Methods of enforcement in civil courts

2–04 Unless there is some contrary provision in a statute, rule or Practice Direction, a successful judgment creditor may use any of the available methods of enforcement listed in CPR 70 PD paras 1.1 and 1.2 to compel payment of what is owed from the judgment debtor. In addition, insolvency procedures can be used, (as considered in Chs 14 and 15 of this book). The judgment creditor can also in most cases use more than one method of enforcement either concurrently or consecutively to enforce payment unless this is prohibited by rule or statute. In this regard, a judgment creditor would need permission to levy execution against a judgment debtor when an attachment of earnings order was in force (see Attachment of Earnings Act 1971 s.8) A judgment given against a third party who is not a party for proceedings can be enforced as if that person were a party through the procedure known as "third party debt order" (TPDO) (see Ch.8).

For ease of reference, the methods in the High Court and County Court are set out below.

Methods of enforcement in the High Court for the payments of money

2–05 These include:

- issuing a High Court writ of control (the County Court equivalent is a warrant of control);
- issuing an application for a third party debt order;
- issuing an application for a charging order, stop order or stop notice;
- appointing a "receiver by way of equitable execution";
- issuing an application for committal, which is only available where it is specifically permitted by a rule or under the (now very old) Debtors Act 1869 and 1878 (see CPR Pt 81);
- issuing a writ of sequestration (where this is permitted) under CPR r.81.20, where the nature of the judgment is in the form of an injunction.

It should be noted that attachment of earnings orders are not available in the High Court, other than to enforce a High Court maintenance order.

Turning away from judgments for the payments of money, where a judgment or order is for possession of land, this may be enforced in the High Court by a writ of possession. Where the judgment or order is for the delivery of goods, the successful claimant can issue a writ of delivery. If the judgment or order for possession or delivery is in the nature of an injunction, enforcement by committal proceedings or by writ of sequestration is also permissible.

In addition to the methods of enforcement, writs of execution in aid of a writ of control are available in the High Court and there is no equivalent in the County Court, except for warrants of restitution.

Insolvency procedures such as bankruptcy or winding up can also be used.

Methods of enforcement in the County Court

2–06 The methods of enforcement available in the County Court are similar to the High Court, but there are one or two exceptions. County Court orders may be enforced by:

- warrants of control against the goods of the judgment debtor (see s.85 of the County Courts Act 1984 (as amended by SI 1991/724)) then ultimately by the Civil Procedure (Amendment) Rules 2014 (SI 2014/407 and CPR Pt 83);
- warrants of possession of land (see CPR Pt 83);
- a warrant for the delivery of goods (see CPR Pt 83);
- an application for an attachment of earnings (see s.1(2) of the Attachment of Earnings Act 1971, CPR Sch.2 CCR Order 27);
- an application for a charging order against any interest in land, as provided under s.1 of the Charging Orders Act 1979 (as amended by Sch.3 to ss.34 and 37 of the Administration of Justice Act 1982, Sch.2 to s.148(1) of the County Courts Act 1984 the County Courts Jurisdiction Order 1981, (SI 1981/1123) and ss.93 and 94 of the Tribunal Courts and Enforcement Act 2007;
- a charging order against any security or funds in court or under any trust (this type of enforcement is very rare but does provide for enforcement against securities held by the judgment debtor);
- an application for a third party debt order (see CPR Pt 72);
- committal of the judgment debtor (see County Courts Act 1984 s.119 (as amended by Civil Procedure Act 1997 s.10, Sch. 2), CPR Pt 81);
- appointing a receiver (see County Courts Act 1984 s.107 and CPR Pt 69);

- in relation to maintenance orders and other debts owned to the Crown, a judgment summons (see s.5 of the Debtors Act 1869 (as amended by Sch.5 to s.169(1) of the Bankruptcy Act 1883, Statute Law (Repeals) Act 2004, (SI 2002/439) (as restricted by Administration of Justice Act 1970 s.11, Sch.4) and CPR);
- the making of an administration order (see ss.112–117 of the County Courts 1984 (as amended) and note that an administration order may also be made following an application for an attachment of earnings order pursuant to s.4 of the Attachment of Earnings Act 1974 (as amended by Sch.3 to s.13 of the Insolvency Act 1976, Sch.2, para.40 to s.148(1) of the County Courts Act 1984).

Insolvency procedures (bankruptcy or winding up) can also be used as a method of enforcement in the County Court.

Enforcement against one of several defendants

2–07 An order against several persons for payment of a sum of money, whether or not deemed joint and several, may be enforced against any one of them separately (*Land Credit Co of Ireland v Lord Fermoy* (1869–1870) L.R. 5 Ch. App. 323).

Enforcement by or against non-parties

2–08 Under CPR Pt 70.4, if a judgment or order is given or made in favour of 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. Such orders are rare but do arise, and as more and more sophistication is being shown in the practice of litigation, they may become more common (examples could be a non-party costs order or a "wasted costs" order under s.51 of the Senior Courts Act 1981 or an undertaking to pay a non-party's costs). A non-party who has the benefit of an order does not need permission to enforce the order and can enforce it against the party ordered to pay.

Solicitor's implied authority to commence enforcement and responsibility to advise

2–09 Having been retained in proceedings leading to a judgment, a solicitor has implied authority to commence enforcement on that judgment without further instructions from his client (*Sandford v Porter & Waine* [1912] 2 I.R. 551). However, this case is over 100 years old so reference should always be made to the Solicitors Conduct Rules

to ensure work is being carried out in accordance with those, and with the client letter of engagement which would have been completed and agreed at the outset of instructions.

The Solicitors Regulation Authority publishes a handbook with all this information set out and it can be found at *http//:www.sra.org.uk/handbook* [Accessed August 2015]. Version 14 of the Handbook was published on 30 April 2015.

Information about costs, timescales and liability for charges must always be explained fully, to avoid any later complaint. Furthermore, if third parties are to assist in the enforcement process, then clients must be made aware of the liability to pay their charges. One good example here is in the case of enforcement through a High Court Enforcement Officer, where the solicitor should warn the client of the client's liability to pay those charges, as such charges are potentially a first charge on any monies recovered, subject to any other agreement reached.

Practitioners should always be proactive with their clients in the area of advice when it comes to enforcing the client's judgment or order, as a failure to do so may amount to a failure to properly advise. If a client is not advised on the various methods of enforcement or, for example, guided on the best chance of success or the availability of interest on a County Court judgment that could have been transferred to the High Court for enforcement, then in the event of missing out on an opportunity to recoup the judgment debt, a solicitor can expect at worst a claim for negligence or at best a very disappointed client. In these days of increased competition for business, being proactive is absolutely crucial.

Enforcement of judgments where state immunity or diplomatic privilege arise

2–10 The immunity of sovereign states from the enforcement of domestic court judgments can be a minefield for the uninitiated. In English law the subject is dealt with under the State Immunity Act ("SIA") 1978, in s.1 of which there is general immunity from a foreign (non-UK) state being sued—subject to limited exceptions.

These exceptions include either where the state has submitted to the jurisdiction of the English courts (s.2(1)) or where the transaction that is the subject of the lawsuit is a commercial one (s.3).

The enforcement of the judgment will usually arise against the state where it has been obtained under a commercial contract in which a state has agreed to the jurisdiction of the English court and submitted to its jurisdiction. For a modern example of a case on this area see *NML Capital Ltd v Argentina* [2011] UKSC 31, where the Supreme Court overturned the Court of Appeal and held that Argentina could not claim sovereign immunity in England in respect of proceedings to enforce a New York judgment on a bond issue

under a fiscal agreement between Argentina and NML. The majority of the Supreme Court Judges were of the view that the enforcement proceedings were not "proceedings relating to a commercial transaction" within the meaning of s.3 of the SIA. However, Argentina was excluded from invoking state immunity under s.2 of the SIA, by virtue of the terms of the waiver and jurisdiction clauses in the underlying agreement. The Court also found that Argentina was precluded from claiming state immunity for the enforcement proceedings under the Civil Jurisdiction and Judgments Act 1982.

In deciding to enforce against a state, a practitioner must decide whether the state in question can be defined either as a unitary body with a legal personality, or a separate entity within the definitions of the 1978 Act.

The answer to this preliminary point will determine how any judgment can be enforced.

2–11 Immunity currently exists for British subjects outside of the 1978 Act under the Diplomatic Privileges Act 1964. Under this legislation, diplomatic immunity is conferred upon a wide range of assets belonging to a state. As a result, embassies can claim that their goods and chattels, including vehicles and money held in bank accounts, are subject to diplomatic immunity and therefore unavailable for enforcement purposes.

If, however, the embassy or some other organ of the state becomes involved in carrying out commercial activities, such as a tourist bureau or a property development subsidiary, then assets may not be immune. The problem here is establishing on evidence whether the assets are in fact used for commercial purposes. Here, a practitioner wishing to pursue a judgment against an embassy may find that the ambassador is prepared to issue a certificate that the goods are that of the embassy and are not available. If this happens, this is treated as evidence that the assets are not used for commercial purposes under s.13(5) of the 1978 Act, and so the burden will be on the judgment creditor to prove the contrary.

The property of a state cannot be subject to the enforcement of a judgment (s.13(2(b)), unless consent has been given by the state. Such consent may have been given expressly in a commercial agreement giving consent to enforcement as well as submitting to the jurisdiction of the English courts. It requires some forethought into what can go wrong in a commercial relationship when entering into a contract with a state or any of its organs such as the embassy or commercial entities, to ensure it is possible for a judgment to be entered against that state. If no such express consent can be found in a contract, then it may still be possible to use the exception in s.13(4) of the Act, which provides that any property used for commercial purposes will be available for enforcement. Obviously, it is easier to rely on an express agreement than to construct this by using the exception.

In the decision of *Harb v HRH Prince Abdul Aziz Bin Fahd Bin Abdul Aziz* [2015] EWCA Civ 481, the English Court of Appeal confirmed that the immunity afforded by the SIA applies to a head of state who dies in office in the same way as it applies to a head of state who stands down from office during his or her lifetime. In short, if the estate is sued, immunity exists only for official acts, and not private acts, committed before the head of state's death in office. As noted by the Court of Appeal, the case was not covered directly by authority and appears to have been the first case of its kind to have dealt directly with this question of public international law.

Clearly this is an involved area in which a course of action should not be embarked upon lightly. It may be sensible to seek specialist advice and support if possible, and matters should also be considered in the context of the Crown Proceedings Act 1947 which can in many circumstances protect the Crown (which is widely defined) against proceedings, and the International Organisations Act 1981, which amended a similar Act of 1968 and provides certain privileges and immunities to international organisations and their staff by the member governments which establish them.

2–12 In the case of *Société Eram Shipping Co Ltd v Compagnie Internationale de Navigation* [2003] UKHL 30; [2004] 1 A.C. 260 the issue surrounding the enforcement of a judgment against the state was examined. The case serves as a useful and modern precedent on the issues that need to be addressed by judgment creditors when faced with enforcement in what is a complex scenario. The enforcement method at the centre of this case was the third party debt procedure under CPR Pt 72. As will be seen later, the basis of this procedure is often that a bank, as the debtor of the judgment debtor, is served with an order to pay the judgment creditor and effectively "leapfrog" the judgment debtor to whom the bank owes the money in the bank account. The bank will be discharged from its obligation to pay the judgment debtor under the third party debt order when it pays the money owed to the judgment creditor under the terms of the final order. However, what the *Société Eram Shipping* case underlines is that for this enforcement method to work, the debt must be owed within England and Wales, and further the bank owing the debt must also be within England and Wales. Unless this is the case, a bank may risk paying the judgment creditor in England under the terms of the order, and then have to pay the judgment debtor in the jurisdiction where the judgment debtor's bank is situated.

