STATUTORY RULES OF NORTHERN IRELAND

1996 No. 324

MAGISTRATES' COURTS

Magistrates' Courts (Domestic Proceedings) Rules (Northern Ireland) 1996

Made - - - -	*25th July 1996*
Coming into operation	*4th November 1996*

The Lord Chancellor, in exercise of the powers conferred on him by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981(**1**) and Articles 8(8), 18(8), 18(9), 21(4), 25(1) and 26(2) of the Domestic Proceedings (Northern Ireland) Order 1980(**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) Rules (Northern Ireland) 1996 and shall come into operation on 4th November 1996.

(2) In these rules—

(a) "the Order" means the Domestic Proceedings (Northern Ireland) Order 1980 and any reference to an Article by number is a reference to that Article as numbered in the Order;

(b) "the Order Book" means the Order Book kept under Rule 19 of the Magistrates' Courts Rules (Northern Ireland) 1984(**3**);

(c) any reference to a form is a reference to a form in Schedule 1 and includes a reference to a form to the same effect with such variations as the circumstances may require.

(3) The Magistrates' Courts Rules (Northern Ireland) 1984 shall have effect subject to the provisions of these Rules.

Revocation and saving

2.—(1) Subject to paragraph (2) the Rules set out in Schedule 2 are hereby revoked.

(**1**) S.I.1981/1675 (N.I. 26)
(**2**) S.I. 1980/563 (N.I. 5)
(**3**) S.R. 1984 No. 225

(2) Nothing in these rules shall affect any proceedings pending (within the meaning of paragraph 1 of Schedule 8 to the Children (Northern Ireland) Order 1995(**4**)) immediately before these rules come into operation and accordingly the Rules set out in Schedule 2 shall continue to apply in relation to such proceedings.

Application under Article 4

3.—(1) An application by way of complaint to a justice of the peace or clerk of petty sessions for an order under Article 4 may be made orally specifying the type of order sought and the ground or grounds on which the application is made.

(2) Where an application under paragraph (*c*) or (*d*) of Article 4 alleges adultery or such behaviour by the respondent that the applicant cannot reasonably be expected to live with the respondent, particulars of the adultery or alleged behaviour shall not be stated in the summons, but, where the respondent or his solicitor, in writing, requests any such particulars, the applicant shall forthwith furnish particulars, in writing, to the respondent or his solicitor and to the clerk of petty sessions.

(3) A summons issued in consequence of such an application shall be in Form D1 and shall be prepared in triplicate and a copy served on the respondent.

Application for order under Article 8 (orders for payments agreed by parties)

4.—(1) An application by way of complaint to a justice of the peace or clerk of petty sessions for an order under Article 8 may be made orally specifying the type or types of financial provision applied for and the amount of any payment to be made thereunder.

(2) A summons issued in consequence of such an application shall be in Form D2 and shall be prepared in triplicate and a copy served on the respondent.

(3) For the purposes of Article 8(9)(*a*) and (*b*) evidence of the consent of the respondent to the making of the order and of the financial resources of the respondent shall be proved by way of a written statement in Form D3 signed by the respondent in the presence of one person from the persons described in paragraph (5) below, according to where the statement is signed.

(4) For the purposes of Article 8(9)(*c*) evidence of the financial resources of the child shall be proved by way of a written statement in Form D3A signed by the respondent, or, in an appropriate case, the child, in the presence of one person from the persons described in paragraph (5) below, according to where the statement is signed.

(5) A written statement under paragraph (3) or (4) above shall be signed in the presence of one of the following persons:—

(a) in Northern Ireland—

a justice of the peace or clerk of petty sessions;

(b) in England and Wales—

a justice of the peace or justice's clerk;

(c) in Scotland—

a justice of the peace or sheriff;

(d) outside the United Kingdom—

(i) any person for the time being authorised by law in the place where the document is executed to administer an oath for any judicial or other legal purpose;

(ii) a British Consular Officer;

(iii) a notary public, or

(**4**) S.R. 1995 No. 755 (N.I. 2)

(iv) if the person executing the document is serving in any of the regular armed Forces of the Crown, an officer holding a commission in any of those Forces.

