

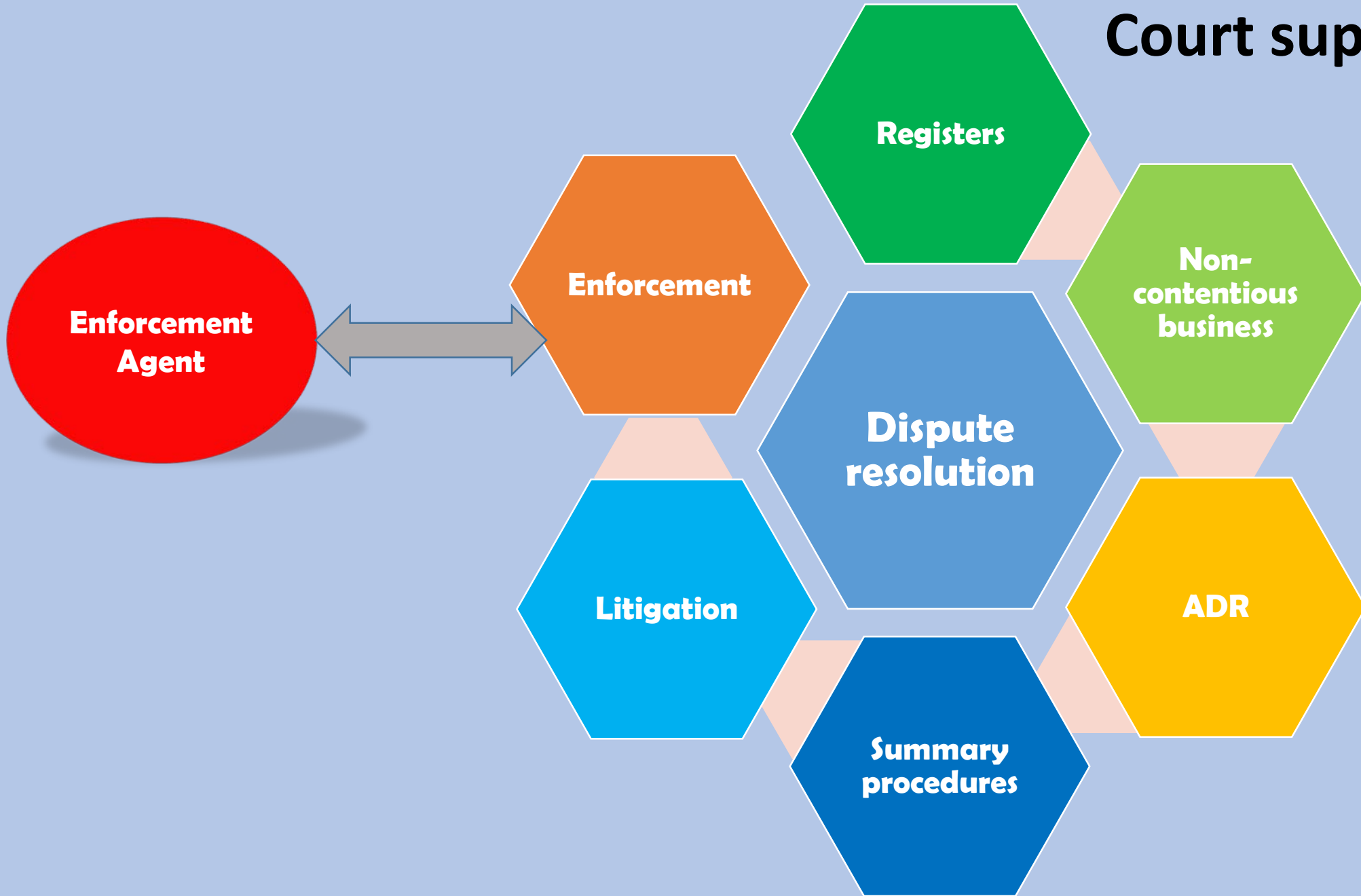
Implementation of new rules on recognition and enforcement according to BU Ia in United Kingdom

Dr. Wendy KENNETT,
Cardiff University, United Kingdom

Civil Procedure (Amendment No.7) Rules 2014 (SI 2014/2948)