Ultimately, when it comes to enforcing a judgment or order against a state or any part thereof, thought should be given at the outset of the commercial relationship as to what the contract should provide for. When contracting with a state, a "non-state party" should seek to protect itself through the contract that it draws up by including clauses which ensure that the state irrevocably appoints an agent

who can accept service of process within the jurisdiction and submits to the jurisdiction of the English court, as well as consenting to the giving of any relief or the issue of any process, including enforcement or execution against any property, irrespective of its use or intended use. The inclusion of appropriate clauses in the contract, should enforcement ultimately become necessary, will help lay the groundwork to meet the evidential burdens of jurisdiction, service and execution under English law. If it can be found that monies held in a bank account are owed to the state by a bank in the jurisdiction of England and Wales for commercial purposes, then the likelihood of successful enforcement improves—provided those monies can be identified. As with any third party debt enforcement, however, if there are no monies available, enforcement becomes fruitless.

Enforcement of judgments and orders of the Technology and Construction Court

2–13 Of course, there are various divisions of the High Court, but not all are enforcement courts (for example, judgments of the Commercial Court are normally enforced in the Queen's Bench Division). However, the Technology and Construction Court (TCC) produces judgments and orders capable of enforcement, along with adjudicators' decisions and arbitrators' awards. The party wishing to make use of any provision of the CPR, especially if they are concerned with the enforcement of judgments and orders made in the TCC in London, can use the TCC registry in London or any convenient TCC district registry as listed in the rules. Outside London, where the judgment or order in respect of which enforcement is sought is made by a judge, the party seeking an enforcement procedure should use the registry of the court in which the judgment or order was made. Where orders are required or sought to support enforcement of a TCC judgment or order, the judge of the TCC is the appropriate judge for that purpose. If available, the judge who gave the relevant judgment or made the relevant order is the appropriate judge to whom all applications should be addressed.

A TCC County Court judgment must be enforced in the County Court (if less than £600) or in the High Court where the judgment amount is more than £5,000. Amounts between £600 and £5,000 can be enforced in either court, at the option of the judgment creditor.

Enforcement of orders made in the Court of Appeal

2–14 Under s.15(4) of the Senior Courts Act 1981, any enactment authorising or requiring the taking of any steps for the enforcement of orders or judgments of the High Court applies similarly in relation to

the orders or judgments of the Court of Appeal. However note that the Court of Appeal is not an enforcement court, so you will need to issue enforcement proceedings of its judgments in the High Court. In this book, reference to a High Court judgment normally includes a High Court order and a judgment or order of the Court of Appeal. Indeed, it is questionable whether there is any meaningful distinction between a "judgment" and an "order", as CPR Pt 40 seems to make clear by supplying appropriate rules relating to both.

The County Courts Act 1984 contains no similar provision. Nevertheless, in *Ager v Ager* [1998] 1 W.L.R. 1074; [1998] 1 All E.R. 703 CA it was held that the jurisdiction conferred on the High Court by s.15(4) constituted a "general principle of practice" within the meaning of s.76 of the 1984 Act, which could be adopted and applied in proceedings in the County Court.

Enforcement of orders made by the Supreme Court

2–15 The enforcement of orders made by the Supreme Court in England and Wales is dealt with in para.13 of Practice Direction 40B, which supplements Pt 40 of the Civil Procedure Rules.

This provides for an application to be made in accordance with CPR Pt 23 for an order to make an order of the Supreme Court into an order of the High Court.

The application needs to be made to the procedural judge of the division, District Registry or court in which the proceedings are taking place, and may be made without notice unless the court directs otherwise.

The Pt 23 application must be supported by the following:

- details of the order which was the subject of the appeal to the Supreme Court or the House of Lords;
- details of the order of the Supreme Court, with a copy annexed; and
- a copy of the certificate of the Registrar of the Supreme Court of the assessment of the costs of the appeal to the Supreme Court.

The order to make an order of the Supreme Court an order of the High Court should be made using Form No. PF68.

An order made by the Supreme Court is a UK judgment, and enforcement of such an order in Scotland and Northern Ireland is dealt with in accordance with Sch.6 to the Civil Jurisdiction and Judgments Act 1982, which is dealt with in CPR Pt 74. (For more information on this area, see the information in Ch.10 concerning enforcement of foreign judgments.)

Interrelation of High Court with County Court judgments for enforcement

2–16 Where the judgment creditor intends to enforce the judgment using execution against goods as his chosen method of enforcement, the following should be borne in mind:

- a judgment may only be enforced in the High Court where the sum being recovered is £5,000 or more (and the proceedings are not under the Consumer Credit Act 1974);
- the judgment can only be enforced in the County Court where the sum being recovered is less than £600;
- for judgments between £600 and £5,000, the judgment creditor has a choice in which court to enforce the judgment—a decision which should be driven by the likely success of the enforcement officer, and no doubt the cost and time involved in managing the enforcement;
- judgments obtained under an agreement regulated by the Consumer Credit Act 1974 (as amended) can only be enforced in the County Court, regardless of the amount.

Where the County Court judgment is over £600 (a figure that can be made up of the judgment debt, costs allowed and any interest running on the judgment), the judgment can be transferred to the High Court as a result of the limits imposed under the High Court and County Courts Jurisdiction (Amendment) Order (SI 1999/1014). This statutory instrument determines the value at which judgments can be transferred from the County Court to the High Court. The initial statutory instrument was the High Court and County Courts Jurisdiction Order 1991 art.8, which originally introduced a transfer level of £2,000. This figure then reduced to £1,000, and now stands at £600. There has been much ongoing debate concerning the ability to allow judgment creditors freedom of choice when it comes to whether they want to enforce in the County Court or High Court, but at the time of publication of this book, the jurisdictional differential still applies. This jurisdictional point is considered in more detail in Ch.5).

Enforcement of awards of bodies other than the High Court and County Court and Court of Appeal and Supreme Court

2–17 Many tribunals are created by statute to deal with particular types of dispute. Hearings before a tribunal often result in an order for the payment of money. As most tribunals have no machinery for

enforcement, CPR r.70.5 provides the mechanism to allow the enforcement of the tribunal's award.

The Rules allow awards of certain tribunals to be enforced as if they were a judgment or order of the High Court or County Court. The statute that creates the tribunal will be the relevant enactment for the purpose of CPR r.70.5(3).

The rule does not apply, however, to:

- a foreign judgment to which CPR Pt 74 applies—this is dealt with later in this book;
- arbitration awards;
- any order to which RSC Order 115 applies—this order provides for registration in the High Court for the purposes of the enforcement of certain orders made in connection with criminal proceedings and investigations;
- employment tribunal awards which now have their own specially created "Fast Track", which is dealt with later in this chapter;
- proceedings relating to traffic enforcement under CPR Pt 75, which are dealt with later in this book, in Ch.11.

If enforcement of a tribunal award is permitted under the CPR, the following procedural points need to be noted:

- the application may be made without notice to the party who will become the judgment debtor, and the decision may be made by the court officer;
- the application must be made to the hearing centre for the area where the person against whom the award was made resides or carries on business, unless the court orders otherwise;
- the application notice must be in Practice Form N322A, which can be found on the HMCTS website in the Forms and Guidance section: *https://www.justice.gov.uk/courts/procedure-rules/civil/forms* [Accessed August 2015] (as can be seen, this website is now found via the *www.gov.uk* navigation, as part of a concerted plan to bring across many sites which were previously found via the Ministry of Justice website;
- under CPR r.70.5(6) a copy of the award must be filed with the application notice.

When making the application on Practice Form N322A, the application notice must state the name and the address of the person against whom it is sought to enforce the award, and how much of the award remains unpaid.

Under CPR r.70.5(8), an application to the High Court to register a tribunal award for enforcement must be sent in writing to the Head Clerk of the Action Department of the Royal Courts of Justice, Strand, London WC2A 2LL. (See also CPR 70 PD paras 4 and 5.)

The application must specify the statutory provision under which the application is made and state the name and address of the person against whom it seeks to enforce the decision. If the decision requires that person to pay a sum of money, then the amount which remains unpaid must be stated.

Different types of award of "other bodies" capable of enforcement

Arbitration awards

2–18 An arbitration award is specifically excluded from CPR r.70.5(2)(b). An application for permission under ss.66 or 101 of the Arbitration Act 1996 (being a New York Convention Award), to enforce an award in the same manner as a judgment or order, may be made without notice in an arbitration claim form. The enforcement of an arbitration award is governed by CPR Pt 62 s.III in respect of enforcement proceedings commenced on or after 25 March 2002. CPR r.62.20 deals with the enforcement of foreign awards.

Legal aid

2–19 The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 (SI 2013/480) now deal with all aspects of payment for legal aid services. The extent to which legal aid is available for cases is substantially reduced from previous years, and so careful note should be taken of current regulations and whether the grant of legal aid could also cover any enforcement proceedings in any court action. The starting point in terms of legislation is now the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

The Criminal Legal Aid (Recovery of Defence Costs Orders) Regulations 2013 (SI2013/511) deal with the recovery of costs in the High Court and Court of Appeal. The Criminal Legal Aid (Contribution Orders) Regulations 2013 (SI 2013/483) provide for contributions in relation to Crown court matters and for the enforcement of any order made. The Legal Aid (Information about Financial Resources) Regulations 2013 (SI 2013/628) allow for information exchange between the Legal Aid Authority and HM Revenue & Customs, among others.

Judgments of the Supreme Court (House of Lords)

2–20 Judgments of the Supreme Court (also referred to as the House of Lords, for cases that were heard before the title of the Court changed) are considered to be judgments "other than the High Court and County Court".

To convert a judgment from the highest court in England and Wales into a High Court judgment, an application must be made under CPR Pt 23, using Form No. PF68.

Tax Tribunals

2–21 Decisions of first tier and upper tax Tribunals are enforceable as awards and can become enforceable as County Court and in some circumstances High Court judgments.

Companies Act 1985 and 2006

2–22 Orders made by a competent court under the Companies Acts 1985 and 2006 are enforceable under the CPR according to the court in which it was made—see CPR Pt 49 and the supporting Practice Direction 49A.

Commercial Court

2–23 Unless otherwise ordered, all proceedings for the enforcement of any judgment or order for the payment of money given or made in the Commercial Court will be referred automatically to a master of the Queen's Bench Division or a district judge (see CPR Pt 58 PD 1.2(2)). Applications in connection with the enforcement of a judgment or order for the payment of money should be directed to the Registry, which will allocate them to the Admiralty Registrar or to one of the Queen's Bench Masters, as appropriate

Tribunals generally

2–24 A plethora of tribunals—too numerous to mention here— exist under various enactments. The judgments of some of these tribunals can be found on the Register of Judgments, Orders and Fines (see *http://www.trustonline.org.uk/understand-judgments-fines/entries-on-the-england-and-wales-register/tribunal-awards-and-the-register* [Accessed August 2015]. The judgments made by such tribunals will be enforceable as a result of the provisions of CPR r.70.5

- Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), as amended from time to time. It is now known as the Recast Brussels Regulation and applies to the enforcement of judgements across the EU in proceedings instituted on or after 10 January 2015. Note that it does not yet apply to Denmark. Although Denmark has notified the Commission of its decision to implement the Regulation, the date when it will become effective is not yet known. As stated in CPR r.74.1(5)(d) this is referred to therein as the "the Judgments Regulation";
- Regulation 805/2004 creating a European Enforcement Order for uncontested claims;
- the "Lugano Convention", being the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, between the European Community and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Kingdom of Denmark and signed by the European Community on 30 October 2007.
- Regulation 861/2007, the European Small Claims Procedure.

10–02 It is important to remember that anyone who needs to be able to enforce a judgment or order always should consider carefully the economics of doing so. When enforcement moves across borders, the need to assess the likely assets of the judgment debtor and the cost of the enforcement process become ever more acute. There is still plenty of work to be done to make the cost of enforcement outside England and Wales easy and transparent to follow. In many cases a person with the benefit of a judgment will have to factor in the cost of engaging a local lawyer to act as an agent, which only increases the cost of the enforcement process.

Universally, although different business rules operate, the way that judgments are enforced in England and Wales is essentially the same across the globe when the focus becomes the available assets. Houses, goods, salaries and business assets usually will have a complementary enforcement process in another part of the world.

