
STATUTORY RULES OF NORTHERN IRELAND

1996 No. 322

The Family Proceedings Rules (Northern Ireland) 1996

Part VIII

Enforcement of orders

Application

8.1. In this Part, unless the context otherwise requires—

“matrimonial order” means an order made in matrimonial proceedings for the periodical payment of money;

“government stock” means any stock issued by Her Majesty’s government in the United Kingdom or any funds of or annuity granted by that body;

“judgment creditor” means the person entitled to payments under an order;

“judgment debtor” means the person liable to make payments under an order.

Garnishee proceedings

Attachment of debt due to judgment debtor

8.2.—(1) On the application of the judgment creditor where there is an amount remaining unpaid by the judgment debtor under a matrimonial order and any other person within the jurisdiction (hereinafter referred to as “the garnishee”) is in debt to the judgment debtor, the court may, subject to the provisions of paragraph (2) and rules 8.3 to 8.8 and 8.10 and to any other statutory provision, order the garnishee to pay the judgment creditor the amount of any debt due or accruing to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy the order and the costs of the garnishee proceedings.

(2) An order under this rule shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter, and in the meantime attaching such debt as is mentioned in paragraph (1), or so much thereof as may be specified in the order, to answer the order mentioned in that paragraph and the costs of the garnishee proceedings.

(3) In this rule “the garnishee” shall include a limited company having a place of business within the jurisdiction or a firm any member of which is resident within the jurisdiction and a garnishee order may be made against any firm in the name of the firm; and any appearance by any member then within the jurisdiction pursuant to an order made under this rule shall be a sufficient appearance by the firm.

Application for order

8.3. An application for an order under rule 8.2 must be made ex parte supported by an affidavit—

(a) identifying the order to be enforced and stating the amount remaining unpaid under it at the time of the application;

- (b) stating that to the best of the information and belief of the deponent the garnishee (naming him) is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the deponent's information and the grounds for his belief; and
- (c) stating, where the garnishee is a bank having more than one place of business, the name and address of the branch at which the judgment debtor's account is believed to be held or, if it be the case, that this information is not known to the deponent.

Service and effect of order to show cause

8.4.—(1) An order under rule 8.12 to show cause must, at least 7 days before the time appointed thereby for the further consideration of the matter, be served—

- (a) on the garnishee personally, and
- (b) unless the court otherwise directs, on the judgment debtor.

(2) Such an order shall bind in the hands of the garnishee as from the service of the order on him any debt specified in the order or so much thereof as may be so specified.

No appearance or dispute of liability by garnishee

8.5.—(1) Where on the further consideration of the matter the garnishee does not attend or does not dispute the debt due or claimed to be due from him to the judgment debtor, the court may, subject to rule 8.8 make an order absolute under rule 8.2 against the garnishee.

(2) An order absolute under rule 8.2 against the garnishee may be enforced as if judgment for the amount payable thereunder had been given against the garnishee.

Dispute of liability by garnishee

8.6. Where on the further consideration of the matter the garnishee disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the court may summarily determine the question at issue or order that any question necessary for determining the liability of the garnishee be tried in any manner in which any question or issue in an action may be tried.

Claims of third persons

8.7.—(1) If in garnishee proceedings it is brought to the notice of the court that some other person than the judgment debtor is or claims to be entitled to the debt sought to be attached or has or claims to have a charge or lien upon it, the court may order that person to attend before the court and state the nature of his claim with particulars thereof.

(2) After hearing any person who attends before the court in compliance with an order under paragraph (1), the court may summarily determine the questions at issue between the claimants or make such other order as it thinks just, including an order that any question or issue necessary for determining the validity of the claim of such other person as is mentioned in paragraph (1) be tried in such manner as is mentioned in rule 8.6.

Discharge of garnishee

8.8. Any payment made by a garnishee in compliance with an order absolute under these Rules, shall be a valid discharge of his liability to the judgment debtor to the extent of the amount paid notwithstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which they arose is reversed.

