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligations of the country or state in which those assets are situated or under the proper law of any contract between itself and the Respondent; and

(2) any orders of the courts of that country or state, provided that reasonable notice of any application for such an order is given to the Applicant's solicitors.

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COMMUNICATIONS WITH THE COURT

All communications to the court about this order should be sent to –

[Insert the address and telephone number of the appropriate Court Office]

If the order is made at the Royal Courts of Justice, communications should be addressed as follows –

Where the order is made in the Chancery Division

Room TM 5.07, Royal Courts of Justice, Strand, London WC2A 2LL quoting the case number. The telephone number is 020 7947 6322.

Where the order is made in the Queen's Bench Division

Room WG08, Royal Courts of Justice, Strand, London WC2A 2LL quoting the case number. The telephone number is 020 7947 6010.

Where the order is made in the Commercial Court

Room EB09, Royal Courts of Justice, Strand, London WC2A 2LL quoting the case number. The telephone number is 0207 947 6826.

The offices are open between 10 a.m. and 4.30 p.m. Monday to Friday.

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SCHEDULE A

AFFIDAVITS

The Applicant relied on the following affidavits–

[name] [number of affidavit][date sworn][filed on behalf of]

SCHEDULE B

UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

(1)

If the court later finds that this order has caused loss to the Respondent, and decides that the Respondent should be compensated for that loss, the Applicant will comply with any order the court may make.

[(2)

The Applicant will –

(a) on or before [date] cause a written guarantee in the sum of £ to be issued from a bank with a place of business within England or Wales, in respect of any order the court may make pursuant to paragraph (1) above; and

(b) immediately upon issue of the guarantee, cause a copy of it to be served on the Respondent.]

(3)

As soon as practicable the Applicant will issue and serve a claim form [in the form of the draft produced to the court] [claiming the appropriate relief].

(4)

The Applicant will [swear and file an affidavit] [cause an affidavit to be sworn and filed] [substantially in the terms of the draft affidavit produced to the court] [confirming the substance of what was said to the court by the Applicant's counsel/solicitors].

(5)

The Applicant will serve upon the Respondent [together with this order] [as soon as practicable] –

(i) copies of the affidavits and exhibits containing the evidence relied upon by the Applicant, and any other documents provided to the court on the making of the application;

(ii) the claim form; and

(iii) an application notice for continuation of the order.

[(6)

Anyone notified of this order will be given a copy of it by the Applicant's legal representatives.]

(7)

The Applicant will pay the reasonable costs of anyone other than the Respondent which have been incurred as a result of this order including the costs of finding out whether that person holds any of the Respondent's assets and if the court later finds that this order has caused such person loss, and decides that such person should be compensated for that loss, the Applicant will comply with any order the court may make.

(8)

If this order ceases to have effect (for example, if the Respondent provides security or the Applicant does not provide a bank guarantee as provided for above) the Applicant will immediately take all reasonable steps to inform in writing anyone to whom he has given notice of this order, or who he has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.

[(9)

The Applicant will not without the permission of the court use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in England and Wales or in any other jurisdiction, other than this claim.]

[(10)

The Applicant will not without the permission of the court seek to enforce this order in any country outside England and Wales [or seek an order of a similar nature including orders conferring a charge or other security against the Respondent or the Respondent's assets].]

NAME AND ADDRESS OF APPLICANT'S LEGAL REPRESENTATIVES

The Applicant's legal representatives are –

[Name, address, reference, fax and telephone numbers both in and out of office hours and e-mail]

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SEARCH ORDER

IN THE HIGH COURT OF JUSTICE
[] DIVISION

Before The Honourable Mr Justice

[]

Claim No .

Dated

Applicant



Respondent

Name, address and reference of Respondent

PENAL NOTICE

IF YOU []: **DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.**

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE RESPONDENT TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.

¹ Insert name of Respondent.

THIS ORDER

1. This is a Search Order made against [] ('the Respondent') on [] by Mr Justice [] on the application of [] ('the Applicant'). The Judge read the Affidavits listed in Schedule F and accepted the undertakings set out in Schedules C, D and E at the end of this order.
2. This order was made at a hearing without notice to the Respondent. The Respondent has a right to apply to the court to vary or discharge the order – see paragraph 27 below.
3. There will be a further hearing in respect of this order on [] ('the return date').
4. If there is more than one Respondent –
 - (a) unless otherwise stated, references in this order to 'the Respondent' mean both or all of them; and
 - (b) this order is effective against any Respondent on whom it is served or who is given notice of it.



PART 71 - ORDERS TO OBTAIN INFORMATION FROM JUDGMENT DEBTORS

Contents of this Part

Title	Number
Scope of this Part	Rule 71.1
Order to attend court	Rule 71.2
Service of order	Rule 71.3
Travelling expenses	Rule 71.4
Judgment creditor's affidavit	Rule 71.5
Conduct of the hearing	Rule 71.6
Adjournment of the hearing	Rule 71.7
Failure to comply with order	Rule 71.8

Scope of this Part

71.1

This Part contains rules which provide for a judgment debtor to be required to attend court to provide information, for the purpose of enabling a judgment creditor to enforce a judgment or order against him.

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Order to attend court

71.2

(1) A judgment creditor may apply for an order requiring –

(a) a judgment debtor; or

(b) if a judgment debtor is a company or other corporation, an officer of that body,

to attend court to provide information about –

(i) the judgment debtor's means; or

(ii) any other matter about which information is needed to enforce a judgment or order.

(2) An application under paragraph (1) –

(a) may be made without notice; and

(b) must be issued in the court which made the judgment or order which it is sought to enforce, except that –

- (i) if the proceedings have since been transferred to a different court, it must be issued in that court; or
- (ii) subject to subparagraph (b)(i), if it is to enforce a judgment made in Northampton County Court in respect of a designated money claim, it must be issued in accordance with section 2 of Practice Direction 70.
- (3) The application notice must –
- (a) be in the form; and
- (b) contain the information required by Practice Direction 71.
- (4) An application under paragraph (1) may be dealt with by a court officer without a hearing.
- (5) If the application notice complies with paragraph (3), an order to attend court will be issued in the terms of paragraph (6).
- (6) A person served with an order issued under this rule must –
- (a) attend court at the time and place specified in the order;
- (b) when he does so, produce at court documents in his control which are described in the order; and
- (c) answer on oath such questions as the court may require.
- (7) An order under this rule will contain a notice in the following terms, or in terms to substantially the same effect –
- “If you the within-named [] do not comply with this order you may be held to be in contempt of court and imprisoned or fined, or your assets may be seized.”

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Service of order

71.3

- (1) An order to attend court must, unless the court otherwise orders, be served personally on the person ordered to attend court not less than 14 days before the hearing.
- (2) If the order is to be served by the judgment creditor, he must inform the court not less than 7 days before the date of the hearing if he has been unable to serve it.

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Travelling expenses

71.4

- (1) A person ordered to attend court may, within 7 days of being served with the order, ask the judgment creditor to pay him a sum reasonably sufficient to cover his travelling expenses to and from court.
- (2) The judgment creditor must pay such a sum if requested.

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Judgment creditor's affidavit

71.5

- (1) The judgment creditor must file an affidavit^(GL) or affidavits –
- (a) by the person who served the order (unless it was served by the court) giving details of how and when it was served;
 - (b) stating either that –
 - (i) the person ordered to attend court has not requested payment of his travelling expenses; or
 - (ii) the judgment creditor has paid a sum in accordance with such a request; and
 - (c) stating how much of the judgment debt remains unpaid.
- (2) The judgment creditor must either –
- (a) file the affidavit^(GL) or affidavits not less than 2 days before the hearing; or
 - (b) produce it or them at the hearing.

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Conduct of the hearing

71.6

- (1) The person ordered to attend court will be questioned on oath.
- (2) The questioning will be carried out by a court officer unless the court has ordered that the hearing shall be before a judge.
- (3) The judgment creditor or his representative –
- (a) may attend and ask questions where the questioning takes place before a court officer; and
 - (b) must attend and conduct the questioning if the hearing is before a judge.

