STATUTORY RULES OF NORTHERN IRELAND

# 1996 No. 323

# MAGISTRATES' COURTS

## Magistrates' Courts (Children (Northern Ireland) Order 1995) Rules (Northern Ireland) 1996

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| *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 Article 71 and 165 of the Children (Northern Ireland) Order 1995(**2**) and all other powers enabling him in that behalf, 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 (Children (Northern Ireland) Order 1995) Rules (Northern Ireland) 1996 and shall come into operation on 4th November 1996.

(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) immediately before these rules come into operation.

(3) In these rules unless the context otherwise requires—

"the Allocation Order" means the Children (Allocation of Proceedings) Order (Northern Ireland) 1996(**3**);

"application" means an application under or by virtue of the Order or under these Rules and "applicant" shall be construed accordingly;

"an Article 8 order" has the same meaning as in Article 8(2);

"Board" means a Health and Social Services Board;

"business day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday which is, or is to be observed as, a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971(**4**);

"child" means—

(**1**) S.I.1981/1675 (N.I. 26)
(**2**) S.I. 1995/755 (N.I. 2)
(**3**) S.R. 1996 No. 300
(**4**) 1971 c. 80

(a) subject to paragraph (*b*), a person under the age of 18 with respect to whom the proceedings are brought; and

(b) where the proceedings are under Schedule 1 also includes a person who has reached the age of 18;

"court" includes a family proceedings court to which proceedings are brought in accordance with the Allocation Order and a resident magistrate or member of a juvenile court panel in respect of the proceedings prescribed in rule 2(5)(*a*) and a resident magistrate in respect of the proceedings prescribed in rule 2(5)(*b*);

"directions appointment" means a hearing for directions under rule 15;

"document exchange" means any document exchange for the time being approved by the Lord Chancellor;

"file" means deposit with the clerk of petty sessions;

"guardian ad litem" means a guardian ad litem appointed under Article 60, of the child with respect to whom the proceedings are brought;

"leave" includes permission and approval;

"parental responsibility" has the same meaning as in Article 6;

"parties" in relation to any relevant proceedings means the respondents specified in column (iii) of Schedule 2 and the applicant;

"relevant proceedings" has the same meaning as in Article 165(3);

"specified proceedings" has the same meaning as in Article 60(6) and rule 2(2);

"the Order" means the Children (Northern Ireland) Order 1995 and an Article or Schedule referred to by number means the Article or Schedule so numbered in the Order;

"Trust" means a Health and Social Services Trust by whom functions are exercisable by virtue of an authorisation for the time being in operation under the Health and Personal Social Services (Northern Ireland) Order 1994(**5**);

"welfare officer" means a person who has been asked to prepare a welfare report under Article 4.

(4) Any reference to a form is a reference to a form in Schedule 1 to these rules and includes a reference to a form to the same effect with such variations as the circumstances might require.

(5) The Magistrates' Courts Rules (Northern Ireland) 1984(**6**) shall have effect subject to the provisions of these Rules.

**Matters prescribed for the purposes of the Order**

**2.**—(1) The parties to proceedings in which directions are given under Article 57(6) and any person named in such a direction, form the prescribed class for the purposes of Article 57(8)(*b*) (application to vary directions made with interim care or interim supervision order).

(2) The following proceedings are specified for the purposes of Article 60 in accordance with paragraph 6(i) thereof—

(a) proceedings under Article 33(1);

(b) proceedings under Article 44;

(c) applications under Article 52(7);

(d) proceedings under paragraph 6(3) of Schedule 3.

(**5**) S.I. 1994/429 (N.I. 2)
(**6**) S.R. 1984 No. 225

(3) The applicant for an order that has been made under Article 62(1) and the persons referred to in Article 62(11) may, in any circumstances, apply under Article 62(12) for a child assessment order to be varied or discharged.

(4) The following persons form the prescribed class for the purposes of Article 63(9)(*b*) (application to vary directions)—

(a) the parties to the application in which it is sought to vary the directions;

(b) the guardian ad litem;

(c) the authority in whose area the child is ordinarily resident;

(d) any person who is named in the directions.

(5) Where, in accordance with the Allocation Order an application is required to be commenced in a family proceedings court the following proceedings are prescribed for the purposes of Article 165(2)(i)—

(a) proceedings on an ex parte application under Article 63; 67 and 69; and under rule 5 are proceedings with respect to which a resident magistrate or member of a juvenile court panel may discharge the functions of a court of summary jurisdiction; and

(b) proceedings in accordance with rule 3, 6, 7, 11, 15, 16, 17, 18, 19 and 20 are proceedings with respect to which a resident magistrate may discharge the functions of a court of summary jurisdiction.

**Application for leave to commence proceedings**

**3.**—(1) Where the leave of the court is required to bring any relevant proceedings, the person seeking leave shall file—

(a) an application for leave in Form C2; and

(b) a draft of the application in respect of which leave is sought in the appropriate form in Schedule 1 or where there is no such form, in writing, together with sufficient copies for one to be served on each respondent; and

(c) A draft summons in Form C1A.