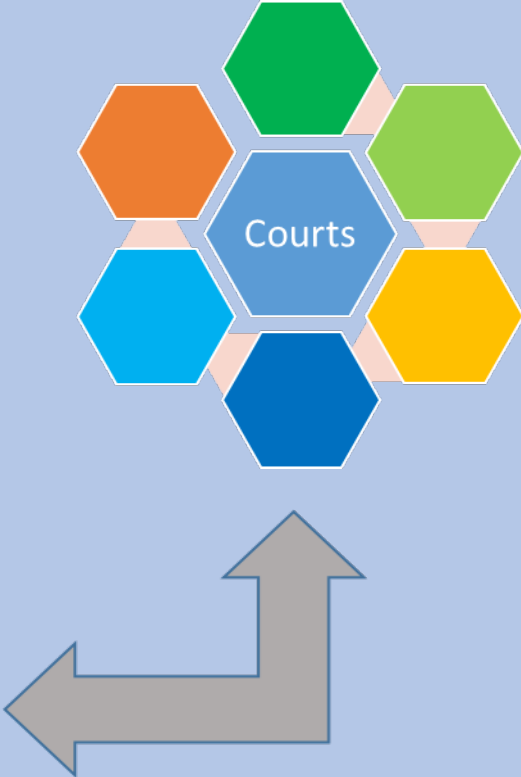
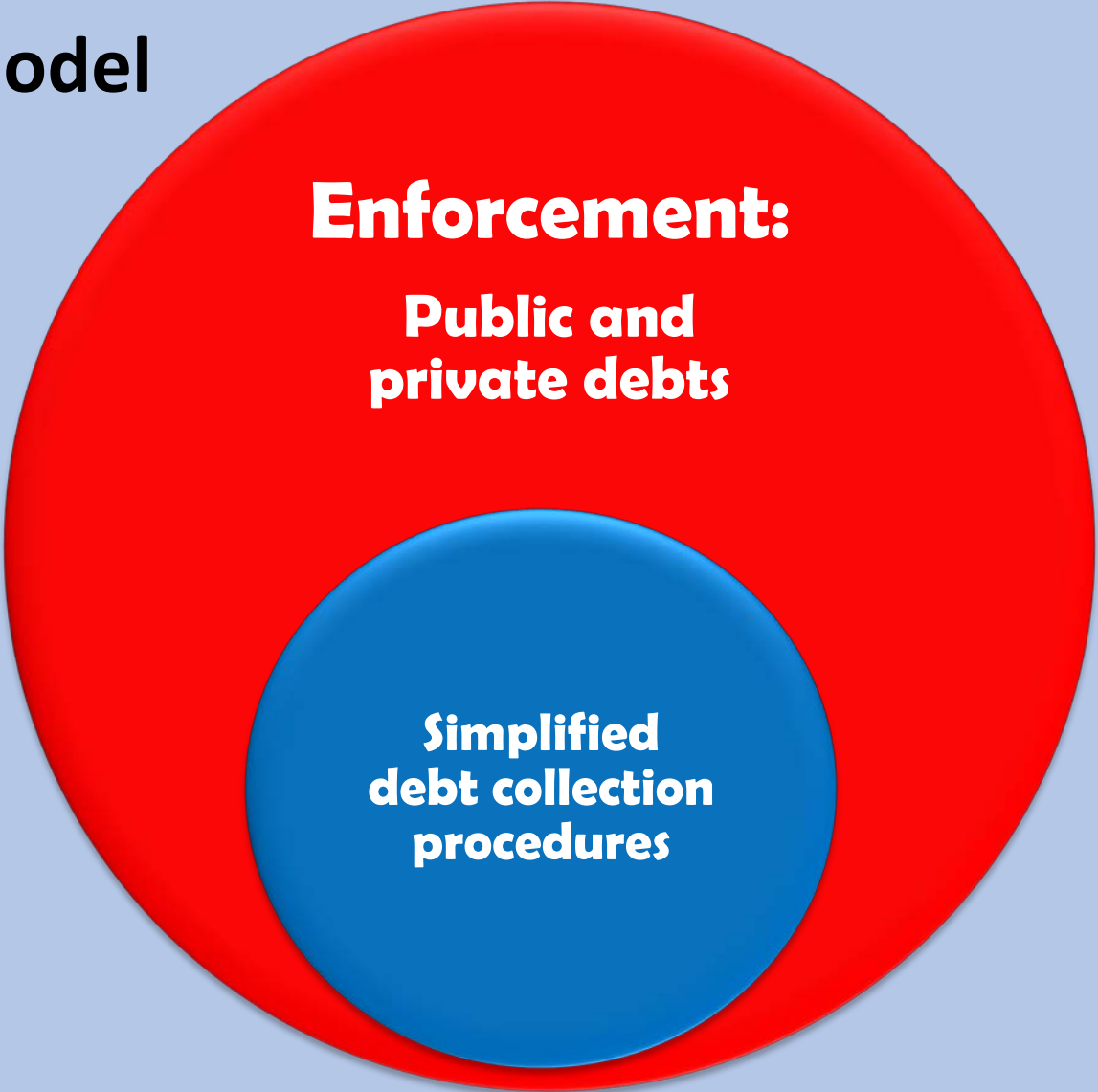
- CPR 74 Enforcement of Judgments in Different Jurisdictions
- Rules as amended omit any reference to registration of a judgment enforceable under the Judgments Regulation
- Previous references to ‘registration’ are altered to read ‘enforcement’.
 - Thus CPR rule 74.4A states that “a person seeking the enforcement of a judgment which is enforceable under the Judgments Regulation must, except in a case falling within article 43(3) of the Regulation (protective measures), provide the documents required by article 42 of the Regulation”.

