1980 No. 371

MAGISTRATES' COURTS

Magistrates' Courts (Domestic Proceedings) Rules (Northern Ireland) 1980

Made	*20th October 1980*
Coming into operation . . .	*1st December 1980*

The Lord Chancellor in pursuance of section 23 of the Magistrates' Courts Act (Northern Ireland) 1964(**a**) and Articles 8(8), 14(2)(*b*), 18(8), 18(9), 21(4), 25(1) and 26(2) of the Domestic Proceedings (Northern Ireland) Order 1980(**b**) on the advice of the Magistrates' Courts Rules Committee and after consultation with the Lord Chief Justice hereby makes the following rules:—

Citation and commencement

1. These rules may be cited as the Magistrates' Courts (Domestic Proceedings) Rules (Northern Ireland) 1980 and shall come into operation on 1st December 1980.

Interpretation

2.—(1) 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) 1974(**c**);

(*c*) any reference to a form is a reference to a form in the Schedule to these rules and includes a reference to a form to the like effect with such variations as the circumstances may require;

(*d*) expressions used shall have the same respective meanings as in the Order.

(2) The provisions of the Magistrates' Courts Rules (Northern Ireland) 1974 shall have effect subject to these rules.

Application for order under Article 4 (orders for financial provision)

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 and the ground or grounds on which the application is made must be stated.

(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 1 and shall be prepared in triplicate and a copy served on the respondent.

(**a**) 1964 c. 21 (N.I.) as modified by S.I. 1973/2163 (1973 III, p. 7541)
(**b**) 1980 No. 563 (N.I. 5)
(**c**) S.R. 1974 No. 334 (II, p. 1541)

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 2 and shall be prepared in triplicate and a copy served on the respondent.

(3) For the purposes of Article 8(8) 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 3 signed by the respondent 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

(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.

(4) For the purposes of the said Article 8(8) a written statement purporting to be signed and witnessed in accordance with paragraph (3) shall be admissible as evidence without further proof of the signature of the respondent 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.

(2) A summons issued in consequence of such an application shall be in Form 4 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 memorandum 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 5 on the respondent.

Lodgement of birth certificate

6. On any application for an order under Article 4, 8, 9 or 10 or for the variation or revocation of such an order under Article 22 or 23 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 its birth in the Register of Births or, where it 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 16(3), 22 and 23

7.—(1) The following persons (not being the applicant) shall be made respondents on an application (under Article 16(3), 22 or 23) 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, 9 or 13(2)(*a*), the parties to the marriage in question;

(*b*) in the case of the variation or revocation of an order made under Article 13(3)(*a*) requiring payments to be made to or for the benefit of a child of a person who is a parent of the child but not a party to the marriage in question and who has the legal custody of the child—

(i) that person;

(ii) the parties to the marriage in question;

(*c*) in the case of the variation or revocation of an order made under Article 13(4) requiring payments to be made to the Department or to a child whose care has been committed to the Department—

(i) the Department;

(ii) the parties to the marriage in question;

(*d*) in the case of the variation or revocation of an order made under Article 16(1) requiring access to a child to be given to a grandparent—

(i) the person who has the legal custody of the child;

(ii) the grandparent concerned;

(*e*) in the case of the variation or revocation of an order made under Article 20 the parties to the marriage in question and also—

(i) if 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; or

(ii) if the order gives the legal custody of a child to a person who is not a party to the marriage in question, that person;

(*f*) in the case of the variation or revocation of an order referred to in sub-paragraphs (*a*) to (*e*) 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 are to be made respondents by virtue of those sub-paragraphs;

(*g*) in the case of the variation or revocation of an order made under Article 10 in respect of the custody of or access to a child of the family—

(i) the parties to the marriage in question;

(ii) any person who is a parent of the child but not a party to the marriage;

and also if the child is required by an order made under Article 11 to be under the supervision of the Department, the Department;

(*h*) in the case of the variation or revocation of an order made under Article 11 requiring a child to be under the supervision of the Department—

(i) the parties to the marriage in question;

(ii) any person who is a parent of the child but not a party to the marriage;

(iii) the Department;

(*i*) in the case of the revocation of an order made under Article 12 committing the care of a child to the Department—

(i) the parties to the marriage in question;

(ii) any person who is a parent of the child but not a party to the marriage;

(iii) the Department.

