

## SCHEDULE 1

### RSC ORDER 52

#### COMMITTAL

##### **Committal for contempt of court**

**Rule 1.**—(1) The power of the High Court or Court of Appeal to punish for contempt of court may be exercised by an order of committal.

(2) Where contempt of court—

(a) is committed in connection with—

- (i) any proceedings before a Divisional Court of the Queen’s Bench Division; or
- (ii) criminal proceedings, except where the contempt is committed in the face of the court or consists of disobedience to an order of the court or a breach of an undertaking to the court; or
- (iii) proceedings in an inferior court; or

(b) is committed otherwise than in connection with any proceedings, then, subject to paragraph (4), an order of committal may be made only by a Divisional Court of the Queen’s Bench Division.

This paragraph shall not apply in relation to contempt of the Court of Appeal.

(3) Where contempt of court is committed in connection with any proceedings in the High Court, then, subject to paragraph (2), an order of committal may be made by a single judge of the Queen’s Bench Division except where the proceedings were assigned or subsequently transferred to some other Division, in which case the order may be made only by a single judge of that other Division.

The reference in this paragraph to a single judge of the Queen’s Bench Division shall, in relation to proceedings in any court the judge or judges of which are, when exercising the jurisdiction of that court, deemed by virtue of any enactment to constitute a court of the High Court, be construed as a reference to a judge of that court.

(4) Where by virtue of any enactment the High Court has power to punish or take steps for the punishment of any person charged with having done anything in relation to a court, tribunal or person which would, if it had been done in relation to the High Court, have been a contempt of that Court, an order of committal may be made by a single judge of the Queen’s Bench Division.

##### **Application to Divisional Court**

**Rule 2.**—(1) No application to a Divisional Court for an order of committal against any person may be made unless permission to make such an application has been granted in accordance with this rule.

(2) An application for such permission must be made without notice to a Divisional Court, except in vacation when it may be made to a judge in chambers and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

(3) The applicant must give notice of the application for permission not later than the preceding day to the Crown Office and must at the same time lodge in that office copies of the statement and affidavit.

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(4) Where an application for permission under this rule is refused by a judge in chambers, the applicant may make a fresh application for such permission to a Divisional Court.

(5) An application made to a Divisional Court by virtue of paragraph (4) must be made within 8 days after the judge's refusal to give permission or, if a Divisional Court does not sit within that period, on the first day on which it sits thereafter.

#### **Application for order after leave to apply granted**

**Rule 3.**—(1) When permission has been granted under rule 2 to apply for an order of committal, the application for the order must be made to a Divisional Court and, unless the court or judge granting permission has otherwise directed, there must be at least 14 clear days between the service of the claim form and the day named therein for the hearing.

(2) Unless within 14 days after such permission was granted, the claim form is issued the permission shall lapse.

(3) Subject to paragraph 4, the claim form, accompanied by a copy of the statement and affidavit in support of the application for permission, must be served personally on the person sought to be committed.

(4) Without prejudice to the powers of the court or judge under Part 6 of the CPR, the court or judge may dispense with service under this rule if it or he thinks it just to do so.

#### **Application to Court other than Divisional Court**

**Rule 4.**—(1) Where an application for an order of committal may be made to a court other than a Divisional Court, the application must be made by claim form or application notice and be supported by an affidavit.

(2) Subject to paragraph (3) the claim form or application notice, stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, must be served personally on the person sought to be committed.

(3) Without prejudice to its powers under Part 6 of the CPR, the Court may dispense with service under this rule if it thinks it just to do so.

(4) This rule does not apply to committal applications which under rules 1(2) and 3(1) should be made to a Divisional Court but which, in vacation, have been properly made to a single judge in accordance with Order 64, rule 4.

#### **Saving for power to commit without application for purpose**

**Rule 5** Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the High Court or Court of Appeal to make an order of committal of its own initiative against a person guilty of contempt of court.

#### **Provisions as to hearing**

**Rule 6.**—(1) Subject to paragraph (2), the Court hearing an application for an order of committal may sit in private in the following cases, that is to say—

- (a) where the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant;
- (b) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder within the meaning of the Mental Health Act 1983(1);

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(1) 1983 c. 20.

- (c) where the application arises out of proceedings in which a secret process, discovery or invention was in issue;
- (d) where it appears to the Court that in the interests of the administration of justice or for reasons of national security the application should be heard in private;

but, except as aforesaid, the application shall be heard in open court.

(2) If the Court hearing an application in private by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, it shall in open court state—

- (a) the name of that person,
- (b) in general terms the nature of the contempt of Court in respect of which the order of committal is being made, and
- (c) the length of the period for which he is being committed.

(3) Except with the permission of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the statement under rule 2 or, as the case may be, in the claim form or application notice under rule 4.

(4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf, he shall be entitled to do so.

#### **Power to suspend execution of committal order**

**Rule 7.**—(1) The Court by whom an order of committal is made may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as it may specify.

(2) Where execution of an order of committal is suspended by an order under paragraph (1), the applicant for the order of committal must, unless the Court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.

#### **Discharge of person committed**

**Rule 8.**—(1) The Court may, on the application of any person committed to prison for any contempt of Court, discharge him.

(2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver any thing to some other person or to deposit it in Court or elsewhere, and a writ of sequestration has also been issued to enforce that judgment or order, then, if the thing is in the custody or power of the person committed, the commissioners appointed by the writ of sequestration may take possession of it as if it were the property of that person and, without prejudice to the generality of paragraph (1), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the commissioners as it thinks fit.

(RSC Order 46, rule 5 contains rules relating to writs of sequestration)

#### **Saving for other powers**

**Rule 9** Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any enactment in like manner as if he had been guilty of contempt of the High Court, to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

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