
STATUTORY RULES OF NORTHERN IRELAND

1999 No. 88

**The Family Proceedings (Amendment)
Rules (Northern Ireland) 1999**

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Family Proceedings (Amendment) Rules (Northern Ireland) 1999 and shall come into operation on 29th March 1999.

(2) In these Rules, a rule referred to by number means the rule so numbered in the Family Proceedings Rules (Northern Ireland) 1996⁽¹⁾ and a reference to Appendix 1 is a reference to Appendix 1 to those Rules.

2. In rule 1.3(1), after the definition of “the Order of 1995” there shall be inserted the following—

““the Order of 1998” means the Family Homes and Domestic Violence (Northern Ireland) Order 1998⁽²⁾; and

“the Allocation Order of 1999” means the Family Homes and Domestic Violence (Allocation of Proceedings) Order (Northern Ireland) 1999⁽³⁾”.

Revocation and saving

3.—(1) Subject to paragraph (2), Order 115 of the Rules of the Supreme Court (Northern Ireland) 1980⁽⁴⁾ and Part II of Order 29 of the County Court Rules (Northern Ireland) 1981⁽⁵⁾ are hereby revoked.

(2) Nothing in these Rules shall affect any proceedings which are pending immediately before these rules come into operation and the rules in operation immediately before that day shall continue to apply to those proceedings.

Supplemental petition, pleadings and amendment of petition

4. Rule 2.13(3) shall be amended as follows—

(a) the words “and unless the court otherwise directs” shall be inserted after the words “Subject to paragraph 4”; and

(b) in paragraph (b), the words “, unless the court otherwise directs,” shall be revoked.

Pensions

5. For rule 2.73 there shall be substituted the following new rule—

(1) S.R. 1996 No. 322

(2) S.I.1998/1071 (N.I. 6)

(3) S.R. 1999 No. 61

(4) S.R. 1980 No. 346 to which the most recent relevant amendments were made by S.R. 1989 No. 287 and S.R. 1991 No. 232

(5) S.R. 1981 No. 225 to which the most relevant amendment was made by S.R. 1989 No. 211

“Pensions

2.73.—(1) Where an applicant for ancillary relief or the respondent to the application is obliged by rule 2.60 to give full particulars of his property and income, he shall also give full particulars of any benefits under a pension scheme which he has or is likely to have including the most recent valuation furnished by the trustees or managers of the pension scheme pursuant to—

- (a) regulation 5 of and Schedule 2 to the Occupational Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 1997⁽⁶⁾ and regulation 11 of and Schedule 1 to the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996⁽⁷⁾;
- (b) paragraph 2(2) of Schedule 2 to the Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 1987⁽⁸⁾; or
- (c) regulation 4 (provision of valuations after petition).

(2) Where by virtue of rule 2.64(5) the Master has power to order discovery of any document he shall also have power to require either party to request a valuation under regulation 4 from the trustees or managers of any pension scheme under which that party has or is likely to have any benefits.

(3) A petitioner or respondent who has applied for ancillary relief, not including provision made by Article 27B or 27C of the Order of 1978, may at any time amend the application so as to include such provision by way of a notice or amended notice in Form M13 and rule 2.57 shall apply to any such notice.

(4) A petitioner or respondent who has applied for an order which by virtue of Article 27B or 27C of the Order of 1978 imposes any requirement on the trustees or managers of a pension scheme shall, within 4 days after filing the notice in Form M13 or M15 as the case may be, serve on those trustees or managers a copy of that notice, together with the following—

- (a) an address to which any notice which the trustees or managers may be required to serve is to be sent;
- (b) an address to which any payment which the trustees or managers are required to make to the applicant is to be sent; and
- (c) where the address in sub-paragraph (b) is that of a bank, a building society or the Department of National Savings sufficient details to enable payment to be made into the account of the applicant.

(5) Trustees or managers of a pension scheme on whom a copy of such a notice is served may, within 14 days after service, require the applicant to provide them with a copy of the affidavit supporting his application.

(6) Trustees or managers of a pension scheme who receive a copy of an affidavit pursuant to paragraph (5) may within 14 days after receipt file an affidavit in answer.

(7) Trustees or managers of a pension scheme who file an affidavit pursuant to paragraph (6) may file therewith a notice to the court requiring an appointment to be fixed, and where such a notice is filed—

- (a) the proper officer or chief clerk shall fix an appointment for the hearing or further hearing of the application and shall give not less than 14 days' notice of that

⁽⁶⁾ S.R. 1997 No. 98
⁽⁷⁾ S.R. 1996 No. 619
⁽⁸⁾ S.R. 1987 No. 288

appointment to the petitioner, the respondent and the trustees or managers of the pension scheme; and

- (b) the trustees or managers of the pension scheme shall be entitled to be represented at any such hearing.