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Adjournment of the hearing

71.7

If the hearing is adjourned, the court will give directions as to the manner in which notice of the new hearing is to be served on the judgment debtor.

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Failure to comply with order

71.8

- (1) If a person against whom an order has been made under rule 71.2 –

- (a) fails to attend court;
- (b) refuses at the hearing to take the oath or to answer any question; or
- (c) otherwise fails to comply with the order,

the court will refer the matter to a High Court judge or circuit judge.

(2) That judge may, subject to paragraphs (3) and (4), make a committal order against the person.

(3) A committal order for failing to attend court may not be made unless the judgment creditor has complied with rules 71.4 and 71.5.

(4) If a committal order is made, the judge will direct that –

(a) the order shall be suspended provided that the person –

(i) attends court at a time and place specified in the order; and

(ii) complies with all the terms of that order and the original order; and

(b) if the person fails to comply with any term on which the committal order is suspended, he shall be brought before a judge to consider whether the committal order should be discharged.

(Part 81 contains provisions in relation to committal.)

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PRACTICE DIRECTION 71 – ORDERS TO OBTAIN INFORMATION FROM JUDGMENT DEBTORS

This practice direction supplements Part 71

Contents of this Practice Direction

Title	Number
Application notice – rule 71.2	Para. 1.1
Order to attend court – rule 71.2	Para. 2.1
Service of order to attend court – rule 71.3	Para. 3.
Attendance at court: normal procedure – rule 71.6	Para. 4.1
Attendance at court: procedure where the order is to attend before a judge – rule 71.6	Para. 5.1
Failure to comply with order: reference to judge – rule 71.8(1)	Para. 6.
Suspended committal order – rule 71.8(2) and (4) (a)	Para. 7.1
Breach of terms on which committal order is suspended – rule 71.8(4)(b)	Para. 8.1
Appendix A	
Appendix B	

Application notice – rule 71.2

1.1

An application by a judgment creditor under rule 71.2(1) must be made by filing an application notice in Practice Form [N316](#) if the application is to question an individual judgment debtor, or [N316A](#) if the application is to question an officer of a company or other corporation.

1.2

The application notice must –

- (1) state the name and address of the judgment debtor;
- (2) identify the judgment or order which the judgment creditor is seeking to enforce;
- (3) if the application is to enforce a judgment or order for the payment of money, state the amount presently owed by the judgment debtor under the judgment or order;
- (4) if the judgment debtor is a company or other corporation, state –

- (a) the name and address of the officer of that body whom the judgment creditor wishes to be ordered to attend court; and
 - (b) his position in the company;
- (5) if the judgment creditor wishes the questioning to be conducted before a judge, state this and give his reasons;
- (6) if the judgment creditor wishes the judgment debtor (or other person to be questioned) to be ordered to produce specific documents at court, identify those documents; and
- (7) if the application is to enforce a judgment or order which is not for the payment of money, identify the matters about which the judgment creditor wishes the judgment debtor (or officer of the judgment debtor) to be questioned.

1.3

The court officer considering the application notice –

- (1) may, in any appropriate case, refer it to a judge (rule 3.2); and
- (2) will refer it to a judge for consideration, if the judgment creditor requests the judgment debtor (or officer of the judgment debtor) to be questioned before a judge.



Order to attend court – rule 71.2

2.1

The order will provide for the judgment debtor (or other person to be questioned) to attend the county court for the district in which he resides or carries on business, unless a judge decides otherwise.

2.2

The order will provide for questioning to take place before a judge only if the judge considering the request decides that there are compelling reasons to make such an order.



Service of order to attend court – rule 71.3

3.

Service of an order to attend court for questioning may be carried out by –

- (a) the judgment creditor (or someone acting on the judgment creditor's behalf)
- (b) a High Court enforcement officer; or
- (c) a county court bailiff.



Attendance at court: normal procedure – rule 71.6

4.1

The court officer will ask a standard series of questions, as set out in the forms in Appendixes A and B to this practice

direction. The form in Appendix A will be used if the person being questioned is the judgment debtor, and the form in Appendix B will be used if the person is an officer of a company or other corporation.

4.2

The judgment creditor or his representative may either –

(1) attend court and ask questions himself; or

(2) request the court officer to ask additional questions, by attaching a list of proposed additional questions to his application notice.

4.3

The court officer will –

(1) make a written record of the evidence given, unless the proceedings are tape recorded;

(2) at the end of the questioning, read the record of evidence to the person being questioned and ask him to sign it; and

(3) if the person refuses to sign it, note that refusal on the record of evidence.



Attendance at court: procedure where the order is to attend before a judge – rule 71.6

5.1

Where the hearing takes place before a judge, the questioning will be conducted by the judgment creditor or his representative, and the standard questions in the forms in Appendixes A and B will not be used.

5.2

The proceedings will be tape recorded and the court will not make a written record of the evidence.



Failure to comply with order: reference to judge – rule 71.8(1)

6.

If a judge or court officer refers to a High Court judge or circuit judge the failure of a judgment debtor to comply with an order under rule 71.2, he shall certify in writing the respect in which the judgment debtor failed to comply with the order.



Suspended committal order – rule 71.8(2) and (4)(a)

7.1

A committal order will be suspended provided that the person attends court at a time and place specified in the order (rule 71.8(4)(a)(i)). The appointment specified will be –

(1) before a judge, if –

- (a) the original order under rule 71.2 was to attend before a judge; or
 - (b) the judge making the suspended committal order so directs; and
- (2) otherwise, before a court officer.

7.2

Rule 71.3 and paragraph 3 of this practice direction (service of order), and rule 71.5(1)(a) and (2) (affidavit of service), apply with the necessary changes to a suspended committal order as they do to an order to attend court.



Breach of terms on which committal order is suspended – rule 71.8(4)(b)

8.1

If –

- (1) the judgment debtor fails to attend court at the time and place specified in the suspended committal order; and
 - (2) it appears to the judge or court officer that the judgment debtor has been duly served with the order,
- the judge or court officer will certify in writing the debtor's failure to attend.

8.2

If the judgment debtor fails to comply with any other term on which the committal order was suspended, the judge or court officer will certify in writing the non-compliance and set out details of it.

8.3

A warrant to bring the judgment debtor before a judge may be issued on the basis of a certificate under paragraph 8.1 or 8.2.

8.4

The hearing under rule 71.8(4)(b) may take place before a master or district judge.

8.5

At the hearing the judge will discharge the committal order unless he is satisfied beyond reasonable doubt that –

- (1) the judgment debtor has failed to comply with –
 - (a) the original order to attend court; and
 - (b) the terms on which the committal order was suspended; and
- (2) both orders have been duly served on the judgment debtor.

8.6

If the judge decides that the committal order should not be discharged, a warrant of committal shall be issued immediately.



Appendix A

General

EX140 Record of Examination (individual)

Available on the [forms page](#).

Appendix B

General

EX141 Record of Examination (officer of company or corporation)

Available on the [forms page](#).

Application for order that debtor attend court for questioning

Claim No.

Appn. No.

Claimant

Defendant

The [claimant] [defendant] ('the judgment creditor') applies for an order that the [defendant] [claimant] ('the judgment debtor') attend court to provide information about the judgment debtor's means and any other information needed to enforce the judgment or order given on [by the] [in claim no.] [20].

1. Judgment debtor

The judgment debtor is
whose address is

Postcode

2. Judgment debt or order

[The judgment or order required the judgment debtor to pay £ (including any costs and interest). The amount now owing is £ [which includes further interest payable on the judgment debt]].

[The judgment or order required the judgment debtor to

Note:

Questioning and documents

Questioning will be by a court officer unless a judge agrees there are compelling reasons for questioning to take place before a judge. Normally the court officer will ask the questions set out in Form EX140 and the judgment debtor will be told to produce all relevant documents including:

- pay slips
- bank statements
- building society books
- share certificates
- rent book
- mortgage statement
- hire purchase and similar agreements
- court orders
- any other outstanding bills
- electricity, gas, water and council tax bills for the past year.

and in the case of a business

- bills owed to it
- 2 years' accounts
- current management accounts.

