PART 48 Execution Against Assets

PART 48

Interpretation 48.1

48.1

In this Part:

(1) ‘enforcement officer’ means the Court Bailiff or an individual who is authorised to act as such by the Chief Justice or a person acting on his behalf; and

(2) ‘relevant enforcement officer’ means:

(a) in relation to an order for execution against assets which is directed to a single enforcement officer , that officer;

(b) in relation to an order for execution against assets which is directed to two or more enforcement officers , the officer to whom the order is allocated;

(3) ‘writ of execution’ includes a writ of execution against assets, a writ of possession, or a writ of delivery, a writ of sequestration and any further writ in aid of any of the aforementioned writs.

Notice of seizure 48.2

48.2

When first executing an order for execution against assets, the relevant enforcement officer shall deliver to the debtor or leave at each place where execution is levied, a notice in Form P48/01 informing the debtor of the execution.

Enforcement of judgment for delivery of goods 48.3 - 48.7

48.3

Subject to the provisions of this Part, a judgment or order for the delivery of any goods which does not give a person against whom the judgment is given or order made, the alternative of paying the assessed value of the goods may be enforced by one or more of the following means:

(1) an order of delivery to recover the goods without alternative provision for recovery of the assessed value thereof (hereafter in this Part referred to as an ‘order of specific delivery’);

(2) in a case in which Rule 48.8 applies:

(a) an order of committal; or

(b) a writ of sequestration.

48.4

Subject to the provisions of this Part, a judgment or order for the delivery of any goods or payment of their assessed value may be enforced by one or more of the following means:

(1) an order of delivery to recover the goods or their assessed value;

(2) by order of the Court , an order of specific delivery;

(3) in a case in which Rule 48.8 applies, a writ of sequestration.

48.5

An application for an order under Rule 48.4(2) shall be made in accordance with Part 23, which must be served on the defendant against whom the judgment or order sought to be enforced was given or made.

48.6

A writ of specific delivery, and a writ of delivery to recover any goods or their assessed value, may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

48.7

A judgment or order for the payment of the assessed value of any goods may be enforced by the same means as any other judgment or order for the payment of money .

Enforcement of judgment to do or abstain from doing any act 48.8 - 48.10

48.8

Where:

(1) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or, as the case may be, within that time as extended or abridged under a Court order or Rule 2.19; or

(2) a person disobeys a judgment or order requiring him to abstain from doing an act;

then, subject to the provisions of these Rules, the judgment or order may be enforced by one or more of the following means:

(a) with the permission of the Court , a writ of sequestration against the property of that person;

(b) where that person is a body corporate, with the permission of the Court , a writ of sequestration against the property of any director or other officer of the body;

(c) an order of committal against that person or, where that person is a body corporate, against any such officer.

48.9

Where a judgment or order requires a person to do an act within a specified time and an order is subsequently made under Rule 48.11 requiring the act to be done within some other time, references in Rule 48.8 to a judgment or order shall be construed as references to the order made under Rule 48.11.

48.10

Where under any judgment or order requiring the delivery of any goods the person liable to execution has the alternative of paying the assessed value of the goods, the judgment or order shall not be enforceable by order of committal under Rule 48.8, but the Court may, on the application of the person entitled to enforce the judgment or order , make an order requiring the first mentioned person to deliver the goods to the applicant within a time specified in the order, and that order may be so enforced.

Judgment or order requiring act to be done: Order fixing time for doing it 48.11 - 48.13

48.11

Notwithstanding that a judgment or order requiring a person to do an act specifies a time within

which the act is to be done, the Court shall have power to make an order requiring the act to be done within another time, being such time after service of that order, or such other time, as may be specified therein.

48.12

Where a judgment or order requiring a person to do an act does not specify a time within which the act is to be done, the Court shall have power subsequently to make an order requiring the act to be done within such time after service of that order, or such other time, as may be specified therein.

48.13

An application for an order under Rule 48.11 or Rule 48.12 must be made in accordance with Part 23 and the application notice must be served on the person required to do the act in question.

