

PART 12 : ENFORCEMENT

CHAPTER 1: ENFORCEMENT — GENERAL

12.1 Scope of this Chapter and interpretation (70.1)

(1) This Chapter contains general rules about enforcement of judgments and orders.

(2) In this Part —

‘the 1981 Act’ means the Administration of Justice Act 1981;

‘arrestment order’ means an order for the arrestment of debts under section 14 of the 1981 Act;

‘charging order’ means an order under section 14A of the 1981 Act.

‘execution’ means execution against the goods or land of a judgment debtor in accordance with Schedule 1 or 2 to the 1981 Act;

‘judgment creditor’ means a person who has obtained or is entitled to enforce a judgment or order;

‘judgment debtor’ means a person against whom a judgment or order was given or made;

‘judgment or order’ includes an award which the court has —

(a) registered for enforcement;

(b) ordered to be enforced; or

(c) given permission to enforce as if it were a judgment or order of the court,

and in relation to such an award, ‘the court which made the judgment or order’ means the court which registered the award or made such an order; and

‘judgment or order for the payment of money’ includes a judgment or order for the payment of costs, but does not include a judgment or order for the payment of money into court.

(3) A reference in this order to a specified amount of money includes a reference to a specified amount of damages.

12.2 Methods of enforcing judgments or orders (70.2, PD70.1)

(1) A judgment creditor may enforce a judgment or order for the payment of money by any of the following methods —

(a) execution;

(b) the appointment of a receiver.

(c) an arrestment order;

(d) a charging order;

(e) an attachment of earnings order.

(2) In addition the court may make an order of imprisonment against a judgment debtor in accordance with —

(a) section 17 of the Bankruptcy Procedure Act 1892; and

(b) the Imprisonment for Debt Act 1928.

(3) A judgment creditor may, except where a statutory provision or rule provides otherwise —

(a) use any method of enforcement which is available; and

(b) use more than one method of enforcement, either at the same time or one after another.

12.3 Enforcement of judgment or order by or against non-party (70.4)

If a judgment or order is given or made in favour of or against a person who is not a party to proceedings, it may be enforced by or against that person by the same methods as if he were a party.

12.4 Enforcement of awards of bodies other than the court (70.5, PD70.4-5)

- (1) This rule applies, subject to paragraph (2), if —
 - (a) an award of a sum of money or other decision is made by any court, tribunal, body or person other than the court; and
 - (b) a statutory provision provides that the award may be enforced as if payable under a court order, or that the decision may be enforced as if it were a court order.
- (2) This rule does not apply to —
 - (a) any judgment to which Chapter 8 applies;
 - (b) any order to which Chapter 11 applies; or
 - (c) an arbitration award.
- (3) If the statutory provision provides that an award of a sum of money is enforceable if a court so orders, an application for such an order must be made in accordance with paragraphs (4) to (7) of this rule.
- (4) An application for an order that an award may be enforced as if payable under a court order may be made without notice
- (5) The application notice must state —
 - (a) the name and address of the person against whom it is sought to enforce the award; and
 - (b) how much of the award remains unpaid.
- (6) A copy of the award must be filed with the application notice.
- (7) The application may be dealt with by a court officer without a hearing.
- (8) If a statutory provision provides that an award or decision may be enforced in the same manner as an order of the court if it is registered, any application to the court for registration must —
 - (a) specify the statutory provision under which the application is made;
 - (b) state the name and address of the person against whom it is sought to enforce the award or decision;
 - (c) if the award or decision requires that person to pay a sum of money, state the amount which remains unpaid.

12.5 Effect of setting aside judgment or order (70.6)

If a judgment or order is set aside, any enforcement of the judgment or order shall cease to have effect unless the court otherwise orders.

12.6 Register of judgments

For the purposes of section 15 of the 1981 Act (register of judgments) ‘default action’ means any claim for —

- (a) a specified amount of money;
- (b) an amount of money to be decided by the court;
- (c) delivery of goods where the claim form gives the defendant the alternative of paying their value; or
- (d) any combination of these remedies.

12.7 Enforcement of judgment or order against firm (RHC 36.8)

(1) Subject to paragraph (2), a judgment or order against a firm may be enforced against —

- (a) any property of the firm;
- (b) any person who admitted in the proceedings that he was a partner or was adjudged to be a partner;
- (c) any person who was served as a partner with the claim form if —
 - (i) judgment was entered under Chapter 2 or Chapter 5 of Part 10; or
 - (iii) the person so served did not appear at the trial or hearing of the proceedings.

(2) Except as provided by paragraph (1)(a), a judgment or order obtained against a firm shall not render liable, release or otherwise affect a member of the firm who was out of the jurisdiction when the claim form was issued.

(3) A judgment creditor who claims to be entitled to enforce a judgment or order against any other person as a partner may apply to the court for permission to do so.

(4) An application notice under paragraph (3) shall be served on the alleged partner not less than 3 days before the hearing of the application.

(5) On the hearing of the application —

- (a) if the alleged partner does not dispute his liability, the court may, subject to paragraph (2), give permission to enforce the judgment or order against him;
- (b) if he disputes liability, the court may order that the question of his liability be tried and determined in such a manner as the court thinks fit.

CHAPTER 2: EXECUTION

12.8 Execution on entry of default judgment or judgment on admission

Where —

- (a) judgment for a specified amount of money is entered under Chapter 2 (default judgment) or Chapter 5 (judgment on admission) of Part 10;
- (b) the judgment is for immediate payment;
- (c) the court is not required by rule 10.52 or 10.53 to make an instalment order; and
- (d) the request filed under rule 10.25(1) or 10.43(1) includes a request for execution,

the court shall on entering judgment grant execution for the amount of the judgment, including costs and interest (if any).

12.9 Execution on application

(1) Where —

- (a) judgment is entered or given for, or an order is made for the payment of, a specified amount of money; or
- (b) judgment is entered or given for, or an order is made for the payment of, an amount of money to be decided by the court, and the amount or value is determined or agreed; or
- (c) judgment is entered or given or an order is made for the delivery up of goods, with the option of paying the value of the goods or the agreed value, and the amount or value is determined or agreed;

the court shall (subject to rule 10.55) on the application of the judgment creditor grant execution for the amount or value, including costs and interest (if any).

- (2) Where judgment is entered or given or an order is made —
 - (a) for the delivery up of goods, without the option of paying the value of the goods or the agreed value, or
 - (b) for the recovery or possession of land;

the court shall on the application of the judgment creditor grant execution in respect of the goods or land.

- (3) An application under paragraph (1) or (2) may be made —
 - (a) by filing a request, or
 - (b) where the judgment or determination is given in the course or at the conclusion of a trial or hearing, orally at the trial or hearing.
- (4) An application under paragraph (1) or (2) may be made without notice.

12.9A Execution for amount in foreign currency

- (1) Execution may not be granted on a judgment for an amount in a foreign currency otherwise than —
 - (a) on an application under rule 12.9, and
 - (b) for the sterling equivalent of the amount as certified in accordance with paragraph (2).
- (2) The application for execution must include or be accompanied by a certificate signed by the advocate for the judgment creditor (or by the judgment creditor if acting in person) and stating —
 - (a) the rate at which that currency was offered for sale by Isle of Man Bank Limited at the close of business on the last business day before the date of the application; and
 - (b) the sterling equivalent of the amount of the judgment at that rate.

[subs (12.9A) added by SD954/11]

12.10 Enforcing judgment between a firm and its members (RHC 36.9)

- (1) Execution to enforce a judgment or order given or made in —
 - (a) proceedings by or against a firm, in the name of the firm against or by a member of the firm; or
 - (b) proceedings by a firm in the name of the firm against a firm in the name of the firm where those firms have one or more members in common,

shall not issue without the permission of the court.

(2) On an application for permission the court may give such directions, including directions as to the taking of accounts and the making of inquiries, as may be just.

12.11 Enforcing judgment for contribution (RHC 10.7(2))

Where judgment is given for the payment of any contribution or indemnity to a person who is under a liability to make a payment in respect of the same debt or damage, execution shall not issue on the judgment without the permission of the court until that liability has been discharged.

12.12 Enforcing judgment for possession of land (RHC 8.5, RSC 45.11)

(1) In a claim for possession of land, where there is more than one defendant, execution shall not issue on a judgment or order for possession unless and until a judgment or order for possession has been obtained against all the defendants.

(2) Where a judgment or order for possession of land has been obtained, the defendant may apply to the court for a stay of execution of the judgment or order or other relief, on the ground of matters which have occurred since the date of the judgment or order.

(3) On an application under paragraph (2) the court may by order stay the execution or grant such other relief, on such terms, as it thinks just.

12.13 Execution against land

(1) This rule applies to an application by a coroner for permission to enter premises forcibly under paragraph 2 of Schedule 2 to the 1981 Act.

(2) The application notice must —

(a) give particulars of —

- (i) the land to be arrested (stating whether or not it is or includes residential premises);
- (ii) all occupiers of the land, so far as known to the judgment creditor or the coroner;
- (iii) any charges secured on the land, so far as known to the judgment creditor or the coroner;
- (iv) the amount of the judgment remaining unsatisfied (including costs and interest, if any); and
- (v) the estimated value of the land; and

(b) be served on all adult persons who were in occupation of the premises at the date when the application is filed, not less than 7 days before the date fixed for the hearing of the application.

