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# SCHEDULE 2 CCR ORDER 28

## JUDGMENT SUMMONSES

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### **Rule 1 Application for judgment summons**

- (1) An application for the issue of a judgment summons may be made to the court for the district in which the debtor resides or carries on business or, if the summons is to issue against two or more persons jointly liable under the judgment or order sought to be enforced, in the court for the district in which any of the debtors resides or carries on business.
- (2) The judgment creditor shall make his application by filing a request in that behalf certifying the amount of money remaining due under the judgment or order, the amount in respect of which the judgment summons is to issue and that the whole or part of any instalment due remains unpaid.
- (3) The judgment creditor must file with the request all written evidence on which he intends to rely.

### **Rule 2 Mode of service**

- (1) Subject to paragraph (2), a judgment summons shall be served personally on every debtor against whom it is issued.
- (2) Where the judgment creditor or the judgment creditor's solicitor gives a certificate for postal service in respect of a debtor residing or carrying on business within the district of the court, the judgment summons will, unless the district judge otherwise directs, be served on that debtor by the court sending it to the debtor by first-class post at the address stated in the request for the judgment summons and, unless the contrary is shown, the date of service is deemed to be the seventh day after the date on which the judgment summons was sent to the debtor.
- (3) Where a judgment summons has been served on a debtor in accordance with paragraph (2), no order of commitment shall be made against him unless –
  - (a) he appears at the hearing; or
  - (b) it is made under section 110(2) of the Act.
- (4) The written evidence on which the judgment creditor intends to rely must be served with the judgment summons.

### **Rule 3 Time for service**

- (1) The judgment summons and written evidence must be served not less than 14 days before the day fixed for the hearing.
- (2) A notice of non-service will be sent pursuant to CPR rule 6.18 in respect of a judgment summons which has been sent by post under rule 2(2) and has been returned to the court undelivered.

- (3) CPR rules 7.5 and 7.6 apply, with the necessary modifications, to a judgment summons as they apply to a claim form.

#### **Rule 4 Enforcement of debtor's attendance**

- (1) Order 27, rules 7B and 8, shall apply, with the necessary modifications, to an order made under section 110(1) of the Act for the attendance of the debtor at an adjourned hearing of a judgment summons as they apply to an order made under section 23(1) of the Attachment of Earnings Act 1971<sup>1</sup> for the attendance of the debtor at an adjourned hearing of an application for an attachment of earnings order.
- (1A) An order made under section 110(1) of the Act must be served personally on the judgment debtor.
- (1B) Copies of—
  - (a) the judgment summons; and
  - (b) the written evidence,must be served with the order.
- (2) At the time of service of the order there shall be paid or tendered to the debtor a sum reasonably sufficient to cover his expenses in travelling to and from the court, unless such a sum was paid to him at the time of service of the judgment summons.

#### **Rule 5 Evidence**

- (1) No person may be committed on an application for a judgment summons unless—
  - (a) the order is made under section 110(2) of the Act; or
  - (b) the judgment creditor proves that the debtor—
    - (i) has or has had since the date of the judgment or order the means to pay the sum in respect of which he has made default; and
    - (ii) has refused or neglected or refuses or neglects to pay that sum.
- (2) The debtor may not be compelled to give evidence.

#### **Rule 7 Suspension of committal order**

- (1) If on the hearing of a judgment summons a committal order is made, the judge may direct execution of the order to be suspended to enable the debtor to pay the amount due.
- (2) A note of any direction given under paragraph (1) shall be entered in the records of the court and notice of the suspended committal order shall be sent to the debtor.
- (3) Where a judgment summons is issued in respect of one or more but not all of the instalments payable under a judgment or order for payment by instalments and a committal order is made and suspended under paragraph (1), the judgment or order shall, unless the judge otherwise orders, be suspended for so long as the execution of the committal order is suspended.
- (4) Where execution of a committal order is suspended under paragraph (1) and the debtor subsequently desires to apply for a further suspension, the debtor shall attend at or write to the court office and apply for the suspension he desires, stating the reasons for his inability to comply with the terms of the original suspension, and the court shall fix a day for the hearing of the application by the judge and give at least 3 days' notice thereof to the judgment creditor and the debtor.

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<sup>1</sup> 1971 c.32; section 23(1) was amended by the Administration of Justice Act 1982 (c.53), section 53(2).

- (5) The district judge may suspend execution of the committal order pending the hearing of an application under paragraph (4).

#### **Rule 8 New order on judgment summons**

- (1) Where on the hearing of a judgment summons, the judge makes a new order for payment of the amount of the judgment debt remaining unpaid, there shall be included in the amount payable under the order for the purpose of any enforcement proceedings, otherwise than by judgment summons, any amount in respect of which a committal order has already been made and the debtor imprisoned.
- (2) No judgment summons under the new order shall include any amount in respect of which the debtor was imprisoned before the new order was made, and any amount subsequently paid shall be appropriated in the first instance to the amount due under the new order.