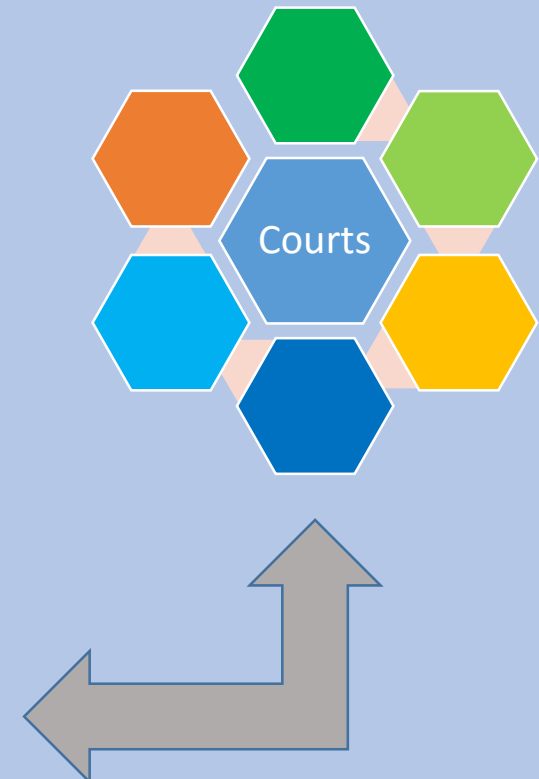
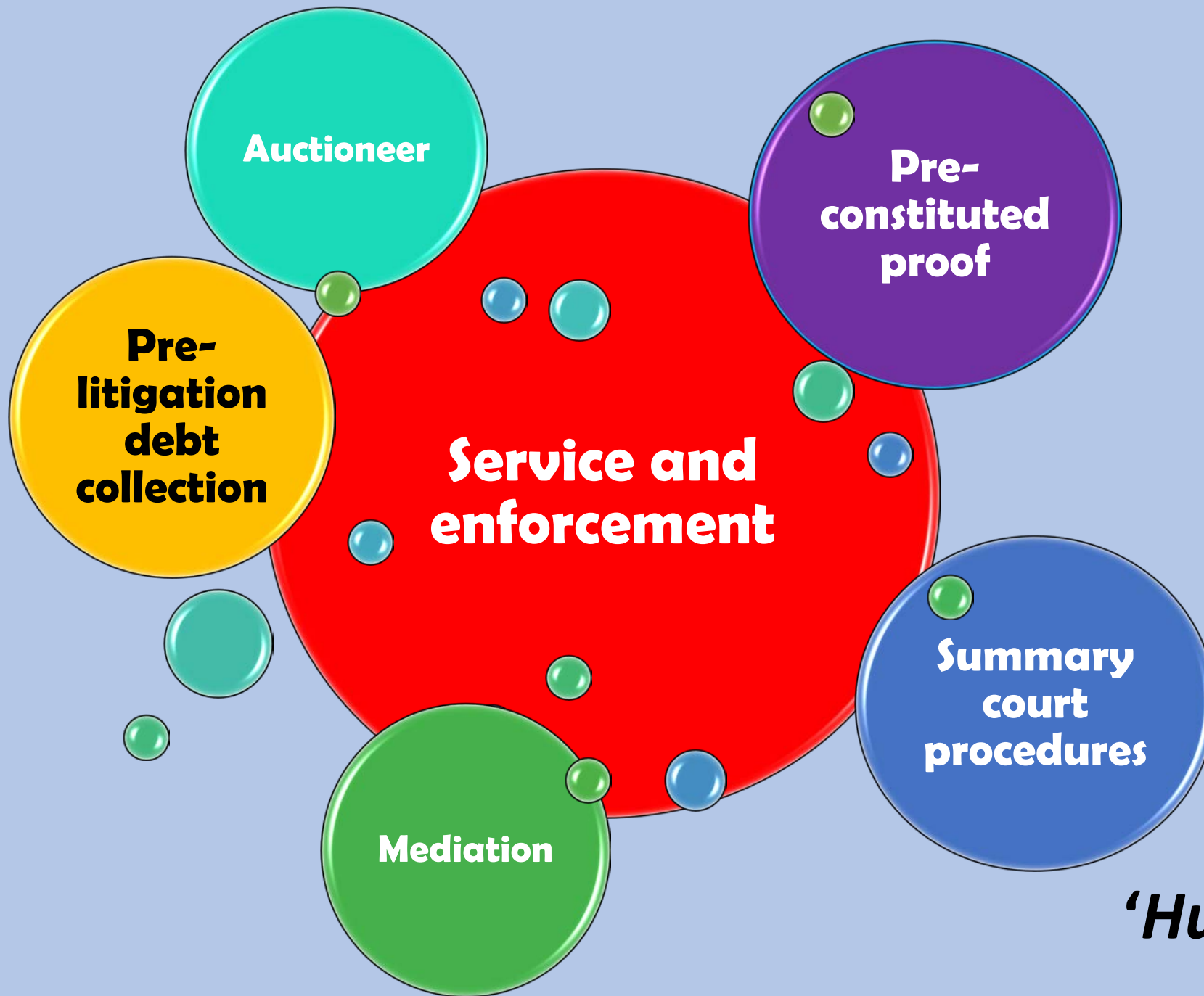
Court supervised



