
STATUTORY INSTRUMENTS

1981 No. 1687

The County Court Rules 1981

ORDER 26

WARRANTS OF EXECUTION, DELIVERY AND POSSESSION

Application for warrant of execution

1.—(1) A judgment creditor desiring a warrant of execution to be issued shall file a request in that behalf.

(2) Where the court has made an order for payment of a sum of money by instalments and default has been made in payment of such an instalment, a warrant of execution may be issued for the whole of the said sum of money and costs then remaining unpaid or, subject to paragraph (3), for such part as the judgment creditor may request, not being in the latter case less than £15 or the amount of one monthly instalment or, as the case may be, four weekly instalments, whichever is the greater.

(3) In any case to which paragraph (2) applies no warrant shall be issued unless at the time when it is issued—

- (a) the whole or part of an instalment which has already become due remains unpaid, and
- (b) any warrant previously issued for part of the said sum of money and costs has expired or has been satisfied or abandoned.

(4) Where a warrant is issued for part of the said sum of money and costs, the registrar responsible for its execution may, if he thinks fit, direct that a warning notice shall be sent to the person against whom the warrant is issued and that the warrant shall not be levied until 7 days thereafter.

(5) Where judgment is given or an order made for payment otherwise than by instalments of a sum of money and costs to be taxed and default is made in payment of the sum of money before the costs have been taxed, a warrant of execution may issue for recovery of the sum of money and a separate warrant may issue subsequently for the recovery of the costs if default is made in payment of them.

Execution of High Court judgment

2.—(1) Where it is desired to enforce by warrant of execution a judgment or order of the High Court, or a judgment, order, decree or award which is or has become enforceable as if it were a judgment of the High Court, the request referred to in rule 1(1) may be filed in any court in the district of which execution is to be levied.

(2) Subject to Order 25, rule 9(5), any restriction imposed by these rules on the issue of execution shall apply as if the judgment, order, decree or award were a judgment or order of the county court, but leave to issue execution shall not be required if leave has already been given by the High Court.

(3) Notice of the issue of the warrant shall be sent by the proper officer of the county court to the proper officer of the High Court.

Execution against farmer

3. If after the issue of a warrant of execution the registrar for the district in which the warrant is to be executed has reason to believe that the debtor is a farmer, the execution creditor shall, if so required by the registrar, furnish him with an official certificate, dated not more than three days beforehand, of the result of a search at the Land Registry as to the existence of any charge registered against the debtor under the Agricultural Credits Act 1928.

Concurrent warrants

4. Two or more warrants of execution may be issued concurrently for execution in different districts, but—

- (a) no more shall be levied under all the warrants together than is authorised to be levied under one of them, and
- (b) the costs of more than one such warrant shall not be allowed against the debtor except by order of the court.

Leave to issue certain warrants

5.—(1) A warrant of execution shall not issue without the leave of the court where—

- (a) six years or more have elapsed since the date of the judgment or order;
- (b) any change has taken place, whether by death or otherwise in the parties entitled to enforce the judgment or order or liable to have it enforced against them;
- (c) 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; or
- (d) any goods to be seized under a warrant of execution are in the hands of a receiver appointed by a court.

(2) An application for leave shall be supported by an affidavit establishing the applicant's right to relief and may be made ex parte in the first instance but the court may direct notice of the application to be served on such persons as it thinks fit.

(3) Where, by reason of one and the same event, a person seeks leave under paragraph (1)(b) to enforce more judgments or orders than one, he may make one application only, specifying in a schedule all the judgments or orders in respect of which it is made, and if notice is directed to be given to any person, it need set out only such part of the application as affects him.

(4) Paragraph (1) is without prejudice to any enactment, rule or direction by virtue of which a person is required to obtain the leave of the court for the issue of a warrant or to proceed to execution or otherwise to the enforcement of a judgment or order.