*Complete sections 3,4 and 5 only if applicable.
The statement of truth overleaf must be completed.*

3. [Attached is a list of questions which the judgment creditor wishes the court officer to ask the judgment debtor in addition to those in Form EX140.]
4. [Attached is a list of documents which the judgment creditor wishes the judgment debtor to be ordered to produce in addition to those listed in the note above.]
5. [The judgment creditor requests that the judgment debtor be questioned by the judgment creditor before a judge. The reason for this request is

]

Statement of Truth

*(I believe)(The judgment creditor believes) that the facts stated in this application form are true.

* I am duly authorised by the judgment creditor to sign this statement.

signed _____ date _____

*(Judgment creditor)(Litigation friend(*where judgment creditor is a child or a patient*))(Judgment creditor's solicitor)

**delete as appropriate*

Full name _____

Name of judgment creditor's solicitor's firm _____

position or office held _____

(if signing on behalf of firm or company)

Judgment creditor's or judgment creditor's solicitor's address to which documents should be sent.

Postcode

Tel. no.

if applicable	
Ref. no.	
fax no.	
DX no.	
e-mail	通し21 ページ

Application for order that officer of debtor company attend court for questioning

Claim No.

Appn. No.

Claimant

Defendant

The [claimant] [defendant] ('the judgment creditor') applies for an order that an officer of the [defendant] [claimant] company or corporation ('the judgment debtor') attend court to provide information about the judgment debtor's means and any other information needed to enforce the judgment or order given on 20 [by the in claim no.].

1. Judgment debtor

The judgment debtor is
whose address is

Postcode

2. The officer

The officer is the judgment debtor's
whose name is
and whose address is

Postcode

3. Judgment debt or order

[The judgment or order required the judgment debtor to pay £ (including any costs and interest). The amount now owing is £ [which includes further interest payable on the judgment debt]].

[The judgment or order required the judgment debtor to]

Note:

Questioning and documents

Questioning will be by a court officer unless a judge agrees there are compelling reasons for questioning to take place before a judge. Normally the court officer will ask the questions set out in Form EX141 and the officer of the company will be told to produce all relevant documents including:

- bank statements
- any outstanding bills
- share certificates
- bills owed to the company
- hire purchase and similar agreements
- 2 years' accounts
- court orders on which money is still owed
- current management accounts.

*Complete sections 4,5 and 6 only if applicable.
The statement of truth overleaf must be completed.*

4. [Attached is a list of questions which the judgment creditor wishes the court officer to ask the officer of the company in addition to those in Form EX141.]
5. [Attached is a list of documents which the judgment creditor wishes the officer of the company to be ordered to produce in addition to those listed in the note above.]
6. [The judgment creditor requests that the officer of the company be questioned by the judgment creditor before a judge. The reason for this request is

]

Statement of Truth

*(I believe)(The judgment creditor believes) that the facts stated in this application form are true.

* I am duly authorised by the judgment creditor to sign this statement.

signed _____ date _____

*(Judgment creditor)(Litigation friend(*where judgment creditor is a child or a patient*))(Judgment creditor's solicitor)

**delete as appropriate*

Full name _____

Name of judgment creditor's solicitor's firm _____

position or office held _____

(if signing on behalf of firm or company)

Judgment creditor's or judgment creditor's solicitor's address to which documents should be sent.

Postcode

Tel. no.

if applicable	
Ref. no.	
fax no.	
DX no.	
e-mail	通し23 ページ

Order to attend court for questioning

In the

Claim No.

Claimant

Defendant

On 20 , [the court] [[Master][District Judge]

sitting at

considered the application of the [claimant] [defendant] ('the judgment creditor'), which shows that:

a judgment or order given on 20 [by the
in claim no.] ordered the [defendant] [claimant] ('the judgment debtor') [to pay money
to the judgment creditor, and that the amount now owing under the judgment or order is £]
[and] [to

and the court orders that

1. [who is an officer of] the judgment debtor [company]
[corporation] attend [the court] [county court]
at on 20
before a [judge][court officer] at [a.m] [p.m.]
to provide information about the judgment debtor's means and any other information needed to enforce
the judgment or order.
[The questioning will take place before a judge.]
2. The [judgment debtor] [officer] at that time and place produce at court all documents in the judgment
debtor's control [which relate to the judgment debtor's means of paying the amount due under the judgment
or order and] which relate to those matters mentioned in paragraph 1. [The documents produced must
include those shown in the attached list.]
3. The [judgment debtor] [officer] at that time and place answer on oath, all the questions which the court asks
and which the court allows the judgment creditor to ask.
4. The court where the questioning is to take place may make an order for payment of the
costs of the application and of the hearing.]

To

You must obey this order. If you do not, you may be sent to prison for contempt of court.

Amount owing

The application shows that the amount owing under the judgment or order
(including any costs and interest) is £

The judgment creditor has paid a court fee of £ _____

Total £ _____

If the total amount owing is paid (together with any further interest falling due), the judgment creditor may
agree that the questioning need not take place (but may ask for an order for costs).

To the person ordered to attend

How to pay

Do not send payments to the court office. They will not be accepted.

Payment must be made to the judgment creditor at the address below, quoting the reference and the claim number. Allow at least 4 days for payments sent by post to arrive. It is not safe to send cash unless you use registered post.

Keep records and make sure you can account for all payments made. Proof may be needed if there is a disagreement.

If you need more information about paying, contact the judgment creditor or representative.

Correspondence for the court relating to the hearing should be addressed to 'The Court Manager' of the court where the hearing is to take place.

Travelling expenses

You may ask the judgment creditor to pay you a sum reasonably sufficient to cover your travelling expenses to and from court. You should ensure your request reaches the judgment creditor within 7 days of receiving this order.

If the court orders you to pay the judgment creditor's costs, the order may include any amount which has been paid to you for travelling expenses.

The information required

You will be required to disclose full details of your income and outgoings and your assets (what you own) and liabilities (what you owe) and the matters referred to in paragraph 1 of the order.

(If you have been ordered to attend as an officer of a company or corporation, you will be required to disclose the same details about the company or corporation.)

Documents in your control

You must produce all documents which confirm the information required. If you do not have them in your possession, you must get them if you can.

These will include

- pay slips
- bank statements
- building society books
- share certificates
- rent book
- mortgage statement
- hire-purchase and similar agreements
- court orders on which you still owe money
- other outstanding bills
- electricity, gas, water and council tax bills for the last year.

If you have a business or you are a partner in a business, or the judgment debtor is a company or corporation, they will include the above documents so far as they relate to the business and

- bills or invoices owed to the judgment debtor
- two years' balance sheets and profit and loss accounts
- current management accounts.

If a list of additional documents is attached to this order, these too must be produced.

Judgment Creditor's address

ref.	Tel.
------	------

To the judgment creditor

If the hearing is to be before a judge, you or your representative **must attend** and conduct the questioning.

If the questioning is to be carried out by a court officer, you need not attend, but you or your representative may attend if you wish to ask questions.

Record of examination (Individual)

In the	
Claim No.	
Appn. No.	

Judgment Creditor:

Judgment Debtor:

1 Personal Information

Full Name

Your age?

Present address

National insurance no.

Are you married? single?
 separated? divorced?
 living with partner?

Phone numbers:

home

work

mobile

other

Do you intend moving to another address? Yes No
If Yes, what will your new address be and when are you moving?

Date

Do you have any dependant children? Yes No
If Yes, what are their names and ages?

Name	Age

Do you have other dependants living with you, eg. elderly relatives? Yes No
If Yes, what are their names and ages and to what extent are they dependant?

--

2 Employment Status

Are you employed?

Go to section 3
below

self employed?

Go to section 4
page 3

unemployed?

Go to section 5
page 5

retired?

Go to section 6
page 5

3 Employment Details

What is your
occupation?

Where is your
place of work
if different?