(3) Any person on whom notice of the application is served under paragraph (2)(b) may appear and be heard at the hearing of the application.

12.14 Power to stay enforcement (RSC 47.1)

(1) This rule applies to a judgment or order for the payment of money.

(2) Where the court is satisfied, on an application made by the judgment debtor at the time of the judgment or order, or at any time afterwards, —

- (a) that there are special circumstances which render it inexpedient to enforce the judgment or order; or
- (b) that the judgment debtor is unable for any reason to pay the money,

the court may by order stay the enforcement of the judgment or order either absolutely or for such period and subject to such conditions as the court thinks fit.

(3) An application under this rule may be made even though the judgment debtor did not —

- (a) acknowledge service of the claim form,
- (b) serve a defence, or
- (c) take any previous part in the proceedings.

(4) The grounds on which the application is made must be set out in the application notice and verified by a statement of truth.

(5) Where the application is made on the ground that the judgment debtor is unable to pay, the application notice must set out —

- (a) his income,
- (b) the nature and value of any property of his, and
- (c) the amount of any other liabilities of his.

(6) An order staying enforcement under this rule may be varied or discharged by a subsequent order.

CHAPTER 3: APPOINTMENT OF RECEIVER

12.15 Scope of this Chapter (69.1)

(1) This Chapter contains provisions about the court's power to appoint a receiver under any statutory provision except Part 1 of the Proceeds of Crime Act 2008.

(2) In this Chapter 'receiver' includes a manager.

12.16 Court's power to appoint receiver (69.2)

(1) The court may appoint a receiver under section 42 of the High Court Act 1991 —

- (a) before proceedings have started;
- (b) in existing proceedings; or
- (c) on or after judgment.

(2) A receiver must be an individual.

(3) The court may at any time —

- (a) terminate the appointment of a receiver; and
- (b) appoint another receiver in his place.

12.17 How to apply for the appointment of a receiver (69.3)

An application for the appointment of a receiver —

- (a) may be made without notice; and
- (b) must be supported by written evidence.

12.18 Service of order appointing receiver (69.4)

An order appointing a receiver must be served by the party who applied for it on —

- (a) the person appointed as receiver;
- (b) unless the court orders otherwise, every other party to the proceedings; and
- (c) such other persons as the court may direct.

12.19 Security (69.5)

(1) The court may direct that before a receiver begins to act or within a specified time he must either —

- (a) give such security as the court may determine; or
- (b) file and serve on all parties to the proceedings evidence that he already has in force sufficient security,

to cover his liability for his acts and omissions as a receiver.

(2) The court may terminate the appointment of the receiver if he fails —

- (a) to give the security; or
- (b) to satisfy the court as to the security he has in force,

by the date specified.

12.20 Receiver's application for directions (69.6)

(1) The receiver may apply to the court at any time for directions to assist him in carrying out his function as a receiver.

(2) The court, when it gives directions, may also direct the receiver to serve on any person —

- (a) the directions; and
- (b) the application for directions.

12.21 Receiver's remuneration (69.7)

- (1) A receiver may only charge for his services if the court —
 - (a) so directs; and
 - (b) specifies the basis on which the receiver is to be remunerated.
- (2) The court may specify —
 - (a) who is to be responsible for paying the receiver; and
 - (b) the fund or property from which the receiver is to recover his remuneration.
- (3) If the court directs that the amount of a receiver's remuneration is to be determined by the court —
 - (a) the receiver may not recover any remuneration for his services without a determination by the court; and
 - (b) the receiver or any party may apply at any time for such a determination to take place.
- (4) Unless the court orders otherwise, in determining the remuneration of a receiver the court shall award such sum as is reasonable and proportionate in all the circumstances and which takes into account —
 - (a) the time properly given by him and his staff to the receivership;
 - (b) the complexity of the receivership;
 - (c) any responsibility of an exceptional kind or degree which falls on the receiver in consequence of the receivership;
 - (d) the effectiveness with which the receiver appears to be carrying out, or to have carried out, his duties; and
 - (e) the value and nature of the subject matter of the receivership.
- (5) The court may refer the determination of a receiver's remuneration to a costs officer.

12.22 Accounts (69.8, PD69)

- (1) The court may order a receiver to prepare and serve accounts.
- (2) When the court makes an order under paragraph (1), it may —
 - (a) direct the receiver to prepare and serve accounts either by a specified date or at specified intervals; and
 - (b) specify the persons on whom he must serve the accounts.
- (3) A party served with such accounts may apply for an order permitting him to inspect any document in the possession of the receiver relevant to those accounts.
- (4) Any party may, within 14 days of being served with the accounts, serve notice on the receiver—
 - (a) specifying any item in the accounts to which he objects;
 - (b) giving the reason for such objection; and
 - (c) requiring the receiver, within 14 days of receipt of the notice, either —
 - (i) to notify all the parties who were served with the accounts that he accepts the objection; or
 - (ii) if he does not accept the objection, to apply for an examination of the accounts in relation to the contested item.

(5) When the receiver applies for the examination of the accounts he must at the same time file —

- (a) the accounts; and
- (b) a copy of the notice served on him under this rule.

(6) If the receiver fails to comply with paragraph (4)(c), any party may apply to the court for an examination of the accounts in relation to the contested item.

(7) At the conclusion of its examination of the accounts the court shall certify the result.

12.23 Non-compliance by receiver (69.9)

(1) If a receiver fails to comply with any rule or direction of the court the court may order him to attend a hearing to explain his non-compliance.

(2) At the hearing the court may make any order it considers appropriate, including —

- (a) terminating the appointment of the receiver;
- (b) reducing the receiver's remuneration or disallowing it altogether; and
- (c) ordering the receiver to pay the costs of any party.

(3) Where —

- (a) the court has ordered a receiver to pay a sum of money into court; and
- (b) the receiver has failed to do so,

the court may order him to pay interest on that sum for the time he is in default at such rate as it considers appropriate.

12.24 Application for discharge of receiver (69.10)

(1) The receiver or any party may apply for the receiver to be discharged on completion of his duties.

(2) The application notice must be served on the persons who were required under rule 12.18 to be served with the order appointing the receiver.

12.25 Order discharging or terminating appointment of receiver (69.11)

(1) An order discharging or terminating the appointment of a receiver may —

- (a) require him to pay into court any money held by him; or
- (b) specify the person to whom he must pay any money or transfer any assets still in his possession; and
- (c) make provision for the discharge or cancellation of any guarantee given by the receiver as security.

(2) The order must be served on the persons who were required under rule 12.18 to be served with the order appointing the receiver.

CHAPTER 4: ARRESTMENT ORDERS

12.26 Scope of this Chapter (72.1)

(1) This Chapter contains rules which provide for a judgment creditor to obtain an order (an 'arrestment order') in the exercise of the jurisdiction of the court to attach debts for the purpose of satisfying judgments or orders for the payment of money.

(2) In this Chapter —

'bank' includes any person carrying on a business in the course of which he lawfully accepts deposits in the Island;

references to a judgment creditor include, where appropriate, references to a coroner acting with the consent of the judgment creditor pursuant to section 14 of the 1981 Act.

(3) A firm carrying on business within the jurisdiction shall be treated for the purpose of this Chapter as within the jurisdiction even though one or more members of the firm may be resident out of the jurisdiction.

12.27 Arrestment order (72.2)

(1) Upon the application of a judgment creditor, the court may make an order (a ‘final arrestment order’) requiring a third party to pay to the judgment creditor —

- (a) the amount of any debt due or accruing due to the judgment debtor from the third party; or
- (b) so much of that debt as is sufficient to satisfy the judgment debt and the judgment creditor’s costs of the application.

(2) The court shall not make an order under paragraph (1) without first making an order (an ‘interim arrestment order’) as provided by rule 12.29(2).

(3) In deciding whether money standing to the credit of the judgment debtor in an account to which section 46 of the High Court Act 1991 relates may be made the subject of an arrestment order, any condition applying to the account that a receipt for money deposited in the account must be produced before any money is withdrawn shall be disregarded.

12.28 Application for arrestment order (72.3, PD72)

- (1) An application for an arrestment order may be made without notice.
- (2) The application notice must contain the following information —
 - (a) the name and address of the judgment debtor;
 - (b) particulars of the judgment or order sought to be enforced;
 - (c) the amount of money remaining due under the judgment or order;
 - (d) if an instalment order is in force, the amount of any instalments which have fallen due and remain unpaid;
 - (e) the name and address of the third party;
 - (f) if the third party is a bank —
 - (i) its name and the address of the branch at which the judgment debtor’s account is believed to be held; and
 - (ii) the account number;

or, if the judgment creditor does not know all or part of this information, a statement to that effect;

- (g) a statement that to the best of the judgment creditor’s knowledge or belief the third party —
 - (i) is within the jurisdiction; and
 - (ii) owes money to or holds money to the credit of the judgment debtor;
- (h) if the judgment creditor knows or believes that any person other than the judgment debtor has any claim to the money owed by the third party —
 - (i) his name and (if known) his address; and
 - (ii) such information as is known to the judgment creditor about his claim;
- (i) details of any other applications for arrestment orders issued by the judgment creditor in respect of the same judgment debt; and

- (j) the sources or grounds of the judgment creditor's knowledge or belief of the matters referred to in (g), (h) and (i).
- (3) The application notice must be verified by a statement of truth.