Sweden/Finland

Administrative model





***'Huissier'* model**

Entry point : Brussels I – declaration of enforceability

France

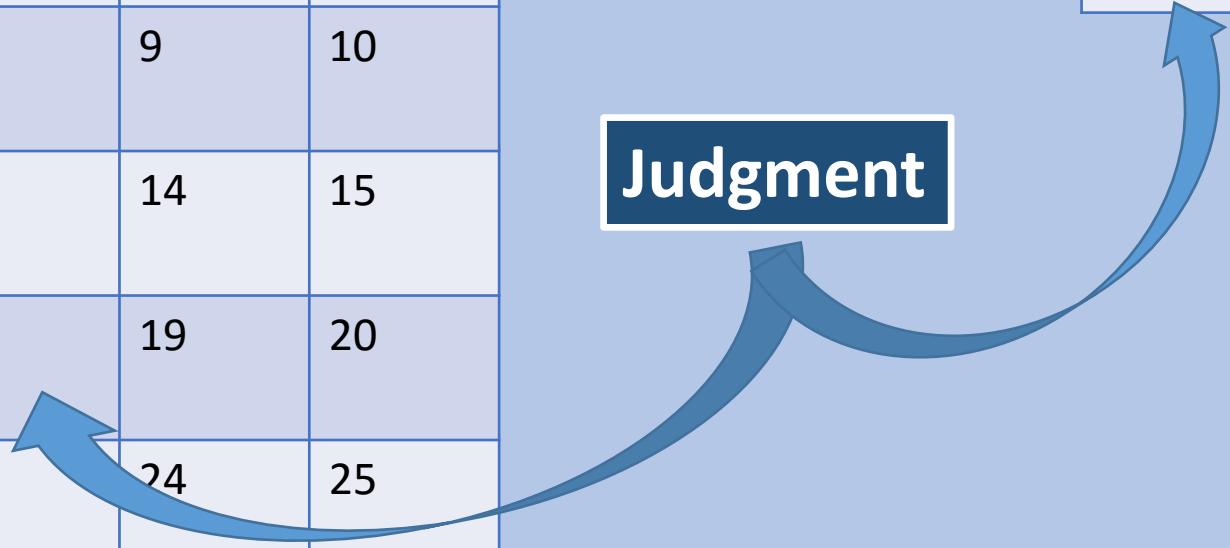
1	2	3	4	5
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England