What is the
name and
address of your
employer and
your employee
number?

employee number

What is your gross pay
*ie. before tax, national
insurance deductions?*

 £ per

What is your average take
home pay including
overtime and commission?

 £ per

Do you receive Working
Tax Credit?

Yes

If Yes, how much?

 £ per

No

How often are you paid?

weekly

monthly

other _____

On which day are you
paid?

Is your pay paid

in cash

by cheque

direct to bank or building society account?

If direct to bank or building
society account what is
the name and address of
the branch and account
number?

account
number

Do you have any jobs other
than your main job?

Yes

If Yes, ask for all the above details in relation to
all other jobs and set out information below.

No

4 Self Employed

How long have you been self employed?

What work do you do?

What is the name of your business?

Do you have business premises? eg. shop, yard, lockup

 Yes
 No

If Yes, what is their address?

What is your annual turnover?

 £

What amount of profit did the business make over the last year?

 £

How much do you draw from the business?

 £ per

What were your total drawings in last 12 months?

 £

Are you a

 sole trader? partner? If a partner,

(a) How many partners are there?

How many employees do you have?

(b) What is your share of the partnership ?

 %

Do you complete Inland Revenue self assessment?

 Yes No

Do you have accounts?

 Yes No

Do you employ an accountant?

 Yes
 No

If Yes, what is the accountant's name and address?

If you don't have an accountant are accounts audited by a third party?

 Yes
 No

If Yes, give name and address and say when audit takes place?

Date of audit

Will you allow the creditor to approach your accountant or auditor or Inland Revenue to verify the information you have given in this section?

 Yes
 No

Are you working on any contracts at the moment?

 Yes
 No

If Yes, give details below

Name and address of customer	Nature of work	Contract price £	Amount outstanding £	Date payment expected

Is any money still due to you for work already done?

- Yes
 No

If Yes, give details below

Name and address of customer	Nature of work	Contract price £	Amount outstanding £	Date payment expected

If money (see above) is overdue what steps are you taking to recover it?

Do you have contracts for work in the future?

- Yes
 No

If Yes, give details below

Name and address of customer	Nature of work	Expected price £

— [Go to Section 7 page 5] —

5 Unemployed

How long have you been unemployed?

What is your trade / training / profession?

What steps are you taking to obtain employment?

Do you have any outstanding job interviews?

- Yes
 No

If Yes, when?

What state benefits do you receive?
(Housing benefit, if any should be included section 8b on page 7)

Type of benefit	Amount	Frequency of payment	DSS/BA ref.

—[Go to Section 7 below]—

6 Retired

When did you retire?

By whom are your pension(s) paid, how much is paid and when?
(include both state and private pensions)

Pension from	Amount	Frequency of payment

—[Go to Section 7 below]—

7 Other Income

Is there anyone else in your household who is employed? (Do not include tenants/lodgers. See section 8 on page 6)

- Yes
 No

If Yes, how much do they contribute to the running of the home?

£ per

What other state benefits do you receive?
(Housing benefit, if any should be included section 8b on page 7)

Type of benefit	Amount	Frequency of payment	DSS/BA ref.

—[Go to Section 8 page 6]—

8

Residence

Is your home

 your own property?
Go to 8a below lodgings?
Go to 8b page 7 rented from a council or housing
association?
Go to 8b page 7 rented unfurnished from
a private landlord?
Go to 8b page 7 rented furnished from
a private landlord?
Go to 8b page 7 other _____
(e.g. mobile home) Go to 8b page 7

8a

Your own property

Are you the sole owner?

 Yes No

If No, name joint owner(s)

Do you own the

 freehold? leasehold?When did you
buy the
property?

Is your home a

 house? bungalow? flat?

Is it

 detached? semi-detached? terraced?How many of the following
rooms does it have? living rooms? kitchens? bedrooms? bath/shower rooms?How much Council Tax do
you pay per year?£ What was the purchase
price of property?£

What is its value now?

£

Is your home mortgaged?

 Yes NoIf Yes, what is the name and
address of your mortgage
lender?How much are your
mortgage payments per
month?£ What type of mortgage do
you have? eg. *repayment*,
*endowment etc.*How long is the mortgage
for? yearsWhen did you take out the
mortgage?How much is currently
owed under the mortgage?£ Is some or all of the
interest paid by the Benefits
Agency? Yes NoIf Yes, how much is paid
each month?£

Do you let any part of your home?

Yes

No

If Yes, give names of the tenants/lodgers and details of rent received

Do you have any loans secured on your home? (e.g. further mortgage)

Yes

No

If Yes, give the same details as for the first mortgage

— [Go to Section 9 page 8] —

8b Rented property

Do you rent

on your own? jointly?

What is the name and address of your landlord?

How long have you lived at the property?

___ months ___ years

Do you share parts of your home with someone unconnected with you?

Yes

No

Do you pay any additional service charges in connection with the premises?

Yes

No

If Yes, give details

£ per

How much rent do you pay?

£ per
none

How much Council Tax do you pay a year?

£ none

Do you sub-let any part of your home?

Yes

No

If Yes, give names of tenants/lodgers and details of rent received.

Do you receive housing benefit?

Yes

No

If Yes, give details

£ per
paid to

— [Go to Section 9 page 8] —

9 Savings, Investments and other Assets

Do you own any property other than your home?

Yes
 No

If Yes, give the address and value and details of any mortgages and lettings

Do you have any bank, building society or other accounts?

Yes No

If Yes, give details below

Name & Address of Bank Building Society	Account No.	Type of Account	Balance	Sole or joint A/c	Name(s) of joint account holder(s)

Do you have any shares, investments (eg. ISAs, Tensas etc.), insurance/assurance policies or premium bonds?

Yes No

If Yes, give details below

Are you making contributions to a pension scheme?

Yes
 No

If Yes, give details

Do you have any of the following items and how long have you had them?

	Age (years)	Is it owned by you, on hire purchase credit sale or rented?	If not owned by you, give;		
			Name of Creditor	Amount still owed	Payments
<input type="checkbox"/> Microwave					
<input type="checkbox"/> Hi-fi / surround sound					
<input type="checkbox"/> Television (No. _____)					
<input type="checkbox"/> Video					
<input type="checkbox"/> Camcorder					
<input type="checkbox"/> Computer					
<input type="checkbox"/> Dishwasher					
<input type="checkbox"/> Camera					
<input type="checkbox"/> Dining Room suite					
<input type="checkbox"/> Caravan					
<input type="checkbox"/> Mobile telephone					
<input type="checkbox"/> Musical instruments..					
<input type="checkbox"/> Other items....					

Do you own a motor vehicle? Yes
 No

If Yes, give age, make, model value and registration number. State whether it is owned by you, or subject to a hire purchase/ rental agreement.

--

Do you have any assets not previously mentioned? Yes
 No

If Yes, give details

Assets	Value

Does anyone owe you money, which is not a business debt or for work you have done? Yes
 No

If Yes, who owes you money and how much do they owe?

	Value

10 Other Debts or regular payments and court orders

Expenses

Do not include payments made by other members of your household out of their own income or priority debts listed opposite

Priority Debts

This section is for arrears only. DO NOT include regular expenses listed left

Total arrears outstanding

Mortgage	£	per	Rent arrears	£	per	£
Rent	£	per	Mortgage arrears	£	per	£
Council tax	£	per	Council tax/Community charge arrears	£	per	£
Gas	£	per	Water charge arrears	£	per	£
Electricity	£	per	Fuel arrears: Gas	£	per	£
Water charges	£	per	Electricity	£	per	£
Housekeeping, food, school meals	£	per	Other	£	per	£
Travelling expenses		£ per	Maintenance arrears	£	per	£
Children's clothing	£	per	Income tax	£	per	£
Maintenance/child support payments	£	per	VAT	£	per	£
Student loan repayments	£	per	National Insurance	£	per	£
Mail order payments	£	per	Others (give details below)	£	per	£
HP repayments	£	per		£	per	£
Digital/satellite TV subscriptions	£	per		£	per	£
Telephone	£	per		£	per	£
Mobile phone	£	per		£	per	£
Other expenses (not court orders, priority debts or credit debts listed left)	£	per		£	per	£
	£	per		£	per	£
Total Expenses	£	per	Total Priority Debts	£	per	£

Have any court orders been made against you? Yes No

If Yes, give details below

Name of court and case number	Date of Judgment or order	Amount of Judgment or order	Instalments payable per month	Name of creditor	Total still owed	Are payments up to date? (yes/no)	If no, how much in arrears?
TOTALS							

Do you owe money on credit cards or any other loans (not mortgage or business)? Yes No

If Yes, give details below

Name of Creditor	Total amount owing	Instalments payable per month	Are payments up to date? (yes/no)	If no, how much in arrears?
TOTALS				

Have any bankruptcy proceedings been issued against you? Yes No

If Yes, what is the court name and case no.