12.28A Arrestment for amount in foreign currency

- (1) An application for an arrestment order to enforce a judgment for an amount in a foreign currency must state —
 - (a) whether the bank account or other money owed by the third party to the judgment debtor is in that currency; and
 - (b) if so —
 - (i) the rate at which that currency was offered for sale by Isle of Man Bank Limited at the close of business on the last business day before the date of the application; and
 - (ii) the sterling equivalent of the amount of the judgment at that rate.
- (2) The arrestment order shall be made —
 - (a) for the amount of the judgment in the foreign currency, where the application states that the bank account or other money owed by the third party to the judgment debtor is in that currency;
 - (b) otherwise, for the sterling equivalent of the amount as stated in accordance with paragraph (1)(b).

[subs (12.28A) added by SD954/11]

12.29 Interim arrestment order (72.4)

- (1) An application for an arrestment order shall initially be dealt with by a judge without a hearing.
- (2) The judge may make an interim arrestment order —
 - (a) fixing a hearing to consider whether to make a final arrestment order; and
 - (b) directing that until that hearing the third party must not make any payment which reduces the amount he owes the judgment debtor to less than the amount specified in the order.
- (3) An interim arrestment order shall specify the amount of money which the third party must retain, which shall be the total of —
 - (a) the amount of money remaining due to the judgment creditor under the judgment or order; and
 - (b) an amount for the judgment creditor's fixed costs of the application, as specified in rule 11.19.
- (4) An interim arrestment order becomes binding on a third party when it is served on him.
- (5) The date of the hearing to consider the application shall be not less than 28 days after the interim arrestment order is made.

12.30 Service of interim order (72.5)

- (1) Copies of an interim arrestment order, the application notice and any documents filed in support of it must be served —
 - (a) on the third party, not less than 21 days before the date fixed for the hearing; and
 - (b) on the judgment debtor not less than —
 - (i) 7 days after a copy has been served on the third party; and
 - (ii) 7 days before the date fixed for the hearing.

- (2) If the judgment creditor serves the order, he must either —
 - (a) file a certificate of service not less than 2 days before the hearing; or
 - (b) produce a certificate of service at the hearing.

12.31 Obligations of third party served with interim order (72.6)

(1) A bank served with an interim arrestment order must carry out a search to identify all accounts held with it by the judgment debtor.

(2) The bank must disclose to the court and the creditor within 7 days of being served with the order, in respect of each account held by the judgment debtor —

- (a) the number of the account;
- (b) whether the account is in credit; and
- (c) if the account is in credit —
 - (i) whether the balance of the account is sufficient to cover the amount specified in the order;
 - (ii) the amount of the balance at the date it was served with the order, if it is less than the amount specified in the order; and
 - (iii) whether the bank asserts any right to the money in the account, whether pursuant to a right of set-off or otherwise, and if so giving details of the grounds for that assertion.

(3) If —

- (a) the judgment debtor does not hold an account with the bank; or
- (b) the bank is unable to comply with the order for any other reason (for example, because it has more than one account holder whose details match the information contained in the order, and cannot identify which account the order applies to),

the bank must inform the court and the judgment creditor of that fact within 7 days of being served with the order.

(4) Any third party other than a bank served with an interim arrestment order must notify the court and the judgment creditor in writing within 7 days of being served with the order, if he claims —

- (a) not to owe any money to the judgment debtor; or
- (b) to owe less than the amount specified in the order.

12.32 Arrangements for debtors in hardship (72.7)

(1) If —

- (a) a judgment debtor is an individual;
- (b) he is prevented from withdrawing money from his account with a bank as a result of an interim arrestment order; and
- (c) as a result he or his family is suffering hardship in meeting ordinary living expenses or legal expenses relating to the proceedings in question,

the court may, on an application by the judgment debtor, make an order permitting the bank to make a payment or payments out of the account ('a hardship payment order').

(2) An application notice seeking a hardship payment order must —

- (a) include detailed evidence explaining why the judgment debtor needs a payment of the amount requested; and
- (b) be verified by a statement of truth.

(3) Unless the court orders otherwise, the application notice —

- (a) must be served on the judgment creditor at least 2 days before the hearing; but
- (b) does not need to be served on the third party.
- (4) A hardship payment order may —
 - (a) permit the third party to make one or more payments out of the account; and
 - (b) specify to whom the payments may be made.

12.33 Further consideration of the application (72.8)

(1) If the judgment debtor or the third party objects to the court making a final arrestment order, he must file and serve written evidence stating the grounds for his objections.

(2) If the judgment debtor or the third party knows or believes that a person other than the judgment debtor has any claim to the money specified in the interim order, he must file and serve written evidence stating his knowledge of that matter.

- (3) If —
 - (a) the third party has given notice under rule 12.31 that he does not owe any money to the judgment debtor, or that the amount which he owes is less than the amount specified in the interim order; and
 - (b) the judgment creditor wishes to dispute this,

the judgment creditor must file and serve written evidence setting out the grounds on which he disputes the third party's case.

(4) Written evidence under paragraph (1), (2) or (3) must be filed and served on each other party as soon as possible, and in any event not less than 3 days before the hearing.

(5) If the court is notified that some person other than the judgment debtor may have a claim to the money specified in the interim order, it will serve on that person notice of the application and the hearing.

- (6) At the hearing the court may —
 - (a) make a final arrestment order;
 - (b) discharge the interim arrestment order and dismiss the application;
 - (c) decide any issues in dispute between the parties, or between any of the parties and any other person who has a claim to the money specified in the interim order; or
 - (d) direct a trial of any such issues, and if necessary give directions.

12.34 Effect of final arrestment order (72.9)

- (1) A final arrestment order shall be enforceable as an order to pay money.
- (2) If —
 - (a) the third party pays money to the judgment creditor in compliance with an arrestment order; or
 - (b) the order is enforced against him,

the third party shall, to the extent of the amount paid by him or realised by enforcement against him, be discharged from his debt to the judgment debtor.

(3) Paragraph (2) applies even if the arrestment order, or the original judgment or order against the judgment debtor, is later set aside.

12.35 Money in court (72.10)

- (1) If money is standing to the credit of the judgment debtor in court —

- (a) the judgment creditor may not apply for an arrestment order in respect of that money; but
- (b) he may apply for an order that the money in court, or so much of it as is sufficient to satisfy the judgment or order and the costs of the application, be paid to him.
- (2) An application notice seeking an order under this rule must be served on —
 - (a) the judgment debtor, and
 - (b) any other person appearing to the judgment creditor to have an interest in the money in court.
- (3) If an application notice has been issued under this rule, the money in court must not be paid out until the application has been disposed of.

12.36 Costs (72.11)

If the judgment creditor is awarded costs on an application for an order under rule 12.27 or 12.35 —

- (a) he shall, unless the court otherwise directs, retain those costs out of the money recovered by him under the order; and
- (b) the costs shall be deemed to be paid first out of the money he recovers, in priority to the judgment debt.

CHAPTER 5: CHARGING ORDERS

12.37 Scope of this Chapter (73.1)

(1) This Chapter contains rules which provide for a judgment creditor to enforce a judgment by obtaining a charging order over or against the judgment debtor's interest in an asset pursuant to section 14A of the 1981 Act.

(2) In this Chapter —

‘funds in court’ includes securities held in court;

‘securities’ means securities of any of the kinds specified in paragraph 1(3) of Schedule 2A to the 1981 Act;

references to a judgment creditor include, where appropriate, references to a coroner acting with the consent of the judgment creditor.

12.38 Application for charging order (73.3)

- (1) An application for a charging order may be made without notice.
- (2) A judgment creditor may apply for a single charging order in respect of more than one judgment or order against the same debtor.
- (3) The application notice must contain the following information —
 - (a) the name and address of the judgment debtor;
 - (b) particulars of the judgment or order sought to be enforced;
 - (c) the amount of money remaining due under the judgment or order;
 - (d) if an instalment order is in force, the amount of any instalments which have fallen due and remain unpaid;
 - (e) if the judgment creditor knows of the existence of any other creditors of the judgment debtor, their names and (if known) their addresses;
 - (f) particulars of the asset or assets which it is intended to charge; and
 - (g) particulars of the judgment debtor's interest in the asset.

[Subs (3) amended by SD 686/09]

- (4) The application notice must be verified by a statement of truth.

12.39 Interim charging order (73.4)

- (1) An application for a charging order shall initially be dealt with by a judge without a hearing.
- (2) The judge may make an order (an 'interim charging order') —
 - (a) imposing a charge over the judgment debtor's interest in the asset to which the application relates; and
 - (b) fixing a hearing to consider whether to make a final charging order as provided by rule 12.43(2)(a).