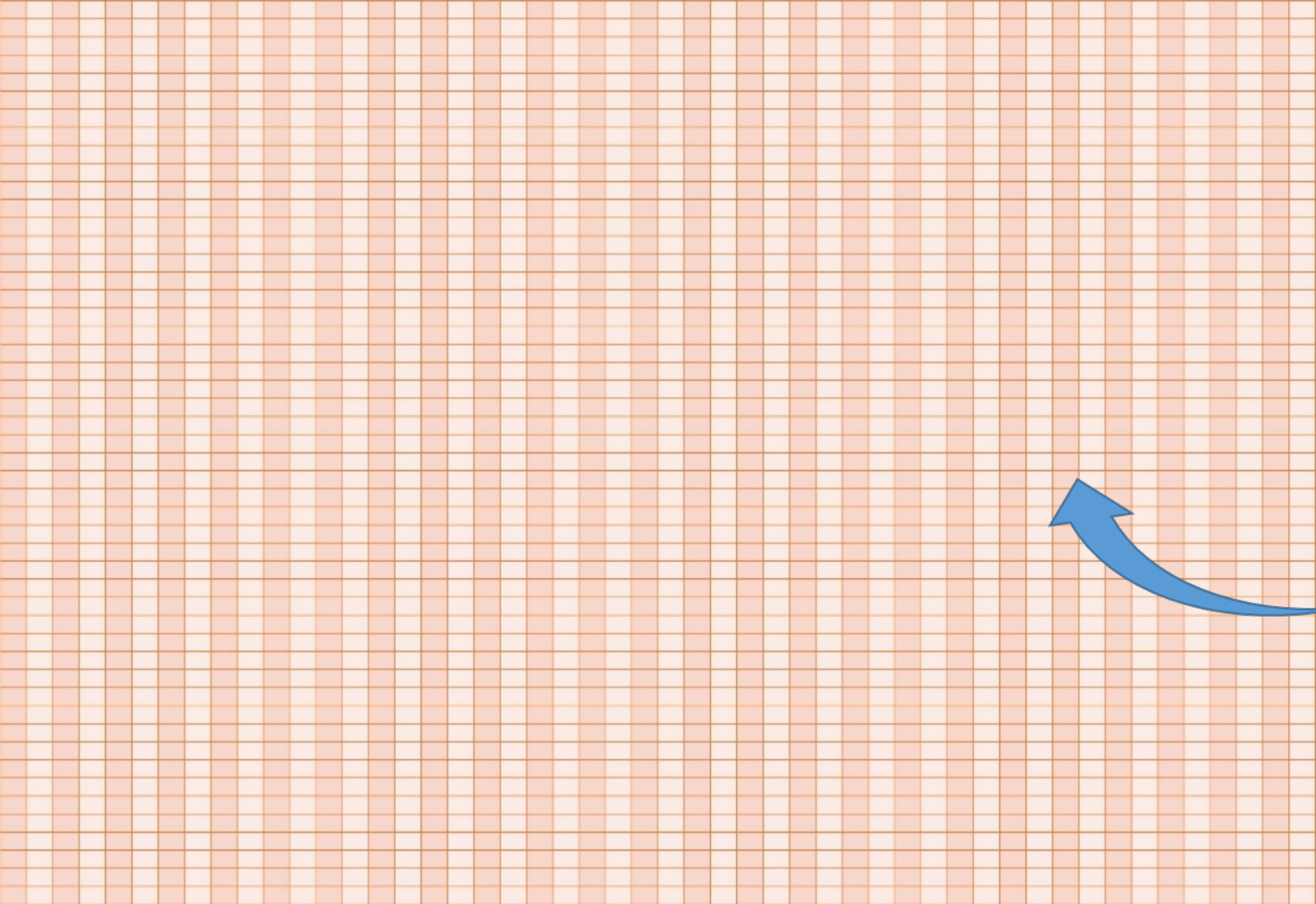
High Court

Judgment

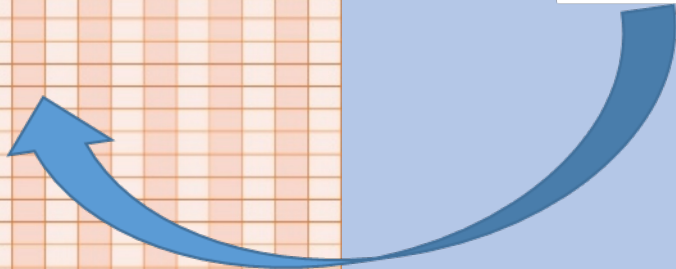
Small number
Generalist
Gaining expertise



Entry point : *huissier de justice* – *huissier* can decide on enforcement measures

