

# PART 40

## JUDGMENTS, ORDERS, SALE OF LAND ETC.

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## I JUDGMENTS AND ORDERS

### SCOPE OF THIS SECTION

- 40.1 | This Section sets out rules about judgments and orders which apply except where any other of these Rules makes a different provision in relation to the judgment or order in question.

### STANDARD REQUIREMENTS

- 40.2 | (1) Every judgment or order must state the name and judicial title of the person who made it, unless it is –
- (a) default judgment entered under rule 12.4(1) (entry of default judgment where judgment is entered by a court officer) or a default costs certificate obtained under rule 47.11;
  - (b) judgment entered under rule 14.4, 14.5, 14.6, 14.7 and 14.9 (entry of judgment on admission where judgment is entered by a court officer);
  - (c) a consent order under rule 40.6(2) (consent orders made by court officers);
  - (d) an order made by a court officer under rule 70.5 (orders to enforce awards as if payable under a court order); or
  - (e) an order made by a court officer under rule 71.2 (orders to obtain information from judgment debtors).
- (2) Every judgment or order must –
- (a) bear the date on which it is given or made; and
  - (b) be sealed<sup>(GL)</sup> by the court.

### DRAWING UP AND FILING OF JUDGMENTS AND ORDERS

- 40.3 | (1) Every judgment or order will be drawn up by the court unless –
- (a) the court orders a party to draw it up;
  - (b) a party, with the permission of the court, agrees to draw it up;
  - (c) the court dispenses with the need to draw it up; or
  - (d) it is a consent order under rule 40.6.
- (2) The court may direct that –
- (a) a judgment or an order drawn up by a party must be checked by the court before it is sealed<sup>(GL)</sup>; or
  - (b) before a judgment or an order is drawn up by the court, the parties must file an agreed statement of its terms.
- (3) Where a judgment or an order is to be drawn up by a party –

- (a) he must file it no later than 7 days after the date on which the court ordered or permitted him to draw it up so that it can be sealed<sup>(GL)</sup> by the court; and
- (b) if he fails to file it within that period, any other party may draw it up and file it.

## SERVICE OF JUDGMENTS AND ORDERS

- 40.4 | (1) Where a judgment or an order has been drawn up by a party and is to be served by the court –
- (a) the party who drew it up must file a copy to be retained at court and sufficient copies for service on him and on the other parties; and
  - (b) once it has been sealed<sup>(GL)</sup>, the court must serve a copy of it on each party to the proceedings.
- (2) Unless the court directs otherwise, any order made otherwise than at trial must be served on –
- (a) the applicant and the respondent; and
  - (b) any other person on whom the court orders it to be served.

(Rule 6.3 specifies who must serve judgments and orders)

## POWER TO REQUIRE JUDGMENT OR ORDER TO BE SERVED ON A PARTY AS WELL AS HIS SOLICITOR

- 40.5 | Where the party on whom a judgment or order is to be served is acting by a solicitor, the court may order the judgment or order to be served on the party as well as on his solicitor.

## CONSENT JUDGMENTS AND ORDERS

- 40.6 | (1) This rule applies where all the parties agree the terms in which a judgment should be given or an order should be made.
- (2) A court officer may enter and seal<sup>(GL)</sup> an agreed judgment or order if –
- (a) the judgment or order is listed in paragraph (3);
  - (b) none of the parties is a litigant in person; and
  - (c) the approval of the court is not required by these Rules, a practice direction or any enactment before an agreed order can be made.
- (3) The judgments and orders referred to in paragraph (2) are –
- (a) a judgment or order for –
    - (i) the payment of an amount of money (including a judgment or order for damages or the value of goods to be decided by the court); or

- (ii) the delivery up of goods with or without the option of paying the value of the goods or the agreed value.
- (b) an order for –
  - (i) the dismissal of any proceedings, wholly or in part;
  - (ii) the stay<sup>(GL)</sup> of proceedings on agreed terms, disposing of the proceedings, whether those terms are recorded in a schedule to the order or elsewhere;
  - (iii) the stay<sup>(GL)</sup> of enforcement of a judgment, either unconditionally or on condition that the money due under the judgment is paid by instalments specified in the order;
  - (iv) the setting aside under Part 13 of a default judgment which has not been satisfied;
  - (v) the payment out of money which has been paid into court;
  - (vi) the discharge from liability of any party;
  - (vii) the payment, assessment or waiver of costs, or such other provision for costs as may be agreed.
- (4) Rule 40.3 (drawing up and filing of judgments and orders) applies to judgments and orders entered and sealed<sup>(GL)</sup> by a court officer under paragraph (2) as it applies to other judgments and orders.
- (5) Where paragraph (2) does not apply, any party may apply for a judgment or order in the terms agreed.
- (6) The court may deal with an application under paragraph (5) without a hearing.
- (7) Where this rule applies –
  - (a) the order which is agreed by the parties must be drawn up in the terms agreed;
  - (b) it must be expressed as being ‘By Consent’;
  - (c) it must be signed by the legal representative acting for each of the parties to whom the order relates or, where paragraph (5) applies, by the party if he is a litigant in person.

## WHEN JUDGMENT OR ORDER TAKES EFFECT

40.7

- (1) A judgment or order takes effect from the day when it is given or made, or such later date as the court may specify.
- (2) This rule applies to all judgments and orders except those to which rule 40.10 (judgment against a State) applies.