12.40 Service of interim order (73.5)

(1) Copies of the interim charging order, the application notice and any documents filed in support of it must, not less than 21 days before the hearing, be served on the following persons —

- (a) the judgment debtor;
- (b) such other creditors as the court directs;
- (c) if the order relates to an interest under a trust, on such of the trustees as the court directs;
- (d) if the interest charged is in securities other than securities held in court —
 - (i) in the case of government stock, the Treasury;
 - (ii) in the case of stock of any body incorporated in the Island, that body;
 - (iii) in the case of stock of any body incorporated outside the Island, which is registered in a register kept in the Island, the keeper of that register;
 - (iv) in the case of units of any unit trust in respect of which a register of the unit holders is kept in the Island, the keeper of that register.
- (2) The judgment creditor must either —
 - (a) file a certificate of service not less than 2 days before the hearing; or
 - (b) produce a certificate of service at the hearing.

12.41 Effect of interim order in relation to securities (73.6)

(1) If a judgment debtor disposes of his interest in any securities, while they are subject to an interim charging order which has been served on him, that disposition shall not, so long as that order remains in force, be valid as against the judgment creditor.

(2) A person served under rule 12.40(1)(d) with an interim charging order relating to securities must not, unless the court gives permission —

- (a) permit any transfer of any of the securities; or
- (b) pay any dividend, interest or redemption payment relating to them.
- (3) If a person acts in breach of paragraph (2), he is liable to pay to the judgment creditor —
 - (a) the value of the securities transferred or the amount of the payment made (as the case may be); or
 - (b) if less, the amount necessary to satisfy the debt in relation to which the interim charging order was made.

12.42 Effect of interim order in relation to funds in court (73.7)

If a judgment debtor disposes of his interest in funds in court while they are subject to an interim charging order which has been served on him in accordance with rule 12.40(1), that disposition shall not, so long as that order remains in force, be valid as against the judgment creditor.

12.43 Further consideration of the application (73.8)

(1) If any person objects to the court making a final charging order, he must file, and serve on the applicant, written evidence stating the grounds of his objection, not less than 7 days before the hearing.

(2) At the hearing the court may —

- (a) make a final charging order confirming that the charge imposed by the interim charging order shall continue, with or without modification;
- (b) discharge the interim charging order and dismiss the application;
- (c) decide any issues in dispute between the parties, or between any of the parties and any other person who objects to the court making a final charging order; or
- (d) direct a trial of any such issues, and if necessary give directions.

(3) Without prejudice to paragraph 2(2) (service of charging order) of Schedule 2A to the 1981 Act, any order made at the hearing must be served on all the persons on whom the interim charging order was required to be served.

12.44 Discharge or variation of order (73.9)

(1) The judgment debtor or any interested person may apply to the court for an order discharging or varying a charging order.

(2) The court may direct that —

- (a) any interested person be joined as a party to such an application; or
- (b) the application notice be served on any such person.

(3) An order discharging or varying a charging order must be served on all the persons on whom the charging order was required to be served.

12.45 Enforcement of charging order by sale etc. (73.10)

(1) This rule applies to an application under paragraph 2(4) (order authorising disposal of asset) of Schedule 2A to the 1981 Act.

(2) The application notice must contain the following information —

- (a) the name and address of the judgment debtor;
 - (b) particulars of the charging order;
 - (c) particulars of the property sought to be disposed of;
 - (d) the proposed manner of disposal;
 - (e) the amount in respect of which the charge was imposed and the amount due at the date of the application;
 - (f) so far as known to the judgment creditor —
 - (i) the judgment debtor's title to the property;
 - (ii) the names and addresses of any other creditors who have a prior charge or other security over the property; and
 - (iii) the amount owed to each such creditor;
 - (g) the estimated amount which would be realised on the disposal of the property;
 - (h) if the property is land, particulars of every person who to the best of the judgment creditor's knowledge is in possession of the property.
- (3) The application notice must be verified by a statement of truth.

12.46 Application for permission to register transfer etc.

Where an application is made for permission to take any step mentioned in paragraph 3 of Schedule 2A to the 1981 Act, a copy of the application notice must be served on —

- (a) the judgment creditor;
- (b) the judgment debtor;
- (c) any other person on whom the charging order was required to be served.

CHAPTER 6: ATTACHMENT OF EARNINGS ORDERS

12.47 Interpretation

In this Chapter —

‘instalment order’ means an order made by the court under rule 10.52, 10.53 or 10.54;

‘maintenance order’ means a maintenance order (within the meaning of the 1981 Act) made by the court;

references to a judgment creditor include, where appropriate, references to a coroner acting with the consent of the judgment creditor pursuant to section 28(1)(a) of the 1981 Act.

12.48 Application for attachment of earnings order (RHC 51B.2)

(1) Where application is made for an attachment of earnings order, the application notice must include —

- (a) particulars of the instalment order or maintenance order sought to be enforced;
- (b) the date of service of the instalment order or maintenance order on the judgment debtor, or the reason why it has not been served;
- (c) the amount of any arrears due to the judgment creditor under the order;
- (d) particulars of any steps which have been taken for the enforcement of the order;
- (e) the name and address of the person believed to be the judgment debtor’s employer;
- (f) the following particulars of the judgment debtor (or, in the case of an application by the judgment creditor, such of them as are known to him) —
 - (i) the judgment debtor’s full name and address;
 - (ii) his age;
 - (iii) his national insurance number;
 - (iv) his place of work;
 - (v) the nature of his work and his works number, if any;
- (g) any other facts relevant to the means of the judgment debtor (or, in the case of an application by the judgment creditor, such facts relevant to those means as are known to him).

(2) The application notice, with a copy of any document accompanying it, must be served on the respondent to the application at least 7 days before the court is to deal with the application.

(3) The respondent may, within 4 days after service of notice of the application on him, file a reply to the application, and must serve a copy on the judgment creditor or judgment debtor, as the case may be, within 24 hours after filing it.

(4) The court shall, when fixing the date when it is to deal with the application, give such directions under section 32(1)(a) and (b) of the 1981 Act as appear to it to be necessary for determining the application.

(5) The powers of the court under section 32(1) of the 1981 Act may be exercised by a court officer.

12.49 Content of order (RHC 51B.3)

- (1) An attachment of earnings order shall include —
 - (a) the name and address of the judgment debtor's employer to whom the order is directed;
 - (b) such of the following particulars of the judgment debtor as are known to the court —
 - (i) the judgment debtor's full name and address;
 - (ii) his age;
 - (iii) his national insurance number;
 - (iv) his place of work;
 - (v) the nature of his work and his works number, if any;
 - (c) the date of the instalment order or maintenance order to be enforced, and the amount and frequency of the instalments or periodical payments payable under that order;
 - (d) the amount and frequency of the amounts normally to be deducted under the attachment of earnings order;
 - (e) the minimum amount of earnings to be paid to the judgment debtor.
- (2) The order shall provide for the sums deducted under the order to be paid —
 - (a) in the case of an order to enforce a maintenance order, to the Chief Registrar;
 - (b) in any other case, such coroner as appears to the court to be appropriate.
- (3) The judgment creditor or judgment debtor, as the case may be, shall serve a copy of the order on —
 - (a) the person to whom it is directed, and
 - (b) the respondent to the application,

and, in the case within paragraph (2)(b), send a copy to the coroner.

12.50 Suspension and revival of order (RHC 51B.4)

(1) Where an attachment of earnings order is suspended under section 29(2) of the 1981 Act, the court shall cause notice of the suspension to be given to the judgment creditor and, where the payments under the order are to be made to a coroner, to the coroner.

(2) Where the court is informed under section 29(3) of the 1981 Act that the judgment debtor is again employed —

- (a) it shall give notice to the judgment creditor; and
- (b) the judgment creditor or the judgment debtor may apply to the court that the order be revived and, if appropriate, redirected in accordance with section 29(4).

(3) On an application under paragraph (2), the application notice must include the information specified in rule 12.48(1) and be verified by a statement of truth.

(4) The powers of the court under section 29(4) of the 1981 Act (revival and redirection of order) may be exercised by a court officer.

12.51 Deduction by employer (RHC 51B.5)

A person to whom an attachment of earnings order is directed may deduct from any payment made in accordance with the order a sum not exceeding £1.00 for the clerical and administrative costs of complying with the order.

CHAPTER 7: MISCELLANEOUS ORDERS

12.52 Order to attend before coroner (71.2, PD71. ER8-10)

(1) This rule applies to an application to the court by a coroner for an attendance order under paragraph 3 of Schedule 3 to the 1981 Act.

(2) The application may be made without notice.

(3) The application notice must contain the following information —

(a) the name and address of the judgment debtor;

(b) particulars of the judgment or order which the coroner is seeking to enforce;

(c) if the application is to enforce a judgment or order for the payment of money, the amount presently owed by the judgment debtor under the judgment or order;

(d) if the judgment debtor is a company or other corporation —

(i) the name and address of the officer of the corporation whom the coroner wishes to examine; and

(ii) his position in the corporation;

(e) where a person is required to provide information as to the means of the judgment debtor —

(i) the name and address of that person, and

(ii) why it appears to the coroner that he may be able to give that information.