(2) References in paragraph (1) to the parent of a child include the father of an illegitimate child if, but only if, he has been adjudged by a court to be the father of that child.

Notice to Department with regard to child

8. Where a court is required under Article 12(2)(*a*) to notify the Department of the court's intention to make an order committing the care of the child to the Department the clerk of petty sessions shall cause notice in Form 6 to be delivered or sent by recorded delivery post to the Department.

Notice to applicant of court's powers to make provision with regard to children

9. In a case where the powers of a court under Article 10, 11, 12 or 13 to make provision with regard to any child of the family are or may be exercisable the clerk of petty sessions shall upon the making of an application under Article 3, 8, or 9, send by ordinary post a duplicate copy of the summons to the applicant or his solicitor.

Notice to parent of child (other than a party to the marriage) of court's powers to make provision with regard to children

10.—(1) In the case of an application for an order under Article 4, 8, 9, 16 or 23 where—

(*a*) there is a child of the family of the parties to the marriage in question who is not a child of both parties to the marriage; and

(*b*) the court is required under Article 14(2) to be satisfied that prescribed steps have been taken with a view to giving notice of the application, and of the time and place appointed for the hearing, to any person who, though not a party to the marriage in question is a parent of that child

the court may exercise its power under Articles 10 to 12 in relation to that child if there has been read aloud before the court at the hearing a statement signed by the clerk of petty sessions that the steps required by paragraph (2) have been taken with a view to giving notice to the parent as aforesaid.

(2) Subject to paragraph (3) the steps required by this rule are the following—

(*a*) before the summons is issued on the application the applicant shall be required to say whether or not there is a child of the family who is not a child of both parties to the marriage in question and in respect of whom a notice is required to be given to his parent or parents under Article 14(2), and, if there is such a child, to give the name and address of the parent or parents so far as this information is known to or can be obtained by the applicant;

(*b*) at least 10 days before the hearing at which the court proposes to make an order on the application, the clerk of petty sessions shall cause a notice in Form 7 to be sent by post to any parent referred to in sub-paragraph (*a*) whose name and address are known to him, whether from information given by the applicant in accordance with that sub-paragraph or otherwise.

(3) Where after such notice has been sent to a parent, the hearing at which the court proposes to exercise the said powers is adjourned, the court may exercise the said powers at the adjourned hearing if it is satisfied that reasonable steps have been taken to give the parent adequate notice of the time and place thereof.

Form of order under Article 4, 8, 9, 10, 11, 12 or 13

11. An order for financial provision under Article 4, 8 or 9, for custody of or access to children under Article 10, for supervision of children under Article 11, for committal of children to care under Article 12, or for maintenance of children under Article 13, shall be in Form 8.

Applications for personal protection orders and exclusion orders

12.—(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 9 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.

Consideration of applications for personal protection orders and exclusion orders

13. Where such an application as is mentioned in rule 12 has been made and the applicant makes a sworn statement to the effect that there is imminent danger of physical injury to the applicant or a child of the family, a justice of the peace shall take such steps as may be necessary to ensure that the court or resident magistrate shall consider forthwith whether or not to exercise the powers conferred by Article 21(2) to make an interim protection order or an interim exclusion order.

Form of personal protection order and exclusion order

14.—(1) A personal protection order under Article 18 shall be in Form 10.

(2) An exclusion order under the said Article shall be in Form 11.

Notification of personal protection orders and exclusion orders

15.—(1) Where a court or a resident magistrate makes either an exclusion order under Article 18(2) or an interim personal protection order or an interim exclusion order under Article 21(1) or (2), or both such 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 12 or Form 13 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.