STATUTORY RULES OF NORTHERN IRELAND

1999 No. 62

MAGISTRATES' COURTS

Magistrates' Courts (Domestic Proceedings) (Amendment) Rules (Northern Ireland) 1999

Made - - - - 14th February 1999

Coming into operation in accordance with Rule 1

The Lord Chancellor, in exercise of the powers conferred on him by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981(**1**) and Article 34(11) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998(**2**) on the advice of the Magistrates' Courts Rules Committee and after consultation with the Lord Chief Justice, hereby makes the following Rules:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Magistrates' Courts (Domestic Proceedings) (Amendment) Rules (Northern Ireland) 1999 and shall come into operation on the same day as Article 20 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 comes into operation.

(2) The Magistrates' Courts (Domestic Proceedings) Rules (Northern Ireland) 1996(**3**) shall be amended in accordance with the following provisions of these Rules and, in those provisions, any reference to a rule by number alone shall be construed as a reference to the rule so numbered in the said Rules of 1996.

2. Rule 1(2) shall be amended by inserting—

(a) after paragraph (aa) the following—

"(aaa) "the Order of 1998" means the Family Homes and Domestic Violence (Northern Ireland) Order 1998(**2**);";

(b) after paragraph (c) the following—

"(d) "first class post" means first class post which has been pre-paid or in respect of which pre-payment is not required.".

3. After rule 2 there shall be inserted the following new rule—

(**1**) S.I.1981/1675 (N.I. 26)
(**2**) S.I. 1998/1071 (N.I. 6)
(**3**) S.R. 1996 No. 324
(**2**) S.I. 1998/1071 (N.I. 6)

"**Proceedings with respect to which a Resident Magistrate may discharge the functions of a court**

2A. Where an application is made ex parte for an occupation order or a non-molestation order under the Order of 1998, a resident magistrate may discharge the functions of a court of summary jurisdiction.".

4. For rules 10 to 13 there shall be substituted the following—

"**Applications under the Order of 1998**

10.—(1) An application by way of complaint to a justice of the peace or clerk of petty sessions for an occupation order or a non-molestation order under the Order of 1998 shall be made in writing in Form F1.

(2) An application in Form F1 shall be supported—

(a) by a statement which is signed and is declared to be true; or

(b) with the leave of the court, by oral evidence.

(3) Any summons issued in consequence of such an application shall be prepared in triplicate in Form F2 and a copy shall be served (together with a copy of the written application referred to in paragraph (1) and any supporting statement referred to in paragraph (2)) on the respondent not less than two days prior to the date fixed for hearing.

(4) The court may abridge the period specified in paragraph (3).

Ex parte applications under the Order of 1998

10A.—(1) An application for an occupation order or a non-molestation order under the Order of 1998 may, with the leave of the court, be made ex parte and in which case—

(a) Article 77(2) of the Magistrates' Courts (Northern Ireland) Order 1981 (civil proceedings to be on complaint) and rule 10 shall not apply; and

(b) the evidence in support of the application shall state the reasons why the application is made ex parte.

(2) Where the leave of the court is granted, the application may be made orally and the applicant shall, within 48 hours of the making of the application or as directed by the court,—

(a) file a written copy of the application in Form F1 together with any supporting statement with the clerk of petty sessions; and

(b) serve a copy of the application in Form F1, together with any supporting statement on the respondent.

(3) Service of any document referred to in paragraph (2)(b) may be effected—

(a) if the respondent is not known to be acting by solicitor—

(i) by delivering it to him personally, or

(ii) by delivering it at, or by sending it by first class post, to his residence or his last known residence, or

(b) if the respondent is known to be acting by solicitor—

(i) by delivering the document at, or sending it by first class post to the solicitor's address for service,

(ii) where the solicitor's address for service includes a numbered box at a document exchange, by leaving the document at that document exchange

or at a document exchange which transmits documents on every business day to that document exchange, or

(iii) by sending a legible copy of the document by facsimile transmission to the solicitor's office.

(4) Upon complying with paragraph (2)(b) the applicant shall file a statement in Form F4 and the statement shall indicate—

(a) the manner, date, time and place of service, or

(b) where service was effected by post, the date, time and place of posting.

(5) Where the court refuses to make an order on an ex parte application it may direct that the application be made inter partes.

Notice of application under the Order of 1998 to Mortgagee or Landlord

10B.—(1) A copy of an application for an occupation order under Article 11, 13 or 14 of the Order of 1998 shall be served by the applicant by first-class post on the mortgagee or, as the case may be, the landlord of the dwelling-house in question together with a notice in Form F3 informing him of his right to make representations in writing or at any hearing.