(4) The application may be dealt with by a court officer without a hearing.

(5) If the application notice complies with paragraph (3), an order shall be issued requiring the judgment debtor, officer or other person —

(a) to appear to be examined by the coroner, or to provide information, as to the means of the judgment debtor in accordance with Schedule 3 to the 1981 Act at a time and place specified in the order; and

(b) in the case of the judgment debtor or an officer, to produce all books, documents and things in his possession or under his control relevant to the means of the judgment debtor; or

(c) in the case of a person required to provide information, to produce all books, documents and things in his possession or under his control relevant to that information.

(6) The order shall contain a notice in the following terms —

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

(7) An order which requires a person to appear to be examined must be served on the person to whom it is addressed not less than 7 days before the date fixed for the examination, and at the same time a copy must be served on the judgment creditor.

(8) The depositions of persons examined on oath in connection with an inquiry under Schedule 3 to the 1981 Act shall contain the following information —

(a) the name and address of the person making the statement and the fact that the person was on oath;

(b) the date upon which and the place at which the statement was made,

(c) the details of the execution order upon which the inquiry is held; and

(d) the signature of the person making the statement at the end of the statement.

(9) The record of findings under paragraph 6 of Schedule 3 to the 1981 Act shall

be retained by the coroner for not less than 3 years and shall contain the following information —

- (a) particulars of the judgment or order to be enforced;
- (b) the date and place of the inquiry;
- (c) the name and address of every person examined in the course of the inquiry; and
- (d) the findings of the coroner after holding the inquiry.

12.53 Sequestration of benefice

(1) This rule applies to an application for an order for the sequestration of an ecclesiastical benefice to enforce a judgment or order for the payment of money.

(2) The application notice must contain the following information —

- (a) the name and address of the judgment debtor;
- (b) particulars of the judgment or order sought to be enforced;
- (c) the amount of money remaining due under the judgment or order;
- (d) if an instalment order is in force, the amount of any instalments which have fallen due and remain unpaid;
- (e) particulars of the ecclesiastical benefice, the profits of which are sought to be sequestered;
- (f) particulars of the steps taken to enforce the judgment or order against other assets of the judgment debtor.

(3) Notice of the application must be given to —

- (a) the judgment debtor,
- (b) the Bishop,
- (c) the Diocesan Registrar, and
- (d) the Sodor and Man Diocesan Board of Finance.

(4) The order shall be issued to the Bishop directing him to sequester the profits of the benefice until the amount due under the judgment or order, including costs and interest (if any), is paid or the order is discharged.

(5) The judgment creditor shall serve a copy of the order on the Diocesan Registrar.

12.54 Order under Partnership Act 1909 section 25 (PD73)

(1) This rule relates to orders under section 25 of the Partnership Act 1909 ('section 25').

(2) Where an application for such an order is made by a judgment creditor of a partner, the application notice and every order made following the application must be served on the judgment debtor and on any of the other partners who are within the jurisdiction.

(3) Where an application for any order is made by a partner of the judgment debtor in consequence of any application made by the judgment creditor under section 25, the application notice and every order made following the application must be served on —

- (a) the judgment creditor,
- (b) the judgment debtor; and
- (c) the other partners of the judgment debtor who are not joined in the application and are within the jurisdiction.

(4) An application notice or order served under this rule on one or more, but not all, of the partners of a partnership shall be deemed to have been served on all the partners of that partnership.

CHAPTER 8: ENFORCEMENT OF OVERSEAS JUDGMENTS

12.55 Scope of this Chapter and interpretation (74.1, 74.2)

(1) This Chapter applies to the enforcement in the Island of judgments of overseas courts.

(2) In this Chapter —

‘the 1968 Act’ means the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968;

‘country of origin’, in relation to any judgment, means the country or territory in which that judgment was given.

12.56 Applications for registration (74.3, 74.4)

(1) This rule applies to applications under section 2 of the 1968 Act in respect of judgments to which Part I of that Act applies.

(2) The application must be made by a claim form, and may be made without notice.

(3) The application must be supported by written evidence exhibiting —

(a) the judgment or a verified or certified or otherwise authenticated copy of it; and

(b) where the judgment is not in English, a translation of it into English —

(i) certified by a notary public or other qualified person; or

(ii) accompanied by written evidence confirming that the translation is accurate.

(4) The written evidence in support of the application must state —

(a) the name of the judgment creditor and his address for service within the jurisdiction;

(b) the name of the judgment debtor and his address or place of business, if known;

(c) the grounds on which the judgment creditor is entitled to enforce the judgment;

(d) that the judgment is a money judgment;

(e) the amount in respect of which it remains unsatisfied; and

(f) where interest is recoverable on the judgment under the law of the country of origin —

(i) the amount of interest which has accrued up to the date of the application, or

(ii) the rate of interest, the date from which it is recoverable, and the date on which it ceases to accrue.

(5) Written evidence in support of the application under the 1968 Act must also

—

(a) confirm that the judgment can be enforced by execution in the country of origin;

(b) confirm that the registration could not be set aside under section 4 of the 1968 Act;

(c) confirm that the judgment is not a judgment to which section 5 of the Protection of Trading Interests Act 1980 (an Act of Parliament) applies;

- (d) where the judgment contains different provisions, some but not all of which can be registered for enforcement, set out those provisions in respect of which it is sought to register the judgment; and
- (e) be accompanied by any further evidence as to —
 - (i) the enforceability of the judgment in the country of origin, and
 - (ii) the law of that country under which any interest has become due under the judgment, which may be required under the relevant order extending Part I of the 1968 Act to that country.

12.57 Security for costs (74.5)

(1) Subject to paragraph (2), Chapter 4 of Part 7 applies to an application for security for the costs of —

- (a) the application for registration;
- (b) any proceedings brought to set aside the registration; and
- (c) any appeal against the granting of the registration,

as if the judgment creditor were a claimant.

(2) Paragraph (1) does not apply to an application where the relevant order extending Part I of the 1968 Act to the country of origin otherwise provides.

12.58 Registration orders (74.6)

(1) An order granting permission to register a judgment ('a registration order') must be drawn up by the judgment creditor and served on the judgment debtor —

- (a) by delivering it to him personally;
- (b) as provided by section 335 or 335A of the Companies Act 1931; or
- (c) in such other manner as the court may direct.

(2) Permission is not required to serve a registration order out of the jurisdiction, and rules 2.43, 2.44, 2.45 and 2.48 apply to such an order as they apply to a claim form.

(3) A registration order must state —

- (a) full particulars of the judgment registered;
- (b) the name of the judgment creditor and his address for service within the jurisdiction;
- (c) the right of the judgment debtor to apply to have the registration set aside;
- (d) the period within which such an application or appeal may be made; and
- (e) that no measures of enforcement will be taken before the end of that period, other than measures ordered by the court to preserve the property of the judgment debtor.

12.59 Applications to set aside registration (74.7)

(1) An application to set aside registration under the 1968 Act must be made within the period set out in the registration order.

(2) The court may extend that period; but an application for such an extension must be made before the end of the period as originally fixed or as subsequently extended.

(3) The court hearing the application may order any issue between the judgment creditor and the judgment debtor to be tried.

12.60 Enforcement (74.9)

(1) No steps may be taken to enforce a judgment —

- (a) before the end of the period specified under rule 12.58(3)(d), or that period as extended by the court; or

- (b) where there is an application under rule 12.59, until the application has been determined.
- (2) Any party wishing to enforce a judgment must file evidence of the service on the judgment debtor of —
 - (a) the registration order; and
 - (b) any other relevant order of the court.
- (3) Nothing in this rule prevents the court from making orders to preserve the property of the judgment debtor pending final determination of any issue relating to the enforcement of the judgment.

CHAPTER 9: *COMMITTAL FOR CONTEMPT OF COURT*

12.61 Committal for contempt of court (RSC 52.1)

- (1) The power of the court to punish for contempt of court may be exercised by an order of committal.
- (2) Where contempt of court —
 - (a) is committed in connection with —
 - (i) any proceedings before the court; or
 - (ii) proceedings in a Court of General Gaol Delivery, except where the contempt is committed in the face of the court or consists of disobedience to an order of the court or a breach of an undertaking to the court; or
 - (iii) proceedings in an inferior court; or
 - (b) is committed otherwise than in connection with any proceedings,an order of committal may be made only by a Deemster.

12.62 Application for committal order (RSC 52.3)

- (1) An application for a committal order must be made —
 - (a) by an application notice, in existing proceedings;
 - (b) by a claim form, in any other case.
- (2) The application must be accompanied by an affidavit in support setting out —
 - (a) the name and description of the applicant,
 - (b) the name, description and address of the person sought to be committed, and
 - (c) the grounds on which his committal is sought.
- (3) There must be at least 14 clear days between the service of the notice or claim form and the hearing date.
- (4) Unless the court otherwise directs, a copy of the notice or claim form, accompanied by a copy of the affidavit in support of the application, must be served personally on the person sought to be committed.