Judgment creditors need to consider whether they are:

- Enforcing a judgment coming into England and Wales (which we shall refer to as an "incoming" judgment)—in this type of situation the judgment creditor needs to ensure that the foreign incoming judgment is capable of being recognised by the English and Welsh courts and follows the Rules so that it can be enforced.

- Enforcing a judgment going outside England and Wales (which we shall refer to as an "outgoing" judgment)—in this type of situation the judgment creditor will need to follow the Rules to ensure the judgment is certified as outstanding, and will then be recognised as a judgment which is capable of being enforced in the country where enforcement is to take place.

Fortunately, the Civil Procedure Rules help practitioners by streamlining CPR Pt 74 into five separate sections relevant to the type of judgment to be enforced. With that in mind, the table below sets out the five sections of CPR Pt 74, as follows: **10–03**

Section I—Enforcement in England and Wales of Judgments of Foreign Courts	For the enforcement of "incoming judgments" into England and Wales, this section of the CPR Pt 74 contains provisions for the registration and enforcement of judgments from the courts of the Member States of the European Union, the European Free Trade Area (EFTA), certain Commonwealth countries and certain states with which the UK has reciprocal treaties and conventions for the enforcement of judgments in the High Court.
Section II—Enforcement in Foreign Countries of Judgments of the High Court and County Courts	For the enforcement of judgments outside the European Economic Area, this section deals with "outgoing judgments" from the English and Welsh High Court and County Courts to a court in a foreign jurisdiction, under the provisions of the various Acts dating back to 1920, 1933 and 1982, to which reference is made throughout this chapter The application to transfer a judgment out of the jurisdiction is usually made without notice to the court where the judgment was given. The application is in effect a request for a certified copy of the English or Welsh judgment. In the case of judgments for registration in Member States of the EU, such a certificate will be in the form of Annex 1 to the relevant Judgments Regulation, (see also CPR 74A PD). Care should be taken to ensure that evidence in support of the application complies fully with CPR r. 74.13. There is some debate as to whether a judgment obtained in a County Court and transferred to the High Court for enforcement can be enforced through a court abroad. It has been queried as to whether such a

	judgment would meet the criteria of the 1920 and/or 1933 Acts in that it should be a judgment "given" or "obtained" in a superior court. If there is doubt about whether such a difficulty can be overcome, then the better course is to issue the proceedings in the High Court. If that is not permitted (for instance under the High Court and County Courts Jurisdiction Order 1991 (SI 1991/1724), where the claim involves a Consumer Credit Act matter), then the claim should still be issued in the County Court and, before any further step is taken, application made to transfer the claim to the High Court (see CPR 30.3).
Section III—Enforcement of UK Judgments in other parts of the UK	This section provides for the registration of "incoming" judgments of courts from other parts of the UK, by a certificate for the enforcement of either "money" and "non-money" provisions, as well as for obtaining a certificate for enforcing "outgoing" judgments from England and Wales to other parts of the UK. The largest traffic crossing borders in this regard will be Scottish decrees.
Section IV—Enforcement in England and Wales of European Community Judgments	The European Communities (Enforcement of Community Judgments) Order 1972 (SI 1972/1590) The "1972 Order" was made as part of the UK accession to the Treaty of Rome. It provided for the enforcement of certain judgments of the European Community/Union and some of its institutions, provided that the Secretary of State has appended an order for enforcement to the judgment (see arts 2(1) and 3(1) of the Order). It is important to note that the 1972 Order and this section of Pt 74 do not apply to the judgments of European Union Member States' domestic courts, which are subject to the Judgments Regulation and s.I of CPR Pt 74. The 1972 Order and this section apply to judgments and orders against persons (other than Member States) made by Community institutions, such as the Council of the Commission. They arise often in the nature of a penalty for breach of regulatory requirements (e.g. in respect of anticompetitive activities) and the European Court. They also include Euratom inspection orders (see CPR 74A PD para.9).

Section V—European Enforcement Orders	This section was introduced by the Civil Procedure (Amendment No. 3) Rules 2005 (SI 2005/2292). It makes provision for the certification of judgments of the courts of England and Wales as European Enforcement Orders, and for the recognition and enforcement in England and Wales of judgments of other contracting states that have been certified as European Enforcement Orders, under Council Regulation (EC) No. 805/2004. This statutory instrument created a "European Enforcement Order for Uncontested Claims" (OJ [2004] 143 0015–0039). EEOs have been available since 21 October 2005 for all judgments dated after 20 January 2005.

10–04 Although CPR Pt 74 has streamlined the position, it does not follow a particularly logical path, and so navigating the Rules can still be confusing. To help make the subject easier, this text approaches the problem of how to enforce a judgment with a foreign element by dividing the rules into eight types of scenario in which litigators are likely to find themselves and gives the section of CPR Pt 74 applicable to each type of situation.

Scenario 1—Is the judgment to be enforced an *incoming* judgment into England and Wales from another part of the UK?	SECTION III
Scenario 2—Is the judgment to be enforced an uncontested *incoming* judgment into England and Wales from another part of the EU?	SECTION V
Scenario 3—Is the judgment to be enforced an *incoming* judgment into England and Wales from another country with which England and Wales has a reciprocal treaty?	SECTION I
Scenario 4—Is the judgment to be enforced an *incoming* judgment into England and Wales from another country with which England and Wales has **NO** reciprocal treaty?	See the notes below
Scenario 5—Is the judgment to be enforced an *outgoing* judgment from England and Wales to another part of the UK?	SECTION III
Scenario 6—Is the judgment to be enforced an "uncontested" *outgoing* judgment from England and Wales to another country within the EU?	SECTION V

Scenario 7—Is the judgment to be enforced an *outgoing* judgment from England and Wales to another country with which England and Wales has a reciprocal treaty?	SECTION II
Scenario 8—Is the judgment to be enforced an *outgoing* judgment from England and Wales to another country where there is no reciprocal treaty in place?	See the notes below

Scenario 1—Is the judgment to be enforced an incoming judgment into England and Wales from another part of the UK?

CPR Part 74—SECTION III

10–05 If a judgment creditor wants to enforce a judgment debt in another part of the UK, the starting point in the Rules is CPR r.74.14. Helpfully, UK "jurisdiction" is defined in CPR r.2.3 to include England and Wales and any part of the territorial waters of the UK adjoining England and Wales. "Other parts" of the UK in practical terms means Scotland and Northern Ireland, but excludes the Isle and Man and the Channel Isles, which are dealt with under separate "scenarios" set out in this chapter.

In enforcing an incoming judgment from another part of the UK, the judgment creditor should appreciate the distinction between a "money provision" and a "non-money provision" judgment as set out in the Rules, which define each as follows:

- a "money provision" judgment is one in which the court has ordered the payment of one or more sums of money in a judgment, the enforcement of which is governed by s.18, Sch.6 to the 1982 Act;
- a "non-money provision" judgment is one in which the court has made provision for any relief or remedy which does not require the payment of a sum of money and where the enforcement is governed by s.18, Sch.7 to the 1982 Act.

The distinction as to the nature of the judgment to be enforced becomes important in terms of the application to register the incoming judgment.

10–06 CPR r.74.15 deals with the registration of incoming money provision judgments from either Scotland or Northern Ireland and is relatively straightforward. The money judgment is registered in the

High Court under para.5 of Sch.6 to the 1982 Act by way of a certificate issued by the courts in either Scotland or Northern Ireland, which must be registered in the Central Office of the High Court within six months of issue. The certificate will need to be filed together with a certified copy and written evidence to confirm it is a true copy. For example, if a Scottish judgment creditor wanted to issue a writ of control to a High Court Enforcement Officer, then the Scottish certificate, a certified copy and the writ of control ready to issue could be filed at the court.

The effect of registering the judgment in the High Court means the incoming judgment becomes a High Court judgment, and the enforcement of the incoming judgment is therefore subject to rules on the enforcement of High Court judgments. To be able to use the Attachment of Earnings procedure, which is only available in the County Court, a judgment creditor would then need to arrange for the judgment to be transferred to the County Court for enforcement.

10–07 The response of a judgment debtor to the registration of a judgment in this situation may be to apply to the court to stay the enforcement of the judgment. Under para.9 of Sch.6 to the 1982 Act an application may be made to stay the enforcement of the certificate issued under CPR r.74.15. If such an application is made, then the registering court (being the Supreme Court of England and Wales) has to be satisfied that the applicant is entitled and intends to apply to the judgment court (being the court in Scotland or Northern Ireland which made the judgment) to set aside or stay the judgment. If the High Court is satisfied that such an application is to be made, it can make an order staying the enforcement proceedings on any terms it thinks fit, including the period of the stay, which will enable the application to be dealt with.

CPR r.74.16 deals specifically with the registration of non-money judgments in the High Court under para.5 of Sch.7 to the 1982 Act for judgments coming from either Scotland or Northern Ireland.

The application for registration of a non-money judgment may be made without notice and must be accompanied by:

- a certified copy of the judgment issued under Sch.7 to the 1982 Act; and
- a certificate, issued not more than six months before the date of the application, stating that the conditions set out in para.3 of Sch.7 are satisfied in relation to the judgment.

Scenario 2—Is the judgment to be enforced an incoming judgment into England and Wales from another part of the EU?

CPR Part 74 SECTION V

10–08 If the judgment is incoming from another country in the European Union, the procedure to enforce an uncontested judgment in England and Wales comes under the European Enforcement Order regime, or "EEO" as it is termed throughout the rest of this chapter. Section V was introduced by the Civil Procedure (Amendment No.3) Rules 2005 (SI 2005/2292) and makes provision for the certification of judgments of the courts of England and Wales as EEOs and for the recognition and enforcement in England and Wales of judgments of other contracting states that have been certified as EEOs (see Council Regulation 805/2004, which created the European Enforcement Order for uncontested claims (OJ [2004] 143 0015–0039). Hopefully, of course, enforcement of a debt judgment is effectively an uncontested claim. Now that the Recast Brussels Regulation has abolished the need to apply for a registration order in the enforcing country, one of the advantages of the EEO procedure has gone (at least in relation to proceedings commenced on or after 10 January 2015). However, it is still simpler, because no process needs to be served on the debtor and the defences which can be taken are much more limited. It is important to remember that the EEO procedure is only available for "uncontested" judgments. These could be, for example, relating to claims under Pt 8; judgments relating to claims under Pt 7 where the claim was admitted; where a settlement/Tomlin Order has been agreed, or possibly where the defendant has filed a defence and then failed to appear further. The recast Brussels Regulation must be used where judgment has been given further to defended proceedings. If there is any doubt about whether the defendant was properly served, or whether the proceedings can be properly classed as "uncontested", then serious consideration should be given by practitioners as to whether or not to use the EEO procedure.

Indeed, barriers on moving debt around Europe have moved on in recent years, with the introduction of Council Regulation 1896/2006. This regulation, which came into force in 2008, was designed to simplify and reduce the costs of litigation in cross-border cases concerning "uncontested pecuniary claims". The regulation seeks to achieve this by creating a "European orders for payment procedure". The basis of the regulation is to permit the free circulation of European orders for payment throughout the Member States by laying down minimum standards and compliance, which then renders it unnecessary for any intermediate proceedings in the Member State of enforcement. This is considered later in this chapter at paras 10–63 to 10–73

10–09 In this section "Regulation State" is often referred to and this includes all Member States except Denmark (CPR r.74.27). When considering this scenario it is helpful to cross refer with scenario 6, which is effectively its mirror image , and, of course, it is important to remember that CPR Pt74 Section 1 could apply to an incoming judgment into England and Wales from another part of the EU. This position is considered as part of Scenario 3 below which looks at, amongst other aspects, the Recast Brussels Regulation for all contested or uncontested matters post since 10 January 2015.

Finally, by way of completeness, it should be noted that Section IV of CPR Pt 74 applies generally to the enforcement in England and Wales of European Community judgments and Euratom inspection orders.

10–10 Under CPR r.74.31 a person seeking to enforce an EEO in England and Wales must lodge the following documents, as required by Art.20 of the EEO Regulation, at the local court in which enforcement proceedings are to be issued:

- a sealed copy of the judgment;
- the sealed EEO certificate;
- a translation of the EEO certificate into the language of the country of enforcement, which must be certified by "a person qualified to do so in one of the Member States"—practitioners can, of course, find online legal translators if required.