Money in court

8.9.—(1) Where money is standing to the credit of the judgment debtor in court, the judgment creditor shall not be entitled to take garnishee proceedings in respect of that money but may apply to the court by summons for an order that the money or so much thereof as is sufficient to satisfy the order sought to be enforced and the costs of the application be paid to the judgment creditor.

(2) On issuing a summons under this rule the applicant must produce the summons at the Court Funds Office and leave a copy at that office, and the money to which the application relates shall not be paid out of court until after the determination of the application.

If the application is dismissed, the applicant must give notice of that fact to the Court Funds Office.

(3) Unless the court otherwise directs, the summons must be served on the judgment debtor at least 7 days before the day named therein for the hearing.

(4) The court hearing an application under the rule may make such order with respect to the money in court as it thinks just.

Costs

8.10. The costs of any application for an order under rule 8.2 to 8.9 and of any proceedings arising therefrom or incidental thereto, shall, unless the court otherwise directs, be retained by the judgment creditor out of the money recovered by him under the order and in priority to the judgment debt.

Charging orders, stop orders etc

Order imposing charge on securities

8.11.—(1) The court may for the purpose of enforcing a matrimonial order by order impose on any interest to which the judgment debtor is beneficially entitled in such of the securities to which this rule applies as may be specified in the order a charge for securing payment of the amount due under the order and interest thereon.

(2) Any such order shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter and imposing the charge until that time in any event.

(3) The securities to which this rule applies are—

(a) any Government stock, and any stock of any company registered under the Companies (Northern Ireland) Order 1986(1) including any such stock standing in the name of the Accountant General, and

(b) any dividend of or interest payable on such stock.

Application for order under rule 8.13

8.12. An application for an order under rule 8.13 must be made ex parte supported by an affidavit—

(a) identifying the order to be enforced, stating the amount unpaid under it at the date of the application and showing that the applicant is entitled to enforce the order;

(b) specifying the securities on the judgment debtor's interest in which it is sought to impose a charge and stating in whose name they stand;

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- (c) stating that to the best of the information and belief of the deponent the judgment debtor is beneficially entitled to an interest in the securities in question, describing that interest and stating the sources of the deponent's information or the ground for his belief.

Service of notice of order to show cause

8.13.—(1) Unless the court otherwise directs, a copy of the order under rule 8.11 to show cause must, at least 7 days before the time appointed thereby for the further consideration of the matter, be served on the judgment debtor, and, if he does not attend on such consideration, proof of service must be given.

(2) Notice of the making of the order to show cause, with a copy of that order, must as soon as practicable after the making of the order be served—

- (a) where the order relates to Government stock, on the principal office in Belfast of the Bank of Ireland,
- (b) where the order relates to other stock, on the company concerned,
- (c) where the order relates to stock standing in the name of the Accountant General, on the proper officer of the Court Funds Office.

Effect of order to show cause

8.14.—(1) No disposition by the judgment debtor of his interest in any securities to which an order under rule 8.11 to show cause relates which is made after the making of that order shall, so long as that order remains in force, be valid as against the judgment creditor.

(2) Until such order is discharged or made absolute, the Bank of Ireland or, as the case may be, a company shall not permit any transfer of any such stock as is specified in the order or pay to any person any dividend thereof or interest payable thereon, except with the authority of the court.

(3) If, after the notice of the making of such order is served on the Bank of Ireland or a company, the Bank or company permits any transfer or makes any payment prohibited by paragraph (2), it shall be liable to pay the judgment creditor the value of the stock transferred or, as the case may be, the amount of the payment made or, if that value or amount is more than sufficient to satisfy the judgment or order to which such order relates, so much thereof as is sufficient to satisfy it.

Making and effect of charging order absolute

8.15.—(1) On the further consideration of the matter the court shall, unless it appears that there is sufficient cause to the contrary, make the order absolute with or without modifications.

(2) Where on the further consideration of the matter it appears to the court that the order should not be made absolute, it shall discharge the order.