12.63 Hearing of application (RSC 52.6)

- (1) Subject to paragraph (2), the court hearing an application for an order of committal may sit in private in the following cases —
 - (a) where the application arises out of proceedings relating to the wardship or adoption of an minor, or wholly or mainly to —
 - (i) the guardianship, maintenance or upbringing of a minor,
 - (ii) the arrangements to be made as to the person with whom a minor is to live, or

- (iii) rights of contact with a minor;
- (b) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder within the meaning of the Mental Health Act 1998;
- (c) where the application arises out of proceedings in which a secret process, discovery or invention was in issue;
- (d) where it appears to the court that in the interests of the administration of justice or for reasons of national security the application should be heard in private;

but otherwise the application must be heard in public.

(2) If the court hearing an application in private by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, it shall in public state —

- (a) the name of that person;
- (b) in general terms the nature of the contempt of court in respect of which the order of committal is being made; and
- (c) the length of the period for which he is being committed.

(3) Except with the permission of the court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the affidavit under rule 12.62.

(4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf, he is entitled to do so.

12.64 Power to suspend execution of committal order (RSC 52.7)

(1) Where the court has made an order of committal, it may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as it may specify.

(2) Where execution of an order of committal is suspended by an order under paragraph (1), the applicant for the order of committal must, unless the court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.

12.65 Warrant for arrest (RSC 52.7A)

A warrant for the arrest of a person against whom an order of committal has been made shall not, without further order of the court, be enforced more than 2 years after the date on which the warrant is issued.

12.66 Discharge of person committed (RSC 52.8)

The court may, on the application of any person committed to an institution for any contempt of court, discharge him.

12.67 Savings (RSC 52.5, 9)

(1) Nothing in this Chapter shall be taken as affecting the power of the court to make an order of committal of its own initiative against a person guilty of contempt of court.

(2) Nothing in this Chapter shall be taken as affecting the power of the court to make an order requiring —

- (a) a person guilty of contempt of court, or
- (b) a person punishable by virtue of any statutory provision in like manner as if he had been guilty of contempt of the court,

to pay a fine or to give security for his good behaviour; and rules 12.61 to 12.64, so far as applicable and with the necessary modifications, apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

12.68 Committal for non-payment of judgment debt etc.

The foregoing provisions of this Chapter apply, with any necessary modifications, to the committal of a person under —

- (a) section 17 of the Bankruptcy Procedure Act 1892, or
- (b) section 2 of the Imprisonment for Debt Act 1928,

as they apply to committal for contempt of court.

CHAPTER 10: ENFORCEMENT OF JUDGMENTS ABROAD

12.69 Scope of Chapter

(1) This Chapter applies to applications to the court under section 9 of the 1968 Act.

(2) In this Chapter ‘the 1968 Act’ means the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968.

12.70 Application for a certified copy of judgment (74.12)

(1) A judgment creditor who wishes to enforce, in a country to which Part I of the 1968 Act applies, a judgment entered in the court must apply for a certified copy of the judgment.

(2) The application may be made by letter without notice.

12.71 Evidence in support (74.13)

(1) An application under rule 12.70 must be supported by written evidence exhibiting copies of —

- (a) the claim form in the proceedings in which judgment was given;
- (b) evidence that it was served on the defendant;
- (c) the statements of case; and
- (d) where relevant, a document showing that for those proceedings the applicant was an assisted person.

(2) The written evidence must —

- (a) identify the grounds on which the judgment was obtained;
- (b) state whether the defendant objected to the jurisdiction and, if he did, the grounds of his objection;
- (c) show that the judgment —
 - (i) has been served in accordance with Chapter 7 of Part 2 and rule 10.5, and
 - (ii) is not subject to a stay of enforcement;
- (d) state the amount in respect of which the judgment remains unsatisfied;
- (e) state whether interest is recoverable on the judgment, and if so, either —
 - (i) the amount of interest which has accrued up to the date of the application, or
 - (ii) the rate of interest, the date from which it is recoverable, and the date on which it ceases to accrue.

CHAPTER 11: FORFEITURE AND CIVIL RECOVERY

12.72 Forfeiture

Schedule 12.1 makes provision for proceedings in the court for —

- (a) the forfeiture of property used for the purposes of terrorism;
- (b) the enforcement of fines, forfeitures and other orders imposed or made by the International Criminal Court; and
- (c) the enforcement of orders made overseas which are enforceable in the Island by virtue of an order under section 32 of the Criminal Justice Act 1991.

12.73 Civil recovery

Schedule 12.2 makes provision for proceedings under —

- (a) Part 1 of the Proceeds of Crime Act 2008 (civil recovery orders); and
- (b) Part 4 of that Act (investigations).

SCHEDULE 12.1 — FORFEITURE

Rule 12.72

1. *Interpretation*

In this Schedule —

‘the 2003 Act’ means the Anti-Terrorism and Crime Act 2003;

‘ICC order’ means —

- (a) a fine or forfeiture ordered by the International Criminal Court; or
- (b) an order by the International Criminal Court against a person convicted by that Court specifying a reparation to, or in respect of, a victim;

‘the ICC Regulations’ means the International Criminal Court (Enforcement) Regulations 2004.

2. *General*

(1) Proceedings under this Schedule shall be allocated to the chancery procedure.

(2) The title of any proceedings under this Schedule shall be ‘*Proceedings under the Anti-Terrorism and Crime Act 2003* [or as the case may be] *against [name of defendant]*’.

(3) Where a defendant is believed to have absconded, any requirement under this Schedule that a document be served on the defendant is satisfied if it is sent or transmitted to, or left at, his usual or last known residence.

3. *Application for restraint order (RSC 115.3, 26)*

(1) An application for a restraint order under paragraph 5 of Schedule 2 to the 2003 Act may be made by the prosecutor by the issue of a claim form, which need not be served on any other party.

(2) An application under sub-paragraph (1) must be supported by a witness statement or affidavit, which must —

(a) state either —

- (i) that proceedings have been instituted against a person for an offence under any of sections 7 to 10 of the 2003 Act and that they have not been concluded; or
- (ii) that a criminal investigation has been started in the Island with regard to such an offence,

and in either case give details of the alleged or suspected offence and of the defendant’s involvement;

(b) where proceedings have been instituted, state that a forfeiture order has been made in the proceedings or the grounds for believing that such an order may be made, as the case may be;

(c) where proceedings have not been instituted —

- (i) indicate the state of progress of the investigation and when it is anticipated that a decision will be taken on whether to institute proceedings against the defendant;
- (ii) state the grounds for believing that a forfeiture order may be made in any proceedings against the defendant; and
- (iii) verify that the prosecutor is to have the conduct of any such proceedings;

(d) to the best of the witness’s ability, give full particulars of the property in respect of which the order is sought and specify the person or persons holding such property and any other persons having an interest in it.

(3) Unless the court otherwise directs, a witness statement or affidavit under sub-paragraph (2) may contain statements of information or belief with the sources and grounds of it.

4. *Restraint order (RSC 115.4, 27)*

(1) A restraint order may be made subject to conditions and exceptions, including but not limited to —

- (a) conditions relating to the indemnifying of third parties against expenses incurred in complying with the order, and
- (b) exceptions relating to living expenses and legal expenses of the defendant,

but the prosecutor shall not be required to give an undertaking to abide by any order as to damages sustained by the defendant as a result of the restraint order.

(2) Unless the court otherwise directs, a restraint order made where notice of it has not been served on any person shall have effect until a day which shall be fixed for the hearing where all parties may attend on the application.

(3) Where a restraint order is made the prosecutor must —

- (a) serve copies of the order and of the witness statement or affidavit in support on the defendant and on all other named persons restrained by the order, and
- (b) notify all other persons or bodies affected by the order or its terms.

5. *Discharge or variation of order (RSC 115.5, 28)*

(1) The prosecutor, or any person or body on whom a restraint order is served or who is notified of the order, may make an application to discharge or vary the order.

(2) The application notice and any witness statement or affidavit in support must be filed and served on —

- (a) the prosecutor (if not the applicant),
- (b) the defendant (if not the applicant), and
- (c) any other person restrained or otherwise affected by the order,

not less than 2 clear days before the date fixed for the hearing of the application.

(3) Where a restraint order has been made and has not been discharged, the prosecutor must notify the court when proceedings for the offence have been concluded, and the court shall thereupon discharge the restraint order.

(4) The court may also discharge a restraint order upon receiving notice from the prosecutor that it is no longer appropriate for the order to remain in place.

(5) Where an order is made discharging or varying a restraint order, the applicant must serve copies of the order of discharge or variation on all persons restrained by the restraint order and must notify all other persons affected of the terms of the order of discharge or variation.

6. *Application for registration of overseas order (RSC 115.12, 13, 15, 30, 31)*

(1) An application for —

- (a) registration of a British Islands order under paragraph 13 of Schedule 2 to the 2003 Act, or
- (b) registration of an ICC order under regulation 2 of the ICC Regulations,

may be made without notice.

