

SCHEDULE 1

RSC ORDER 46

WRITS OF EXECUTION: GENERAL

Definition

Rule 1 In this Order, unless the context otherwise requires, “writ of execution” includes a writ of fieri facias, a writ of possession, a writ of delivery, a writ of sequestration and any further writ in aid of any of the aforementioned writs.

When permission to issue any writ of execution is necessary

Rule 2.—(1) A writ of execution to enforce a judgment or order may not issue without the permission of the Court in the following cases, that is to say:—

- (a) where six years or more have elapsed since the date of the judgment or order;
- (b) where any change has taken place, whether by death or otherwise, in the parties entitled or liable to execution under the judgment or order;
- (c) where the judgment or order is against the assets of a deceased person coming to the hands of his executors or administrators after the date of the judgment or order, and it is sought to issue execution against such assets;
- (d) where under the judgment or order any person is entitled to a remedy subject to the fulfilment of any condition which it is alleged has been fulfilled;
- (e) where any goods sought to be seized under a writ of execution are in the hands of a receiver appointed by the Court or a sequestrator.

(2) Paragraph (1) is without prejudice to section 2 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(1), or any other enactment or rule by virtue of which a person is required to obtain the permission of the Court for the issue of a writ of execution or to proceed to execution on or otherwise to the enforcement of a judgment or order.

(3) Where the Court grants permission, whether under this rule or otherwise, for the issue of a writ of execution and the writ is not issued within one year after the date of the order granting such permission, the order shall cease to have effect, without prejudice, however, to the making of a fresh order.

Permission required for issue of writ in aid of other writ

Rule 3 A writ of execution in aid of any other writ of execution shall not issue without the permission of the Court.

Application for permission to issue writ

Rule 4.—(1) An application for permission to issue a writ of execution may be made in accordance with CPR Part 23 but the application notice need not be served on the respondent unless the Court directs.

- (2) Such an application must be supported by a witness statement or affidavit—

(1) 1951 c. 65.

Status: This is the original version (as it was originally made).

- (a) identifying the judgment or order to which the application relates and, if the judgment or order is for the payment of money, stating the amount originally due thereunder and the amount due thereunder at the date the application notice is filed;
- (b) stating, where the case falls within rule 2 (1)(a) the reasons for the delay in enforcing the judgment or order;
- (c) stating where the case falls within rule 2 (1)(b) the change which has taken place in the parties entitled or liable to execution since the date of the judgment or order;
- (d) stating, where the case falls within rule 2 (1)(c) or (d) that a demand to satisfy the judgment or order was made on the person liable to satisfy it and that he has refused or failed to do so;
- (e) giving such other information as is necessary to satisfy the Court that the applicant is entitled to proceed to execution on the judgment or order in question and that the person against whom it is sought to issue execution is liable to execution on it.

(3) The Court hearing such application may grant permission in accordance with the application or may order that any issue or question, a decision on which is necessary to determine the rights of the parties, be tried in any manner in which any question of fact or law arising in proceedings may be tried and, in either case, may impose such terms as to costs or otherwise as it thinks just.

Application for permission to issue writ of sequestration

Rule 5.—(1) Notwithstanding anything in rules 2 and 4, an application for permission to issue a writ of sequestration must be made in accordance with CPR Part 23 and be heard by a Judge.

(2) Subject to paragraph (3) the application notice, stating the grounds of the application and accompanied by a copy of the witness statement or affidavit in support of the application, must be served personally on the person against whose property it is sought to issue the writ.

(3) The Court may dispense with service of the application notice under this rule if it thinks it just to do so.

(4) The judge hearing an application for permission to issue a writ of sequestration may sit in private in any case in which, if the application were for an order of committal, he would be entitled to do so by virtue of Order 52, rule 6 but, except in such a case, the application shall be heard in public.

Issue of writ of execution

Rule 6.—(1) Issue of a writ of execution takes place on its being sealed by a court officer of the appropriate office.

(2) Before such a writ is issued a praecipe for its issue must be filed.

(3) The praecipe must be signed by or on behalf of the solicitor of the person entitled to execution or, if that person is acting in person, by him.

(4) No such writ shall be sealed unless at the time of the tender thereof for sealing—

(a) the person tendering it produces—

- (i) the judgment or order on which the writ is to issue, or an office copy thereof;
- (ii) where the writ may not issue without the permission of the Court, the order granting such permission or evidence of the granting of it;
- (iii) where judgment on failure to acknowledge service has been entered against a State, as defined in section 14 of the State Immunity Act 1978(2), evidence that the State has been served in accordance with CPR rule 40.10 and that the judgment has taken effect; and

(2) 1978 c. 33.

- (b) the court officer authorised to seal it is satisfied that the period, if any, specified in the judgment or order for the payment of any money or the doing of any other act thereunder has expired.
- (5) Every writ of execution shall bear the date of the day on which it is issued.
- (6) In this rule “the appropriate office” means—
 - (a) where the proceedings in which execution is to issue are in a District Registry, that Registry;
 - (b) where the proceedings are in the Principal Registry of the Family Division, that Registry;
 - (c) where the proceedings are Admiralty proceedings or commercial proceedings which are not in a District Registry, the Admiralty and Commercial Registry;
 - (ca) where the proceedings are in the Chancery Division, Chancery Chambers;
 - (d) in any other case, the Central Office of the Supreme Court.

Duration and renewal of writ of execution

Rule 8.—(1) For the purpose of execution, a writ of execution is valid in the first instance for 12 months beginning with the date of its issue.

(2) Where a writ has not been wholly executed the Court may by order extend the validity of the writ from time to time for a period of 12 months at any one time beginning with the day on which the order is made, if an application for extension is made to the Court before the day next following that on which the writ would otherwise expire or such later day, if any, as the Court may allow.

(3) Before a writ the validity of which had been extended under paragraph (2) is executed either the writ must be sealed with the seal of the office out of which it was issued showing the date on which the order extending its validity was made or the applicant for the order must serve a notice (in Form No. 71 in the relevant Practice Direction) sealed as aforesaid, on the sheriff to whom the writ is directed informing him of the making of the order and the date thereof.

(4) The priority of a writ, the validity of which has been extended under this rule, shall be determined by reference to the date on which it was originally delivered to the sheriff.

(5) The production of a writ of execution, or of such a notice as is mentioned in paragraph (3) purporting in either case to be sealed as mentioned in that paragraph, shall be evidence that the validity of that writ, or, as the case may be, of the writ referred to in that notice, has been extended under paragraph (2).

(6) If, during the validity of a writ of execution, an interpleader summons is issued in relation to an execution under that writ, the validity of the writ shall be extended until the expiry of 12 months from the conclusion of the interpleader proceedings.

Return to writ of execution

Rule 9.—(1) Any party at whose instance or against whom a writ of execution was issued may serve a notice on the sheriff to whom the writ was directed requiring him, within such time as may be specified in the notice, to indorse on the writ a statement of the manner in which he has executed it and to send to that party a copy of the statement.

(2) If a sheriff on whom such a notice is served fails to comply with it the party by whom it was served may apply to the Court for an order directing the sheriff to comply with the notice.