## TIME FROM WHICH INTEREST BEGINS TO RUN

- 40.8
- (1) Where interest is payable on a judgment pursuant to section 17 of the Judgments Act 1838<sup>57</sup> or section 74 of the County Courts Act 1984<sup>58</sup>, the interest shall begin to run from the date that judgment is given unless –
    - (a) a rule in another Part or a practice direction makes different provision; or
    - (b) the court orders otherwise.
  - (2) The court may order that interest shall begin to run from a date before the date that judgment is given.

## WHO MAY APPLY TO SET ASIDE OR VARY A JUDGMENT OR ORDER

- 40.9
- A person who is not a party but who is directly affected by a judgment or order may apply to have the judgment or order set aside or varied.

## JUDGMENT AGAINST A STATE IN DEFAULT OF ACKNOWLEDGMENT OF SERVICE

- 40.10
- (1) Where the claimant obtains default judgment under Part 12 on a claim against a State where the defendant has failed to file an acknowledgment of service, the judgment does not take effect until 2 months after service on the State of –
    - (a) a copy of the judgment; and
    - (b) a copy of the evidence in support of the application for permission to enter default judgment (unless the evidence has already been served on the State in accordance with an order made under Part 12).
  - (2) In this rule, ‘State’ has the meaning given by section 14 of the State Immunity Act 1978<sup>59</sup>.

## TIME FOR COMPLYING WITH A JUDGMENT OR ORDER

- 40.11
- A party must comply with a judgment or order for the payment of an amount of money (including costs) within 14 days of the date of the judgment or order, unless –
- (a) the judgment or order specifies a different date for compliance (including specifying payment by instalments);
  - (b) any of these Rules specifies a different date for compliance; or
  - (c) the court has stayed the proceedings or judgment.
- (Parts 12 and 14 specify different dates for complying with certain default judgments and judgments on admissions)

57 1838 c.110. Section 17 was amended by S.I. 1998/2940.

58 1984 c.28. Section 74 was amended by section 2 of the Private International Law (Miscellaneous Provisions) Act 1995 (c.42).

59 1978 c.33.

## CORRECTION OF ERRORS IN JUDGMENTS AND ORDERS

- 40.12 |
- (1) The court may at any time correct an accidental slip or omission in a judgment or order.
  - (2) A party may apply for a correction without notice.

## CASES WHERE COURT GIVES JUDGMENT BOTH ON CLAIM AND COUNTERCLAIM

- 40.13 |
- (1) This rule applies where the court gives judgment for specified amounts both for the claimant on his claim and against the claimant on a counterclaim.
  - (2) If there is a balance in favour of one of the parties, it may order the party whose judgment is for the lesser amount to pay the balance.
  - (3) In a case to which this rule applies, the court may make a separate order as to costs against each party.

## JUDGMENT IN FAVOUR OF CERTAIN PART OWNERS RELATING TO THE DETENTION OF GOODS

- 40.14 |
- (1) In this rule ‘part owner’ means one of two or more persons who have an interest in the same goods.
  - (2) Where –
    - (a) a part owner makes a claim relating to the detention of the goods; and
    - (b) the claim is not based on a right to possession,any judgment or order given or made in respect of the claim is to be for the payment of damages only, unless the claimant had the written authority of every other part owner of the goods to make the claim on his behalf as well as for himself.
  - (3) This rule applies notwithstanding anything in subsection (3) of section 3 of the Torts (Interference with Goods) Act 1977<sup>60</sup>, but does not affect the remedies and jurisdiction mentioned in subsection (8) of that section.

## II SALE OF LAND ETC. AND CONVEYANCING COUNSEL

### SCOPE OF THIS SECTION

- 40.15 |
- (1) This Section –
    - (a) deals with the court’s power to order the sale, mortgage, partition or exchange of land; and
    - (b) contains provisions about conveyancing counsel.

(Section 131 of the Supreme Court Act 1981<sup>61</sup> (provides for the appointment of the conveyancing counsel of the Supreme Court)

60 1977 c.32.

61 1981 c.54; section 131 was amended by the Courts and Legal Services Act 1990 (c.41), Schedule 10, paragraph 48.

(2) In this Section ‘land’ includes any interest in, or right over, land.

#### POWER TO ORDER SALE ETC.

- 40.16 | In any proceedings relating to land, the court may order the land, or part of it, to be –
- (a) sold;
  - (b) mortgaged;
  - (c) exchanged; or
  - (d) partitioned.

#### POWER TO ORDER DELIVERY UP OF POSSESSION ETC.

- 40.17 | Where the court has made an order under rule 40.16, it may order any party to deliver up to the purchaser or any other person –
- (a) possession of the land;
  - (b) receipt of rents or profits relating to it; or
  - (c) both.

#### REFERENCE TO CONVEYANCING COUNSEL

- 40.18 | (1) The court may direct conveyancing counsel to investigate and prepare a report on the title of any land or to draft any document.
- (2) The court may take the report on title into account when it decides the issue in question.
- (Provisions dealing with the fees payable to conveyancing counsel are set out in the practice direction relating to Part 44)

#### PARTY MAY OBJECT TO REPORT

- 40.19 | (1) Any party to the proceedings may object to the report on title prepared by conveyancing counsel.
- (2) Where there is an objection, the issue will be referred to a judge for determination.
- (Part 23 contains general rules about making an application)

### III DECLARATORY JUDGEMENTS

#### DECLARATORY JUDGEMENTS

- 40.20 | The court may make binding declarations whether or not any other remedy is claimed.