(8) Where the petitioner and the respondent have agreed on the terms of an order which by virtue of Article 27B or 27C of the Order of 1978 imposes any requirement on the trustees or managers of a pension scheme, then unless service has already been effected under paragraph (4), they shall serve on the trustees or managers a draft of the consent order together with the particulars set out in sub-paragraphs (a), (b) and (c) of paragraph (4), and no such order shall be made unless either—

- (a) the trustees or managers have not made any objection within 14 days after the service on them of the draft order; or
(b) the court has considered the objection made by the trustees or managers

and for the purpose of considering any such objection the court may make such directions as it sees fit for the trustees or managers to attend before it or to furnish written details of their objection.

(9) In deciding whether to make an order which by virtue of Article 27B or 27C of the Order of 1978 imposes any requirement on the trustees or managers of a pension scheme, the court shall take into account any representations of the trustees or managers as to whether, in all the circumstances of the case, the court ought to make the order, and in particular whether the particulars supplied under paragraph (4) are sufficient to enable the trustees or managers to comply with their obligations under any such order.

(10) In this rule—

- (a) every reference to a regulation by number alone means the regulation so numbered in the Divorce etc (Pensions) Regulations (Northern Ireland) 1996⁽⁹⁾;
(b) all words and phrases have the same meaning as in Article 27D of the Order of 1978.”.

Family Homes and Domestic Violence (Northern Ireland) Order 1998⁽¹⁰⁾

6. For rule 3.9 there shall be substituted the following—

“Transfer of certain tenancies on divorce etc or on separation of cohabitants

3.9.—(1) The jurisdiction of the court under Article 30 of and Schedule 2 to the Order of 1998 may be exercised by the Master.

(2) An application is made for an order under Part II of Schedule 2 to the Order of 1998 notice of the application shall be served by the applicant on the other cohabitant or spouse and on the landlord (as those terms are defined by paragraph 1 of Schedule 2 to the Order of 1998) and any person so served shall be entitled to be heard on the application.

(3) The applicant shall file a statement of service on Form F4 after he has served notice of application in accordance with paragraph (2).

(4) Any person who is served with a notice of application under paragraph (2) above shall, if he intends to contest the application, within 14 days of service of that notice, file a statement which is signed by him and sworn to be true in answer to the application setting

⁽⁹⁾ S.R. 1996 No. 296 to which the most recent amendments were made by S.R. 1997 No. 275

⁽¹⁰⁾ S.I. 1998/1071 (N.I. 6)

out the grounds on which he relies and shall arrange for a copy of that statement to be served on the applicant personally.

(5) If a statement is not filed under paragraph (4) above, the applicant may apply for directions and the court may give such directions as it thinks fit, including a direction that the respondent shall be debarred from defending the application unless a statement is filed in accordance with paragraph (4) within such time as the court may direct.

(6) Rules 2.64(4) to (7) (investigation by Master of application for ancillary relief) shall apply with the necessary modifications to an application for an order under Part II of Schedule 2 to the Order of 1998 as they apply to an application for ancillary relief.”.

7. After rule 3.14 there shall be inserted the following—

“Applications for an occupation order or a non-molestation order under the Order of 1998

3.15.—(1) Subject to rules 3.16 and 3.17, on an application for an occupation order or a non-molestation order under the Order of 1998, the applicant shall—

- (a) file the documents referred to in paragraph (2) (which documents shall together be called “the application”), together with sufficient copies for one to be served on each respondent—
 - (i) in relation to an application to the High Court, in the Office of Care and Protection; or
 - (ii) in relation to an application to a county court in the county court office;
- (b) arrange for the copy of the application, together with Form F3 to be served on respondent personally not less than 2 days before the date on which the application will be heard; and
- (c) file a statement in Form F4 in the Office of Care and Protection or, as the case may be, the county court office after the application has been served.

(2) The documents to be filed under paragraph 1(a) are—

- (a) Form F2; and
- (b) a supporting statement which is signed by the applicant and sworn to be true.

(3) On receipt of the documents referred to in paragraph (1)(a), the proper officer or chief clerk shall—

- (a) fix the date for the hearing, allowing sufficient time for the applicant to comply with paragraph 1(b);
- (b) endorse the date so fixed on Form F3; and
- (c) return forthwith to the applicant the copies of the application, together with Form F3.