Is the petition

- still pending? order made but discharged?
- order has been made but not discharged? other outcome? (give details below)

Has an Individual Voluntary Arrangement been made? Yes No

If Yes, give the date

If No, is there a current proposal for one?

- Yes No

Give details of Trustee/ Insolvency Practitioner/ Administrator, supervisor

11 Offer of Payment

Can you make an offer of payment? Yes No

If No, please explain why

What is your offer of payment?

Pay in full by day of

Instalments of £ per to start on

Method of payment postal order cheque direct debit
 standing order payment book cash

I certify that this is a correct record of the answers I gave to the questions in this document.

Signed _____ Judgment Debtor

Print name _____

Date _____

The judgment debtor refused to sign this record of evidence.

Signed _____ Court Officer

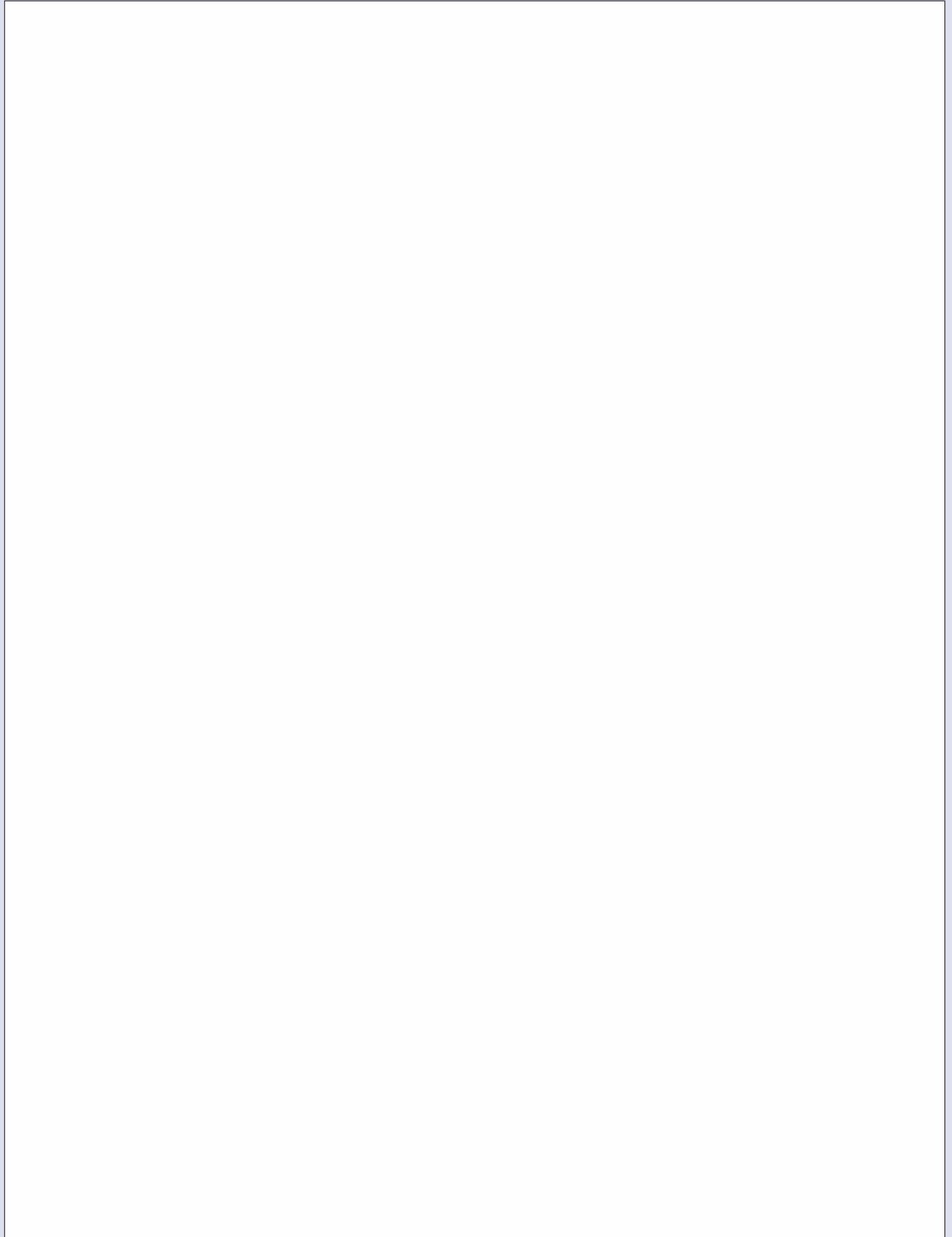
Print name _____

Date _____

The following costs of the examination have been allowed and added to the judgment debt £

12 Documents produced

The judgment debtor produced the following documents:



Record of examination

(officer of company or corporation)

In the	
Case No.	
Appn. No.	

Judgment Creditor:

Judgment Debtor:

1 Personal Information

Full Name

Present Address

Phone numbers:

Home

Mobile

Work

Other

Your position in the company

2 Company Information

Name of company

Company registration no.

Business address

Telephone no.(s)

Is the company the sole occupier? Yes No

Registered office

Telephone no.(s)

Name and address of other company officers

Name and address of company solicitors

Name and address of company accountants

Where are the company trading records held?

Where are the company's statutory books held?

3 Current operational status

What is the nature of business?

Is the company still trading?

Yes

No

If No, when did the company cease trading?

How were assets disposed of?

Have you any current contracts? Yes No

If Yes, what are they and what is their total value?

	Value
--	-------

Are there any staged payments? Yes No

Have you any future contracts? Yes No

If Yes, what is the date and amount of the next and future payments?

If Yes, what are they and what is their total value?

	Value
--	-------

4 Current financial status

Does the company hold any cash? Yes No

If Yes, say how much and where held e.g. named bank or other?

Does the company have any overdraft facilities? Yes No

If Yes, please provide details of overdraft facility

What is the name and address of the branch, account number and type?

type of account

account number

How much of the overdraft facility have you used? All Part

If Part, say how much?

Have you approached the bank to increase the limit? Yes No

If No, why not?

If Yes, what was the response?

Is your overdraft secured? Yes No

If Yes, how?

- fixed charge
- fixed and floating charge
- floating charge
- personal guarantee

What assets are affected by the charge?

What is the current turnover of the company?

5 Assets

What assets, excluding property, are owned outright by your company? - description, value and in the case of vehicles, registration numbers

What assets are subject to hire purchase?

--	--	--	--

value

--	--	--	--

last payment date

--	--	--	--

What assets are subject to lease purchase?

--	--	--	--

value

--	--	--	--

last payment date

--	--	--	--

What assets are on lease?

--	--	--	--

Are there any debts due to your company? Yes No

If Yes, give details

Name and address of debtor	Invoice no.	Total amount owing?	Are amounts owed disputed? Yes/No

Are any goods supplied to the debtor subject to a retention of title clause? Yes No

If Yes, describe the goods and enter the amount owed by the debtor

	amount owed
--	-------------

Does your company own livestock? Yes No

Does your company have/own
 investments Yes No
 shares Yes No

Has the company sold any assets within the last 12 months? Yes No

If Yes, on what date

--	--	--	--

description of asset sold

--	--	--	--

buyers name and address

--	--	--	--

purchase price

--	--	--	--

6 Property

Does your company own any real property? Yes No

If Yes, please give address(es) and value

--	--	--

Value

--	--	--

Are the premises mortgaged? Yes No | Yes No | Yes No

If Yes, give details of lender's name and address

--	--	--

amount borrowed

--	--	--

amount outstanding

--	--	--

date borrowed

--	--	--

purchase price

--	--	--

current value of property

--	--	--

details of any subsequent charges

--	--	--

Does your company rent any premises from a landlord? Yes No

If Yes, how much is paid for

rent?

council tax?

service charges etc.?