(3) A charge imposed by an order under rule 8.11 made absolute under this rule shall have the same effect, and the judgment creditor in whose favour it is made shall, subject to paragraph (4), have the same remedies for enforcing it, as if it were a valid charge effectively made by the judgment debtor.

(4) No proceedings to enforce a charge imposed by an order made absolute under this rule shall be taken until after the expiration of 6 months from the date of the order to show cause.

Discharge, etc of charging order

8.16. The court, on the application of the judgment debtor or any other person interested in the securities to which an order under rule 8.11 relates, may at any time whether before or after the order is made absolute, discharge or vary the order on such terms (if any) as to costs as it thinks just.

Money in court: charging order

8.17.—(1) The court may for the purpose of enforcing a matrimonial order by order impose on any interest to which the judgment debtor is beneficially entitled in any money in court identified in the order a charge for securing payment of the amount due under the order and interest thereon.

(2) Any such order shall in the first instance be an order to show cause, specifying the time and place for the further consideration of the matter and imposing the charge until that time in any event.

(3) Rules 8.12 and 8.13 shall, with the necessary modifications, apply in relation to an application for an order under this rule and to the order as they apply in relation to an application for an order under rule 8.11 and to such order.

(4) Notice of the making of an order under this rule to show cause, with a copy of that order, must as soon as practicable after the making of the order, be served on the proper officer of the Court Funds Office.

(5) Rules 8.14(1), 8.15(1) and (2) and 8.16 shall, with the necessary modifications, apply in relation to an order under this rule as they apply in relation to an order under rule 112.

Jurisdiction of Master to grant injunction or appoint receiver to enforce charge

8.18. The Master shall have power to grant an injunction if, and only so far as, it is ancillary or incidental to an order under rule 8.11 or 8.17, and an application for an injunction under this rule may be joined with the application for the order under rule 8.11 or 8.17 to which it relates.

Funds in court: stop order

8.19.—(1) The court, on the application of the judgment creditor may without notice to the applicant make an order prohibiting the transfer, sale, delivery out or payment of, or other dealing with, funds in court or any part thereof or the income thereon in which the judgment debtor has an interest.

(2) An application for an order under this rule must be made by summons in the cause or matter relating to the funds in court.

(3) The summons must be served on every person whose interest may be affected by the order applied for and on the proper officer of the Court Funds Office but shall not be served on any other person.

(4) Without prejudice to the court's powers and discretion as to costs, the court may order the applicant for an order under this rule to pay the costs of any party to the cause or matter relating to the funds in question, or of any person interested in those funds, occasioned by the application.

Securities not in court: stop notice

8.20.—(1) A judgment creditor claiming to be beneficially entitled to an interest in any securities to which rule 8.11 applies, other than securities in court, who wishes to be notified of any proposed transfer or payment of those securities may avail himself of the provisions of this rule.

(2) A person claiming to be so entitled must file in the court office,

(a) an affidavit identifying the securities in question and describing his interest therein by reference to the document under which it arises, and

(b) a notice in Form M23, signed by the deponent to the affidavit, and annexed to it, addressed to the Bank of Ireland or, as the case may be, the company concerned

and must serve an office copy of the affidavit and a copy of the notice sealed with the seal of the court on the Bank of that company.

(3) There must be indorsed on the affidavit filed under this rule a notice stating the address to which any such notice as is referred to in rule 8.21(1) is to be sent and, subject to paragraph (4), that address shall for the purpose of that rule be the address for service of the person on whose behalf the affidavit is filed.

(4) A person on whose behalf an affidavit under this rule is filed may change his address for service for the purpose of rule 8.21 by serving on the Bank of Ireland or, as the case may be, the company concerned, a notice to that effect, and as from the date of service of such a notice the address stating thereon shall for the purpose of that rule be the address for service of that person.

Effect of stop notice

8.21.—(1) Where a notice under rule 8.20 has been served on the Bank of Ireland or a company, then, so long as the notice is in force, the Bank or company shall not register a transfer of any stock or make a payment of any dividend or interest, being a transfer or payment restrained by the notice, without serving on the person on whose behalf the notice was filed at his address for service a notice informing him of the request for such transfer or payment.