(6) For the purposes of the said Article 8(9) a written statement purporting to be signed and witnessed in accordance with paragraph (3) or (4) shall be admissible as evidence without further proof of the signature of the respondent or of the witness, or, in the case of a statement in Form D3A which the child has signed, the child or of the witness, and shall be deemed to have been so signed and witnessed on the date and at the place specified in the document, unless the contrary is proved.

Application for order under Article 9 (orders for payments where parties are living apart by agreement)

5.—(1) An application by way of complaint to a justice of the peace or clerk of petty sessions for an order under Article 9 may be made orally specifying the aggregate amount of the payments made during the period of three months immediately preceding the date of the making of the application and the type of order sought.

(2) A summons issued in consequence of such an application shall be in Form D4 and shall be prepared in triplicate and a copy served on the respondent.

(3) Where under Article 9(4) the court decides to treat such an application as if it were an application for an order under Article 4 the court shall state which of grounds (*a*) and (*b*) of Article 9(4) is considered applicable and a note of the decision and the grounds therefor shall be entered in the Order Book.

(4) Where the court decides to treat the application as aforesaid and the respondent is not present or represented in court, or the respondent or his representative does not agree to the continuance of the hearing, the court shall adjourn the hearing and the clerk of petty sessions shall serve notice of the decision and the grounds therefor in Form D5 on the respondent.

Lodgment of birth certificate

6. On any application for an order under Articles 4, 8 or 9 or for the variation or revocation of such an order under Article 22 or for the review of such an order under Article 22B the applicant shall lodge with the clerk of petty sessions before the hearing of the application, where the birth of the child in respect of which the order is sought has been registered, a copy of the entry relating to his birth in the Register of Births or, where he has been adopted, a copy of the entry in the Adopted Children Register, as the case may be.

Respondents to application for order under Articles 22 or 22B

7.—(1) The following persons (not being the applicant) shall be made respondents on an application under Article 22 for the variation or revocation of an order that is to say:—

(a) in the case of the variation or revocation of an order made under Article 4(1)(*a*) or (*c*), 8, or 9 the parties to the marriage in question;

(b) in the case of the variation or revocation of an order made under Article 20—

(i) the parties to the marriage in question; and

(ii) where the order requires payments to be made for the benefit of a child who has his home with a person who is a parent of the child but not a party to the marriage in question that person;

(c) in the case of the variation or revocation of an order requiring payments to be made to or for the benefit of a child who is 16 years of age or over, that child in addition to the persons who may be respondents by virtue of sub-paragraphs (*a*) and (*b*).

(2) In the case of an application for the revival of an order under Article 22B the respondents shall be the parties to the proceedings leading to the order which it is sought to have revived.

Form of order

8. An order for financial provision under Articles 4, 8 or 9 shall be in Form D6.

Notice of court's powers under the Children (Northern Ireland) Order 1995

9.—(1) In a case where the powers of a court under the Children (Northern Ireland) Order 1995 are or may be exercisable but where no application has been made under that Order, the clerk of petty sessions shall upon the making of an application under Article 4, 8 or 9 send by ordinary post a notice in Form D7 to—

the applicant or his solicitor;

the respondent or his solicitor; and

any parent of the child who is not a party to the marriage; and whose name and address is known.

Application for personal protection orders and exclusion orders

10.—(1) An application by way of complaint to a justice of the peace or clerk of petty sessions for a personal protection order under Article 18(1) or an exclusion order under Article 18(2) may be made orally.

(2) A summons issued in consequence of such an application shall be in Form D8 and shall be prepared in triplicate and a copy served on the respondent.

(3) In the case of an application for an exclusion order the date fixed for the hearing of the application shall be as soon as practicable.