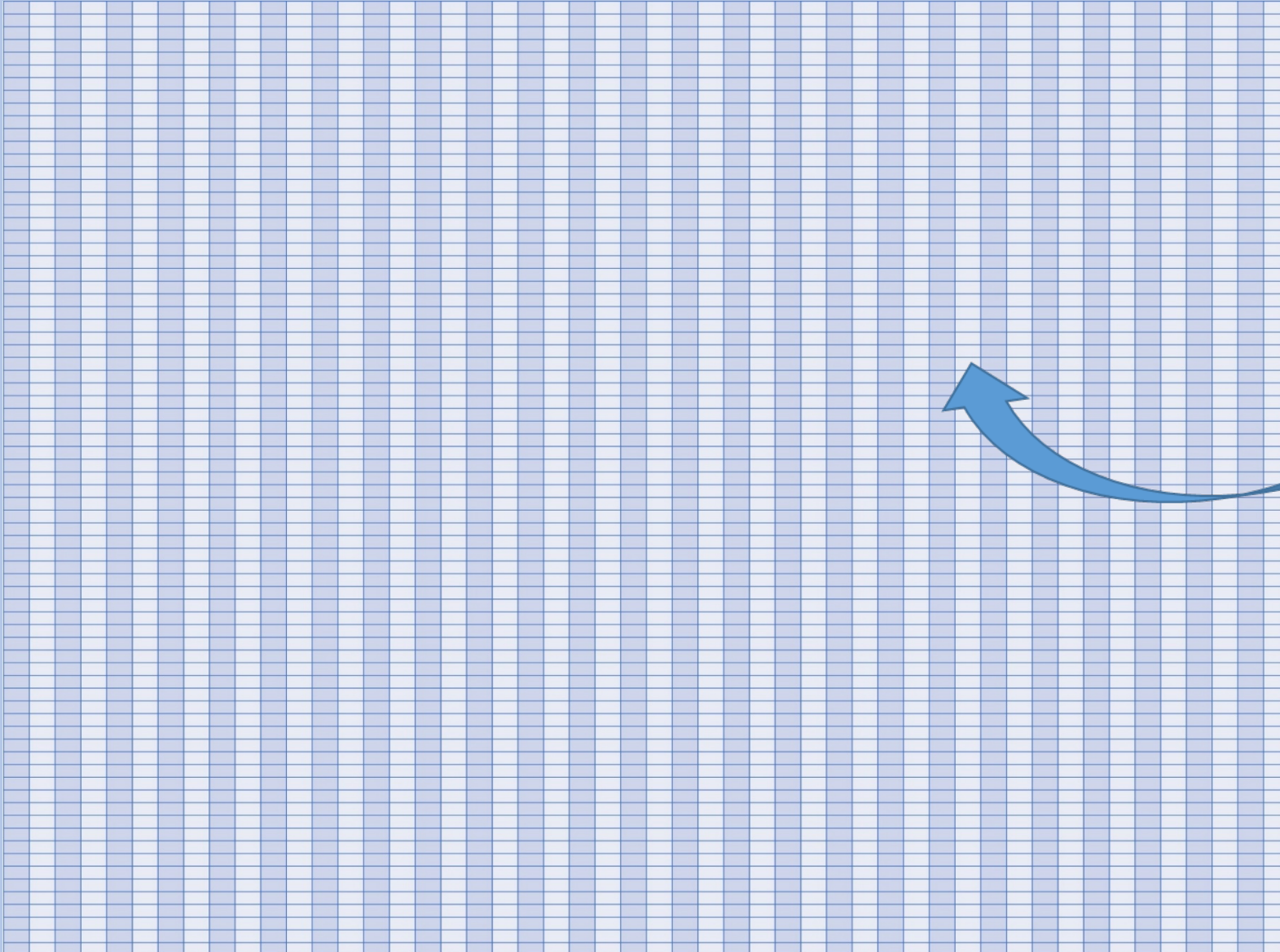


Judgment

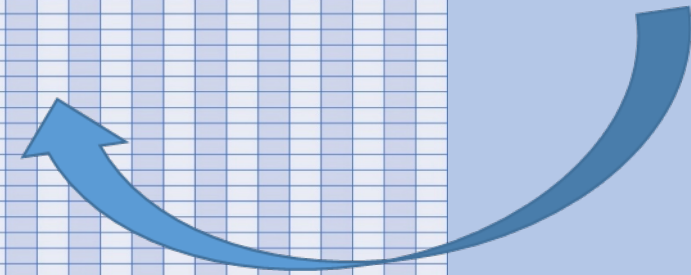


Large number
Specialists

Entry point: lawyer or HCEO choosing enforcement measure →
first instance court



Judgment



Large number
Generalist



High Court



County Court



High Court and County Court

- High Court

- Not competent in relation to attachment of earnings orders

Otherwise:

- Exclusive competence for enforcement of debts over £5000