Service of copy of judgment or order prerequisite to enforcement under Rule-48.8 48.14 - 48.20

48.14

In Rules 48.15 to 48.20, references to an order shall be construed as including references to a judgment.

48.15

Subject to Rules 48.19 and 48.20, an order shall not be enforced under Rule 48.8 unless:

(1) a copy of the order has been served personally on the person required to do or abstain from doing the act in question; and

(2) in the case of an order requiring a person to do an act, the copy has been so served before the expiration of the time within which he was required to do the act.

48.16

Subject as aforesaid, an order requiring a body corporate to do or abstain from doing an act shall not be enforced as mentioned in Rule 48.8 unless:

(1) a copy of the order has also been served personally on the officer against whose property permission is sought to issue a writ of sequestration or against whom an order of committal is sought; and

(2) in the case of an order requiring the body corporate to do an act, the copy has been so served before the expiration of the time within which the body was required to do the act.

48.17

There must be prominently displayed on the front of the copy of an order served under Rule 48.15 or 48.16 a warning to the person on whom the copy is served that disobedience to the order would be a contempt of Court punishable by a fine, or (in the case of an order requiring a body corporate to do or abstain from doing an act) punishable by sequestration of the assets of the body corporate and by a fine of any individual responsible.

48.18

With the copy of an order required to be served under Rule 48.15 or 48.16, being an order requiring a person to do an act, there must also be served a copy of any order or agreement under Rule 2.19 extending or abridging the time for doing the act and, where the first-mentioned order was made under Rule 48.11 or Rule 48.12, a copy of the previous order requiring the act to be done.

48.19

An order requiring a person to abstain from doing an act may be enforced under Rule 48.8 notwithstanding that service of a copy of the order has not been effected in accordance with Rule 48.15 or 48.16 if the Court is satisfied that pending such service , the person against whom or against whose property is sought to enforce the order has had notice thereof either:

(1) by being present when the order was made; or

(2) by being notified of the terms of the order, whether by telephone, telegram or otherwise.

48.20

The Court may dispense with service of a copy of an order under Rules 48.15 to 48.18 if it thinks it just to do so.

Court may order act to be done at the expense of the disobedient party 48.21

48.21

If a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person appointed by the Court , at the cost of the disobedient party, and upon the act being done, the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs.

Matters occurring after judgment: Stay of execution 48.22

48.22

A party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order , and the Court may by order grant such relief, and on such terms, as it thinks just.

Forms of writs 48.23 - 48.27

48.23

An order for execution against assets must be in Form P48/02.

48.24

An order of delivery must be in Form P48/03.

48.25

A writ of possession must be in Form P48/04.

48.26

A writ of sequestration must be in Form P48/05.

48.27

Unless the Court orders otherwise, an order of execution to enforce a judgment or order must not be executed on a day that is not a business day .

No enforcement 6 years after order made 48.28

48.28

The Court shall not make an order to enforce a judgment or order after 6 years have elapsed from the date when the judgment or order was made.

When permission to issue any writ of execution is necessary 48.29 - 48.31

48.29

An order of execution to enforce a judgment or order may not issue without the permission of the Court in the following cases:

(1) where any change has taken place, whether by death or otherwise, in the parties entitled or liable to execution under the judgment or order ;

(2) where the judgment or order is against the assets of a deceased person coming to the hands of his executors or administrators after the date of the judgment or order , and it is sought to issue execution against such assets;

(3) where under the judgment or order , any person is entitled to a remedy subject to the fulfilment of any condition which it is alleged has been fulfilled;

(4) where any goods sought to be seized under an order of execution are in the hands of a receiver appointed by the Court or a sequestrator.

48.30

Rule 48.29 is without prejudice to any enactment or Rule by virtue of which a person is required to obtain the permission of the Court for the issue of a writ of execution or to proceed to execution on or otherwise to the enforcement of a judgment or order .

48.31

Where the Court grants permission, whether under Rule 48.29 or otherwise, for the issue of a writ of execution and the writ is not issued within one year after the date of the order granting such permission, the order shall cease to have effect, without prejudice, however, to the making of a fresh order.