Is the rent in arrears? Yes No

If Yes, how much?

What action is being taken to recover the debt?

--

7

Liabilities

Please list all
Creditors

--	--	--

amounts owed

--	--	--

What actions are the
creditors taking to
recover the debts?

--	--	--

Are the amounts
disputed by the
company?

Yes

No

Yes

No

Yes

No

Are any of the debts
secured?

Yes

No

If Yes, how?

fixed charge

Does the company
have court order(s)
against it?

Yes

No

fixed and floating charge

floating charge

If Yes, please provide
details of

personal guarantee

date of judgment

--	--	--

name of court

--	--	--

case number

--	--	--

name of creditor

--	--	--

total amount owing

--	--	--

amount now due

--	--	--

rate of payments
being made

--	--	--

are payments in
arrears?

Yes

No

Yes

No

Yes

No

If Yes, by how much?

--	--	--

Is the company able to
pay its debts as they
fall due?

Yes

No

8

Other information

Are there any associated or subsidiary companies?

Yes No

If Yes, please provide names

--	--	--

place of business

--	--	--

other trading addresses

--	--	--

What accounting records are kept?

--

Have accounts been submitted to Companies House? Yes No

Do you or any other director/personnel hold a loan account with the company?

Yes No

If Yes, what is the current status?

overdrawn by

--

in credit by

--

Have any assets been transferred to you or any other director/personnel personally

Yes No

If Yes, please give description

--	--	--

value

--	--	--

Other information

Have you or any other Yes No
member of the
company received
benefits other than by
way of salary?

If Yes, please give
details

Additional information

9**Offer of Payment**

Can the company make payment in full now? Yes No

If No, why?

When can the company make payment in full?

Have you any other proposal for payment?

10**Declaration**

I certify that this is a correct record of the answers I gave to the questions in this document.

Signed _____ Officer of Judgment Debtor Company/Corporation

Print name _____

Date _____

The officer of the judgment debtor company refused to sign this record of evidence.

Signed _____ **Court Officer**

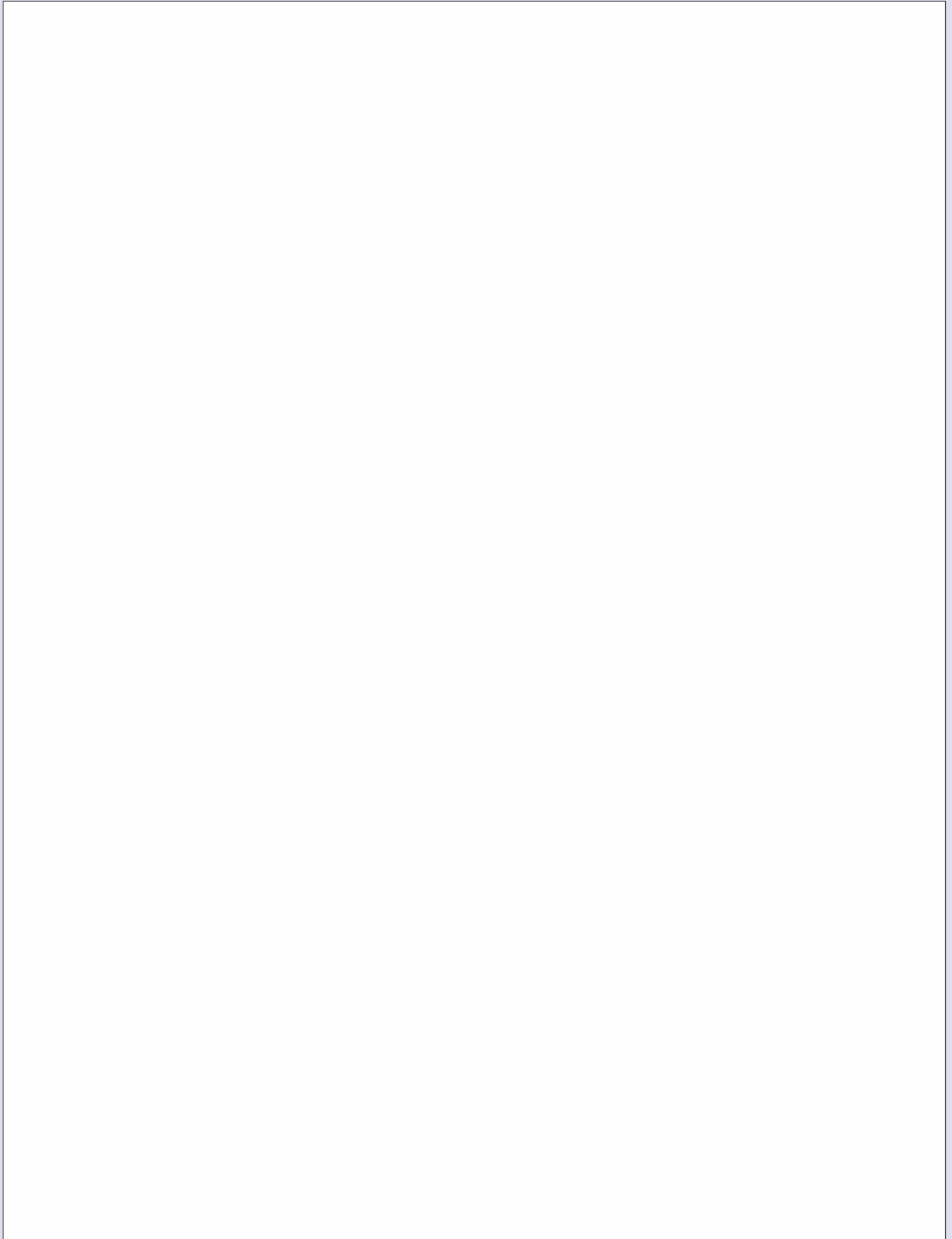
Print name _____

Date _____

The following costs of the examination have been allowed and added to the judgment debt £

11 Documents produced

The officer produced the following documents:



Suspended committal order for disobedience
(order to attend court for questioning)

In the

Claim No

Claimant

Defendant

On _____ 20 ____, [[Mr][Mrs]Justice][[His][Her]Honour Judge]
sitting at _____

and]

[heard
read the order made on _____ 20 ____, [the certificate dated _____ 20 ____ of the bailiff,] the
affidavit[s] of _____ sworn on _____ 20 ____ [and
_____ sworn on _____ 20 ____ respectively as to service of the order
and] as to the provision of travelling expenses and the certificate dated _____ 20 ____ of the
[Master][District Judge][Court Officer]

and the court is satisfied that

1. _____ was ordered to attend court on _____ 20 ____
to be questioned
2. the order to attend was served on _____ on _____ 20 ____
3. _____ did not within seven days of the service of the order request
from the judgment creditor payment of a sufficient sum for travelling expenses
4. on _____ 20 ____ the judgment creditor _____ paid a
sufficient sum for travelling expenses
5. _____ did not attend court on _____ 20 ____ to
be questioned
6. _____, having attended court, refused to be sworn
7. _____, having attended court, refused to answer [any question][the
question _____]

And that _____ has been guilty of contempt of court by disobeying the order
of _____ 20 ____

and the court orders that

_____ be committed to Her Majesty's Prison

for a period of _____ days

and the court orders that

1. this order shall be suspended so long as _____ attends
court at _____

and complies with the order made on _____ 20
[and _____]

2. if _____ does not comply with these terms, a warrant
of arrest shall be issued and _____ shall,
when arrested, be brought before a judge to consider whether the committal order should be
discharged

3. and that _____ pay the judgment creditor's costs of attending
of £ _____, on or before _____ 20

Certificate of Service

I certify that a copy of this order was served by me on _____
the judgment debtor, on _____

Signed _____
Bailiff of the County Court



Tribunals, Courts and Enforcement Act 2007

2007 CHAPTER 15

PART 4

ENFORCEMENT OF JUDGMENTS AND ORDERS

PROSPECTIVE

Information requests and orders

95 Application for information about action to recover judgment debt

- (1) A person who is the creditor in relation to a judgment debt may apply to the High Court or a county court for information about what kind of action it would be appropriate to take in court to recover that particular debt.
- (2) An application under subsection (1) must comply with any provision made in regulations about the making of such applications.