- Shared competence for debts between £600 and £5000

Enforcement agent : High Court Enforcement Officer (formerly Sheriff's Officer – independent professional)

- County Court

- Exclusive competence for enforcement of debts under £600
- Shared competence for debts between £600 and £5000
- Exclusive competence for attachment of earnings orders

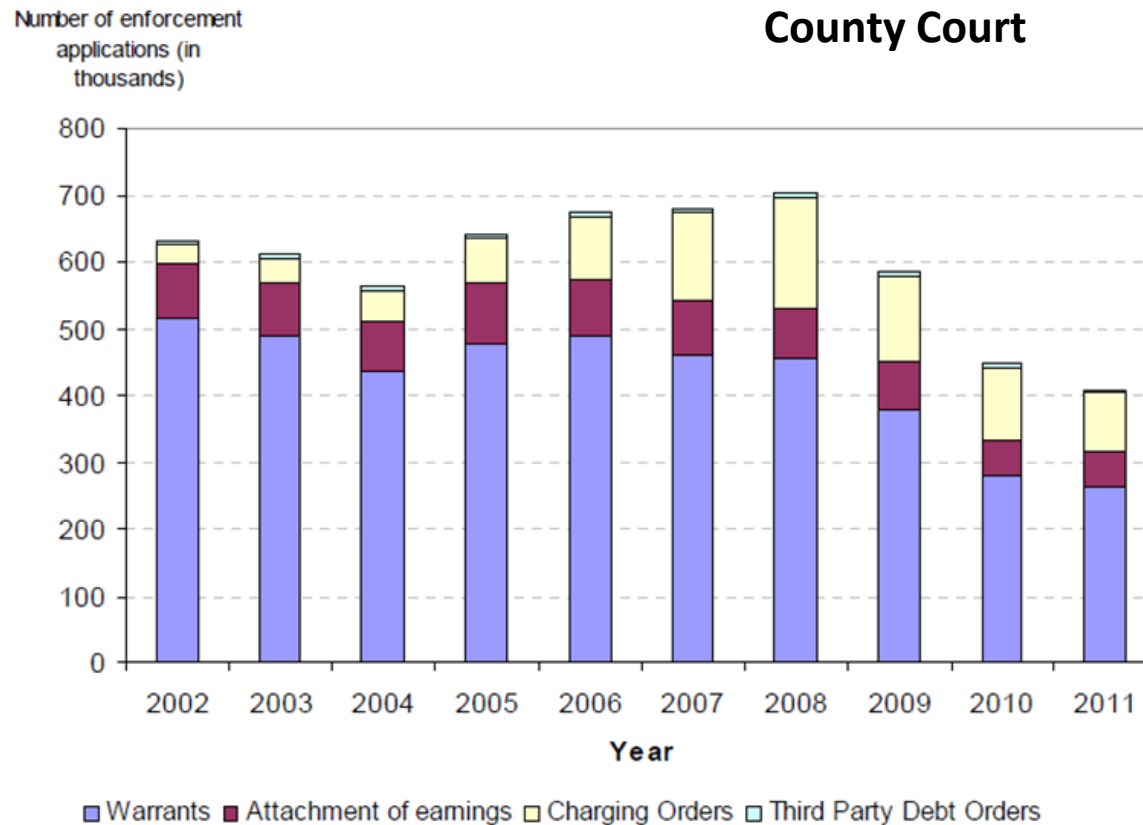
Enforcement agent: County Court Bailiff (civil servant)

