

STATUTORY INSTRUMENTS

**1998 No. 3132**

The Civil Procedure Rules 1998

[<sup>F1</sup>PART 87

APPLICATIONS FOR WRIT OF HABEAS CORPUS

**Textual Amendments**

**F1** Pt. 87 inserted (6.4.2015) by [The Civil Procedure \(Amendment No. 8\) Rules 2014 \(S.I. 2014/3299\)](#), rule 2(c), [Sch. 2](#)

**Contents of this Part**

<i>Title</i>	<i>Rule number</i>
SECTION 1 – SCOPE AND INTERPRETATION	
Scope and interpretation of this Part	Rule 87.1
SECTION 2 – APPLICATIONS TO THE HIGH COURT FOR A WRIT OF HABEAS CORPUS FOR RELEASE	
How to make the application for the writ of habeas corpus for release	Rule 87.2
Initial consideration of the application by a judge	Rule 87.3
Initial consideration of the application on paper	Rule 87.4
Consideration of the application at a hearing	Rule 87.5
Order for release: sufficient authority to release detained person	Rule 87.6
Applications involving protected parties	Rule 87.7
Form and directions as to the return to the writ	Rule 87.8
Service of the writ	Rule 87.9
Return to the writ	Rule 87.10
Procedure at hearing of the writ	Rule 87.11
SECTION 3 – WRIT OF HABEAS CORPUS TO GIVE EVIDENCE OR TO ANSWER A CHARGE	

---

**Changes to legislation:** There are currently no known outstanding effects for the  
The Civil Procedure Rules 1998, PART 87. (See end of Document for details)

---

<i>Title</i>	<i>Rule number</i>
Writ of habeas corpus to give evidence or answer a charge	Rule 87.12

---

## *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
- (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 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—
- (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 [<sup>F2</sup>King’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.

#### **Textual Amendments**

- F2** Word in rule 87.4(1)(c) substituted (6.4.2023) by [The Civil Procedure \(Amendment\) Rules 2023 \(S.I. 2023/105\)](#), rules 1(1), **40(1)**

### **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 [<sup>F3</sup>King’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.

#### Textual Amendments

- F3** Word in [rule 87.5\(c\)](#) substituted (6.4.2023) by [The Civil Procedure \(Amendment\) Rules 2023 \(S.I. 2023/105\)](#), rules 1(1), **40(2)**

#### 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 <sup>F4</sup>....

(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.

#### Textual Amendments

- F4** Words in [rule 87.8\(1\)](#) omitted (1.10.2022) by virtue of [The Civil Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/783\)](#), rules 1(1), **33(a)**

#### 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 <sup>F5</sup>....

(3) A writ of habeas corpus to answer a charge must be in Practice Form No. 92 <sup>F6</sup>....

(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—

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

#### **Textual Amendments**

**F5** Words in [rule 87.12\(2\)](#) omitted (1.10.2022) by virtue of [The Civil Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/783\)](#), [rules 1\(1\)](#), [33\(b\)](#)

**F6** Words in [rule 87.12\(3\)](#) omitted (1.10.2022) by virtue of [The Civil Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/783\)](#), [rules 1\(1\)](#), [33\(b\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Civil Procedure Rules 1998, PART 87.