

# SCHEDULE 1 RSC ORDER 45

## ENFORCEMENT OF JUDGMENTS AND ORDERS: GENERAL

### Rule 1A Interpretation

In this Order, and in RSC Orders 46 and 47 –

- (a) ‘enforcement officer’ means an individual who is authorised to act as an enforcement officer under the Courts Act 2003; and
- (b) ‘relevant enforcement officer’ means –
  - (i) in relation to a writ of execution which is directed to an single enforcement officer, that officer;
  - (ii) in relation to a writ of execution which is directed to two or more enforcement officers, the officer to whom the writ is allocated.

### Rule 1 Enforcement of judgment, etc., for payment of money

- (4) In this order references to any writ shall be construed as including references to any further writ in aid of the first mentioned writ.

### Rule 2 Notice of seizure

When first executing a writ of fieri facias, the Sheriff or his officer or the relevant enforcement officer shall deliver to the debtor or leave at each place where execution is levied a notice in Form No. 55 in the relevant Practice Direction informing the debtor of the execution.

### Rule 3 Enforcement of judgment for possession of land

- (1) Subject to the provisions of these rules, a judgment or order for the giving of possession of land may be enforced by one or more of the following means, that is to say –
  - (a) writ of possession;
  - (b) in a case in which rule 5 applies, an order of committal;
  - (c) in such a case, writ of sequestration.
- (2) A writ of possession to enforce a judgment or order for the giving of possession of any land shall 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 –
  - (a) payment of moneys secured by the mortgage;
  - (b) sale of the mortgaged property;
  - (c) foreclosure;
  - (d) 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;
  - (e) redemption;
  - (f) reconveyance of the land or its release from the security; or
  - (g) delivery of possession by the mortgagee.

- (2A) In paragraph (2) ‘mortgage’ includes a legal or equitable mortgage and a legal or equitable charge, and reference to a mortgagor, a mortgagee and mortgaged land is to be interpreted accordingly.
- (3) Such permission as is referred to in paragraph (2) shall not be granted unless it is shown –
- (a) that every person in actual possession of the whole or any part of the land has received such notice of the proceedings as appears to the court sufficient to enable him to apply to the court for any relief to which he may be entitled; and
  - (b) if the operation of the judgment or order is suspended by subsection (2) of section 16 of the Landlord and Tenant Act, 1954<sup>1</sup>, that the applicant has not received notice in writing from the tenant that he desires that the provisions of paragraphs (a) and (b) of that subsection shall have effect.
- (4) 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.

#### **Rule 4 Enforcement of judgment for delivery of goods**

- (1) Subject to the provisions of these rules, a judgment or order for the delivery of any goods which does not give a person against whom the judgment is given or order made the alternative of paying the assessed value of the goods may be enforced by one or more of the following means, that is to say –
- (a) writ of delivery to recover the goods without alternative provision for recovery of the assessed value thereof (hereafter in this rule referred to as a ‘writ of specific delivery’);
  - (b) in a case in which rule 5 applies, an order of committal;
  - (c) in such a case, writ of sequestration.
- (2) Subject to the provisions of these rules, a judgment or order for the delivery of any goods or payment of their assessed value may be enforced by one or more of the following means, that is to say –
- (a) writ of delivery to recover the goods or their assessed value;
  - (b) by order of the court, writ of specific delivery;
  - (c) in a case in which rule 5 applies, writ of sequestration.
- An application for an order under sub-paragraph (b) shall be made in accordance with CPR Part 23, which must be served on the defendant against whom the judgment or order sought to be enforced was given or made.
- (3) A writ of specific delivery, and a writ of delivery to recover any goods or their assessed value, 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.
- (4) A judgment or order for the payment of the assessed value of any goods may be enforced by the same means as any other judgment or order for the payment of money.