(2) Where the Bank of Ireland or a company receives a request for such a transfer or payment as is mentioned in paragraph (1) made by or on behalf of the holder of the securities to which the notice under rule 8.20 relates, the Bank or company shall not by reason only of that notice refuse to register the transfer or make the payment for longer than 8 days after receipt of the request except under the authority of an order of the court.

Amendment of stop notice

8.22. If any securities are incorrectly described in a notice filed under rule 8.20, the person on whose behalf the notice was filed may file in the Matrimonial Office or county court office an amended notice and serve on the Bank of Ireland or, as the case may be, the company concerned a copy of that notice sealed with the appropriate seal and where he does so the notice under rule 8.20 shall be deemed to have been served on the Bank or company on the day on which the copy of the amended notice was served on it.

Withdrawal, etc of stop notice

8.23.—(1) The person on whose behalf a notice under rule 8.20 was filed may withdraw it by serving a request for its withdrawal on the Bank of Ireland or, as the case may be, the company on whom the notice was served.

(2) Such request must be signed by the person on whose behalf the notice was filed and his signature must be witnessed by a practising solicitor.

(3) The court, on the application of any person claiming to be beneficially entitled to an interest in the securities to which a notice under rule 8.20 relates, may by order discharge the notice.

(4) An application for an order under paragraph (3) must be made by summons, and the summons must be served on the person on whose behalf the notice under rule 8.20 was filed.

Receivers: equitable execution

Appointment of receiver by way of equitable execution

8.24. Where an application is made for the appointment of a receiver by way of equitable execution, the court in determining whether it is just or convenient that the appointment should be made shall have regard to the amount claimed by the judgment creditor, to the amount likely to be obtained by the receiver and to the probable costs of his appointment and may direct an inquiry on any of these matters or any other matter before making the appointment.

Master may appoint receiver, etc

8.25. The Master shall have power to make an order for the appointment of a receiver by way of equitable execution and to grant an injunction if, and only so far as, the injunction is ancillary or incidental to such an order.

Application of rules as to appointment of receiver, etc

8.26. An application for the appointment of a receiver by way of equitable execution shall be made by summons.

Attachment of earnings

8.27. Articles 73 to 79 of the Judgments Enforcement (Northern Ireland) Order 1981 and R.S.C. Order 105 (which deals with attachment of earnings) shall apply to the enforcement of orders made in matrimonial proceedings in a county court as if they were orders of the High Court.

Examination in aid of enforcement

Examination as to debts owing to judgment debtor, etc

8.28.—(1) Any party entitled to enforce an order made in matrimonial proceedings may issue and serve a summons on the judgment debtor liable under such order requiring him to attend before the court to be orally examined as to whether any and what debts are owing to the judgment debtor, and whether the judgment debtor has any and what other property or means of satisfying the order.

(2) The summons under paragraph (1) shall be in Form M24 or as near thereto as the circumstances of the case may render necessary and shall be served on the judgment debtor by recorded delivery or personally.

(3) If the judgment debtor shall fail to attend in pursuance of the summons the court may make an order for the attendance of the judgment debtor or any other person and for the production of any books or documents.

(4) An order for attendance under paragraph (3) shall be served personally on such person or persons and within such time as the court shall direct.

(5) Upon the examination the court may make any of the following orders:—

- (a) a conditional order of garnishee,
- (b) a charging order or stop order or any order ancillary thereto,
- (c) an order for the appointment of a receiver by way of equitable execution, under the preceding rules,
- (d) an attachment of earnings order under Article 73 of the Judgments Enforcement (Northern Ireland) Order 1981.

(6) The evidence given on the examination shall be taken down in writing, not ordinarily by question and answer, but so as to represent as nearly as may be the statement of the examinee. A copy of the note of such evidence shall, on payment of the appropriate fee, be made available to the parties to any such examination, but save as aforesaid no person shall, without leave of the court, be entitled to examine such note or obtain a copy thereof.