(4) The court may abridge the period specified in paragraph (1)(b).

(5) Rule 6.3 shall not apply to an application for an occupation order or a non-molestation order under the Order of 1998.

(6) Rule 2.64(4) to (7) (investigation by Master of an application for ancillary relief) shall apply, with the necessary modifications, to an application for an occupation order under Article 11, 13 or 14 of the Order of 1998 as they apply to an application for ancillary relief.

Application for leave to commence proceedings under the Order of 1998

3.16.—(1) Where the leave of the court is required to bring proceedings under the Order of 1998, the person seeking leave shall file in the Office of Care and Protection a draft of the application (being the documents referred to in rule 3.15(2)) for the making of which leave is sought, together with sufficient copies for one to be served on each respondent.

- (2) On considering a request for leave filed under paragraph (1) the court shall—
- (a) grant the request, whereupon the proper officer shall inform the person making the request of the decision, or
 - (b) direct that a date be fixed for the hearing of the request, whereupon the proper officer shall fix such a date and 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.

(3) Where notice is required to be given under paragraph (2) it shall, with the necessary modifications, be given in Form F3.

(4) Where leave is granted to bring proceedings under the Order of 1998, the application shall proceed in accordance with rule 3.15 but paragraph (1)(a) of that rule shall not apply.

Ex parte applications under the Order of 1998

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

- (a) rule 3.15 shall not apply; and
- (b) the evidence in support of the application shall include 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 in the Office of Care and Protection or, as the case may be, the county court office, a written copy of the application in Form F2 together with a supporting statement which is signed by the applicant and sworn to be true; and
- (b) arrange for a copy of the application in Form F2 together with the supporting statement to be served on the respondent personally.

(3) Upon complying with paragraph (2)(b) the applicant shall file a statement in Form F4 in the Office of Care and Protection or, as the case may be, the county court office.

Notification of application for an occupation order under the Order of 1998

3.18. 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, with a notice in Form F5 informing him of his right to make representations in writing or at any hearing.

Hearing of applications under the Order of 1998

3.19.—(1) Unless the court otherwise directs, an application for an occupation order or a non-molestation order under the Order of 1998 shall be heard by a judge in chambers.

- (2) The following forms shall be used in connection with hearings of such applications—
- (a) a record of the hearing shall be made in Form F6, and

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

(3) 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 occupation order or non-molestation order

3.20.—(1) Where an occupation order or non-molestation order is made under the Order of 1998, the applicant shall arrange for a copy of the order to be served by the applicant on the respondent personally.

(2) Where the application is for an occupation order under Article 11, 13 or 14 of the Order of 1998, the applicant shall arrange for 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.

Variation, extension or discharge of orders made under the Order of 1998

3.21. An application to vary, extend or discharge an occupation order or non-molestation order made under the Order of 1998 shall be made in Form F8 and rules 3.15 and 3.17 to 3.20 shall apply, with the necessary modifications, to such an application.

Transfer of proceedings under the Order of 1998

3.22.—(1) Where proceedings under the Order of 1998 are 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 shall make an order for transfer in Form F9 if it seems necessary or expedient to do so.

(2) Where proceedings have been transferred to a county court in accordance with Article 7 of the Allocation Order of 1999, that court shall consider whether to transfer those proceedings to the High Court in accordance with Article 11 of that Order and either—

- (a) determine that an order for such transfer need not be made;
- (b) make such an order for transfer;
- (c) order that a date be fixed for the hearing of the question whether such an order for transfer should be made, whereupon the chief clerk shall give such notice to the parties as the court directs of the date so fixed; or
- (d) invite the parties to make written representations within a specified period as to whether such an order should be made and, upon receipt of the representations, the court shall act in accordance with sub-paragraphs (a), (b) or (c).

(3) Where proceedings are transferred to the High Court any relevant documentation shall be sent by the chief clerk to the Office of Care and Protection.

(4) The proper officer shall notify the parties of an order transferring proceedings from the High Court in accordance with Article 12 or 13 of the Allocation Order of 1999 and a copy of the order shall be sent to the court to which the proceedings are transferred.

(5) The chief clerk shall notify the parties of an order transferring proceedings in accordance with Article 9 or 10 of the Allocation Order of 1999 and a copy of the order shall be sent to the court to which the proceedings are transferred.

(6) An order under this rule transferring proceedings in accordance with the Allocation Order of 1999 shall be served on the parties by the proper officer or chief clerk as the case may be.