Permission required for issue of writ in aid of other writ 48.32

48.32

A writ of execution in aid of any other writ of execution shall not issue without the permission of the Court .

Application for permission to issue writ 48.33 - 48.35

48.33

An application for permission to issue a writ of execution may be made in accordance with Part 23 but the application notice need not be served on the respondent unless the Court directs.

48.34

Such an application must be supported by a witness statement or affidavit :

(1) identifying the judgment or order to which the application relates and, if the judgment or order is

for the payment of money, stating the amount originally due and the amount due at the date the application notice is filed;

(2) stating, where the case falls within Rule 48.29(1), the change which has taken place in the parties entitled or liable to execution since the date of the judgment or order ;

(3) stating, where the case falls within Rule 48.29(2) or 48.29(3), that a demand to satisfy the judgment or order was made on the person liable to satisfy it, and that he has refused or failed to do so;

(4) giving such other information as is necessary to satisfy the Court that the applicant is entitled to proceed to execution on the judgment or order in question, and that the person against whom it is sought to issue execution is liable to execution on it.

48.35

The Court hearing such application may grant permission in accordance with the application or may order that any issue or question, a decision on which is necessary to determine the rights of the parties, be tried in any manner in which any question of fact or law arising in proceedings may be tried and, in either case, may impose such terms as to costs or otherwise as it thinks just.

Application for permission to issue writ of sequestration 48.36 - 48.39

48.36

Notwithstanding anything in Rules 48.29 to 48.35, an application for permission to issue a writ of sequestration must be made in accordance with Part 23 and be heard by a Judge.

48.37

Subject to Rule 48.38, the application notice , stating the grounds of the application and accompanied by a copy of the witness statement or affidavit in support of the application, must be served personally on the person against whose property it is sought to issue the writ.

48.38

The Court may dispense with service of the application notice under Rule 48.37 if it thinks it just to do so.

48.39

The Judge hearing an application for permission to issue a writ of sequestration may sit in private in any case in which, if the application were for an order of committal, he would be entitled to do so by virtue of Rule 52.28 but, except in such a case, the application shall be heard in public.

Issue of writ of execution 48.40 - 48.43

48.40

Issue of a writ of execution takes place on its being sealed by the Court .

48.41

The application for a writ of execution must be signed by or on behalf of the legal representative of the person entitled to execution or, if that person is acting in person, by him.

48.42

No such order shall be sealed unless at the time tendering it for sealing:

(1) the person tendering it produces:

(a) the judgment or order in respect of it the order of execution is made, or an authorised copy;

(b) where the order may not be made without the permission of the Court , the order granting permission or evidence of the granting of it; and

(2) the Court Officer authorised to seal it is satisfied that the period, if any, specified in the judgment or order for the payment of any money or the doing of any other act thereunder has expired.

48.43

Every order of execution shall bear the date of the day on which it is sealed.

Duration and renewal of writ of execution 48.44 - 48.50

48.44

For the purpose of execution, a writ of execution is valid in the first instance for 12 months beginning with the date of its issue.

48.45

Subject to Rule 48.46, where an order of execution has not been wholly executed, the Court may by order extend the validity of the order from time to time for a period of 12 months at any one time beginning with the day on which the order is made, if an application for extension is made to the Court before the day next following that on which the order would otherwise expire or such later day, if any, as the Court may allow.

48.46

The Court shall not make an order under Rule 48.45 or 48.50 to enforce a judgment or order after 6 years have elapsed from the date when the judgment or order was made.

48.47

Before an order, the validity of which had been extended under Rule 48.45, is executed either the order must be sealed by the Court showing the date on which the order extending its validity was made or the applicant for the order must serve a sealed notice in Form P48/06 on the relevant enforcement officer informing him of the making of the order and the date thereof.

48.48

The priority of an order of execution, the validity of which has been extended under Rule 48.45, shall be determined by reference to the date on which it was originally delivered to the relevant enforcement officer .