In addition, where a person applies to enforce an EEO expressed in a foreign currency in either the High Court or the County Court, then the application must contain a certificate of the sterling equivalent of the judgment amount at the close of business on the date nearest to the date preceding the date of issue of the application for the EEO.

Reference could also usefully be made here to CPR16 PD para.9.1.

10–11 EEOs have their own Practice Direction supporting CPR Pt 74 which is found at Practice Direction 74B. This supplements the rules in Section V of CPR Pt 74. Paragraph 1 of the Practice Direction states that the rules relating to the certification and enforcement of EEOs are governed by Council Regulation 805/2004 which created EEOs for uncontested claims. The amended EEO Regulation Annexes are mentioned in the Practice Direction and can be accessed by simply clicking on the link in the Practice Direction itself.

The EEO Regulation can be found at *http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:143:0015:0039:EN:PDF* [Accessed August 2015].

10–12 Provision is made in the Practice Direction to provide that if a claim does not meet the requirements of the EEO Regulation, or perhaps more importantly if a judgment creditor does not wish to enforce a judgment using the EEO Regulation, then the judgment may be enforceable using another method of enforcement.

Paragraph 5 of the Practice Direction confirms that when the EEO is lodged at a court in England or Wales where enforcement proceedings are to be commenced, then the enforcement proceedings will be assigned a case number. An official copy from the court of the Member State of origin will satisfy the requirement of the regulation (see Art.20) above, for a "sealed copy of the judgment".

10–13 Rules on monetary limits for enforcement also need to be borne in mind when bringing an EEO into the courts of England and Wales for enforcement. These are:

- s.1 of the Charging Orders Act 1979, which provides that only the High Court has jurisdiction to make a charging order where the amount of the original judgment exceeds the County Court limit (currently £350,000);
- art.8 of the High Court and County Courts Jurisdiction Order 1991 ("HCCCJO 1991"), which provides that judgments in excess of £5,000 must only be enforced by execution against goods in the High Court; and
- the HCCCJO 1991, which also stipulates that judgments in excess of £600 may be enforced in the High Court and judgments for less than £600 must only be enforced in the County Court.

Naturally, it is possible that the judgment creditor will run into the obstacle of the judgment debtor making an application seeking an order where the granting of the EEO is refused. Such an application is permissible under CPR r.74.32 and can be made under Art.21 of the EEO Regulation in the form of a CPR Pt 23 application to the court in which the EEO is being enforced.

10–14 If the judgment debtor embarks on such a course, he or she must, as soon as possible, serve copies of any order made under Art.21(1) on all other parties to the proceedings and any other person affected by the order, along with any court in which enforcement proceedings are pending in England and Wales. Once served with such an order, all enforcement action must cease.

At para.6 of the Practice Direction 74B an application to refuse enforcement of the EEO in England and Wales must be accompanied by an official copy of the earlier judgment, along with any other documents relied upon and any translations required by the EEO

Regulation. In turn, this documentation must be supported by written evidence stating:

- why the earlier judgment is irreconcilable; and
- why the irreconcilability was not, and could not have been, raised as an objection in the proceedings in the court of origin.

10–15 It is also possible for the judgment debtor to apply for a stay or limitation of enforcement under CPR r.74.33, which provides that where the EEO has been lodged the judgment debtor can make an application for a stay or limitation of enforcement under Art.23 of the EEO Regulation, again in accordance with the requirements of CPR Pt 23. Paragraph 7 of Practice Direction 74B deals with further evidence required in connection with an application for a stay or limitation of enforcement including strict requirements on the translation of the judgment from the country of origin.

If the application results in an order being made to stay, or limits the enforcement action, the judgment debtor must "as soon as practicable" serve a copy of the order on all the other parties to the proceedings, any other person(s) affected by the order (such as an High Court Enforcement Officer executing a writ of control) and any court in which enforcement proceedings are pending within the jurisdiction of England and Wales. The order staying or limiting enforcement will not have any effect until it has been served in accordance with CPR r.74.33 and the parties to be served have received the order.

Again, at para.5.3 of Practice Direction 74B, the judgment creditor must notify all courts in which enforcement proceedings are pending in England and Wales under the EEO if judgment is set aside in the court of origin, as soon as reasonably practicable after the order is served on the judgment creditor. Notification may be made available by any means including fax, email, post or telephone.

10–16 In relation to applications for a "certificate of lack of enforceability" the Practice Direction includes express requirements at para.3 in which the application must be supported by written evidence. Similarly, in relation to an application for the rectification or withdrawal of an EEO, the Practice Direction requires that evidence in support of that contention should be filed with the application under CPR Pt 23.

It is also possible that an EEO application may become subject to an application for security for costs. If this is the case, CPR r.74.5 applies with the stipulation under CPR r.74.5(2) that a judgment creditor making the application for an EEO may not be required to give security solely on the ground that he is resident outside England and Wales.

In England and Wales CPR r.74.31 provides that the same documents have to be lodged as for other Member States, with the additional requirement of a certificate to the sterling equivalent for a judgment in a foreign currency. The Practice Direction to CPR Pt 74.31 clarifies that in England and Wales the point of entry for the EEO is the court. As no specific court is identified, it would appear that it can be issued at any district registry or County Court, subject to the usual rules on jurisdiction. The court will then give it a reference number (see CPR r.74.31 and para.5.1 of the Practice Direction).

If the chosen method of enforcement is the High Court, the judgment creditor can choose a High Court Enforcement Officer ("HCEO") (for a list of HCEOs, see *http://www.hceoa.org.uk* [Accessed August, 2015]) who has been in the position since 1 April 2004. The EEO can be issued at any District Registry and sent to the HCEO of choice. Other methods of enforcement are available in the English and Welsh courts, including a warrant of control, a charging order, an attachment of earnings, a third party debt order and an order to obtain information.

This is a powerful procedure, however, as, once an EEO certificate is delivered to the English court, the court has no option but to permit enforcement and cannot review its substance (see *Lothschutz v Vogel* [2014] EWHC 473(Q.B.)). Thus, if an EEO certificate issued by a Member State court is withdrawn or rescinded by the foreign court during the course of English enforcement proceedings, the English court has no power to discharge any enforcement orders it has made, and that will include costs orders.

Scenario 3—Is the judgment to be enforced an incoming judgment into England and Wales from another country with which England and Wales has a reciprocal treaty?

CPR Part 74 SECTION I

Introductory comments on Scenario 3

10–17 This scenario concentrates on giving the reader a practical methodology to navigating the Rules, by looking at how an incoming judgment from a country outside Europe will be recognised in the courts of England and Wales. However, as stated earlier the EEO procedure set out in Scenario 2 could also possibly apply here.

Section I of CPR Pt 74 provides for applications to register judgments under a series of reciprocal Acts, some of which have already been mentioned and which are summarised as follows:

- Section 9 of the Administration of Justice 1920 Act, in respect of judgments to which Pt II of that Act applies (referred to throughout this chapter as the "1920 Act");

- Section 2 of the Foreign Judgments (Reciprocal Enforcements) Act 1933, in respect of judgments to which Pt I of that Act applies (referred to throughout this chapter as the "1933 Act");
- Section 4 of the Civil Jurisdiction and Judgments Act 1982 (referred to throughout this chapter, and already, as the "1982 Act").

Background to the 1920 Act

10–18 Part II of the Administration of Justice Act 1920 enabled certain judgments of the superior courts in any part of Her Majesty's dominions outside the UK to be registered in the High Court (or High Court of Northern Ireland or Court of Session in Scotland). These judgments have the same effect insofar as they relate to the execution of a judgment of the registering court.

Section 7 of the Foreign Judgments (Reciprocal Enforcement) Act 1933 provided that Pt II of the 1920 Act should cease to have effect, except in relation to the dominions to which it extended at the date of the Order in Council applying the 1933 Act to HM dominions.

The provisions of Pt II of the Administration of Justice Act 1920 have been extended by Orders in Council, although no further extensions of Pt II have been permissible since 1933. The 1920 Act no longer applies to Hong Kong and there is no provision for the registration of Hong Kong judgments in England or vice versa. Enforcement of such judgments is by action on the judgment. Gibraltar is now subject to Pt III of the Act (SI 1997/2602).

Background to the 1933 Act

10–19 Under s.1 of the Foreign Judgments (Reciprocal Enforcement) Act 1933 the Queen may, by Order in Council, direct that (subject to the terms of the Order) the provisions of the Act which relate to the registration of foreign judgments may extend to any foreign country prepared to give reciprocity of treatment to judgments given in the courts of the UK.

A "judgment" of the "court" of a foreign country—both terms are defined in the Act and the particular Order—may be registered provided the judgment is final and conclusive and the sum payable is not in respect of taxes, fines or penalties (ss.1(2) and 11(1) of the 1933 Act). Application to register may (by virtue of s.2) be made within six years of the date of the judgment, although not if the judgment has been fully satisfied or it could not be enforced by execution in the country of the original court.

Broadly speaking, a foreign judgment when registered can be treated as if it were the judgment of an English court (s.2(1)). If

expressed in the currency of a foreign country, it will be registered in that currency or its sterling equivalent at the time of payment. Interest and the reasonable cost of registration may be added to the judgment when registered. This addition will depend upon the direction in the Master's order, which may be for a sum fixed or summarily assessed. Section 3 of the Act confers power to make rules for registration.

Background to the 1982 Act and the Judgments Regulation

10–20 The Civil Jurisdiction and Judgments Act 1982 was an Act of the Parliament of the UK, which was passed to implement the Brussels Convention of 1968 into British law. As well as governing whether the Courts of England and Wales, Northern Ireland and Scotland have jurisdiction to hear cases against defendants in other contracting states, the Act provided a statutory basis for the division of jurisdiction between the three jurisdictions within the UK. No provision was made in 1982 for division of jurisdiction between the UK and Gibraltar; this was rectified by the Civil Jurisdiction and Judgments Act 1982 (Gibraltar) Order 1997, which stated that, for the purposes of the 1982 Act, Gibraltar should be treated as a separate contracting state. A further significant amendment was made to the Act by the Civil Jurisdiction and Judgments Act 1991 which gave courts power under the Lugano Convention, and later by the Civil Jurisdiction and Judgments Order 2001 (SI 2009/3929) which gave courts jurisdiction under Council Regulation 44/2001 (the original Judgments Regulation or the Brussels Regulation).

The rules surrounding the enforcement of judgments from countries under the 1982 Act and the Judgments Regulation, which has already been mentioned several times, are complex and have been the subject of leading specialist legal textbooks over the years, for example, *Dicey, Morris and Collins on the Conflict of Laws*, 15th edn (London: Sweet & Maxwell, 2012).

In practical terms, countries subject to the 1982 Act are far more limited as a result of the introduction of the European Enforcement Order, which is dealt with in Scenario 2 of this chapter.

The original Brussels Regulation (Regulation (EC) 44/2001) was the key European instrument on jurisdiction and enforcement issues in civil and commercial matters. It was applied by the courts of all 28 EU Member States. Since 10 January 2015, however, Member State courts have applied the Recast and the original Brussels Regulation has largely been repealed.

Several references have already been made to the Judgments Regulation, which is Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast). It can be found at *http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012R1215* [Accessed August 2015].

10–21 The definition of "judgment" was originally found in Art.25 of the Brussels Convention (Art.2(a) of the Judgments Regulation), where it is stated that,

> "for the purposes of this Convention, judgment means any judgment given by a court or tribunal of a contracting state, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court."

That just about covers anything a reader of this text is likely to come across.

The word "judgment" refers solely to judicial decisions actually given by a court or tribunal of a contracting state, and such decisions must emanate from a judicial body of a contracting state deciding on its own authority on the issues between the parties (see *Solo Kleinmotoren GmbH v Emilio Boch* (C-414/92) [1994] E.C.R. I-2237, paras 15 and 17).