Interim personal protection orders and interim exclusion orders

11.—(1) Where the applicant makes a statement to a clerk of petty sessions, either orally or in writing, to the effect that there is imminent danger of physical injury to the applicant or a child of the family, the clerk of petty sessions shall take such steps as may be necessary to ensure that the court or resident magistrate considers as soon as is practicable whether or not to exercise the powers conferred by Article 21(2) to make an interim personal protection order or an interim exclusion order.

(2) For the purposes of this rule "applicant" means a person who has made an application by way of complaint under Rule 10 or a person who intends to make such an application.

Form of personal protection order and exclusion order

12.—(1) A personal protection order under Article 18 shall be in Form D9.

(2) An exclusion order under Article 18 shall be in Form D10.

Notification of personal protection orders and exclusion orders

13.—(1) Where a court or a resident magistrate makes either a personal protection order or an exclusion order under Article 18(1) or (2) or an interim personal protection order or an interim exclusion order under Article 21(1) or (2), or both such orders or interim orders, the clerk of petty sessions shall cause notice of the making of the order to be served on the respondent personally:

Provided that, if the court or the resident magistrate is satisfied by evidence on oath that prompt personal service on the respondent is impracticable, service may be effected—

(a) by sending a copy of the order by post addressed to him at his usual or last known place of abode; or

(b) by leaving a copy of the order for him with some person at his usual or last known place of abode.

(2) In the case of an exclusion order or an interim exclusion order the copy order sent under paragraph (1) shall be accompanied by a notice in either Form D11 or Form D12 as the case may be.

(3) Where the court or the resident magistrate makes a personal protection order or an exclusion order the notice required under Article 18(8)(*e*) to be served on the divisional commander (or commanders as the case may be) of police shall be a certified copy of the order.

(4) Where such an order is varied or revoked the notice required by Article 18(8)(*f*) shall likewise be a certified copy of the varying or revoking order.

(5) In the case of an order made under Article 21(2), a certified copy shall not be sent to the divisional commander of police until notice of the making of the order has been served on the respondent in accordance with paragraph (1) and the clerk of petty sessions shall, before sending it to the divisional commander, endorse on it a signed statement that it has been so served and the date on which the order takes effect.

Proceedings against person outside Northern Ireland on application for variation or revocation of an order

14.—(1) The period referred to in Article 26(2) shall be the period of one month ending on the date of the hearing.

(2) Before proceeding in a case where Article 26(2) applies the court in addition to being satisfied of the fact referred to in that provision must also be satisfied that the applicant has taken steps to give notice to the respondent of the making of the application and of the time and place appointed for the hearing by—

(a) causing a notice in Form D13 to be delivered to the respondent; or

(b) causing a notice in Form D13 to be sent by post addressed to the respondent at his usual or last known place of abode or business.

(3) Where an application for the revocation or variation of an order requiring payments to be made by the applicant to the respondent is heard by virtue of Article 26(2) in the absence of the respondent the court shall not make the order unless it is satisfied that during the period of 6 months immediately preceding the making of the application the respondent was continuously outside Northern Ireland or was not in Northern Ireland on more than 30 days, and that, having regard to any communication in writing to the court purporting to be from the respondent, it is reasonable in all the circumstances so to do.

(4) Rule 11(7) of the Magistrates' Courts Rules (Northern Ireland) 1984 shall apply for the purpose of proving the delivery of a written notice in pursuance of paragraph (2)(*a*) as it applies for the purpose of proving the service of a summons.

Transfer of proceedings for order under Articles 4, 8, 9 or 18

15.—(1) Where an application is made for an order under Articles 4, 8, 9 or 18 and as a consequence a summons is issued, then, on an application made by the respondent in accordance with paragraph (2) the court may, if it appears that the case could more conveniently be heard in another court of summary jurisdiction having jurisdiction to hear it by virtue of Article 32(1), determine that the proceedings shall be removed to that other court.

(2) An application under paragraph (1) may be made orally or in writing by or on behalf of the respondent and, unless the respondent applied in person, there shall be lodged with the clerk of petty