

SCHEDULE 1

RSC ORDER 49

GARNISHEE PROCEEDINGS

Attachment of debt due to judgment debtor

Rule 1.—(1) Where a person (in this Order referred to as “the judgment creditor”) has obtained a judgment or order for the payment by some other person (in this Order referred to as “the judgment debtor”) of a sum of money amounting in value to at least £50, not being a judgment or order for the payment of money into court, and any other person within the jurisdiction (in this Order referred to as “the garnishee”) is indebted to the judgment debtor, the Court may, subject to the provisions of this Order and of any enactment, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy that judgment or 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 judgment or order mentioned in that paragraph and the costs of the garnishee proceedings.

(3) Among the conditions mentioned in section 40 of the Supreme Court Act 1981⁽¹⁾ (which enables any sum standing to the credit of a person in certain types of account to be attached notwithstanding that certain conditions applicable to the account in question have not been satisfied) there shall be included any condition that a receipt for money deposited in the account must be produced before any money is withdrawn.

(4) An order under this rule shall not require a payment which would reduce below £1 the amount standing in the name of the judgment debtor in an account with a building society or a credit union.

Application for order

Rule 2.—(1) An application for an order under rule 1 must be made in accordance with CPR Part 23 but the application notice need not be served on the judgment debtor.

(2) An application must be supported by a witness statement or affidavit—

- (a) stating the name and last known address of the judgment debtor;
- (b) identifying the judgment or order to be enforced and stating the amount of such judgment or order and the amount remaining unpaid under it at the time of the application;
- (c) stating that to the best of the information or belief of the witness the garnishee (naming him) is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the witness’s information or the grounds for his belief; and
- (d) stating, where the garnishee is a deposit-taking institution 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 and the number of that account or, if it be the case, that all or part of this information is not known to the witness.

Service and effect of order to show cause

Rule 3.—(1) Unless the Court otherwise directs, an order under rule 1 to show cause must be served—

(1) 1981 c. 54; section 40 was amended by the Banking Act 1987 (c. 22) section 108(1), schedule 6.

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

- (a) on the garnishee personally, at least 15 days before the time appointed thereby for the further consideration of the matter; and
- (b) on the judgment debtor, at least 7 days after the order has been served on the garnishee and at least 7 days before the time appointed by the order for the further consideration of the matter.

(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

Rule 4.—(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 make an order absolute under rule 1 against the garnishee.

(2) An order absolute under rule 1 against the garnishee may be enforced in the same manner as any other order for the payment of money.

Dispute of liability by garnishee

Rule 5 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 proceedings may be tried, without, if it orders trial before a Master, the need for any consent by the parties.

Claims of third persons

Rule 6.—(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 5.

Discharge of garnishee

Rule 8 Any payment made by a garnishee in compliance with an order absolute under this Order, and any execution levied against him in pursuance of such an order, shall be a valid discharge of his liability to the judgment debtor to the extent of the amount paid or levied notwithstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which they arose reversed.

Money in Court

Rule 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 in accordance with CPR Part 23 for an order that the money or so much thereof as is sufficient to satisfy the judgment or order sought to be enforced and the costs of the application be paid to the judgment creditor.

(2) On filing an application notice under this rule the applicant must produce the application notice at the office of the Accountant General 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 Accountant General.

(3) Unless the Court otherwise directs, the application notice must be served on the judgment debtor at least 7 days before the hearing.

(4) Subject to Order 75, rule 24, the Court hearing an application under this rule may make such order with respect to the money in Court as it thinks just.

Costs

Rule 10 The costs of any application for an order under rule 1 or 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.