Access to information

- No authorised access to official sources of information (e.g. tax, social insurance)
 - Low level of regulation of enforcement agents
 - Lack of trust
- Registry Trust
- Purely commercial sources
 - Credit reference agencies
 - Tracing agents
 - 'Big data'
- Orders to Obtain Information
 - Debtor required to attend in court (usually before court officer)
 - Typically standard questionnaire
 - Ultimate sanction for non-attendance: imprisonment for contempt of court

Prominence of execution against goods

Enforcement applications by type, 2002-2011



High Court (2014)

- 41,267 writs of fieri facias (now writs of control)
- 445 charging orders
- 201 third party debt orders
- 107 orders to obtain information

Challenges to the recognition and enforcement of judgments

- CPR Part 23: General rules about applications for court orders
 - Applies in relation to Arts 38, 44, 45, 46, 54 Brussels I recast

PART 23 - GENERAL RULES ABOUT APPLICATIONS FOR COURT ORDERS

Contents of this Part

Title	Number
Meaning of 'application notice' and 'respondent'	Rule 23.1
Where to make an application	Rule 23.2
Application notice to be filed	Rule 23.3
Notice of an application	Rule 23.4
Time when an application is made	Rule 23.5
What an application notice must include	Rule 23.6
Service of a copy of an application notice	Rule 23.7
Applications which may be dealt with without a hearing	Rule 23.8
Service of application where application made without notice	Rule 23.9
Application to set aside or vary order made without notice	Rule 23.10
Power of the court to proceed in the absence of a party	Rule 23.11
Dismissal of totally without merit applications	Rule 23.12

Onus on parties when challenging enforcement

Relief against enforcement under the Judgments Regulation

74.7B.—(1) An application for relief under article 44 of the Judgments Regulation must be made—

- (a) in accordance with Part 23; and
- (b) to the court in which the judgment is being enforced or, **if the judgment debtor is not aware of any proceedings relating to enforcement, the High Court.**

(2) The judgment debtor must, as soon as practicable, serve copies of any order made under article 44 on—

- (a) all other parties to the proceedings and any other person affected by the order;
- (b) any court in which proceedings relating to enforcement of the judgment are pending in England and Wales; and
- (c) any enforcement agent or enforcement officer (as defined in rule 83.1(2)) instructed by the judgment creditor,

and any such order will not have effect on any person until it has been served.

Similar wording
for applications
under articles:

45

46

38

Adaptation orders

Adaptation of certain orders in foreign judgments subject to the Judgments Regulation

74.11A.—(1) In this rule, an “adaptation order” means an order for the adaptation of a legal remedy which is contained in a foreign judgment but is unknown under the law of England and Wales pursuant to article 54 of the Judgments Regulation.

(2) The court may make an adaptation order on its own initiative or on an application by any party.

(3) In accordance with article 54(1) of the Judgments Regulation, an adaptation order may only result in a remedy whose legal effects are equivalent to those contained in the judgment and which does not produce such effects extending beyond those provided for under the law of England and Wales.

(4) An application for an adaptation order or a challenge under article 54(2) of the Judgments Regulation to the adaptation of any measure without an adaptation order must be made—

(a) to the High Court; and

(b) in accordance with Part 23.

Protective measures

Article 40 B I A: “An enforceable judgment shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State addressed”

- CPR Part 20
 - E.g. asset freezing order? Or
- CPR Parts 69-73
 - Preliminary freezing of assets pending enforcement