Judgment summonses

Application for issue of judgment summons

8.29.—(1) In this rule and in rules 8.30 and 8.31 unless the context otherwise requires—

“the Order” means the Judgments (Enforcement) (Northern Ireland) Order 1981(2),

“order” means an order made in matrimonial proceedings for the periodical payment of money or an order made by the Enforcement of Judgments Office for the payment by instalments of the amount due under an order made in matrimonial proceedings for payment of a lump sum or costs;

“judgment creditor” means a person entitled to enforce an order;

“debtor” means a person liable under an order;

“judgment summons” means a summons issued under Article 108 of the Order.

(2) An application for the issue of a judgment summons may be made—

- (a) in the case of an order of the High Court, to the Matrimonial Office;
- (b) in the case of an order of a county court to that court;

by filing an affidavit verifying the amount due under the order and showing how the amount is arrived at.

(3) A judgment summons shall not be issued without the leave of the judge if the debtor is in default under an order of committal made on a previous judgment summons in respect of the same order.

(4) Every judgment summons shall be in Form M25 and shall be served on the debtor personally not less than 10 clear days before the hearing and at the time of service there shall be paid or tendered to the debtor a sum reasonably sufficient to cover his expenses in travelling to and from the court.

(5) Where a judgment summons has not been served in due time, it may by leave of the registrar be reissued and, if necessary, amended from time to time within 6 months of the date of the original judgment summons.

(6) If the judge makes an order for committal, he may direct its execution to be stayed on terms that the debtor pays to the judgment creditor the amount due, together with the costs of the judgment summons, either at a specified time or by instalments, in addition to any sums accruing due under the original order.

(7) All payments under an order made under or an order of committal shall be made to the judgment creditor unless the judge otherwise directs.

(8) Where an order of committal is stayed on such terms as are mentioned in paragraph (9)—

- (a) all payments thereafter made shall be deemed to be made, first, in or towards the discharge of any sums from time to time accruing due under the original order and, secondly, in or towards the discharge of the debt in respect of which the judgment summons was issued and the costs of the summons; and
- (b) the said order shall not be issued until the judgment creditor has filed an affidavit of default on the part of the debtor.

(9) Where an order of committal has been made but execution of the order is stayed and the debtor subsequently desires to apply for a further stay, he shall attend at or write to the Matrimonial Office or the county court office, as the case may be, and apply for the stay he requires, stating the reasons for his inability to comply with the order, and the Master or chief clerk, as the case may be, shall fix a day for the hearing of the application by the judge and serve notice thereof on the judgment creditor and on the debtor by recorded delivery at least 3 clear days before the day fixed for the hearing.

(10) The judgment creditor shall serve notice by recorded delivery on the debtor of the terms of any order made under this rule whether or not the debtor has attended the hearing.

(11) An order for committal shall be directed to any police officer or other person as the court may direct for execution.

Further provisions as to judgment summonses

8.30.—(1) R.S.C. Order 38, rule 2(3) (which enables evidence to be given by affidavit in certain cases) shall apply to a judgment summons issued in the High Court or a county court as if it were an originating summons.

(2) Witnesses may be summoned to prove the means of the debtor in the same manner as witnesses are summoned to give evidence on the hearing of a cause, and writs of subpoena or witness summonses may be issued for that purpose.

(3) Where the debtor appears at the hearing, the travelling expenses paid to him may, if the judge so directs, be allowed as expenses of a witness, but if the debtor appears at the hearing and no order of commitment is made, the judge may allow to the debtor, by way of set-off or otherwise, his proper costs, including compensation for loss of time, as upon an attendance by a defendant at a trial in court.

Special provisions as to judgment summonses in divorce county courts

8.31. C.C.R. Order 40 (which deals with enforcement of decrees) shall not apply to a judgment summons issued in a county court.

Removal of divorce county court order into High Court

8.32.—(1) Any order made by a county court in matrimonial proceedings may, on an application made to the High Court ex parte by affidavit by the person entitled to enforce the order, be removed into the High Court by direction of the Master, if he is satisfied that the order cannot conveniently be enforced in the county court.