#### **Rule 5 Enforcement of judgment to do or abstain from doing any act**

- (1) Where –
- (a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or, as the case may be, within that time as extended or abridged under a court order or CPR rule 2.11; or
  - (b) a person disobeys a judgment or order requiring him to abstain from doing an act,

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<sup>1</sup> 1954 c.56.

then, subject to the provisions of these rules, the judgment or order may be enforced by one or more of the following means, that is to say –

- (i) with the permission of the court, a writ of sequestration against the property of that person;
  - (ii) where that person is a body corporate, with the permission of the court, a writ of sequestration against the property of any director or other officer of the body;
  - (iii) subject to the provisions of the Debtors Act 1869 and 1878<sup>1</sup>, an order of committal against that person or, where that person is a body corporate, against any such officer.
- (2) Where a judgment or order requires a person to do an act within a time therein specified and an order is subsequently made under rule 6 requiring the act to be done within some other time, references in paragraph (1) of this rule to a judgment or order shall be construed as references to the order made under rule 6.
- (3) Where under any judgment or order requiring the delivery of any goods the person liable to execution has the alternative of paying the assessed value of the goods, the judgment or order shall not be enforceable by order of committal under paragraph (1), but the court may, on the application of the person entitled to enforce the judgment or order, make an order requiring the first mentioned person to deliver the goods to the applicant within a time specified in the order, and that order may be so enforced.

#### **Rule 6 Judgment, etc. requiring act to be done: order fixing time for doing it**

- (1) Notwithstanding that a judgment or order requiring a person to do an act specifies a time within which the act is to be done, the court shall have power to make an order requiring the act to be done within another time, being such time after service of that order, or such other time, as may be specified therein.
- (2) Where a judgment or order requiring a person to do an act does not specify a time within which the act is to be done, the court shall have power subsequently to make an order requiring the act to be done within such time after service of that order, or such other time, as may be specified therein.
- (3) An application for an order under this rule must be made in accordance with CPR Part 23 and the application notice must, be served on the person required to do the act in question.

#### **Rule 7 Service of copy of judgment, etc., prerequisite to enforcement under rule 5**

- (1) In this rule references to an order shall be construed as including references to a judgment.
- (2) Subject to paragraphs (6) and (7) of this rule, an order shall not be enforced under rule 5 unless –
  - (a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question; and
  - (b) in the case of an order requiring a person to do an act, the copy has been so served before the expiration of the time within which he was required to do the act.
- (3) Subject as aforesaid, an order requiring a body corporate to do or abstain from doing an act shall not be enforced as mentioned in rule 5(1)(b)(ii) or (iii) unless –
  - (a) a copy of the order has also been served personally on the officer against whose property permission is sought to issue a writ of sequestration or against whom an order of committal is sought; and

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<sup>1</sup> 1869 c.62; 1878 c.54.

- (b) in the case of an order requiring the body corporate to do an act, the copy has been so served before the expiration of the time within which the body was required to do the act.
- (4) There must be prominently displayed on the front of the copy of an order served under this rule a warning to the person on whom the copy is served that disobedience to the order would be a contempt of court punishable by imprisonment, or (in the case of an order requiring a body corporate to do or abstain from doing an act) punishable by sequestration of the assets of the body corporate and by imprisonment of any individual responsible.
- (5) With the copy of an order required to be served under this rule, being an order requiring a person to do an act, there must also be served a copy of any order or agreement under CPR rule 2.11 extending or abridging the time for doing the act and, where the first-mentioned order was made under rule 5(3) or 6 of this order, a copy of the previous order requiring the act to be done.
- (6) An order requiring a person to abstain from doing an act may be enforced under rule 5 notwithstanding that service of a copy of the order has not been effected in accordance with this rule if the court is satisfied that pending such service, the person against whom or against whose property is sought to enforce the order has had notice thereof either –
  - (a) by being present when the order was made; or
  - (b) by being notified of the terms of the order, whether by telephone, telegram or otherwise.
- (7) The court may dispense with service of a copy of an order under this rule if it thinks it just to do so.

#### **Rule 8 Court may order act to be done at expense of disobedient party**

If a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to its powers under section 39 of the Act and its powers to punish the disobedient party for contempt, the court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person appointed by the court, at the cost of the disobedient party, and upon the act being done the expenses incurred may be ascertained in such manner as the court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs.

#### **Rule 11 Matters occurring after judgment: stay of execution, etc.**

Without prejudice to Order 47, rule 1, a party against whom a judgment has been given or an order made may apply to the court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the court may by order grant such relief, and on such terms, as it thinks just.

#### **Rule 12 Forms of writs**

- (1) A writ of fieri facias must be in such of the Forms Nos. 53 to 63 in the relevant practice direction as is appropriate in the particular case.
- (2) A writ of delivery must be in Form No. 64 or 65 in the relevant practice direction, whichever is appropriate.
- (3) A writ of possession must be in Form No. 66 or 66A in the relevant practice direction, whichever is appropriate.
- (4) A writ of sequestration must be in Form No. 67 in the relevant practice direction.