(2) Rule 10A(4) above shall apply, with the necessary modifications, to service under this rule.

Disclosure of address

10C. Rule 24 of the Magistrates' Courts (Children (Northern Ireland) Order 1995) Rules (Northern Ireland) 1996(**4**) (disclosure of address) shall apply for the purpose of preventing the disclosure of addresses where an application is made in Form F1 as it applies for that purpose in proceedings under the Children (Northern Ireland) Order 1995(**5**).

Transfer of Proceedings under the Family Homes and Domestic Violence (Allocation of Proceedings) Order 1999(6)

11.—(1) Where an application for an occupation order or a non-molestation order under the Order of 1998 is pending, the court shall consider (on the application in writing of either party or of its own motion) whether to exercise its powers to transfer the hearing of that application to another court and the court shall make an order for transfer in Form F5 if it seems necessary or expedient to do so.

(2) Where an order for transfer is made, the clerk of petty sessions shall send a copy of the order to—

(a) the parties; and

(b) to the clerk of petty sessions or the chief clerk of the county court or the Master (Probate and Matrimonial) of the High Court as the case may be.

Hearing of applications under the Order of 1998

12.—(1) This rule applies to the hearing of applications under the Order of 1998 and the following forms shall be used in connection with such hearings:

(a) a record of the hearing shall be made in Form F6, and

(**4**) S.R. 1996 No. 323
(**5**) S.I. 1995/755 (N.I. 2)
(**6**) **S.R. 1999 No. 61**

(b) any order made on the hearing shall be issued in Form F7.

(2) The court may direct that a further hearing be held in order to consider any representations made by a mortgagee or a landlord.

Notification of orders made under the Order of 1998

12A.—(1) Subject to paragraph (2) where a court makes either a non-molestation or an occupation order under the Order of 1998, the clerk of petty sessions shall cause a copy of the order to be served forthwith—

(a) on the respondent personally, and

(b) on the divisional commander of the police division in which the applicant is resident or in which any premises or any part of an area specified in the order are or is situated.

(2) If the court is satisfied by evidence on oath that prompt personal service on the respondent is impracticable, service may be effected in accordance with rule 10A(3)(a)(ii) or (b) above.

(3) Where the application is for an occupation order under Article 11, 13 or 14 of the Order of 1998, a copy of any order made on the application shall be served by the applicant by first-class post on the mortgagee or, as the case may be, the landlord of the dwelling-house in question.

Applications to vary etc orders made under the Order of 1998

13.—(1) An application by way of complaint to a justice of the peace or clerk of petty sessions for the extension, variation or discharge of an occupation order or non-molestation order made under the Order of 1998 shall be made in writing in Form F8.

(2) Rules 10(3) and (4), 10C, 12 and 12A above shall apply, with the necessary modifications, to such an application.".

5. In rule 15(1) for the words "Articles 4, 8, 9 or 18" there shall be substituted the words "Articles 4, 8 or 9".

6. In Schedule 1 for Forms D8 to D12 there shall be substituted the new Forms F1 to F8 set out in the Schedule to these rules.

7. Subject to paragraph 4(3) of Schedule 4 to the Order of 1998, rules 2 to 6, shall not apply to proceedings commenced before these Rules came into operation.

Dated 14th February 1999 *Irvine of Lairg, C.*

Schedule Rule 6

Form F1Application for a non-molestation order/an occupation orderFamily Homes and Domestic Violence (Northern Ireland) Order 1998

of Petty Sessions District of

Applicant

of County Court Division of

Respondent

Please read the accompanying notes as you complete this form

1. About you (the applicant)

State your title (Mr, Mrs etc), full name, address, telephone number and date of birth (if under 18)

State your solicitor's name, address, reference, telephone, FAX and DX numbers:

2. About the respondent

State the respondent's name, address and date of birth (if known):

3. The Order(s) for which you are applying

This application is for:

☐ a non-molestation order

☐ an occupation order

☐ Tick this box if you wish the court to hear your application without notice being given to the respondent. The reasons relied on for an application being heard without notice must be stated in the statement in support.

4. Your relationship to the respondent (the person to be served with this application)

Your relationship to the respondent is:

Please tick only one of the following. **The accompanying notes on Section 4 will help you to decide which category is most applicable to you.**

1. ☐ Married
2. ☐ Were married
3. ☐ Cohabiting
4. ☐ Were cohabiting