Duration and renewal of warrant

6.—(1) A warrant of execution shall, for the purpose of execution, be valid in the first instance for 12 months beginning with the date of its issue, but if not wholly executed, it may be renewed from time to time, by order of the court, for a period of 12 months at any one time, beginning with the day next following that on which it would otherwise expire, if an application for renewal is made before that day or such later day (if any) as the court may allow.

(2) A note of any such renewal shall be indorsed on the warrant and it shall be entitled to priority according to the time of its original issue or, where appropriate, its receipt by the registrar responsible for its execution.

Notice on levy

7. Any bailiff upon levying execution shall deliver to the debtor or leave at the place where execution is levied a notice of the warrant.

Bankruptcy or winding up of debtor

8.—(1) Where the registrar responsible for the execution of a warrant is required by section 41(2) of the Bankruptcy Act 1914 or section 326(2) of the Companies Act 1948 to retain the proceeds of sale of goods sold under the warrant or money paid in order to avoid a sale, the proper officer shall, as soon as practicable after the sale or the receipt of the money, send notice to the execution creditor and, if the warrant issued out of another court, to the proper officer of that court.

(2) Where the registrar responsible for the execution of a warrant—

- (a) receives notice that a receiving order has been made against the debtor or, if the debtor is a company, that a provisional liquidator has been appointed or that an order has been made or a resolution passed for the winding up of the company, and
- (b) withdraws from possession of goods seized or pays over to the official receiver or trustee in bankruptcy or, if the debtor is a company, to the liquidator the proceeds of sale of goods sold under the warrant or money paid in order to avoid a sale or seized or received in part satisfaction of the warrant,

the proper officer shall send notice to the execution creditor and, if the warrant issued out of another court, to the proper officer of that court.

(3) Where the proper officer of a court to which a warrant issued out of another court has been sent for execution receives any such notice as is referred to in paragraph (2)(a) after he has sent to the proper officer of the home court any money seized or received in part satisfaction of the warrant, he shall forward the notice to the proper officer of that court.

Costs of warrant

9.—(1) The costs of a warrant of execution shall, unless the court otherwise directs, be recoverable under the warrant or, if the warrant is unproductive, under a subsequent warrant of execution against the debtor's goods but shall not be recoverable in any other manner.

(2) Where a request for a warrant of execution is filed by a solicitor in respect of a sum of money exceeding £25, the solicitor shall be entitled to make a charge for filing the request, which may be fixed and allowed without taxation.

Withdrawal and suspension of warrant at creditor's request

10.—(1) Where an execution creditor requests the registrar responsible for executing a warrant to withdraw from possession, he shall, subject to the following paragraphs of this rule, be treated as having abandoned the execution, and the proper officer shall mark the warrant as withdrawn by request of the execution creditor.

(2) Where the request is made in consequence of a claim having been made under Order 33, rule 1, to goods seized under the warrant, the execution shall be treated as being abandoned in respect only of the goods claimed.

(3) If the registrar responsible for executing a warrant is requested by the execution creditor to suspend it in pursuance of an arrangement between him and the debtor, the proper officer shall mark the warrant as suspended by request of the execution creditor and the execution creditor may subsequently apply to the registrar holding the warrant for it to be re-issued and, if he does so, the application shall be deemed for the purpose of section 120(3) of the Act to be an application to issue the warrant.

(4) Nothing in this rule shall prejudice any right of the execution creditor to apply for the issue of a fresh warrant or shall authorise the re-issue of a warrant which has been withdrawn or has expired or has been superseded by the issue of a fresh warrant.

Suspension of part warrant

11. Where a warrant issued for part of a sum of money and costs payable under a judgment or order is suspended on payment of instalments, the judgment or order shall, unless the court otherwise directs, be treated as suspended on those terms as respects the whole of the sum of money and costs then remaining unpaid.

Inventory and notice where goods removed

12.—(1) Where goods seized in execution are removed, the proper officer shall forthwith deliver or send to the debtor a sufficient inventory of the goods removed and shall, not less than 4 days before the time fixed for the sale, give him notice of the time and place at which the goods will be sold.

