

## SCHEDULE 1

### RSC ORDER 47

#### WRITS OF FIERI FACIAS

##### **Power to stay execution by writ of fieri facias**

**Rule 1.**—(1) 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—

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

(b) that the applicant is unable from any cause to pay the money,

then, notwithstanding anything in rule 2 or 3, the Court may by order stay the execution of the judgment or order by writ of fieri facias either absolutely or for such period and subject to such conditions as the Court thinks fit.

(2) An application under this rule, if not made at the time the judgment is given or order made, must be made in accordance with CPR 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.

(3) The grounds on which an application under this rule is made must be set out in the application notice and be supported by a witness statement or affidavit made by or on behalf of the applicant substantiating the said grounds and, in particular, where such 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.

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

(5) An order staying execution under this rule may be varied or revoked by a subsequent order.

##### **Two or more writs of fieri facias**

**Rule 2.**—(1) A party entitled to enforce a judgment or order by writ of fieri facias may issue two or more such writs, directed to the sheriffs of different counties, at either the same time or different times, to enforce that judgment or order, but no more shall be levied under all those writs together than is authorised to be levied under one of them.

(2) Where a party issues two or more writs of fieri facias directed to the sheriffs of different counties to enforce the same judgment or order he must inform each sheriff of the issue of the other writ or writs.

##### **Separate writs to enforce payment of costs, etc.**

**Rule 3.**—(1) Where only the payment of money, together with costs to be assessed in accordance with CPR Part 47 (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 of fieri facias to enforce payment of the sum (other than for costs) adjudged or ordered and, not less than 8 days after the issue of that writ, he may issue a second writ to enforce payment of the assessed costs.

(2) 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, issue a separate writ of fieri facias to enforce payment of any damages or costs awarded to him by that judgment or order.

#### **No expenses of execution in certain cases**

**Rule 4** Where a judgment or order is for less than £600 and does not entitle the claimant to costs against the person against whom the writ of fieri facias to enforce the judgment or order is issued, the writ may not authorise the sheriff to whom it is directed to levy any fees, poundage or other costs of execution.

#### **Writ of fieri facias de bonis ecclesiasticis, etc.**

**Rule 5.**—(1) Where it appears upon the return of any writ of fieri facias that the person against whom the writ was issued has no goods or chattels in the county of the sheriffs to whom the writ was directed but that he is the incumbent of a benefice named in the return, then, after the writ and return have been filed, the party by whom the writ of fieri facias was issued may issue a writ of fieri facias de bonis ecclesiasticis or a writ of sequestrari de bonis ecclesiasticis directed to the bishop of the diocese within which that benefice is.

(2) Any such writ must be delivered to the bishop to be executed by him.

(3) Only such fees for the execution of any such writ shall be taken by or allowed to the bishop or any diocesan officer as are for the time being authorised by or under any enactment, including any measure of the General Synod.

#### **Order for sale otherwise than by auction**

**Rule 6.**—(1) An order of the Court under section 145 of the Bankruptcy Act 1883<sup>(1)</sup>, that a sale under an execution may be made otherwise than by public auction may be made on the application of the person at whose instance the writ of execution under which the sale is to be made was issued or the person against whom that writ was issued (in this rule referred to as “the judgment debtor”) or the sheriff to whom it was issued.

(2) Such an application must be made in accordance with CPR Part 23 and the application notice must contain a short statement of the grounds of the application.

(3) Where the applicant for an order under this rule is not the sheriff, the sheriff must, on the demand of the applicant, send to the applicant a list containing the name and address of every person at whose instance any other writ of execution against the goods of the judgment debtor was issued and delivered to the sheriff (in this rule referred to as “the sheriff’s list”); and where the sheriff is the applicant, he must prepare such a list.

(4) 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 sheriff’s list.

(5) Service of the application notice on a person named in the sheriff’s list is notice to him for the purpose of section 12 of the Bankruptcy Act 1890<sup>(2)</sup> (which provides that the Court shall not consider an application for permission to sell privately goods taken in execution until notice directed by rules of Court has been given to any other execution creditor).

(6) The applicant must produce the sheriff’s list to the Court on the hearing of the application.

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

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(1) 1883 c. 52.

(2) 1890 c. 71.

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