(2) An application under sub-paragraph (1)(a) may be made without notice, and must be supported by a witness statement or affidavit —

- (a) exhibiting the order or a certified copy of it; and

- (b) stating, to the best of the witness's ability, particulars of such property in respect of which the order was made as is in the Island, and the person or persons holding the property.
- (3) An application under sub-paragraph (1)(b) must be supported by a witness statement or affidavit —
 - (a) exhibiting the order or a verified or certified or otherwise duly authenticated copy of it and, where the order is not in the English language, a translation of it into English certified by a notary public or authenticated by witness statement or affidavit; and
 - (b) stating —
 - (i) that the order is in force and is not subject to appeal;
 - (ii) where the person against whom the order was made did not appear in the proceedings, that he received notice thereof in sufficient time to enable him to defend them;
 - (iii) in the case of money, either that at the date of the application the sum payable under the order has not been paid or the amount which remains unpaid, as may be appropriate, or, in the case of other property, the property which has not been recovered; and
 - (iv) to the best of the witness's knowledge, particulars of what property the person against whom the order was made holds in the Island, giving the source of the witness's knowledge.
- (4) Unless the court otherwise directs, a witness statement or affidavit under sub-paragraph (2) or (3) may contain statements of information or belief with the sources and grounds of it.
- (5) The powers conferred on the court by regulation 2 of the ICC Regulations may be exercised by a court officer.

7. *Register of orders (RSC 115.16)*

- (1) There shall be kept in the court office under the direction of the Chief Registrar —
 - (a) a register of British Islands orders registered under Schedule 2 to the 2003 Act; and
 - (b) a register of ICC orders registered under regulation 2 of the ICC Regulations.
- (2) There shall be included in the register particulars of any variation or setting aside of a registration and of any execution issued on a registered order.

8. *Notice of registration (RSC 115.17, 33)*

- (1) Notice of the registration of an ICC order must be served on the person against whom it was obtained —
 - (a) by delivering it to him personally,
 - (b) by sending it to him at his usual or last known address or place of business, or
 - (c) in such other manner as the court may direct.
- (2) Notice of the registration of a British Islands order must be served on the person or persons holding the property referred to in paragraph 6(2)(b) and any other persons appearing to have an interest in that property.
- (3) Permission is not required to serve the notice out of the jurisdiction and rules 2.43, 2.44, 2.45 and 2.48 apply to such a notice as they apply to a claim form.

9. *Application to vary or set aside registration (RSC 115.18, 19, 34, 35)*

- (1) An application —

- (a) by the person against whom an ICC order was made to vary or set aside the registration of the order, or
- (b) to vary or set aside the registration of a British Islands order (except under paragraph 10)

must be made to a judge and be supported by witness statement or affidavit.

(2) If an application is made under sub-paragraph (1), the order shall not be enforced until after the application is determined.

(3) Sub-paragraph (2) does not apply to the taking of steps under paragraph 7 or 8 of Schedule 2 to the 2003 Act, as applied by paragraph 13(6) of that Schedule.

10. Variation, satisfaction and discharge of registered order (RSC 115.20)

Upon the court being notified by the applicant for registration that an order which has been registered has been varied, satisfied or discharged, particulars of the variation, satisfaction or discharge, as the case may be, shall be entered in the register.

11. Variation and cancellation of registration (RSC 115.36)

(1) If effect has been given (whether in the Island or elsewhere) to a British Islands order, or the order has been varied or discharged by the court by which it was made, the applicant for registration must inform the court.

(2) If such effect has been given in respect of all the money or other property to which the order applies, or if the order has been discharged by the court by which it was made, registration of the order shall be cancelled.

(3) If such effect has been given in respect of only part of the money or other property, or if the order has been varied by the court by which it was made, registration of the order shall be varied accordingly.

12. External forfeiture orders (RSC 115.21A)

(1) In this rule 'external forfeiture order' means an order made by a court in a country or territory outside the Island which is enforceable in the Island by virtue of an order under section 32 of the Criminal Justice Act 1991.

(2) Paragraphs 6 to 10 apply, with such modifications as are necessary and subject to the provisions of any order under the said section 32, to proceedings for the registration and enforcement of external forfeiture orders as they apply to such proceedings in relation to ICC orders.

SCHEDULE 12.2 — CIVIL RECOVERY

Rule 12.73

13. *Interpretation*

In this Schedule –

- (a) ‘the Act’ means the Proceeds of Crime Act 2008;
- (b) ‘appropriate officer’ has the meaning given in section 195 of the Act;
- (c) ‘civil recovery proceedings’ means proceedings under Part 1 of the Act;
- (d) ‘interim receiving order’ has the meaning given in section 13 of the Act;
- (e) ‘management receiving order’ means an order to appoint a receiver under section 10 of the Act;
- (f) ‘property freezing order’ has the meaning given in section 6 of the Act;
- (g) other expressions have the same meaning as in the Act.

14. *Claim for a recovery order*

(1) A claim by the Attorney General for a recovery order must be allocated to the chancery procedure.

(2) The claim form must –

- (a) identify the property in relation to which a recovery order is sought;
- (b) state, in relation to each item or description of property –
 - (i) whether the property is alleged to be recoverable property or associated property; and
 - (ii) either who is alleged to hold the property or, where the Attorney General is unable to identify who holds the property, the steps that have been taken to try to establish their identity;
- (c) set out the matters relied upon in support of the claim; and
- (d) give details of the person nominated by the Attorney General to act as trustee for civil recovery in accordance with section 23 of the Act.

(3) The evidence in support of the claim must include the signed written consent of the person nominated by the Attorney General to act as trustee for civil recovery if appointed by the court.

15. *Application for property freezing order or receiving order*

(1) An application for a property freezing order, an interim receiving order or a management receiving order must be made to a judge in accordance with Chapter 2 of Part 7.

(2) Rule 7.12 and Chapter 3 of Part 7 do not apply to applications for property freezing orders, interim receiving orders and management receiving orders.

(3) The application may be made without notice in the circumstances set out in section 6(3), 10(3) or 13(3) of the Act, as the case may be.

(4) An application for a property freezing order must be supported by written evidence which must –

- (a) set out the grounds on which the order is sought;
- (b) give details of each item or description of property in respect of which the order is sought, including an estimate of the value of the property; and
- (c) state in relation to each item or description of property in respect of which the order is sought –

- (i) whether the property is alleged to be recoverable property or associated property, and the facts relied upon in support of that allegation; and
- (ii) in the case of any associated property, who is believed to hold the property or, if the Attorney General is unable to establish who holds the property, the steps that have been taken to establish his identity.

(5) Chapter 3 of Part 12 applies to an application for an interim receiving order with the modifications that the Attorney General's written evidence must —

- (a) in addition to the grounds of the application, state the matters specified in sub-paragraph (4)(c);
- (b) identify an individual whom the court is to be asked to appoint as receiver ('the nominee'); and
- (c) be accompanied by written consent, signed by the nominee, to act as receiver if appointed.

16. *Property freezing order or interim receiving order made before commencement of claim for recovery order*

A property freezing order or interim receiving order which is made before a claim for a recovery order has been commenced shall —

- (a) specify a period within which the Attorney General must either start the claim or apply for the continuation of the order while he carries out his investigation; and
- (b) provide that the order will be set aside if the Attorney General does not start the claim or apply for its continuation before the end of that period.

17. *Exclusions when making property freezing order or interim receiving order*

(1) Where the court makes a property freezing order or interim receiving order on an application without notice, it shall normally make an initial exclusion from the order for the purpose of enabling the respondent to meet his reasonable legal costs so that he may —

- (a) take advice in relation to the order;
- (b) prepare a statement of assets in accordance with paragraph 8(3); and
- (c) if so advised, apply for the order to be varied or set aside.

(2) The total amount specified in the initial exclusion shall not normally exceed £3,000.

(3) When it makes a property freezing order or interim receiving order before a claim for a recovery order has been commenced, the court may also make an exclusion to enable the respondent to meet his reasonable legal costs so that (for example) when the claim is commenced —

- (a) he may file an acknowledgment of service and any written evidence on which he intends to rely; or
- (b) he may apply for a further exclusion for the purpose of enabling him to meet his reasonable costs of the proceedings.

18. *Interim receiving order or management receiving order: application for directions*

(1) An application for directions as to the exercise of the functions of —

- (a) an interim receiver under section 17 of the Act; or
- (b) a management receiver under section 12 of the Act,

may be made at any time by —

- (i) the interim receiver or management receiver, as appropriate;

- (ii) any party to the proceedings; and
- (iii) any person affected by any action taken, or proposed to be taken, by the interim receiver or management receiver.

(2) The application must be made by application notice, which must be served on

- (a) the interim receiver or management receiver, as appropriate (unless he is the applicant);
- (b) every party to the proceedings; and
- (c) any other person who may be interested in the application.

19. *Application to vary or set aside an order*

(1) An application to vary or set aside a property freezing order, an interim receiving order or a management receiving order (including an application for, or relating to, an exclusion from the order) may be made at any time by –

- (a) the Attorney General; or
- (b) any person affected by the order.

(2) Unless the court otherwise directs or exceptional circumstances apply, a copy of the application notice must be served on –

- (a) every party to the proceedings;
- (b) in the case of an application to vary or set aside an interim receiving order or management receiving order, the interim receiver or management receiver (as appropriate); and
- (c) any other person who may be affected by the court's decision.