96 Action by the court

- (1) This section applies if the creditor in relation to a judgment debt makes an application for information under section 95.
- (2) The relevant court may make one or more of the following in relation to the debtor—
 - (a) a departmental information request;
 - (b) an information order.
- (3) The relevant court may exercise its powers under subsection (2) only if it is satisfied that to do so will help it to deal with the creditor's application.

Status: This version of this cross heading contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Tribunals, Courts and Enforcement Act 2007. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (4) Before exercising its powers under subsection (2), the relevant court must give notice to the debtor that the court intends to make a request or order.
- (5) The relevant court may not make a departmental information request to the Commissioners unless regulations are in force that have been made under section 102(4) and (7) and relate to the use or disclosure of debtor information disclosed by the Commissioners.
- (6) The relevant court may disclose such information (including information identifying the debtor) as it considers necessary to assist the recipient of a request or order to comply with the request or order.
- (7) A disclosure under subsection (6) is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (8) Nothing in this section is to be taken to prejudice any power that exists apart from this section to request or order the disclosure of information.

97 Departmental information requests

- (1) A departmental information request is a request for the disclosure of information held by, or on behalf of, a government department.
- (2) The request is to be made to the Minister of the Crown, or other person, who is in charge of the department.
- (3) In the case of a request made to the designated Secretary of State, the disclosure of some or all of the following information may be requested—
 - (a) the full name of the debtor;
 - (b) the address of the debtor;
 - (c) the date of birth of the debtor;
 - (d) the national insurance number of the debtor;
 - (e) prescribed information.
- (4) In the case of a request made to the Commissioners, the disclosure of some or all of the following information may be requested—
 - (a) whether or not the debtor is employed;
 - (b) the name and address of the employer (if the debtor is employed);
 - (c) the national insurance number of the debtor;
 - (d) prescribed information.
- (5) In the case of any other request, the disclosure of prescribed information may be requested.
- (6) In this section—

“designated Secretary of State” means the Secretary of State designated for the purpose of this section by regulations;

“government department” does not include the following—

 - (a) any part of the Scottish Administration;
 - (b) a Northern Ireland department;
 - (c) the Welsh Assembly Government or any member of staff appointed under section 52 of the Government of Wales Act 2006 (c. 32);

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“prescribed information”, in relation to a departmental information request, means information that falls within the category or categories of information (if any) prescribed by regulations in relation to the department to which the request relates.

98 Information orders

- (1) An information order is an order of the relevant court which—
 - (a) specifies a prescribed person (“the information discloser”),
 - (b) specifies prescribed information relating to the debtor (“the required information”), and
 - (c) orders the information discloser to disclose the required information to the relevant court.
- (2) In subsection (1) “prescribed” means prescribed in regulations.
- (3) Regulations under this section may be made by reference to—
 - (a) particular persons or particular descriptions of person (or both);
 - (b) particular information or particular descriptions of information (or both).
- (4) Regulations may, in particular, be made under this section so as to ensure that—
 - (a) an information order made against a particular person, or a person of a particular description, may order that person to disclose only particular information, or information of a particular description;
 - (b) an information order that orders the disclosure of particular information, or information of a particular description, may only be made against a particular person, or a person of a particular description.
- (5) Regulations under this section must not make provision that would allow the relevant court to order—
 - (a) the disclosure of information by the debtor, or
 - (b) the disclosure of information held by, or on behalf of, a government department.

99 Responding to a departmental information request

- (1) This section applies if the relevant court makes a departmental information request.
- (2) The recipient of the request may disclose to the relevant court any information (whether held by the department or on its behalf) that the recipient considers is necessary to comply with the request.
- (3) A disclosure under subsection (2) is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (4) Nothing in this section is to be taken to prejudice any power that exists apart from this section to disclose information.

100 Information order: required information not held etc.

- (1) An information discloser is not to be regarded as having breached an information order because of a failure to disclose some or all of the required information, if that failure is for one of the permitted reasons.

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- (2) These are the permitted reasons—
 - (a) the information provider does not hold the information;
 - (b) the information provider is unable to ascertain whether the information is held, because of the way in which the information order identifies the debtor;
 - (c) the disclosure of the information would involve the information discloser in unreasonable effort or expense.
- (3) It is to be presumed that a failure to disclose required information is for a permitted reason if—
 - (a) the information discloser gives the relevant court a certificate that complies with subsection (4), and
 - (b) there is no evidence that the failure is not for a permitted reason.
- (4) The certificate must state—
 - (a) which of the required information is not being disclosed;
 - (b) what the permitted reason is, or permitted reasons are, for the failure to disclose that information.
- (5) Any reference in this section to the information discloser holding, or not holding, information includes a reference to the information being held, or not being held, on the information discloser's behalf.

101 Using the information about the debtor

- (1) This section applies if—
 - (a) the creditor in relation to a judgment debt makes an application for information under section 95, and
 - (b) information (“debtor information”) is disclosed to the relevant court in compliance with a request or order made under section 96.
- (2) The relevant court may use the debtor information for the purpose of making another request or order under section 96 in relation to the debtor.
- (3) The relevant court may use the debtor information for the purpose of providing the creditor with information about what kind of action (if any) it would be appropriate to take in court (whether the relevant court or another court) to recover the judgment debt.
- (4) If the creditor takes any action in the relevant court to recover the judgment debt, the relevant court may use the debtor information in carrying out functions in relation to that action.
- (5) If the creditor takes any action in another court to recover the judgment debt—
 - (a) the relevant court may disclose the debtor information to the other court, and
 - (b) the other court may use that information in carrying out functions in relation to that action.
- (6) Debtor information may be used or disclosed under any of subsections (3) to (5) only if—
 - (a) regulations about such use or disclosure of information are in force, and
 - (b) the use or disclosure complies with those regulations.

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- (7) In addition, if the debtor information was disclosed by the Commissioners, the information may be used or disclosed under any of subsections (3) to (5) only with the consent of the Commissioners.
- (8) Consent for the purposes of subsection (7) may be given—
 - (a) in relation to particular use or a particular disclosure, or
 - (b) in relation to use, or a disclosure made, in such circumstances as may be specified or described in the consent.
- (9) The use or disclosure of information in accordance with this section is not to be taken to breach any restriction on the use or disclosure of information (however imposed).
- (10) Nothing in this section is to be taken to prejudice any power that exists apart from this section to use or disclose information.

102 Offence of unauthorised use or disclosure

- (1) This section applies if—
 - (a) an application is made under section 95 in relation to recovery of a judgment debt (“the relevant judgment debt”),
 - (b) a departmental information request or an information order is made in consequence of that application, and
 - (c) information (“debtor information”) is disclosed in accordance with the request or order.
- (2) A person to whom the debtor information is disclosed commits an offence if he—
 - (a) uses or discloses the debtor information, and
 - (b) the use or disclosure is not authorised by any of subsections (3) to (6).
- (3) The use or disclosure of the debtor information is authorised if it is in accordance with section 101.
- (4) The use or disclosure of the debtor information is authorised if it is—
 - (a) in accordance with an enactment or order of court, or
 - (b) for the purposes of any proceedings before a court,and it is in accordance with regulations.
- (5) The use or disclosure of the debtor information is authorised if the information has previously been lawfully disclosed to the public.
- (6) The use or disclosure of the debtor information is authorised if it is in accordance with rules of court that comply with regulations under subsection (7).
- (7) Regulations may make provision about the circumstances, if any, in which rules of court may allow access to, or the supply of, information disclosed in accordance with a department information request or an information order.
- (8) It is a defence for a person charged with an offence under subsection (2) to prove that he reasonably believed that the use or disclosure was lawful.
- (9) A person guilty of an offence under subsection (2) is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both;

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- (b) on summary conviction, to imprisonment for a term not exceeding twelve months, to a fine not exceeding the statutory maximum, or to both.