48.49

The production of a writ of execution , or of such a notice as is mentioned in Rule 48.47 purporting in either case to be sealed as mentioned in that Rule, shall be evidence that the validity of that order of execution, or, as the case may be, of the order referred to in that notice, has been extended under Rule 48.45.

48.50

Subject to Rule 48.46, if during the validity of an order of execution, an interpleader claim is issued in relation to an execution under that order, the validity of the order shall be extended until the expiry of 12 months from the conclusion of the interpleader proceedings.

Return to order of execution 48.51 - 48.52

48.51

Any party at whose instance or against whom an order of execution was issued, may serve a notice on the relevant enforcement officer requiring him, within such time as may be specified in the notice, to indorse on the order a statement of the manner in which he has executed it and to send to that party a copy of the statement.

48.52

If an enforcement officer on whom such a notice is served fails to comply with it, the party by whom it was served may apply to the Court for an order directing the enforcement officer to comply with the notice.

Power to stay execution against assets 48.53 - 48.57

48.53

Where a judgment is given or an order made for the payment by any person of money, and the Court is satisfied, on an application made at the time of the judgment or order , or at any time thereafter, by the judgment debtor or other party liable to execution:

(1) that there are special circumstances which render it inexpedient to enforce the judgment or order ; or

(2) that the applicant is unable from any cause to pay the money;

then, the Court may by order stay the execution against assets of the judgment or order either absolutely or for such period and subject to such conditions as the Court thinks fit.

48.54

An application under Rule 48.53, if not made at the time the judgment is given or order made, must be made in accordance with Part 23, and may be so made notwithstanding that the party liable to execution did not acknowledge service of the claim form or serve a defence or take any previous part in the proceedings.

48.55

The grounds on which an application under Rule 48.53 is made must be set out in the application notice and be supported by an affidavit made by or on behalf of the applicant substantiating the grounds and, in particular, where the application is made on the grounds of the applicant’s inability to pay, disclosing his income, the nature and value of any property of his and the amount of any other liabilities of his.

48.56

The application notice and a copy of the supporting affidavit must be served on the party entitled to enforce the judgment or order not less than 4 clear days before the hearing.

48.57

An order staying execution under Rule 48.53 may be varied or revoked by a subsequent order.

Separate orders to enforce payment of costs 48.58 - 48.59

48.58

Where only the payment of money, together with costs to be assessed in accordance with Part 40 (detailed costs assessment), is adjudged or ordered, then, if when the money becomes payable under the judgment or order the costs have not been assessed, the party entitled to enforce that judgment or order may issue a writ for execution against assets to enforce payment of the sum (other than for costs) adjudged or ordered and, not less than 8 days after that order is made, he may obtain a second writ to enforce payment of the assessed costs.

48.59

A party entitled to enforce a judgment or order for the delivery of possession of any property (other than money) may, if he so elects, obtain a separate writ to enforce payment of any damages or costs awarded to him by that judgment or order .

Order for sale otherwise than by auction 48.60 - 48.65

48.60

An order of the Court under Article 45(3) of the Law of Damages emedies 2005 that a sale of goods seized under an execution may be made otherwise than by public auction may be made on the application of:

(1) the judgment creditor ;

(2) the judgment debtor ; or

(3) the relevant enforcement officer .

48.61

An application under Rule 48.60 must be made in accordance with Part 23 and the application notice must contain a short statement of the grounds of the application.

48.62

Where the applicant for an order under this Rule 48.60 is not the enforcement officer , the enforcement officer must, on the demand of the applicant, send to the applicant a list stating:

(1) whether he has notice of the issue of another writ or writs of execution against the goods of the judgment debtor ; and

(2) so far as is known to him, the name and address of every creditor who has obtained the issue of another writ of execution ,

and where the enforcement officer is the applicant, he must prepare such a list.

48.63

Not less than 4 clear days before the hearing, the applicant must serve the application notice on each of the other persons by whom the application might have been made and on every person named in the list under Rule 48.62.

48.64

The applicant must produce the list under Rule 48.62 to the Court on the hearing of the application.

48.65

Every person on whom the application notice was served may attend and be heard on the hearing of the application.