

SCHEDULE 2

Rule 15

“PART 87

APPLICATIONS FOR WRIT OF HABEAS CORPUS

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SECTION 1

SCOPE AND INTERPRETATION

Scope and interpretation of this Part

87.1 This Part contains rules about applications to the court as follows —

- (a) Section 2 relates to applications for a writ of habeas corpus for release; and

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- (b) Section 3 relates to applications for a writ of habeas corpus to give evidence or a writ of habeas corpus to answer a charge.

(The Family Procedure Rules 2010(1) contain rules about applications for a writ of habeas corpus for release in relation to a minor.)

(2) In Sections 2 and 3—

- (a) “judge” means a judge of the High Court; and
- (b) “court” means the High Court,

unless otherwise specified.

SECTION 2

APPLICATIONS TO THE HIGH COURT FOR A WRIT OF HABEAS CORPUS FOR RELEASE

How to make the application for a writ of habeas corpus for release

87.2.—(1) The applicant must make the application by filing—

- (a) a claim form under Part 8; and
- (b) a witness statement or affidavit.

(2) The witness statement or affidavit must—

- (a) state that the application is made at the instance of the person being detained;
- (b) set out the nature of the detention; and
- (c) subject to paragraph (3), be made by the detained person.

(3) If the detained person is unable to make the witness statement or affidavit, the witness statement or affidavit—

- (a) may be made by some other person on behalf of the detained person; and
- (b) must state the reason why the detained person is unable to make the witness statement or affidavit.

(4) The claim form must be filed in the Administrative Court.

(5) The application may be made without notice.

(6) In cases of urgency, the judge—

- (a) may dispense with the requirement that a claim form must be filed; and
- (b) must give directions for the conduct of the application.

Initial consideration of the application by a single judge

87.3.—(1) A judge may consider an application under rule 87.2 initially on paper.

(2) If an application has not been considered initially on paper, it must be considered—

- (a) by a judge sitting in court, unless rule 87.7 applies; or
- (b) if no judge is sitting in court, by a judge otherwise than in court.

Initial consideration of the application on paper

87.4.—(1) Where the judge considers the application under rule 87.2 on paper, the judge may—

(1) [S.I. 2010/2955](#).

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- (a) make an order for the issue of the writ;
- (b) adjourn the application to a hearing;
- (c) direct that the application be considered by a Divisional Court of the Queen's Bench Division;
- (d) direct that the application continues as an application for permission to apply for judicial review;
- (e) give such other directions for resolution of the application as may be appropriate; or
- (f) dismiss the application.

(2) Where the judge dismisses a paper application, the applicant may request the decision to be reconsidered at a hearing.

(3) A request under paragraph (2) must be filed within 7 days after service of the order dismissing the application.

(4) The applicant and the respondent must be given at least 2 days' notice of the hearing date.

Consideration of the application at a hearing

87.5. Where the judge considers the application under rule 87.2 at a hearing, including a hearing ordered under rule 87.4(1)(b) or a hearing requested under rule 87.4(2), the judge may—

- (a) make an order for the issue of the writ;
- (b) adjourn the application to a further hearing;
- (c) direct that the application be considered by a Divisional Court of the Queen's Bench Division;
- (d) direct that the application continues as an application for permission to apply for judicial review;
- (e) give such other directions for resolution of the application as may be appropriate;
- (f) dismiss the application; or
- (g) order that the detained person must be released.

Order for release: sufficient authority to release detained person

87.6. An order made under rule 87.5(g) is sufficient authorisation for a governor of a prison, police officer or other person to release the detained person.

Applications involving protected parties

87.7. Any application made on behalf of a protected party must initially be considered by a judge otherwise than in court.

Form and directions as to the return to the writ

87.8.—(1) A writ of habeas corpus for release must be in Practice Form No. 89 as set out in Practice Direction 4.

(2) A court or judge issuing a writ of habeas corpus for release must give directions as to the court or judge before whom, and the date on which, the writ is returnable.

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Service of the writ

87.9.—(1) Subject to paragraphs (2) and (3), the applicant must serve the writ of habeas corpus for release personally on the respondent.

(2) If it is not practicable to serve the writ personally, or if the respondent is the governor of a prison or other public official, the applicant must serve the writ by leaving it with an employee or agent of the respondent at the place where the detained person is being held.

(3) If there is more than one respondent named in the writ, the original writ must be served according to this rule on the first-named respondent, and copies must be served on the other respondents.

(4) The court must notify all parties—

- (a) of the court or judge before whom, and the date on which, the writ is to be returned to the court; and
- (b) that in default of obedience, proceedings for committal of the party disobeying may be taken.

Return to the writ

87.10.—(1) The return to a writ of habeas corpus for release must—

- (a) be indorsed on or annexed to the writ; and
- (b) state all the causes of the detention of the detained person.

(2) The return may be amended, or another return substituted for it, by permission of the court or judge before whom the writ is returnable.

(3) The return must be filed and served upon the applicant in accordance with the directions of the court issuing the writ.

Procedure at hearing of the writ

87.11. At the hearing of the writ an application may be made—

- (a) to discharge or remand the detained person; or
- (b) to amend or quash the return.

SECTION 3

WRIT OF HABEAS CORPUS TO GIVE EVIDENCE OR TO ANSWER A CHARGE

Writ of habeas corpus to give evidence or to answer a charge

87.12.—(1) An application for a writ of habeas corpus to give evidence or a writ of habeas corpus to answer a charge must be made to a judge and be supported by a witness statement or affidavit.

(2) A writ of habeas corpus to give evidence must be in Practice Form No. 91 as set out in Practice Direction 4.

(3) A writ of habeas corpus to answer a charge must be in Practice Form No. 92 as set out in Practice Direction 4.

(4) An application for an order to bring up a prisoner otherwise than by writ of habeas corpus, to give evidence in any criminal or civil proceedings before any court, tribunal or judge, must be—

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- (a) made to a judge or, in the case of an application for an order under section 57 of the County Courts Act 1984⁽²⁾, a judge of the County Court; and
- (b) supported by a witness statement or affidavit.”

(2) 1984 c.28. Section 57 was amended by the Crime and Courts Act 2013 (c.22) Section 17, Schedule 9, Part 1, paragraphs 1, 10 and Schedule 10, Part 2, paragraphs 64 and 68.