#### **Rule 9 Notification of order on judgment of High Court**

- (1) Notice of the result of the hearing of a judgment summons on a judgment or order of the High Court shall be sent by the county court to the High Court.
- (2) If a committal order or a new order for payment is made on the hearing, the office copy of the judgment or order filed in the county court shall be deemed to be a judgment or order of the court in which the judgment summons is heard.

#### **Rule 10 Costs on judgment summons**

- (1) No costs shall be allowed to the judgment creditor on the hearing of a judgment summons unless –
  - (a) a committal order is made; or
  - (b) the sum in respect of which the judgment summons was issued is paid before the hearing.
- (2) Where costs are allowed to the judgment creditor,
  - (a) there may be allowed –
    - (i) a charge of the judgment creditor's solicitor for attending the hearing and, if the judge so directs, for serving the judgment summons;
    - (ii) a fee to counsel if the court certifies that the case is fit for counsel;
    - (iii) any travelling expenses paid to the debtor, and
    - (iv) the court fee on the issue of the judgment summons;
  - (b) the costs may be fixed and allowed without detailed assessment under CPR Part 47.

#### **Rule 11 Issue of warrant of committal**

- (1) A judgment creditor desiring a warrant to be issued pursuant to a committal order shall file a request in that behalf.
- (2) Where two or more debtors are to be committed in respect of the same judgment or order, a separate warrant of committal shall be issued for each of them.
- (3) Where a warrant of committal is sent to a foreign court for execution, that court shall indorse on it a notice as to the effect of section 122(3) of the Act addressed to the governor of the prison of that court.

## **Rule 12 Notification to foreign court of part payment before debtor lodged in prison**

Where, after a warrant of committal has been sent to a foreign court for execution but before the debtor is lodged in prison, the home court is notified that an amount which is less than the sum on payment of which the debtor is to be discharged has been paid, the home court shall send notice of the payment to the foreign court.

## **Rule 13 Payment after debtor lodged in prison**

- (1) Where, after the debtor has been lodged in prison under a warrant of committal, payment is made of the sum on payment of which the debtor is to be discharged, then –
  - (a) if the payment is made to the court responsible for the execution of the warrant, the court officer shall make and sign a certificate of payment and send it by post or otherwise to the gaoler;
  - (b) if the payment is made to the court which issued the warrant of committal after the warrant has been sent to a foreign court for execution, the home court shall send notice of the payment to the foreign court, and the court officer at the foreign court shall make and sign a certificate of payment and send it by post or otherwise to the gaoler;
  - (c) if the payment is made to the gaoler, he shall sign a certificate of payment and send the amount to the court which made the committal order.
- (2) Where, after the debtor has been lodged in prison under a warrant of committal, payment is made of an amount less than the sum on payment of which the debtor is to be discharged, then subject to paragraph (3), paragraph (1)(a) and (b) shall apply with the substitution of references to a notice of payment for the references to a certificate of payment and paragraph (1)(c) shall apply with the omission of the requirement to make and sign a certificate of payment.
- (3) Where, after the making of a payment to which paragraph (2) relates, the balance of the sum on payment of which the debtor is to be discharged is paid, paragraph (1) shall apply without the modifications mentioned in paragraph (2).

## **Rule 14 Discharge of debtor otherwise than on payment**

- (1) Where the judgment creditor lodges with the district judge a request that a debtor lodged in prison under a warrant of committal may be discharged from custody, the district judge shall make an order for the discharge of the debtor in respect of the warrant of committal and the court shall send the gaoler a certificate of discharge.
- (2) Where a debtor who has been lodged in prison under a warrant of committal desires to apply for his discharge under section 121 of the Act, the application shall be made to the judge in writing and without notice showing the reasons why the debtor alleges that he is unable to pay the sum in respect of which he has been committed and ought to be discharged and stating any offer which he desires to make as to the terms on which his discharge is to be ordered, and Order 27, rule 8(3) and (4), shall apply, with the necessary modifications, as it applies to an application by a debtor for his discharge from custody under section 23(7) of the Attachment of Earnings Act 1971<sup>1</sup>.
- (3) If in a case to which paragraph (2) relates the debtor is ordered to be discharged from custody on terms which include liability to re-arrest if the terms are not complied with, the judge may, on the application of the judgment creditor if the terms are not complied with, order the

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<sup>1</sup> 1971 c.32.

debtor to be re-arrested and imprisoned for such part of the term of imprisonment as remained unserved at the time of discharge.

- (4) Where an order is made under paragraph (3), a duplicate warrant of committal shall be issued, indorsed with a certificate signed by the court officer as to the order of the judge.