An order obtained without notice to the defendant does not qualify as a judgment for the purposes of Art.25 of the Brussels Convention, at least not until the defendant has applied unsuccessfully for it to be set aside (see *Denilauler v Couchet Frères* (C-125/79) [1980] E.C.R. 1553).

Article 27(2) of the Brussels Convention (Art.45(1)(b)(2) of the Judgments Regulation) prevents recognition of a judgment given in default of any appearance by the defendant if the defendant

> "was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time to enable him to arrange for his defence".

10–22 The purpose of this Article is to ensure that a judgment is neither recognised nor enforced under the Convention or Regulation if the defendant has not had an opportunity to defend himself (see *Klomps v Michel* (C-166/80) [1981] E.C.R. 1593 para.9, and *Sonntag v Waidmann* (C-172/91) [1993] E.C.R. I-1963 para.38). This provision is to be strictly complied with, and if service does not comply with the "lex loci executionis", the judgment cannot be enforced (see *Minalmet GmbH v Brandeis* (C-123/91) [1992] E.C.R. I-5661).

The courts of some contracting and regulation states have been reluctant to recognise and enforce "default judgments" that have been obtained in the English courts. For this reason it has been common practice for a claim which it is ultimately intended to enforce in a Brussels/Lugano Convention contracting or regulation state to be taken to trial where the defendant is in default (see *Berliner Bank AG v Karageorgis* [1996] 1 Lloyd's Rep. 426).

Where the application is granted, the court will send the EEO certificate and a sealed copy of the judgment to the person making the application. Where the court refuses the application, it will give reasons for the refusal and may give further directions.

Article 17 requires that certain information must also be supplied to the judgment debtor, advising how the claim can be contested, namely:

(a) the procedural requirements for contesting the claim, including the time limit for contesting the claim in writing or the time for the court hearing (as applicable) the name and the address of the institution to which to respond or before which to appear (as applicable), and whether it is mandatory to be represented by a lawyer;

(b) the consequences of an absence of objection or default of appearance, in particular (where applicable) the possibility that a judgment may be given or enforced against the debtor and the liability for costs related to the court proceedings.

Once the application is prepared, it needs to be served in accordance with the requirements in Arts 13, 14 and 15. The regulations provide various methods of service from personal to postal with no acknowledgement of receipt where the judgment debtor resides in the Member State of origin.

It is important to remember that the issue of service is potentially problematic, since in England and Wales service by post is accepted whereas in most Member States in the EU personal service is standard and postal service is not accepted, being viewed as potentially in contravention of the ECHR.

10–45 As stated, this procedure is only available where the claim is "uncontested". Article 3 sets out what constitutes "an uncontested claim" including circumstances where:

- the judgment debtor has admitted the debt or has agreed a consent order approved by the court; or
- the judgment debtor has not filed a defence; or
- the judgment debtor has failed to attend a court hearing after he has filed a defence, "provided such conduct amounts to a tacit admission of the claim or facts"; or
- the judgment debtor has expressly agreed to it as an authentic instrument, which is defined in Art.4.

An EEO does not appear to be available if a contested claim culminating in a hearing results in judgment for the claimant (which presumably includes judgment for the defendant on a counterclaim). However, if the claim (and presumably counterclaim) is settled "by consent", it is available.

On 5 December 2013, the Court of Justice of the European Union delivered its judgment in *Vapenik v Thurner* (2013) EUECJ C-508/12, also reported at (2013) W.L.R. (D) 477. The case was concerned with a loan contract concluded between two persons not engaged in commercial or professional activities. The issue for the Court was whether a claim based on this contract was eligible to benefit from Regulation 805/2004 on the European Enforcement Order for uncontested claims. More specifically, the issue was whether such contract fell within the scope of Art.6(1)(d). The Court ruled that the Regulation does not apply. It relied on the language of Art.6, but also, and to a much larger extent, on Regulation 44/2001.

Article 18 sets out the circumstances under which perceived defects in the procedure may be cured if appropriate evidence is put before the court at the time of applying for the EEO. If service of the summons is by post and there has been no response from the judgment debtor, it may be wise to use Art.18 to strengthen the claimant's position by serving the judgment together with information as to what to do if disputed. The court may then be persuaded to issue the EEO.

Article 7 confirms an EEO may include both the judgment debt and costs, provided no dispute has been raised as to the liability to pay costs. Therefore, if the judgment debtor has admitted the debt but disputed entitlement to costs, notwithstanding that a cost order has been made against him, the EEO cannot include the costs because that part has been contested.

Article 8 provides for the issue of a partial EEO for a judgment where only part of the order meets the regulations. It should be noted that if the judgment debtor has accepted the liability for costs in principal, but has disputed the amount of the costs, the claim remains "uncontested" for EEO purposes.

10–46 In summary, the requirements are that the judgment is enforceable in the Member State of origin and does not conflict with ss.3 or 6 in Ch.11 of what was originally Regulation 44/2001 and is now Regulation 1215/2012, which repeals and replaces Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and, as has been made clear at several points in this chapter, has application from 10 January 2015. Section 3 deals with jurisdiction on cases involving insurance, while s.6 gives exclusive jurisdiction to certain courts in matters relating to land, property, company constitutions/solutions, patents and trade marks.

Proof of service may also be required for the reasons set out above.

How is an EEO enforced?

10–47 The law of the Member State to which the EEO has been sent governs the enforcement procedures. Article 20 sets out what is to be sent to the Member State of enforcement. The requirements include:

- a sealed copy of the judgment;
- the sealed EEO certificate;
- a translation of the EEO certificate into the language of the country of enforcement—the translation must be certified by a "person qualified to do so in one of the Member States".

Interestingly, although CPR r.74.31 requires that a judgment in a foreign currency must have a certificate with the sterling equivalent, there does not seem to be a similar requirement in the regulations when sending an EEO to Europe.

Therefore, before issuing an EEO of execution in Europe, it would be advisable to obtain the rules from the country of enforcement. Article 29 obliges Member States to provide information as to procedures via the European Judicial Network, which can be found at *http://ec.europa.eu/civiljustice/index_en.htm* [Accessed August 2015].

Information is given in all the European languages, and the enforcement procedures for each country are set out accordingly. Note, though, that this website is being revised prior to its migration into the European e-Justice Portal.

10–48 It should also be noted that under Art.20(3), no security, bond or deposit can be required from the judgment creditor before enforcement, on the grounds that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement. Presumably, though, security can be given if that is the standard practice of that country, even for its own nationals?

Article 20(2) states that the "creditor shall be required to provide the competent enforcement authorities of the Member State of enforcement with the documents", which raises an interesting question as to what constitutes the "competent enforcement authority". It may mean a court in the country of enforcement, but it may also mean that it should be sent directly to the enforcement agent in countries where enforcement is by independent agents, for example France and Holland. Advice from HMCTS suggests that the judgment creditor contacts the relevant court of the Member State and ascertains the procedure for using the EEO in that country.

Further information is also available at the European Commission website: *http://ec.europa.eu* [Accessed August, 2015], where full information about enforcement procedures and enforcement agents is given.

10–49 It is recommended that before embarking on an EEO procedure, the judgment creditor should contact the representative body of the enforcement officers in the destination Member State to ascertain what type of enforcement system operates in that country and what fees will be incurred. The international association of judicial officers originating from Europe can be contacted via their website at *http://www.uihj.com/en/* [Accessed August, 2015]. It is possible that enforcement in Europe is more expensive than enforcement costs in England and Wales.

What happens if the judgment debt becomes disputed?

10–50 The procedural requirements of the Regulations are designed to limit the circumstances in which an EEO can be the subject of dispute. Article 17 specifies that the document(s) must contain details of how the defendant can contest the proceedings.

Article 19 provides that an EEO certificate can only be issued if the court of origin has a procedure to dispute the judgment in cases where the proceedings have been served in accordance with Art.14 (in other words, without proof of receipt) and as a result the judgment debtor has had insufficient time to defend or through no default of his own has not been able to defend, provided such application is made promptly (CPR Pt 13 will apply).

If there are any doubts as to whether a summons came to the defendant's attention as a result of service pursuant to Art.14, Art.18 provides a procedure to cure any perceived or arguable defects.

10–51 Article 21(2) states that under no circumstances may the Member State of enforcement review the judgment as to its substance (this can only be done by the Member State of origin). However, there is an exception to this rule in Art.21(1) in that a Member State of enforcement can refuse to enforce the judgment if it is irreconcilable with an earlier judgment given by any Member State or a third party country, provided the same parties and cause of action were involved (there are several other provisos—see CPR r.74.32 and para.6.1 of the supporting Practice Direction 74B).

Article 10 allows an application to the state of origin to rectify errors, namely mistakes in the EEO certificate, or withdraw the EEO where it has been wrongly granted, for example where the judgment fails to meet the minimum standards set out in Art.19. Annex VI of the regulation addresses the application to rectify/withdraw. If applying in England and Wales, CPR r.74.30 requires a Pt 23 application supported by written evidence.

Article 6(2) provides that where an EEO is no longer enforceable, because and/or the judgment has been set aside, that the appropriate certificate (see Annex IV) to the Regulations has to be issued. An application has to be made under under CPR r.74.29 in accordance with CPR Pt 23).

A similar application would be made to the court of origin under CPR r.74.30 if Art.10 applied for rectification or withdrawal of an EEO certificate.

Article 23 provides that on application of the judgment debtor, a court in the Member State of enforcement can limit enforcement to protect the situation pending the outcome of an Art.10 application in the state of origin. CPR r.74.33 requires a CPR Pt 23 application exhibiting evidence of the application to the court of origin (see CPR r.74.33 and para.7.1 of the accompanying Practice Direction 74B). If the application is successful, the judgment debtor must serve all the parties and the court with copies of the order.

Scenario 7—Is the judgment to be enforced an outgoing judgment from England and Wales to another country with which England and Wales has a reciprocal treaty? CPR 74—Section II

10–52 Under Section II of CPR Pt 74 (starting at CPR r.74.12) the enforcement of English and Welsh judgments in foreign countries where there is a reciprocal enforcement treaty is started by the application of a certified copy of the judgment. This certified copy is then sent to the country where there is a reciprocal treaty for enforcement to begin.

Section II provides the procedure for "outgoing" judgments to be enforced in foreign jurisdictions as follows:

- For a High Court judgment under s.10 of the Administration of Justice Act 1920.
- For a High Court or County Court judgment under s.16 of the Foreign Judgments (Reciprocal Enforcement) Act 1933.
- For a High Court or County Court judgment under s.12 of the Civil Jurisdiction and Judgments Act 1982.
- For a High Court or County Court judgment under Art.53 of the Judgments Regulation or under Art.54 of the Lugano Convention.

Which Acts apply to which countries?

10–53 The listing of countries and the respective reciprocal treaty governing the enforcement position, is subject to change, and therefore reference should always be made to the latest version of specialist texts on European enforcement or the latest edition of the White Book Service (which at the time of publication of this book in 2015 is the Service published in the same year).

How is the application started? (CPR r.74.13)

10–54 The application for a certified copy of the English or Welsh judgment is made without notice and supported by written evidence, which must include:

- copies of the claim form in the proceedings in which the judgment was given;
- evidence of service of the claim form on the defendant;
- the statements of case made in the claim;
- and, where relevant, a document stating whether the applicant was an assisted person or an LSC-funded client.

The written evidence must also deal with:

- the grounds on which the judgment was obtained;
- whether the defendant has objected to the jurisdiction and the grounds of the objection;
- confirmation that the judgment has been served in accordance with CPR Pt 6 and CPR r.40.4 (regarding the service of order where it has been drawn by a party);
- confirmation that the judgment is not subject to a stay of execution;
- the date on which the time for appealing the judgment expired or will expire; or whether an appeal notice has been filed and the status of any application for permission to appeal, and whether an appeal is pending.

In addition, it must state whether the judgment provides for the payment of a sum of money, and if so, the amount in respect of which it remains unsatisfied; whether interest is recoverable on the judgment, and if so, either the amount of interest which has accrued up to the date of the application, or the rate of interest, the date from which it is recoverable, and the date on which it ceases to accrue.