(2) The inventory and notice shall be given to the debtor by delivering them to him personally or by sending them to him by post at his place of residence or, if his place of residence is not known, by leaving them for him, or sending them to him by post, at the place from which the goods were removed.

Account of sale

13. Where goods are sold under an execution, the proper officer shall furnish the debtor with a detailed account in writing of the sale and of the application of the proceeds.

Notification to foreign court of money paid into home court

14. Where, after a warrant has been sent to a foreign court for execution but before a final return has been made to the warrant, money is paid into the home court in respect of the sum for which the warrant is issued, the proper officer of the home court shall send notice of the payment to the proper officer of the foreign court.

Order for private sale

15.—(1) Subject to paragraph (6), an order of the court under section 132 of the Act that a sale under an execution may be made otherwise than by public auction may be made on the application of the execution creditor or the debtor or the registrar responsible for the execution of the warrant.

(2) Where he is not the applicant for an order under this rule, the registrar responsible for the execution of the warrant shall, on the demand of the applicant, furnish him with a list containing the name and address of every execution creditor under any other warrant or writ of execution against the goods of the debtor of which the registrar has notice, and where the registrar is the applicant, he shall prepare such a list.

(3) Not less than 4 days before the day fixed for the hearing of the application, the applicant shall give notice of the application to each of the other persons by whom the application might have been made and to every person named in the list referred to in paragraph (2).

(4) The applicant shall produce the list to the court on the hearing of the application.

(5) Every person to whom notice of the application was given may attend and be heard on the hearing of the application.

(6) Where the registrar responsible for the execution of the warrant is the registrar by whom it was issued and he has no notice of any other warrant or writ of execution against the goods of the

debtor, an order under this rule may be made by the court of its own motion with the consent of the execution creditor and the debtor or after giving them an opportunity of being heard.

Warrant of delivery

16.—(1) Except where by any Act or rule it is otherwise provided, a judgment or order for the delivery of any goods shall be enforceable by warrant of delivery in accordance with this rule.

(2) If the judgment or order does not give the person against whom it was given or made the alternative of paying the value of the goods, it may be enforced by a warrant of specific delivery, that is to say, a warrant to recover the goods without alternative provision for recovery of their value.

(3) If the judgment or order is for the delivery of the goods or payment of their value, it may be enforced by a warrant of delivery to recover the goods or their value.

(4) Where a warrant of delivery is issued, the judgment creditor shall be entitled, by the same or a separate warrant, to execution against the debtor's goods for any money payable under the judgment or order which is to be enforced by the warrant of delivery.

(5) The foregoing provisions of this Order, so far as applicable, shall have effect, with the necessary modifications, in relation to warrants of delivery as they have effect in relation to warrants of execution.

Warrant of possession

17.—(1) A judgment or order for the recovery of land shall be enforceable by warrant of possession.

(2) The person desiring a warrant of possession to be issued shall file a request in that behalf.

(3) Where a warrant of possession is issued, the judgment creditor shall be entitled, by the same or a separate warrant, to execution against the debtor's goods for any money payable under the judgment or order which is to be enforced by the warrant of possession.

(4) A warrant of restitution may be issued, with the leave of the court, in aid of any warrant of possession.

(5) An application for leave under paragraph (4) may be made *ex parte* and shall be supported by evidence of wrongful re-entry into possession following the execution of the warrant of possession and of such further facts as would, in the High Court, enable the judgment creditor to have a writ of restitution issued.

(6) Rules 5 and 6 shall apply, with the necessary modifications, in relation to a warrant of possession and any further warrant in aid of such a warrant as they apply in relation to a warrant of execution.

Saving for enforcement by committal

18. Nothing in rule 16 or 17 shall prejudice any power to enforce a judgment or order for the delivery of goods or the recovery of land by an order of committal.