(3) The evidence in support of an application for an exclusion from a property freezing order or interim receiving order for the purpose of enabling a person to meet his reasonable legal costs must –

- (a) contain full details of the stage or stages in civil recovery proceedings in respect of which the costs in question have been or will be incurred;
- (b) include an estimate of the costs which the person has incurred and will incur in relation to each stage to which the application relates;
- (c) include a statement of assets containing the information set out in paragraph 8(3) (unless the person has previously filed such a statement in the same civil recovery proceedings and there has been no material change in the facts set out in that statement);
- (d) where the court has previously made an exclusion in respect of any stage to which the application relates, explain why the person's costs will exceed the amount specified in the exclusion for that stage; and
- (e) state whether the terms of the exclusion have been agreed with the Attorney General.

20. *Exclusions for the purpose of meeting legal costs: general provisions*

(1) Subject to sub-paragraph (2), when the court makes an order or gives directions in civil recovery proceedings it shall at the same time consider whether it is appropriate to make or vary an exclusion for the purpose of enabling any person affected by the order or directions to meet his reasonable legal costs.

(2) The court shall not make an exclusion for the purpose of enabling a person to meet his reasonable legal costs, other than an exclusion to meet the costs of taking any of the steps referred to in paragraph 5(1), unless he has made and filed a statement of assets.

(3) A statement of assets is a witness statement which sets out all the property which the maker of the statement owns, holds or controls, or in which he has an interest, giving the value, location and details of all such property.

(4) Information given in a statement of assets under this Schedule may be used only for the purpose of the civil recovery proceedings.

(5) The court –

(a) shall not make an exclusion for the purpose of enabling a person to meet his reasonable legal costs (including an initial exclusion under paragraph 5(1); and

(b) may set aside any exclusion which it has made for that purpose or reduce any amount specified in such an exclusion,

if it is satisfied that the person has property to which the property freezing order or interim receiving order does not apply from which he may meet those costs.

(6) The court shall normally refer to a costs officer any question relating to the amount which an exclusion should allow for reasonable legal costs in respect of proceedings or a stage in proceedings.

(7) An exclusion made for the purpose of enabling a person to meet his reasonable legal costs shall specify –

(a) the stage or stages in civil recovery proceedings to which it relates;

(b) the maximum amount which may be released in respect of legal costs for each specified stage; and

(c) the total amount which may be released in respect of legal costs pursuant to the exclusion.

(8) A person who becomes aware that his legal costs –

(a) in relation to any stage in civil recovery proceedings have exceeded or will exceed the maximum amount specified in the exclusion for that stage; or

(b) in relation to all the stages to which the exclusion relates have exceeded or will exceed the total amount that may be released pursuant to the exclusion,

must apply for a further exclusion or a variation of the existing exclusion as soon as reasonably practicable.

21. *Investigations: application for order or warrant*

(1) An application for an order or warrant under Part 4 of the Act in connection with a civil recovery investigation or (where applicable) a detained cash investigation must be made to a judge by filing an application notice.

(2) The application may be made without notice.

22. *Confidentiality of court documents*

(1) Rules 2.20 and 2.21 do not apply to an application under Part 4 of the Act, and sub-paragraphs (2) and (3) have effect in their place.

(2) When an application is issued, the court file will be marked ‘Not for disclosure’ and, unless a judge grants permission, the court records relating to the application (including the application notice, documents filed in support, and any order or warrant that is made) shall not be made available by the court for any person to inspect or copy, either before or after the hearing of the application.

(3) An application for permission under sub-paragraph (2) must be made in accordance with Chapter 2 of Part 7.

23. *Application notice and evidence*

(1) The application must be supported by written evidence, which must be filed with the application notice.

(2) The evidence must set out all the matters on which the appropriate officer relies in support of the application, including any matters required to be stated by the relevant sections of the Act, and all material facts of which the court should be made aware.

24. *Hearing of the application*

The application shall be heard and determined in private, unless the judge hearing it directs otherwise.

25. *Variation or discharge of order or warrant*

(1) An application to vary or discharge an order or warrant may be made by –

- (a) the appropriate officer; or
- (b) any person affected by the order or warrant.

(2) An application under sub-paragraph (1) to stop an order or warrant from being executed must be made immediately upon it being served.

(3) A person applying to vary or discharge a warrant must first inform the appropriate officer that he is making the application.

(4) The application must, if practicable, be made to the judge who made the order or issued the warrant.

26. *Production order*

(1) The application notice must name as a respondent the person believed to be in possession or control of the material in relation to which a production order is sought.

(2) The application notice must specify –

- (a) whether the application is for an order under paragraph (a) or (b) of section 162(4) of the Act;
- (b) the material, or description of material, in relation to which the order is sought; and
- (c) the person who is believed to be in possession or control of the material.

(3) An application under section 164 of the Act for an order to grant entry may be made either –

- (a) together with an application for a production order; or
- (b) by separate application, after a production order has been made.

(4) An application notice for an order to grant entry must –

- (a) specify the premises in relation to which the order is sought; and
- (b) be supported by written evidence explaining why the order is needed.

(5) A production order, or an order to grant entry, must contain a statement of the right of any person affected by the order to apply to vary or discharge the order.

27. *Search and seizure warrant*

(1) The application notice must name as the respondent the occupier of the premises to be subject to the warrant, if known.

(2) The evidence in support of the application must state –

- (a) the matters relied on by the appropriate officer to show that one of the requirements in section 169(6) of the Act for the issue of a warrant is satisfied;

- (b) details of the premises to be subject to the warrant, and of the possible occupier or occupiers of those premises;
- (c) the name and official position (if any) of the person who it is intended will execute the warrant.
- (3) There must be filed with the application notice drafts of –
 - (a) the warrant; and
 - (b) a written undertaking by the person who is to execute the warrant to comply with sub-paragraph (7).
- (4) A search and seizure warrant must –
 - (a) specify the statutory power under which it is issued and, unless the court orders otherwise, give an indication of the nature of the investigation in respect of which it is issued;
 - (b) state the address or other identification of the premises to be subject to the warrant;
 - (c) state the name and official position (if any) of the person who is authorised to execute the warrant;
 - (d) set out the action which the warrant authorises the person executing it to take under the relevant sections of the Act;
 - (e) give the date on which the warrant is issued;
 - (f) include a statement that the warrant continues in force until the end of the period of one month beginning with the day on which it is issued;
 - (g) contain a statement of the right of any person affected by the order to apply to discharge or vary the order.
- (5) Rule 10.2 applies to a search and seizure warrant.
- (6) Upon the issue of a warrant the court shall provide to the appropriate officer –
 - (a) the sealed warrant; and
 - (b) a copy of it for service on the occupier or person in charge of the premises subject to the warrant.
- (7) A person attending premises to execute a warrant must, if the premises are occupied, produce the warrant on arrival at the premises, and as soon as possible thereafter personally serve a copy of the warrant and an explanatory notice on the occupier or the person appearing to him to be in charge of the premises.
- (8) The person executing the warrant must also comply with any order which the court may make for service of any other documents relating to the application.

28. *Disclosure order*

- (1) The application notice must, if practicable, name as respondents the persons on whom the appropriate officer intends to serve notices under the disclosure order sought.
- (2) A disclosure order must –
 - (a) give an indication of the nature of the investigation for the purposes of which the order is made;
 - (b) set out the action which the order authorises the appropriate officer to take in accordance with section 174(4) of the Act;
 - (c) contain a statement of –
 - (i) the offences relating to disclosure orders under section 176 of the Act; and

- (ii) the right of any person affected by the order to apply to discharge or vary the order.

(3) Where, pursuant to a disclosure order, the appropriate officer gives to any person a notice under section 174(4) of the Act, he must also at the same time serve on that person a copy of the disclosure order.

29. *Customer information order*

(1) The application notice must, unless it is impracticable to do so because they are too numerous, name as respondents the financial institution or institutions to which it is proposed that an order should apply.

(2) A customer information order must –

- (a) specify the financial institution, or description of financial institutions, to which it applies;
- (b) state the name of the person in relation to whom customer information is to be given, and any other details to identify that person;
- (c) contain a statement of –
 - (i) the offences relating to disclosure orders under section 183 of the Act; and
 - (ii) the right of any person affected by the order to apply to discharge or vary the order.

(3) Where, pursuant to a customer information order, the appropriate officer gives to a financial institution a notice to provide customer information, he must also at the same time serve a copy of the order on that institution.

30. *Account monitoring order*

(1) The application notice must name as a respondent the financial institution against which an account monitoring order is sought.

(2) The application notice must –

- (a) state the matters required by section 187(3) and (4) of the Act; and
- (b) give details of –
 - (i) the person whose account or accounts the application relates to;
 - (ii) each account or description of accounts in relation to which the order is sought, including if known the number of each account and the branch at which it is held;
 - (iii) the information sought about the account or accounts;
 - (iv) the period for which the order is sought;
 - (v) the manner in which, and the frequency with which, it is proposed that the financial institution should provide account information during that period.

(3) An account monitoring order must contain a statement of the right of any person affected by the order to apply to vary or discharge the order.