Of course, the statement about the "time for appealing has expired" does not apply to a judgment entered in default of any acknowledgment of service or defence under CPR Pt 12. Instead, where judgment has been entered in default, the application must show that no application has been made to set aside the judgment. The formal certificate issued by the court will then state that the defendant may apply to set the judgment aside, although he has not yet done so.

10–55 For default judgments intended to be enforced in European Member States, the approach should be to follow the procedure set out in Scenario 6 above and to apply for an EEO stating:

- whether the judgment provides for the payment of a sum of money and, if so, the outstanding and unsatisfied amount;
- the interest position, setting out whether interest is recoverable on the judgment and, if so, either the amount of interest which has accrued up to the date of the application or the rate of interest from the date of which is recoverable, and the date on which it ceases to accrue.

Are there any pitfalls in using Scenario 7?

10–56 There are potentially a couple of pitfalls that the judgment creditor needs to be aware of when seeking to enforce the judgment under s.II of the CPR Pt 74.

Firstly, under s.10 of the 1933 Act, a certificate of judgment cannot be issued where the sum payable is "in respect of taxes and other charges of a like nature or in respect of a fine or other penalty".

Secondly, there is some debate as to whether a judgment obtained in a County Court and transferred to the High Court for enforcement can be enforced through a court abroad, as it has been queried whether such a judgment meets the criteria of the 1920 and/or 1933 Acts in that it should be a judgment "given" or "obtained" in a "Superior Court". The question is "will the foreign court recognise the County Court judgment as judgment given or obtained in a Superior Court?".

Under the Administration of Justice Act 1920 the position would appear to remain clear, in that a certificate can only be issued in respect of judgments "obtained in the High Court", which leaves open the question of whether the receiving court will consider a County Court judgment which has been transferred to the High Court in England and Wales for enforcement.

In respect of either the 1920 or the 1930 Acts, if there is doubt about whether the receiving country will accept a transferred-up County Court judgment, the safest approach will be to issue the original claim in the High Court. If that is not permissible, for instance under the High Court and County Court Jurisdiction Order 1991 (SI 1991/1724), then the claim should be issued in a County Court and, before any further step is taken, application made to transfer the claim to the High Court (see CPR r.30.3 relating to the criteria for an order to be transferred).

As the 1920 and 1933 Acts are based on reciprocity, it cannot be assumed that the countries in which these reciprocal arrangements exist will enforce judgments other than those of the "High Court" or "Superior Court", as defined in the Acts.

10–57 In respect of countries not party to the various conventions, it can be stated with reasonable certainty that the Isle of Man will enforce an English or Welsh County Court judgment under the 1933 Act

which has been transferred to the High Court for enforcement and certified under this rule by the High Court (see *Stapleford Flying Club v Kreisky* Unreported 18 April 1991, High Court of the Isle of Man, Deemster Corrin).

However, it should be noted that the Royal Court of Jersey rejected registration of an English County Court judgment transferred to the High Court for enforcement under the 1933 Act. The basis of this rejection was the absence of reciprocity, in that a judgment of the Jersey Petty Debts Court would not be amenable to registration in England. Bailiff Bailhache commented that although the English courts might be bound to regard the judgment of the County Court as a judgment of the High Court for all purposes, it was not a judgment "given in a Superior Court" for the purposes of the Jersey legislation (see *Re Hardwick* [1995] Jersey Law Reports 245).

We then had the case of *Manches LLP v Inter Global Financial Ltd* Royal Ct.: (Finch LB) (GRC) No. 41/2009 in Guernsey, where a judgment creditor sought registration of an English County Court judgment which had been transferred to the High Court for the purposes of enforcement, pursuant to the Judgments (Reciprocal Enforcement) (Guernsey) Law 1957. An issue arose because only the judgment of a Superior Court was amenable to registration and enforcement under the 1957 Law. Jersey and the Isle of Man had very similar reciprocal enforcement legislation, and there were two conflicting decisions; however, it was held that registration could be allowed.

The decision of Finch LB in the Royal Court of Guernsey was that while the Jersey decision was not binding upon the Guernsey Royal Court, it was plainly of persuasive authority and had to be considered respectfully. However, the Manx appeal decision had not been cited in the Jersey case and the Court preferred to follow the Isle of Man approach and to reject the "somewhat mechanistic decision" in the Jersey case, which had the added virtue, "always welcome in civil matters, of common sense".

The case is an interesting example of the court of one Crown Dependency having to choose between conflicting decisions of the courts of two other Crown Dependencies. Such mutual assistance arrangements between the UK and the British Islands are long overdue for reform and simplification.

What is the procedure for applying for a certificate where judgment has been entered at a district registry?

Applications of certified copies of judgments entered in District Registries should be sent to the District Registry where the judgment was obtained, following which the District Judge can then exercise his or her powers of a master under this rule (see CPR r.2.4 relating **10–58**

to the interchangeability of powers of District Judges and Masters). This brings the procedure under the 1933 Act in line with the procedure under the Brussels Convention and Judgments Regulation regime.

Scenario 8—Is the judgment to be enforced an outgoing judgment from England and Wales to another country where there is no reciprocal treaty in place?

10–59 If judgment has been obtained against a judgment debtor with assets in the jurisdiction, it is worth considering how to enforce the judgment and then use the usual methods of enforcement under the CPR. It is definitely worth considering the possibility of using a freezing injunction under CPR Pt 25 to restrain the judgment debtor from taking assets out of the jurisdiction before judgment. Such an application may be considered prudent to prevent assets being removed during the period between the judgment debtor being served with notice of registration and the expiry of the period within which he can bring an application to have the registration set aside, or the determination of such an application, during which period, as has been seen, execution may not issue. However, clearly the costs of such an application have to be considered very carefully.

The court was prepared to grant such an injunction in the case of the enforcement in England of a foreign arbitral award, where precisely similar considerations applied (see *Deutsche Schachtbau und Tiefbohrgesellschaft mbH v Ras Al Khaimah National Oil Co* [1987] 3 W.L.R. 1023; [1987] 2 All E.R. 769) (this case also went to the House of Lords on other enforcement aspects at [1990] 1 A.C. 295 and the matter appeared to be beyond doubt). If additional support is needed, such an injunction was granted in similar circumstances in New Zealand (see *Hunt v BP Exploration Co. (Libya) Ltd* [1980] 1 N.Z.L.R. 104).

10–60 If the judgment debtor only has assets abroad, consideration has to be given to whether enforcement is possible in the foreign jurisdiction. If a treaty of reciprocity exists, so much the better, but, once again, a judgment creditor cannot overestimate the overall cost of the exercise which reads well in a textbook but can be fraught with complications and expense in real life.

If no reciprocal enforcement treaty exists, it may still be possible to enforce a judgment abroad.

Options include:

- starting proceedings on the English/Welsh judgment and obtaining summary judgment in that action;

- starting proceedings on the English judgment in the foreign jurisdiction where the judgment debtor has assets but does not reside, serving the proceedings out of the jurisdiction under the local equivalent of CPR Pt 6. As in England, the mere presence of assets in the jurisdiction may not of itself confer on the courts the power to hear an action, but there may be a provision allowing the grant of leave to issue a claim for service out of the jurisdiction to enforce a judgment or arbitral award.

10–61 It follows, therefore, that the first essential requirement when considering enforcing any judgment abroad is to take advice from a local agent in the foreign country concerned, in order to establish whether enforcement:

- is possible at all;
- and, if so, what the procedure will be;
- how long it will take;
- how much it will cost;
- what assistance the foreign lawyer will need.

Indeed, it will usually have been prudent to discuss these matters with a local agent before commencing any proceedings in England and Wales. A good question to ask is whether anyone has tried to use collection agents to collect the outstanding sum over the telephone or by personal visit, rather than by resorting to further legal proceedings in the uncertain enforcement arena. A private enquiry agent may be a good use of money as well.

It may also be worth finding out what rate of interest will run on the judgment once it has become enforceable abroad, and whether any accrued Judgments Act interest will be recoverable. It may then be possible to assess whether further pursuit of the debt is economically worthwhile. Indeed, it is submitted that it will always be worthwhile doing this exercise before starting proceedings at all, especially if the debtor has no assets in England.

10–62 Usually, the foreign lawyer will be able to proceed without a visit from his English instructing solicitor, since all he will probably require is an affidavit exhibiting the judgment or a copy thereof, and setting out the facts which an English court would require in similar circumstances. However, where the sum at stake justifies it, a visit to the foreign lawyer could be undertaken, which will have the effect of clarifying for the English solicitor the procedures and timescales involved, and enable him to assess the calibre of the person he has instructed. Further, it will bring home to the foreign lawyer the

importance of the matter and the need to proceed with skill and commitment.

Transforming enforcement in Europe—CPR Part 78

Introductory comments

10–63 At the beginning of this chapter it was mentioned that the global enforcement of a judgment was knowledge that a judgment creditor would have to embrace. In England and Wales the nearest examples of cross-border enforcement start with Scotland, Northern Ireland and then the rest of the EU.

Outside the British Isles, enforcement, as we have seen, can become problematic, with areas of difficulty including the different systems of law and procedures; the obvious language barriers; the ability to locate the assets of the judgment debtor; and the myriad costs regimes. For many judgment creditors this is enough to put them off trying to enforce their judgment debt; nevertheless, more help is now at hand, in the form of the European order for payment procedure, or "European payment order", which was created under Regulation 1896/2006 and is now a part of s.1 of the Rules. The actual procedure came into force on 12 December 2008, although lawyers had been made aware of it from December 2006.

This process seeks to provide a straightforward and quick debt recovery procedure for uncontested claims across the EU. It can be used for a small claim as well as a large outstanding commercial debt. As is common with many procedures in England and Wales, it is based on a system of standard forms. The theory behind this is that the standard format will allow the dispute to be dealt with by written procedures and, where possible, through automatic electronic data processing. The cost of the procedure is determined by national law in each Member State and is equivalent to domestic court fees.

10–64 In practice, this means that a claimant in England and Wales should be able to use the European payment order to enforce payment of his debt in any EU country, except Denmark as the regulation still does not apply there. When the successful claimant receives the court's order for an uncontested debt in his favour, it becomes automatically enforceable in every EU country (except Denmark) and no further steps are necessary to prove recognition of the judgment in one of the European courts.

If a defence is raised to the European payment order, the claim moves out of the realms of the procedure and into domestic Civil Procedure Rules, to be handled in the normal way.

All this makes the European payment order an option for those wanting to enforce an uncontested debt. However, the new rule does

not make it mandatory to use the procedure in a cross-border case, as a judgment creditor can still use the EEO set up through Regulation 805/2004 of 21 April 2004, and which has been discussed in detail earlier in this chapter.

Making an application

10–65 The European order for payment procedure applies to civil and commercial matters in cross-border cases, whatever the nature of the court or tribunal. A cross-border case is one in which at least one of the parties is domiciled or habitually resident in an EU country other than the country of the court hearing the action. The Regulation applies, as stated above, to all EU countries except Denmark.

The procedure does not extend to revenue, customs or administrative matters or the liability of a state for acts and omissions in the exercise of state authority (*acta iure imperii*).

The following are also excluded:

- matrimonial property regimes;
- bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
- social security;
- claims arising from non-contractual obligations, unless they have been the subject of an agreement between the parties or there has been an admission of debt or they relate to liquidated debts arising from joint ownership of property.

The Regulation includes a form, standard Form A set out in Annex I, to be used to apply for a European order for payment. A pecuniary claim must be for a specific amount that has fallen due at the time when the application for a European order for payment is submitted.

The jurisdiction of courts is decided using the appropriate EU legislation, especially Regulation 1215/2012, which repeals and replaces the original Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters from 10 January 2015.

The court to which an application for a European order for payment has been made considers whether the applicability conditions have been met (the cross-border nature of the case in civil and commercial matters, the jurisdiction of the court in question, etc.) as soon as possible, and examines the well-founded nature of the claim.

The relevant part of the CPR for this procedure is CPR Pt 78, together with the supporting Practice Direction.

If the application complies with the Rules and the forms are properly completed, the European payment order must be issued and served on a defendant, preferably with proof of receipt being obtained, which can be done electronically. The form of order is set out in Annex V to the Regulation.