103 Regulations

- (1) It is for the Lord Chancellor to make information regulations.
- (2) But the Lord Chancellor may make the following regulations only with the agreement of the Commissioners—
 - (a) regulations under section 97(4)(d);
 - (b) regulations under section 102(4) or (7) so far as the regulations relate to the use or disclosure of debtor information disclosed by the Commissioners.
- (3) Information regulations are to be made by statutory instrument.
- (4) A statutory instrument containing information regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (5) But subsection (4) does not apply in the case of a statutory instrument that contains only—
 - (a) regulations under section 95, or
 - (b) regulations under section 97 which designate a Secretary of State for the purpose of that section.
- (6) In such a case, the statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section “information regulations” means regulations under any of sections 95 to 102.

104 Interpretation

- (1) This section applies for the purposes of sections 95 to 103.
- (2) In those provisions—
 - “Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;
 - “creditor”, in relation to a judgment debt, means—
 - (a) the person to whom the debt is payable (whether directly or through an officer of any court or another person);
 - (b) where the debt is payable under an administration order (within the meaning of Part 6 of the County Courts Act 1984 (c. 28)), any one of the creditors scheduled to the order;
 - “debtor”, in relation to a judgment debt, means the person by whom the debt is payable;
 - “departmental information request” has the meaning given by section 97;
 - “information” means information held in any form;
 - “information discloser”, in relation to an information order, has the meaning given by section 98(1)(a);
 - “information order” has the meaning given by section 98;
 - “judgment debt” means either of the following—

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- (a) a sum which is payable under a judgment or order enforceable by the High Court or a county court;
 - (b) a sum which, by virtue of an enactment, is recoverable as if it were payable under a judgment or order of the High Court or of a county court (including a sum which is so recoverable because a court so orders);
- “required information”, in relation to an information order, has the meaning given by section 98(1)(b);
- “relevant court”, in relation to an application under section 95, means the court to which the application is made.
- (3) Any reference to information held on behalf of a government department, or on behalf of an information discloser, includes a reference to any information which—
 - (a) is held by a person who provides services to the department or to the information discloser, and
 - (b) is held by that person in connection with the provision of those services.

105 Application and transitional provision

- (1) Sections 95 to 104 apply in relation to any judgment debt, whether it became payable, or recoverable, before or after the commencement of those sections.
- (2) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), the reference in section 102(9)(b) to 12 months is to be read as a reference to 6 months.

Status:

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Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 6A inserted by [2013 c. 22 Sch. 14 para. 9](#)

Commencement Orders yet to be applied to the Tribunals, Courts and Enforcement Act 2007

Commencement Orders bringing legislation that affects this Act into force:

- [S.I. 2013/2192 reg. 48 49](#) savings for effects of commencing SI 2013/2200 art. 3(a)(e)(f)



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 28 November 2013

**Interinstitutional File:
2011/0204 (COD)**

**16991/13
ADD 1**

**JUSTCIV 291
CODEC 2756**

ADDENDUM TO NOTE

from : Presidency

to : Council

No. Cion prop. : 13260/11 JUSTCIV 205 CODEC 1280

No. prev. doc. 16571/13 JUSTCIV 275 CODEC 2660 ADD 1

Subject : Proposal for a Regulation of the European Parliament and of the Council creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters
- General Approach

Delegations will find in the Annex the text of the Articles and of some selected recitals of the above proposal proposed by the Presidency as a compromise with a view to the adoption of a general approach by the Council (Justice and Home Affairs) at its meeting on 5 and 6 December 2013.

Changes compared to the text of the Commission proposal are marked in **bold** or by (...) for deleted text.

5. **This Article does not deal with the question of a possible liability of the creditor towards the bank or any third party.**

Article 17

Request for obtaining account information

1. **Where the creditor has obtained in a Member State an enforceable judgment, court settlement or authentic instrument which requires the debtor to pay the creditor's claim and the creditor has reasons to believe³⁶ that the debtor holds one or more accounts with a bank in a specific Member State, but knows neither the name and/or address of the bank nor the BIC, IBAN or another bank number capable of identifying the bank, he may request the court with which the application for the Preservation Order is lodged to request that the information authority of the Member State of enforcement obtain the (...) information necessary to enable the identification of the bank or banks and of the debtor's account(s). (...)³⁷**
2. **The creditor shall make his request in the application for the Preservation Order. (...) The creditor shall substantiate why he believes that the debtor holds one or more accounts with a bank in the specific Member State and shall provide all relevant information available to him about the debtor and the account or accounts to be preserved. If the court seised with the application for a Preservation Order considers that the creditor's request is not sufficiently substantiated, it shall reject it.**
3. **When the court is satisfied that the creditor's request is well-substantiated and that all the conditions and requirements for issuing the Preservation Order are met, except for the information requirement set out in point (c) of Article 8(2), and when, where applicable, the creditor has provided security pursuant to Article 16a (...) the court shall transmit the request for information to the information authority in the Member State of enforcement in accordance with Article XX.**

³⁶ The recitals could give examples of situations which would give reasons to believe that a debtor holds an account in a specific Member State, e.g. that the debtor works or exercises a professional activity in that Member States or has property there.

³⁷ The last phrase of this paragraph has been integrated into paragraph 2.

4. **To obtain the information referred to in paragraph 1, the information authority in the Member State of enforcement shall use one of the methods available in that Member State pursuant to paragraph 5. (...).**³⁸
5. **Each Member State shall make available in its national law at least one of the following methods of obtaining the information referred to in paragraph 1:**
- (a) **an obligation on all banks in its territory to disclose, upon request by the information authority, whether the debtor holds an account with them;**
 - (b) **access for the information authority to the relevant information (...) where that information is held by public authorities or administrations in registers or otherwise;**
 - (c) **the possibility for its courts to oblige the debtor to disclose with which bank or banks in its territory he holds one or more accounts where such an obligation is accompanied by an *in personam* order by the court prohibiting the withdrawal or transfer by him of funds held in his account or accounts up to the amount to be preserved by the Preservation Order; or**
 - (d) **any other methods which are effective and efficient for obtaining the relevant information provided that they are not disproportionate with regard to costs or time.**

Irrespective of the method or methods made available by a Member State, all authorities involved in obtaining the information shall act expeditiously.

³⁸ The second phrase of this paragraph has been moved to the new paragraph 5a.

- 5a. As soon as the information authority in the Member State of enforcement has obtained the account information, it shall transmit it to the requesting court in accordance with Article XX.**
- 5b. If the information authority is unable to obtain the information referred to in paragraph 1 it shall inform the requesting court accordingly. Where as a result of such information the application for a Preservation Order is rejected in full the requesting court shall without delay release any security that the creditor has provided pursuant to Article 16a.**
- 6. (...) Where under paragraph 4, the information authority is provided with information by a bank or is granted access to account information held by public authorities or administrations in registers, the notification of the debtor of the disclosure of his personal data shall be deferred for 30 days, in order to prevent that an early notification may jeopardise the effect of the Preservation Order.**

Article 18

Interest and costs

- 1. At the request of the creditor, the Preservation Order shall include any interest accrued under the law applicable to the claim until the date the Order is issued provided that the amount or type of interest does not constitute a violation of overriding mandatory provisions in the law of the Member State of origin.**
- 2. Where the creditor has already obtained a judgment, court settlement or authentic instrument the Preservation Order shall, at the request of the creditor, also include the costs of obtaining the title in question, to the extent that a determination has been made that these costs must be borne by the debtor.**