

## SCHEDULE 3

### PART II

#### SECTION III—INTERIM POSSESSION ORDERS

##### When this section may be used

**55.20.**—(1) This Section of this Part applies where the claimant seeks an Interim Possession Order.

(2) In this Section—

(a) “IPO” means Interim Possession Order; and

(b) “premises” has the same meaning as in section 12 of the Criminal Law Act 1977<sup>(1)</sup>.

(3) Where this Section requires an act to be done within a specified number of hours, rule 2.8(4) does not apply.

##### Conditions for IPO application

**55.21.**—(1) An application for an IPO may be made where the following conditions are satisfied—

(a) the only claim made is a possession claim against trespassers for the recovery of premises;

(b) the claimant—

(i) has an immediate right to possession of the premises; and

(ii) has had such a right throughout the period of alleged unlawful occupation; and

(c) the claim is made within 28 days of the date on which the claimant first knew, or ought reasonably to have known, that the defendant (or any of the defendants), was in occupation.

(2) An application for an IPO may not be made against a defendant who entered or remained on the premises with the consent of a person who, at the time consent was given, had an immediate right to possession of the premises.

##### The application

**55.22.**—(1) Rules 55.3(1) and (4) apply to the claim.

(2) The claim form and the defendant’s form of witness statement must be in the form set out in the relevant practice direction.

(3) When he files his claim form, the claimant must also file—

(a) an application notice in the form set out in the relevant practice direction; and

(b) written evidence.

(4) The written evidence must be given—

(a) by the claimant personally; or

(b) where the claimant is a body corporate, by a duly authorised officer.

(Rule 22.1(6)(b) provides that the statement of truth must be signed by the maker of the witness statement)

(5) The court will—

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(1) 1977 c. 45.

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- (a) issue—
    - (i) the claim form; and
    - (ii) the application for the IPO; and
  - (b) set a date for the hearing of the application.
- (6) The hearing of the application will be as soon as practicable but not less than 3 days after the date of issue.

### **Service**

**55.23.**—(1) Within 24 hours of the issue of the application, the claimant must serve on the defendant—

- (a) the claim form;
  - (b) the application notice together with the written evidence in support; and
  - (c) a blank form for the defendant’s witness statement (as set out in the relevant practice direction) which must be attached to the application notice.
- (2) The claimant must serve the documents listed in paragraph (1) in accordance with rule 55.6(a).
- (3) At or before the hearing the claimant must file a certificate of service in relation to the documents listed in paragraph (1) and rule 6.14(2)(a) does not apply.

### **Defendant’s response**

**55.24.**—(1) At any time before the hearing the defendant may file a witness statement in response to the application.

- (2) The witness statement should be in the form set out in the relevant practice direction.

### **Hearing of the application**

**55.25.**—(1) In deciding whether to grant an IPO, the court will have regard to whether the claimant has given, or is prepared to give, the following undertakings in support of his application—

- (a) if, after an IPO is made, the court decides that the claimant was not entitled to the order to—
    - (i) reinstate the defendant if so ordered by the court; and
    - (ii) pay such damages as the court may order; and
  - (b) before the claim for possession is finally decided, not to—
    - (i) damage the premises;
    - (ii) grant a right of occupation to any other person; and
    - (iii) damage or dispose of any of the defendant’s property.
- (2) The court will make an IPO if—
- (a) the claimant has—
    - (i) filed a certificate of service of the documents referred to in rule 55.23(1); or
    - (ii) proved service of those documents to the satisfaction of the court; and
  - (b) the court considers that—
    - (i) the conditions set out in rule 55.21(1) are satisfied; and
    - (ii) any undertakings given by the claimant as a condition of making the order are adequate.

(3) An IPO will be in the form set out in the relevant practice direction and will require the defendant to vacate the premises specified in the claim form within 24 hours of the service of the order.

(4) On making an IPO the court will set a date for the hearing of the claim for possession which will be not less than 7 days after the date on which the IPO is made.

(5) Where the court does not make an IPO—

- (a) the court will set a date for the hearing of the claim;
- (b) the court may give directions for the future conduct of the claim; and
- (c) subject to such directions, the claim shall proceed in accordance with Section I of this Part.

### **Service and enforcement of the IPO**

**55.26.**—(1) An IPO must be served within 48 hours after it is sealed.

(2) The claimant must serve the IPO on the defendant together with copies of—

- (a) the claim form; and
- (b) the written evidence in support,

in accordance with rule 55.6(a).

(3) CCR Order 26, rule 17 does not apply to the enforcement of an IPO.

(4) If an IPO is not served within the time limit specified by this rule, the claimant may apply to the court for directions for the claim for possession to continue under Section I of this Part.

### **After IPO made**

**55.27.**—(1) Before the date for the hearing of the claim, the claimant must file a certificate of service in relation to the documents specified in rule 55.26(2).

(2) The IPO will expire on the date of the hearing of the claim.

(3) At the hearing the court may make any order it considers appropriate and may, in particular—

- (a) make a final order for possession;
- (b) dismiss the claim for possession;
- (c) give directions for the claim for possession to continue under Section I of this Part; or
- (d) enforce any of the claimant's undertakings.

(4) Unless the court directs otherwise, the claimant must serve any order or directions in accordance with rule 55.6(a).

(5) CCR Order 24, rule 6 applies to the enforcement of a final order for possession.

### **Application to set aside IPO**

**55.28.**—(1) If the defendant has left the premises, he may apply on grounds of urgency for the IPO to be set aside before the date of the hearing of the claim.

(2) An application under paragraph (1) must be supported by a witness statement.

(3) On receipt of the application, the court will give directions as to—

- (a) the date for the hearing; and
- (b) the period of notice, if any, to be given to the claimant and the method of service of any such notice.

(4) No application to set aside an IPO may be made under rule 39.3.

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(5) Where no notice is required under paragraph (3)(b), the only matters to be dealt with at the hearing of the application to set aside are whether—

(a) the IPO should be set aside; and

(b) any undertaking to re-instate the defendant should be enforced,

and all other matters will be dealt with at the hearing of the claim.

(6) The court will serve on all the parties—

(a) a copy of the order made under paragraph (5); and

(b) where no notice was required under paragraph (3)(b), a copy of the defendant's application to set aside and the witness statement in support.

(7) Where notice is required under paragraph (3)(b), the court may treat the hearing of the application to set aside as the hearing of the claim.