Unless a statement of opposition is sent to the court by the defendant within 30 days of the application, with a small amount of time allowed for the statement to arrive at court, the court will declare the order enforceable .

If the defendant opposes the claim, then, unless the claimant brings the case to a halt, the claim will be transferred into the normal system of court business and allocated to the court where the defendant is resident. The claim will then proceed in accordance with the CPR.

The statement of opposition must be sent within 30 days of the order being served on the defendant. Statements of opposition are lodged using the form in Annex VI (Form F), which defendants receive with the European order for payment. Defendants indicate in their statement of opposition that the claim is contested, without having to specify their reasons (Arts 16 and 17 and CPR r.78.5–78.6).

10–66 In exceptional cases, as set out below, the defendant can apply for a review, refusal, stay or limitation of enforcement, but the regulations do not provide a right of appeal. The procedure is designed to be dealt with on paper rather than by oral hearing, although a hearing may be allowed in certain circumstances.

Article 20 of the Regulation, authorising the defendant to apply for a review of the European order for payment before the competent court after the expiry of the 30-day time limit for lodging a statement of opposition, will only be allowed, provided that:

- the order for payment was served without acknowledgement of receipt by the defendant and service was not effected in time to enable him or her to prepare a defence;
- the defendant was prevented from objecting to the claim by reason of force majeure or due to extraordinary circumstances;
- the order for payment was wrongly issued.

If the court rejects the defendant's application, the European order for payment remains in force. If, on the other hand, the court decides that there is a case for a review, the European order for payment becomes null and void.

Enforcement is also refused by the competent court in the EU country of enforcement if the European order for payment is

irreconcilable with an earlier decision or an order previously given in any EU country or in a non-EU country, upon application from the defendant. The decision must involve the same cause of action between the same parties and must have been recognised in the EU country of enforcement.

It is also worth noting that when it comes to serving the European payment order, postal services across Europe can take seven to 10 days to deliver a claim. This is likely to mean that despite the fact that the time limits given for service are not generous, applications for review (which means, in the English context, "default judgments") seem very likely.

There is a requirement to conduct the case in English, which is helpful to those of us for whom English is our first language, and to provide translations.

Applications to set aside the order, for example where there are disputes about the validity of service, or to seek a review or a stay, will invariably be referred to the court, which of course can lead to delay and differing interpretations of the regulations.

Applications made to a court in England and Wales

10–67 To make the application, a claimant in England and Wales must file the documents set out in Art.21 of the Regulations at the court in which the enforcement proceedings are being heard.

These documents include:

- a copy of the European order for payment;
- a translation of the European order for payment.

What is the procedure for applying for a European order for payment?

10–68 As always, judgment creditors wishing to use this procedure must read the main rule in CPR Pt 78, alongside the accompanying Practice Direction.

The terms of CPR Pt 78 are governed primarily by the regulation that created the European payment order process and which is set out in Annex 1 of the Practice Direction. Where the Regulation is silent on any particular matter, the Civil Procedure Rules will apply with necessary modifications.

The application must be completed in English or accompanied by a certified translation, which is then filed at court. An application made to the High Court will be automatically assigned to the Queen's Bench Division, which will not prevent the application being transferred to another court, where appropriate.

Is the possession action in respect of a tenancy, licence and mortgage?

16–05 All tenancies created on or after 29 January 1989 in respect of dwellings are governed by the Housing Act 1988. Consequently, there are now relatively few tenancies governed by the Rent Act 1977 or its predecessors, so the first step is to decide if the occupier was a former tenant, licensee or mortgagee, and then decide on which procedure to follow under the CPR Pt 55 to regain possession.

The granting of a possession order always requires the exercise of judicial discretion.

In which court should a claim for possession be commenced?

16–06 In some ways this question is outside the scope of this book, which is concerned with the enforcement of the resulting order for possession. However, as will become apparent, the forum chosen for the issue of the claim for possession will influence the eventual enforcement of the order for possession, so a short rehearsal of the rules under CPR Pt 55 for the issue of the claim can be important.

The basic rule is that the claim for possession may be made at any County Court hearing centre , and that hearing centre will issue the claim. If it is not made at the County Court hearing centre which serves the address where the land is situated, the claim will be sent to the hearing centre serving that address when it is issued (see CPR r.55.3(1) and the supporting Practice Direction 55A)).

However, a claimant may start a possession claim in the High Court if there are exceptional circumstances (see the Practice Direction 55A to CPR Pt 55 at para.1.1), e.g. where:

- there are complicated disputes of fact;
- there are points of law of general importance; or
- there is a claim against trespassers in the case of a substantial risk of public disturbance or of serious harm to persons or property that requires immediate determination.

16–07 The value of the property and the amount of the financial claim may be relevant circumstances, but they alone will not normally justify starting the claim in the High Court. The Practice Direction points out the consequences of issuing in the High Court when it is not justified. In such circumstances, courts will normally either strike out the claim or transfer it to the County Court on its own initiative, which is likely to result in delay and the court will normally disallow

the costs of starting the claim in the High Court and of any transfer. (See the Practice Direction 55A to CPR Pt 55 at para.1.2.)

High Court claims for the possession of land subject to a mortgage will be assigned to the Chancery Division of the High Court (see the Practice Direction 55A to CPR Pt 55 at para.1.6).

Many court users are confused as to how the High Court can be used as a forum to adjudicate on a claim for possession. Effectively though, many applications for claims against trespassers, or claims which involve complex issues of fact and law, can be started and then enforced in the High Court. In devising a strategy for either a single claim or a series of claims, a claimant seeking possession can take advantage of the duality of approach created within the present rules, resulting in efficiencies in time from the point of view of listing a claim, the hearing and then the eventual enforcement.

Proceedings involving persons whose occupation of the buildings or land is causing serious harm to other persons or to the land itself, or whose presence is creating a disturbance which requires immediate determination, are all potential claims which could be issued in the High Court forum.

16–08 The court user must identify the legislation governing the occupation of the premises or land, as well as reading the tenancy and/or other agreement, allowing occupation to assess how possession proceedings can be commenced and subsequently enforced.

The next sections of this chapter look at the enforcement of orders for possession in either the High Court or the County Court.

High Court business—writs of possession

16–09 CPR Pt 83 is the main reference used when dealing with High Court writs of possession. References to permission are also included in Pt 83. A Practice Direction supports CPR Pt 83 and confirms at para.3.3 that a writ of possession must be in Form 66 or 66A in Practice Direction 4, whichever is appropriate.

Is permission to issue a writ of possession required?

16–10 By virtue of CPR r.83.13, a writ of possession to enforce a judgment or order for the giving of possession of any land must not be issued without the permission of the court, except where the judgment or order was given or made in proceedings by a mortgagee or mortgagor, or by any person having the right to foreclose or redeem any mortgage, being proceedings in which there is a claim for one or more of the following:

- payment of monies secured by the mortgage;
- sale of the mortgaged property;
- foreclosure;
- delivery of possession (whether before or after foreclosure, or without foreclosure) to the mortgagee by the mortgagor or by any person who is alleged to be in possession of the property;
- redemption;
- re-conveyance of the land or its release from the security;
- delivery of possession by the mortgagee.

The reasoning behind why a mortgage action does not require permission is that the position of every person in occupation is known before the order for possession is made (see *Leicester Permanent Building Society v Shearley* [1950] 2 All E.R. 738). A definition of "mortgage" follows similar wording to that set out in CPR Pt 55 at CPR r.83.13(7)).

In addition, under CPR r.83.13(3), the court's permission is not required for the issue of a writ of possession in a possession claim against trespassers under CPR Pt 55 unless the writ is to be issued after the expiry of three months from the date of the order.

16–11 For permission for leave to issue a writ of possession, it is important to bear in mind that the following points must be dealt with in the application to seek leave for permission to issue a writ of possession. Unless shown, the court will not be willing to give its permission. It must therefore be shown that:

- "every person"—so this issue needs to be covered by the appropriate form of service,
- "in actual possession of the whole or any part of the land"—which needs to be dealt with by accurate reference to a plan of the area,
- "has received notice of the proceedings"—the rules on service need to be followed carefully,
- "to satisfy the court that the person served had sufficient information to be able to apply to the court for any relief to which he may have been entitled".

(See CPR r.83.13(8)(a).)

Permission to issue a writ of possession cannot be given on an interim application. It can only be given to enforce a final judgment or order for possession (see *Manchester Corp v Connolly* [1970] 2 W.L.R. 746; [1970] 1 All E.R. 961, CA).

16–12 In the Queen's Bench Division the application for permission to issue the writ of possession is made without notice, supported by evidence.

Where (as often happens) the property consists of a house, of which various parts are sublet to, or in the occupation of, different persons, the evidence should show the nature and length of the notice that has been given to the various occupiers. Where the defendant or any other person is in actual possession of the premises, in addition to dealing with the matters required by CPR r.83.13(8) (set out in para.16–24 below), the evidence in support of the application for permission to issue the writ, must contain, amongst other things, the following information:

- whether the premises or part of the premises are a dwelling house;
- if the premises are a dwelling house, what is the rateable value of the dwelling house and is it let furnished or unfurnished;
- if the dwelling house is let as furnished, what is the amount of furniture within the property;
- and include any other matters which will assist the master in determining whether any occupier is protected by the Rent Acts (*Practice Direction (Q.B.D. Writ of Possession)* [1955] 1 W.L.R. 1314; [1955] 3 All E.R. 646).

Permission is required to issue a writ of possession on a suspended order for possession.

Does notice of the proceedings for permission need to be given?

16–13 Basically, the answer is "Yes". Where the defendant is the only person in possession of the premises, the claimant must give the defendant notice of the judgment or order, and "call upon him" to give up possession under that judgment or order.

Does notice of the proceedings need to be served?

16–14 Where the defendant is the only person in possession of the premises, the claimant will be required to give the defendant notice of the judgment or order.

Where there are other people who are not parties to the proceedings in actual possession of the premises or land, then it is also necessary to serve them with written notice, which will give them a reasonable opportunity to apply to the court.

The combined effect of the CPR rules is that notice of an application for a writ of possession must be given to a tenant, and the writ of execution should not be issued without the tenant having an opportunity to apply to the court for relief (see *Leicester City Council v Aldwinkle, The Times*, 5 April 1991, CA).

However, the need to serve notice of the claimant's intention to seek possession does not confer any new rights on a tenant or other occupier. The only effect of the notice is to give those who may apply for relief an opportunity to do so.

The case of *Ahmed v Mahmood* (2013) EWHC 3176 is a good example of some of the pitfalls and points to watch on a possession claim sought to be enforced through the High Court.

Can a writ of possession enforce a money judgment?

16–15 CPR Pt 83 is mainly concerned with the taking control of goods regime. Thus, we have discussed it a lot with regard to writs and warrants of control (see Ch.12). As we have seen however it also covers writs and warrants of delivery and, as considered in this chapter, writs and warrants of possession. Given that the old RSC Ord.46 has now been superseded (see the Civil Procedure (Amendment) Rules 2014 (SI 2014/407), all other types of writs and warrants are included in CPR Pt 83, and this includes the writs of assistance, sequestration, restitution and writs of venditioni exponas. One can see that monetary issues would particularly apply if these writs also included an element of taking control of goods, and the writ of possession combined with a money judgment is a perfect example of this.

To that end, a writ of possession may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ—see CPR r.83.13(9).

How is a County Court order for possession transferred to the High Court for enforcement?

16–16 A County Court order for possession against trespassers can be transferred to the High Court for enforcement using High Court Enforcement Officers ("HCEO") as the court officers responsible for the enforcement of the writ of possession.

The transfer procedure follows a process similar to that used for a money judgment, in that the claimant applies to the County Court hearing centre which made the order for possession, for a certificate of judgment on Form N293A, seeking confirmation that the order. for possession is still outstanding. The County Court staff will complete and seal the form, which is then returned to the claimant who must complete Part 3 of the form, which then becomes the praecipe to the actual writ of possession.