(2) On considering a request for leave filed under paragraph (1), the court shall—

(a) grant the request whereupon the clerk of petty sessions shall issue a summons in Form C1A; or

(b) fix a date for a hearing of the request whereupon the clerk of petty sessions shall give such notice as the court directs to the person making the request and to such other persons as the court requires to be notified of the date so fixed.

**Application**

**4.**—(1) An application by way of complaint to a justice of the peace or clerk of petty sessions for an order under the Order shall be made in writing in Form C1 together with such of Forms C6 to C17 as is appropriate.

(2) Subject to paragraph (3) any summons issued in consequence of such an application shall be prepared by the applicant in Form C1A and shall be served on each respondent to the application along with a copy of the written application the minimum number of days prior to the date fixed for hearing as is specified in relation to that application in column (iii) of Schedule 2 to these rules.

(3) Where an applicant is also making an application for an order under the Domestic Proceedings (Northern Ireland) Order 1980(**7**) then any summons issued shall be in the appropriate form in

(**7**) S.I. 1980/563 (N.I. 5)

the Magistrates' Courts (Domestic Proceedings) Rules 1996(**8**) and shall be prepared and served in accordance with those rules together with a copy of the written application referred to in paragraph (1).

(4) At the same time as complying with paragraph (2) or (3) notice of the proceedings in Form C2A shall also be given by the applicant to those persons set out in relation to the relevant class of proceedings in column (iv) of Schedule 2 to these rules.

**Ex parte application**

**5.**—(1) An application for—

(a) an Article 8 order;

(b) an emergency protection order under Article 63;

(c) an order or warrant under Article 67;

(d) a recovery order under Article 69; or

(e) a warrant under Article 178(2)

may with the leave of the court be made ex parte and in which case Article 77(2) of the Magistrates' Courts (Northern Ireland) Order 1981 (civil proceedings to be upon complaint) and rule 4 shall not apply.

(2) Where under paragraph (1) 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—

(a) file a written copy of the application in Form C1 together with such of Forms C6 to C17 as is appropriate; and

(b) serve a copy of the application and any order on—

(i) the parties;

(ii) any person who has actual care of the child or had such care immediately prior to the making of the order; and

(iii) in the case of an order or warrant referred to in paragraph (1)(*b*) or (*c*) on the Board or Trust in whose area the child lives or was found.

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

**Withdrawal of application**

**6.**—(1) An application may be withdrawn only with leave of the court.

(2) Subject to paragraph (3) a person seeking leave to withdraw an application shall file and serve on the parties a written request for leave in Form C2 setting out the reasons for the request.

(3) The request under paragraph (2) may be made orally to the court if the parties and, if appointed, the guardian ad litem or the welfare officer are present.

(4) Upon receipt of a written request under paragraph (2), the court shall—

(a) if

(i) the parties consent in writing,

(ii) any guardian ad litem has had an opportunity to make representations, and

(iii) the court thinks fit,

(**8**) S.R. 1996 No.

grant the request; in which case the clerk of petty sessions shall notify the parties, and any guardian ad litem or welfare officer; or

(b) the court shall fix a date for the hearing of the request and the clerk of petty sessions shall give at least 7 days' notice to the parties, and any guardian ad litem or the welfare officer of the date so fixed.

**Transfer of proceedings**

**7.**—(1) Where in any relevant proceedings the court receives a request in writing from a party that the proceedings be transferred to a county court or the High Court in accordance with the Allocation Order the court shall issue an order or certificate in the appropriate form in Schedule 1 to these Rules granting or refusing the request.

(2) A copy of the order or certificate issued under paragraph (1) shall be sent by the clerk of petty sessions—

(a) to the parties,

(b) to any guardian ad litem, and

(c) to the chief clerk of the county court or the Master (Probate and Matrimonial) or the Master (Care and Protection) of the High Court as the case may be.

**Parties**

**8.**—(1) The respondents to relevant proceedings shall be those persons set out in the relevant entry in column (iii) of Schedule 2 to these rules.

(2) In any relevant proceedings a person may file a request in Form C2 that he or another person—

(a) be joined as a party, or

(b) cease to be a party.

(3) On considering a request under paragraph (2) the court shall, subject to paragraph (4)—

(a) grant it without a hearing or representations, save that this shall be done only in the case of a request under paragraph (2)(*a*), whereupon the clerk of petty sessions shall inform in writing the parties and the person making the request of that decision, or

(b) order that a date be fixed for the consideration of the request, whereupon the clerk of petty sessions shall give notice in writing of the date so fixed, together with a copy of the request—

(i) in the case of a request under paragraph (2)(*a*), to the applicant and the person to be joined if he is not also the applicant, and

(ii) in the case of a request under paragraph (2)(*b*), to the parties, or

(c) invite the parties or any of them to make written representations, within a specified period, as to whether the request should be granted; and upon the expiry of the period the court shall act in accordance with sub-paragraph (*a*) or (*b*).

(4) Where a person with parental responsibility requests that he be joined under paragraph (2)(*a*), the court shall grant his request.

(5) In any relevant proceedings the court may direct—

(a) that a person who would not otherwise be a respondent under these Rules be joined as a party to the proceedings, or

(b) that a party to the proceedings cease to be a party.