

# SCHEDULE 2 CCR ORDER 29

## COMMITTAL FOR BREACH OF ORDER OR UNDERTAKING

### **Rule 1 Enforcement of judgment to do or abstain from doing any act**

- (1) Where a person required by a judgment or order to do an act refuses or neglects to do it within the time fixed by the judgment or order or any subsequent order, or where a person disobeys a judgment or order requiring him to abstain from doing an act, then, subject to the Debtors Acts 1869 and 1878<sup>1</sup> and to the provisions of these rules, the judgment or order may be enforced, by order of the judge, by a committal order against that person or, if that person is a body corporate, against any director or other officer of the body.
- (2) Subject to paragraphs (6) and (7), a judgment or order shall not be enforced under paragraph (1) unless –
  - (a) a copy of the judgment or order has been served personally on the person required to do or abstain from doing the act in question and also, where that person is a body corporate, on the director or other officer of the body against whom a committal order is sought; and
  - (b) in the case of a judgment or 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 and was accompanied by a copy of any order, made between the date of the judgment or order and the date of service, fixing that time.
- (3) Where a judgment or order enforceable by committal order under paragraph (1) has been given or made, the court officer shall, if the judgment or order is in the nature of an injunction, at the time when the judgment or order is drawn up, and in any other case on the request of the judgment creditor, issue a copy of the judgment or order, indorsed with or incorporating a notice as to the consequences of disobedience, for service in accordance with paragraph (2).
- (4) If the person served with the judgment or order fails to obey it, the judgment creditor may issue a claim form or, as the case may be, an application notice seeking the committal for contempt of court of that person and subject to paragraph (7), the claim form or application notice shall be served on him personally.
- (4A) The claim form or application notice (as the case may be) shall –
  - (a) identify the provisions of the injunction or undertaking which it is alleged have been disobeyed or broken;
  - (b) list the ways in which it is alleged that the injunction has been disobeyed or the undertaking has been broken;
  - (c) be supported by an affidavit stating the grounds on which the application is made, and unless service is dispensed with under paragraph (7), a copy of the affidavit shall be served with the claim form or application notice.
- (5) If a committal order is made, the order shall be for the issue of a warrant of committal and, unless the judge otherwise orders –

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

- (a) a copy of the order shall be served on the person to be committed either before or at the time of the execution of the warrant; or
  - (b) where the warrant has been signed by the judge, the order for issue of the warrant may be served on the person to be committed at any time within 36 hours after the execution of the warrant.
- (5A)** A warrant of committal shall not, without further order of the court, be enforced more than 2 years after the date on which the warrant is issued.
- (6)** A judgment or order requiring a person to abstain from doing an act may be enforced under paragraph (1) notwithstanding that service of a copy of the judgment or order has not been effected in accordance with paragraph (2) if the judge is satisfied that, pending such service, the person against whom it is sought to enforce the judgment or order has had notice of the judgment or order either –
- (a) by being present when the judgment or order was given or made; or
  - (b) by being notified of the terms of the judgment or order whether by telephone, fax, e-mail or otherwise.
- (7)** Without prejudice to its powers under Part 6 of the CPR, the court may dispense with service of a copy of a judgment or order under paragraph (2) or a claim form or application notice under paragraph (4) if the court thinks it just to do so.
- (8)** Where service of the claim form or application notice has been dispensed with under paragraph (7) and a committal order is made in the absence of the respondent, the judge may on his own initiative fix a date and time when the person to be committed is to be brought before him or before the court.

#### **Rule1A Undertaking given by party**

Rule 1 (except paragraph (6)) shall apply to undertakings as it applies to orders with the necessary modifications and as if –

- (a) for paragraph (2) of that rule there were substituted the following –  
 ‘(2) A copy of the document recording the undertaking shall be delivered by the court officer to the party giving the undertaking –
  - (a) by handing a copy of the document to him before he leaves the court building; or
  - (b) where his place of residence is known, by posting a copy to him at his place of residence; or
  - (c) through his solicitor,
 and, where delivery cannot be effected in this way, the court officer shall deliver a copy of the document to the party for whose benefit the undertaking is given and that party shall cause it to be served personally as soon as is practicable’.
- (b) in paragraph (7), the words from ‘a copy of’ to ‘paragraph (2) or’ were omitted.

#### **Rule 2 Solicitor’s undertaking**

- (1)** An undertaking given by a solicitor in relation to any proceeding in a county court may be enforced, by order of the judge of that court, by committal order against the solicitor.
- (2)** Where it appears to the judge that a solicitor has failed to carry out any such undertaking, he may of his own initiative direct the court officer to issue a notice calling on the solicitor to show cause why he should not be committed to prison.
- (3)** Where any party to the proceedings desires to have the undertaking enforced by committal order, the court officer shall, on the application of the party supported by an affidavit setting

out the facts on which the application is based, issue such a notice as is referred to in paragraph (2).

### **Rule 3 Discharge of person in custody**

- (1)** Where a person in custody under a warrant or order, other than a warrant of committal to which Order 27, rule 8, or Order 28, rule 4 or 14, relates, desires to apply to the court for his discharge, he shall make his application in writing attested by the governor of the prison (or any other officer of the prison not below the rank of principal officer) showing that he has purged or is desirous of purging his contempt and shall, not less than one day before the application is made, serve notice of it on the party, if any, at whose instance the warrant or order was issued.
- (2)** If the committal order –
  - (a) does not direct that any application for discharge shall be made to a judge; or
  - (b) was made by the district judge under section 118 of the Act<sup>1</sup>, any application for discharge may be made to the district judge.
- (3)** Nothing in paragraph (1) shall apply to an application made by the Official Solicitor in his official capacity for the discharge of a person in custody.

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<sup>1</sup> Section 118 was amended by the Statute Law (Repeals) Act 1986 (c.12); and by the Courts and Legal Services Act 1990 (c.41), section 74(6).