The writ of possession form is then completed using Form 66A and is sent to the High Court or district registry for sealing and onward transmission to the local HCEO. A court fee will be payable on the sealing of the High Court writ of possession; at the time of publication that fee is £60.00

There is no requirement to seek leave to transfer the enforcement of the writ of possession to the High Court.

It may be sensible in cases where the proceedings are not against trespassers to apply to the judge at the time of the possession hearing under s.42 of the County Court Act 1984 for permission to transfer the possession order from the County Court to the High Court for enforcement using a High Court Enforcement Officer. This could make the process far quicker and easier and without the need for a further application at a later date.

This process is, however, entirely discretionary and there are no guarantees it will be granted. Some judges seem more amenable to such applications than others. There does not seem to be a consistent approach.

The Civil Procedure Rules have made a distinction between claims against "trespassers" (primarily squatters) and normal possession proceedings. In claims against trespassers the court's permission is not required for transfer to the High Court, but, as can be seen, the procedure is not the same for standard possession proceedings.

How is a High Court writ of possession prepared following a High Court judgment?

16–17 Where the claim was issued in the High Court, the resulting judgment or order is enforceable by a High Court writ of possession. The claimant must complete a Form PF86A together with the correct writ of possession, normally Form 66, and pay a court fee on the sealing of the writ of possession. Current court fees can be found at Form EX50 issued by HMCTS. At the time of publication this fee is £60.00. A writ of possession can be combined with the enforcement of a money judgment by way of a combined writ of possession and control for costs of action (Form 66a is then to be used).

Once issued, the claimant needs to deliver the sealed writ of possession to the HCEO of choice, ready for enforcement.

As a matter of best practice, if the enforcement is likely to be confrontational or have health and safety considerations, then, it is better to plan the eviction with the HCEO of choice to ensure difficulties in executing the writ are minimised. Police support can be called upon under para.5 of Sch.7 to the Courts Act 2003, which provides assistance to an Authorised High Court Enforcement Officer in the execution of a writ.

How does a writ of restitution aid a writ of possession?

16–18 Restitution is normally the means of obtaining possession against a defendant who has gone back into possession after having been evicted pursuant to a court order. Historically at any rate, a writ of restitution could also be sought against a person who had gone into possession by force.

In practice the writ of restitution is the most commonly used writ "in aid of any other writ of execution". Permission to issue a writ "in aid of" another needs to be applied for without notice supported by evidence, given by someone with knowledge of the relevant facts.

The court's permission to issue a writ of restitution in aid of a writ of possession is required whether or not permission was required for the writ of possession (see CPR r.83.13(5)).

A writ of restitution is most commonly used to enable the High Court Enforcement Officer to evict any person in unlawful occupation of premises—again, without the landowner having to issue new proceedings. A writ of restitution may be issued even though not all of the new occupiers of the land were among the original defendants. So there may be an argument that such a writ may be sought by a claimant against a defendant who has entered onto the land after an injunction has been granted restraining him from doing so, or even after a declaration has been made that the claimant is, and the defendant is not, entitled to possession.

This procedure can only be used if there is a "close nexus" between the new occupiers and any people who were dispossessed in the earlier proceedings. If the further occupation is "part and parcel of the same transaction" (see *Wiltshire CC v Frazer (Writ of Restitution)* [1986] 1 W.L.R. 109; [1986] 1 All E.R. 65 per Simon Brown J), the landowner is entitled to apply—without notice—for a warrant of restitution in the County Court or a writ of restitution in the High Court.

16–19 Where, after entry of the enforcement agent under a writ of possession, or after the claimant has been put in possession by the enforcement agent, the defendant resumes possession of the property, either by force or some other strategy, the claimant may apply for a writ of restitution (*Pitcher v Roe* (1841) 9 Dowl 971) to be issued. This is the normal procedure and not an application to commit for contempt (*Alliance Building Society v Austen* [1951] 2 All E.R. 1068). Application for the writ should be made without notice to a master supported by evidence such as a witness statement or affidavit of facts, after which an order will be made for the writ to be issued. The writ then needs to be directed to the HCEO of choice to ensure that the subsequent eviction can take place as soon as practicable.

Conversely, where a claimant has evicted a defendant under a writ of possession, and the underlying order for possession is subsequently set aside but the defendant is unable to regain possession, the defendant can apply to the master for an order setting aside the writ of possession and ordering possession to be given by the claimant to the defendant. Permission may be given at the time of this hearing or subsequently, on a without notice application, to issue a writ of restitution.

Similarly, where possession has been obtained under an irregular writ of possession, or of more land than is properly covered by the writ of possession, then the defendant can apply for an order to set aside the writ of possession and, if unable to restore possession, to make an application for possession to be given and for a writ of restitution to be issued.

What costs are allowed on the issue of a writ of possession?

Under CPR r.45.5 fixed commencement costs are allowed in a claim **16–20** for the recovery of land and then under CPR r.45.6 further costs are allowed on entry of judgment in a claim for the recovery of land. In terms of enforcing an order for possession under CPR r.83.5(3) a party entitled to enforce a judgment or order of the High Court for possession of any property, may issue a separate writ of control to enforce payment of any damages or costs awarded to that party by that judgment or order.

Is an order for possession enforceable by way of committal or sequestration?

A judgment or order to give possession of land will not be enforce- **16–21** able by an order of committal or by way of sequestration, CPR r.81.4 and CPR r.81.20 apply respectively. Effectively, this means the order must specify the time within which the possession is to be given and the defendant then refuses or neglects to give possession within that

time. Therefore, if a judgment or order to give possession of land does not specify the time within which the act of possession is required to be done, a judgment or order for possession will not be enforceable by an order of committal or by writ of sequestration, leaving just the standard writ of possession as the standard course of action to enforce the order for possession.

If the situation does arise, however, in a severe case of non-compliance, and a claimant wishes to enforce the order for possession against a recalcitrant defendant by an order of committal or order of sequestration, then the claimant will need to apply to the court under the powers given in CPR r.83.13 for an order to fix the time for possession, with which the defendant must comply to avoid being subject to either committal or sequestration. Such an order will need to be served on the defendant personally and given the severity of the procedure, the court will need to be fully satisfied that all procedural steps have been complied with. It may be that two separate applications for sequestration and committal will be required.

CPR r.83.2A makes it clear that an application for permission to issue a writ of sequestration must be made in accordance with Pt 81 and in particular s.7 of that Part.

Further information surrounding these two procedures can be found in Chs 19 and 21 respectively.

What form does the writ of possession need to be in?

16–22 The writ of possession takes two forms:

- a writ of possession to recover land—Form 66;
- a writ of possession combined with a writ of control for costs of action—Form 66a—to recover land and any connected judgment for the payment of money—for example in the form of rent arrears or dilapidations.

The writ of possession contains a recital of the judgment or order that the defendant "do give" to the claimant possession of the land which is the subject of the order. The writ itself must therefore contain a description of the property of which possession is to be given. The wording of the description of the land needs to be specific, as the rules warn against generality. Essentially, a plan is the best way to describe the land for which possession is required, perhaps linked to a title number held at HM Land Registry, or an Ordnance Survey map reference so that the land can be staked out where it consists of open land such as a field, heath or common (and see the very old case of *Thynne v Sarl* [1891] 2 Ch. 79).

Is a form of "return" required for a writ of possession?

16–23 There is no requirement on a High Court Enforcement Officer to make a "return" to the outcome of the execution of a writ of possession, but he or she is commanded within the writ of possession after execution to,

> "indorse on this writ immediately after you have done so a statement of the manner in which you have enforced it and to send a copy of the statement to the claimant/defendant".

In practice, HCEOs may require a representative of the claimant organisation to be present at the time possession is handed over, to "sign off" possession of the land and to confirm that possession has been given to the satisfaction of the claimant.

The endorsement of the writ of possession is a mere formality of procedure and is not necessary in order to complete an execution under the writ (*Rea v Hobson* [1886] 33 Ch. D. 493).

How is a writ of possession issued in the Queen's Bench Division of the High Court?

16–24 This has already been mentioned in para.16–12 above, but some points deserve expansion. As already stated in para.16–12, an application for permission to issue a writ of possession in the Queen's Bench Division is made without notice supported by evidence.

Paragraph 16–12 dealt with the extra evidence required where the property to be repossessed consists of a house which has been sublet, and in particular where the defendant or any other person is in actual possession of the premises.

In all cases the claimant must be aware of CPR r.83.13(8), which states that:

> "Permission to enforce a judgment or order for the giving of possession of any land will not be granted unless it is shown—
>
> (a) that every person in actual possession of the whole or any part of the land ('the occupant') has received such notice of the proceedings as appears to the court sufficient to enable the occupant to apply to the court for any relief to which the occupant may be entitled; and
>
> (b) if the operation of the judgment or order is suspended by section 16(2) of the Landlord and Tenant Act 1954, that the applicant has not received notice in writing from the tenant that the

tenant desires that the provisions of section 16(2) (a) and (b) of that subsection shall have effect."

Can a writ of possession be stayed?

16–25 The court has no power to grant a stay of execution to a writ of possession, as against a trespasser. A stay of execution against a former tenant or service occupier will normally be limited to between four to six weeks (see *McPhail v Persons, Names Unknown* [1973] Ch. 447, CA). However, in a serious and substantial dispute between the parties, a period of three months or even longer may be granted (see *Bain & Co v Church Commissioners for England* [1989] 1 W.L.R. 24).

What is the position in relation to a claim for possession against a company?

16–26 In the course of winding up proceedings, the Companies Court has jurisdiction to make an order for possession against a company where there is no defence to the claim for the forfeiture of the lease.

However, the Companies Court has no jurisdiction to entertain an application by a sub-tenant or mortgagee for relief and forfeiture under s.146 of the Law of Property Act 1925, as the winding-up proceedings are not an "action", and therefore applications for relief and/or forfeiture have to be applied for by separate proceedings (see *Re Blue Jean Sales Ltd* [1979] 1 W.L.R. 362).

What is the position if there is a wrongful or irregular execution of a writ of possession?

16–27 We saw in Ch.12 the position on wrongful seizure of goods (see paras 12–148 and 12–151). If HCEOs are executing a judgment by evicting the occupiers and act correctly on the writ of possession before them, then, however wrong the judgment, they are not liable in an action for damages.

A landlord will also not be rendered liable by simply being present at the time of the eviction (see *Williams v Williams* [1937] 2 All E.R. 559, CA).

Clearly, however, HCEOs and those instructing them must always take great care to ensure all procedures are carried out correctly. Even if no legal action can be sustained against any party there are always regulatory and reputational issues to consider.

What happens if the defendant is in the armed forces?

16–28 If the defendant is a member of the armed forces, and the case is covered by the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951, then no person is entitled to the taking of possession of any property; the appointment of a receiver of any property; or re-entry upon land; the realisation of a security or the forfeiture of a deposit without leave of the court. Similarly, a judgment or order for recovery of possession of land in default of payment of rent cannot be enforced without the leave of the court (see s.2(3) of the 1951 Act).

County Court business—warrants of possession

16–29 County Court warrants of possession are far more prevalent than their High Court counterparts. As in the High Court, a claimant has to identify the nature of the defendants against whom an order for possession is sought. Are they tenants/licensees/mortgagors, or are they squatters/travellers or eco-warriors?

Whatever the position though, we now have CPR Pt 83 which applies writs and warrants, and by CPR r.83.26 warrants of possession.

Reference should always also be made to CPR Pt 55 on possession claims generally.

Is leave needed to issue a warrant of possession?

16–30 The County Court rules follow the High Court in providing for cases in which permission to issue a warrant of possession is required, because CPR r.83.2 and the related rules include warrants of possession as well as writs of possession. The issue of a warrant without the necessary permission is an abuse of process (see *Hackney London Borough Council v White* (1995) 28 H.L.R. 219, CA).

Where is the starting point for County Court rules on the enforcement of orders for possession?

16–31 As stated, CPR Pt 83 is the starting point for enforcement rules remaining in the County Court for the enforcement of orders for possession.

A judgment or order of the County Court for the recovery of land is enforceable by a warrant of possession