
SCHEDULE 1 RSC ORDER 54

APPLICATIONS FOR WRIT OF HABEAS CORPUS

Rule 1 Application for writ of habeas corpus ad subjiciendum

- (1) Subject to rule 11, an application for a writ of habeas corpus ad subjiciendum shall be made to a judge in court, except that –
 - (a) it shall be made to a Divisional Court of the Queen's Bench Division if the court so directs;
 - (b) it may be made to a judge otherwise than in court at any time when no judge is sitting in court; and
 - (c) any application on behalf of a child must be made in the first instance to a judge otherwise than in court.
- (2) An application for such writ may be made without notice being served on any other party and, subject to paragraph (3) must be supported by a witness statement or affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint. (3) Where the person restrained is unable for any reason to make the witness statement or affidavit required by paragraph (2) the witness statement or affidavit may be made by some other person on his behalf and that witness statement or affidavit must state that the person restrained is unable to make the witness statement or affidavit himself and for what reason.

Rule 2 Power of Court to whom application made without notice being served on any other party

- (1) The court or judge to whom an application under rule 1 is made without notice being served on any other party may make an order forthwith for the writ to issue, or may –
 - (a) where the application is made to a judge otherwise than in court, direct the issue of a claim form seeking the writ, or that an application therefor be made by claim form to a Divisional Court or to a judge in court;
 - (b) where the application is made to a judge in court, adjourn the application so that notice thereof may be given, or direct that an application be made by claim form to a Divisional Court;
 - (c) where the application is made to a Divisional Court, adjourn the application so that notice thereof may be given.
- (2) The claim form must be served on the person against whom the issue of the writ is sought and on such other persons as the court or judge may direct, and, unless the court or judge otherwise directs, there must be at least 8 clear days between the service of the claim form and the date named therein for the hearing of the application.

Rule 3 Copies of witness statements or affidavits to be supplied

Every party to an application under rule 1 must supply to every other party on demand and on payment of the proper charges copies of the witness statements or affidavits which he proposes to use at the hearing of the application.

Rule 4 Power to order release of person restrained

- (1) Without prejudice to rule 2(1), the court or judge hearing an application for a writ of habeas corpus ad subjiciendum may in its or his discretion order that the person restrained be released, and such order shall be a sufficient warrant to any governor of a prison, constable or other person for the release of the person under restraint.
- (2) Where such an application in criminal proceedings is heard by a judge and the judge does not order the release of the person restrained, he shall direct that the application be made by claim form to a Divisional Court of the Queen's Bench Division.

Rule 5 Directions as to return to writ

Where a writ of habeas corpus ad subjiciendum is ordered to issue, the court or judge by whom the order is made shall give directions as to the court or judge before whom, and the date on which, the writ is returnable.

Rule 6 Service of writ and notice

- (1) Subject to paragraphs (2) and (3), a writ of habeas corpus ad subjiciendum must be served personally on the person to whom it is directed.
- (2) If it is not possible to serve such writ personally, or if it is directed to a governor of a prison or other public official, it must be served by leaving it with a servant or agent of the person to whom the writ is directed at the place where the person restrained is confined or restrained.
- (3) If the writ is directed to more than one person, the writ must be served in manner provided by this rule on the person first named in the writ, and copies must be served on each of the other persons in the same manner as the writ.
- (4) There must be served with the writ a notice (in Form No. 90 in Practice Direction 4) stating the court or judge before whom and the date on which the person restrained is to be brought and that in default of obedience proceedings for committal of the party disobeying will be taken.

Rule 7 Return to the writ

- (1) The return to a writ of habeas corpus ad subjiciendum must be indorsed on or annexed to the writ and must state all the causes of the detainer of the person restrained.
- (2) The return may be amended, or another return substituted therefor, by permission of the court or judge before whom the writ is returnable.

Rule 8 Procedure at hearing of writ

When a return to a writ of habeas corpus ad subjiciendum is made, the return shall first be read, and motion then made for discharging or remanding the person restrained or amending or quashing the return, and where that person is brought up in accordance with the writ, his counsel shall be heard first, then the counsel for the Crown, and then one counsel for the person restrained in reply.

Rule 9 Bringing up prisoner to give evidence, etc.

- (1) An application for a writ of habeas corpus ad testificandum or of habeas corpus ad respondendum must be made on witness statement or affidavit to a judge.

- (2) An application for an order to bring up a prisoner, otherwise than by writ of habeas corpus, to give evidence in any proceedings, civil or criminal, before any court, tribunal or justice, must be made on witness statement or affidavit to a judge.

Rule 10 Form of writ

A writ of habeas corpus must be in Form No. 89, 91 or 92 in Practice Direction 4, whichever is appropriate.

Rule 11 Applications relative to the custody, etc., of child

An application by a parent or guardian of a child for a writ of habeas corpus ad subjiciendum relative to the custody, care or control of the child must be made in the Family Division, and this order shall accordingly apply to such applications with the appropriate modifications.