Enforcement of orders made under the Order of 1998

3.23. CCR Order 57, rule 7 shall apply to non-molestation orders and occupation orders as if for paragraph (1) of that rule there were substituted the following—

“(1) Where an occupation order or non-molestation order made under the Family Homes and Domestic Violence (Northern Ireland) Order 1998(**11**), is enforceable by committal order under rule 5, the judge or the district judge may, on the application of the person entitled to enforce the order, direct the chief clerk to issue a copy of the order and any order so issued shall be served on the respondent personally.””

8.—(1) For rule 4.25 there shall be substituted the following—

“Notification of consent

4.25.—(1) Consent for the purposes of—

- (a) Article 16(3),
- (b) Article 33(3)(c) or (d),
- (c) Article 57A(2)(b)(ii), or
- (d) Article 63A(2)(b)(ii)

shall be given either—

- (i) orally in court, or
- (ii) in writing to the court signed by the person giving his consent.

(2) Any written consent given for the purposes of sub-paragraph (2) of Article 57A or Article 63A, shall include a statement that the person giving consent—

- (a) is able and willing to give to the child the care which it would be reasonable to expect a parent to give him; and
- (b) understands that the giving of consent could lead to the exclusion of the relevant person from the dwelling house in which the child lives.

Exclusion requirements: interim care orders and emergency protection orders

4.25A.—(1) This rule applies where the court includes an exclusion requirement in an interim care order or an emergency protection order.

(2) The applicant shall—

- (a) prepare a separate statement of evidence in support of the making of the exclusion requirement;
- (b) serve the statement personally on the relevant person with a copy of the order containing the exclusion requirement;
- (c) inform the relevant person of his right to apply to vary or discharge the exclusion requirement.

(3) The relevant person shall serve the parties to the proceedings with any application which he makes for the variation or discharge of the exclusion requirement.

(4) Where an exclusion requirement ceases to have effect whether—

- (a) as a result of the removal of a child under Article 57A(6) or 63A(6),
- (b) because of the discharge of the interim care order or emergency protection order, or

- (c) otherwise,
the applicant shall inform—
- (i) the relevant person,
 - (ii) the parties to the proceedings,
 - (iii) (where necessary) the court.

(5) Where the court includes an exclusion requirement in an interim care order or an emergency protection order of its own motion, paragraph (2) shall apply with the omission of any reference to the statement of the evidence.

(6) In this rule—

“the applicant” means the person who initiated the proceedings in which the interim care order or emergency protection order is made;

“exclusion requirement” means one or more of the provisions referred to in Article 57A(3) or, as the case may be, Article 63A(3); and

“relevant person” has the same meaning as in Article 57A(2)(a) or, as the case may be, Article 63A(2)(a).”

9. In rule 5.1, after the words “Order of 1998” there shall be inserted the words “or Article 39(6) of the Order of 1998”.

10. After rule 5.2 there shall be inserted the following new rule—

“Appeals from orders made under the Order of 1998

5.3.—(1) Where an appeal lies to the High Court or a county court such as is specified in the Allocation Order of 1999 for the purposes of Article 39(4)(a) of the Order of 1998—

- (a) paragraphs (2) to (6) of rule 4.23, and
- (b) paragraph (2) of rule 5.2

shall apply subject to the following provisions of this rule and with the necessary modifications.

(2) Where the appeal is brought against the making of a hospital order or a guardianship order under the Mental Health (Northern Ireland) Order 1986(12), a copy of any written evidence considered by the magistrates' court under Article 44(2)(a) of that Order shall be sent by the clerk of petty sessions to the chief clerk for the county court division in which the appeal will be heard.”

Next friends and Guardians ad Litem

11. After rule 6.3(6) there shall be inserted the following new paragraph—

“(6A) In exercising its powers under paragraph (6) the court may order the next friend or guardian ad litem to take such part in the proceedings as the court may direct.”

Service

12. After rule 7.4(2) there shall be added the following new paragraph—

“(3) Where a document is required by these Rules to be served personally and the court is satisfied by evidence on oath that personal service is impracticable, it may order that service of that document be effected in such manner as it may direct.”

Forms

13. In Appendix 1—

- (a) for Forms C8, C20 and C28 there shall be substituted the forms set out in Schedule 1;
- (b) the forms set out in Schedule 2 shall be inserted at the end of the Appendix 1.

*R. D. Carswell
J. J. Shiel
M. J. Higgins
Patrick Markey
Hilary Keegan
F. Brian Hall
M. McReynolds
K. Finlay
C. McKay
Mary Connolly*

Dated 18th February 1999

I concur

Dated 1st March 1999

Irvine of Lairg, C.