
STATUTORY INSTRUMENTS

1995 No. 1582 (L.6)

COUNTY COURTS

PROCEDURE

The County Court (Amendment No. 2) Rules 1995

Made - - - - - *12th June 1995*

Coming into force - - - - - *24th August 1995*

Citation

1. These Rules may be cited as the County Court (Amendment No. 2) Rules 1995.

Interim possession orders

2. Order 24 of the County Court Rules 1981(1) shall be amended in accordance with the following provisions of these Rules and in those provisions, a reference to a rule by number means a reference to the rule so numbered in Order 24, except where otherwise provided.

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

“PART II

INTERIM POSSESSION ORDERS

Definitions and interpretation

8.—(1) In this Part of this Order—

- (a) applicant means a person who applies for an interim possession order;
- (b) premises means premises within the meaning of section 12 of the Criminal Law Act 1977(2);
- (c) respondent means a person against whom an application for an interim possession order is made, whether or not that person is named in the application or order.

(2) Where a rule in this Part of this Order requires an act to be done within a specified number of hours, Order 1, rule 9(4) shall not apply to the calculation of the period of time within which the act must be done.

(1) S.I.1981/1687; the relevant amending instrument is S.I. 1993/2175.

(2) 1977 c. 45.

Conditions for interim possession order application

9. In proceedings for possession under Part I of this Order, an application may be made for an interim possession order where the following conditions are satisfied—

- (a) the only claim made in the proceedings is for the recovery of premises;
- (b) the claim is made by a person who—
 - (i) has an immediate right to possession of the premises; and
 - (ii) has had such a right throughout the period of unlawful occupation complained of;
- (c) the claim is made against a person (not being a tenant holding over after the termination of the tenancy) who entered the premises without the applicant's consent and has not subsequently been granted such consent, but no application for an interim possession order may be made against a person who entered the premises with the consent of the person who, at the time of entry, had an immediate right to possession of the premises; and
- (d) the claim is made within 28 days of the date on which the applicant first knew, or ought reasonably to have known, that the respondent, or any of the respondents, was in occupation.

Issue of the applications

10.—(1) In proceedings in which an application for an interim possession order is made, unless otherwise provided, rules 2 to 7 shall not apply.

- (2) The applicant shall file—
 - (a) an originating application;
 - (b) an affidavit in support; and
 - (c) a notice of application,

each of which shall be in the appropriate prescribed form, together with sufficient copies for service on the respondent.

(3) The affidavit shall be sworn by the applicant personally or, where the application for an interim possession order is made by a body corporate, shall be sworn by an officer of the body corporate duly authorised to swear the affidavit on its behalf.

- (4) On the filing of the documents mentioned in paragraph (2), the proper officer shall—
 - (a) issue the originating application and the application for an interim possession order;
 - (b) fix an appointment for the latter application to be considered; and
 - (c) insert the time of that appointment in the notice of application filed under paragraph (2) and in the copy to be served on the respondent.

(5) The time fixed for consideration of the application for an interim possession order shall be as soon as possible after the documents have been filed, but not less than 3 days after the date on which the application for an interim possession order is issued.

Service of the notice of application

11.—(1) Within 24 hours of the issue of the application for an interim possession order, the applicant shall serve the following documents on the respondent, namely—

- (a) the notice of application; and

- (b) the prescribed form of respondent's affidavit, which shall be attached to the notice of application.
- (2) The applicant shall serve the documents mentioned in paragraph (1) by fixing a copy of them to the main door or other conspicuous part of the premises and, if practicable, inserting through the letter-box at the premises a copy of the documents in a sealed, transparent envelope addressed to the occupiers.
- (3) Additionally (but not alternatively), the applicant may place stakes in the ground at conspicuous parts of the premises to each of which shall be fixed a sealed transparent envelope addressed to the occupiers and containing a copy of the documents.
- (4) At or before the time fixed for consideration of the application for an interim possession order, the applicant shall file an affidavit of service in the prescribed form in relation to the documents mentioned in paragraph (1).
- (5) At any time before the time fixed for consideration of the application for an interim possession order the respondent may file an affidavit in the prescribed form in response to the application.

Consideration of the application

- 12.**—(1) If the respondent has filed an affidavit in accordance with rule 11(5), he may attend before the court when the application for an interim possession order is considered to answer such questions on his affidavit or on the applicant's affidavit as the court may put to him.
- (2) The parties' affidavits shall be read in evidence and no oral evidence shall be adduced except in response to questions put by the court.
 - (3) If the court so directs, an application for an interim possession order may be dealt with in chambers and in the absence of one or both of the parties.
 - (4) In deciding whether to grant an interim possession order the court shall have regard to whether the applicant has given or is prepared to give undertakings in support of his application—
 - (a) to reinstate the respondent if, after an interim possession order has been made, the court holds that the applicant was not entitled to the order;
 - (b) to pay damages if, after an interim possession order has been made, the court holds that the applicant was not entitled to the order;
 - (c) not to damage the premises pending final determination of the possession proceedings;
 - (d) not to grant a right of occupation to any other person pending final determination of the possession proceedings;
 - (e) not to damage or dispose of any of the respondent's possessions pending final determination of the possession proceedings.
 - (5) The court shall make an interim possession order if—
 - (a) the applicant has filed an affidavit of service of the notice of application; and
 - (b) the court is satisfied that—
 - (i) the conditions specified in rule 9 are met; and
 - (ii) any undertakings given by the applicant as a condition of making the order are adequate.

(6) An interim possession order shall be in a prescribed form and shall be to the effect that the respondent vacate the premises specified in the originating application within 24 hours of service of the order.

(7) On the making of an interim possession order, the court shall fix a return date for the originating application which shall be not less than 7 days after the date on which the interim possession order is made.

(8) Where an interim possession order is made, the proper officer shall submit a draft of the order as soon as possible to the judge or district judge by whom it was made for approval, and when the draft order has been approved the court shall insert in the order the time limit for service under rule 13(1).

(9) Where the court does not make an interim possession order—

- (a) the proper officer shall fix a return date for the originating application;
- (b) the court may give directions for the further conduct of the matter;
- (c) subject to such directions, the matter shall proceed in accordance with Part I of this Order.

(10) When it has considered the application for an interim possession order, the court shall give a copy of the respondent's affidavit (if any) to the applicant, if the applicant requests such a copy.

(11) The court shall serve any directions made under paragraph (9) on the parties and at the same time shall serve on the respondent a copy of the originating application and affidavit in support.

Service and enforcement of the interim possession order

13.—(1) An interim possession order must be served within 48 hours of the judge or district judge's approving the draft order under rule 12(8).

(2) The applicant shall serve copies of the originating application, the applicant's affidavit and the interim possession order in accordance with rule 11(2) and (3) or in such other manner as the court may direct.

(3) Order 26, rule 17 (enforcement of warrant of possession) shall not apply to the enforcement of an interim possession order.

(4) If an interim possession order is not served within the time limit specified by this rule or by any order made under Order 13, rule 4 (extension or abridgment of time), the applicant may apply to the court for directions for the application for possession to continue under Part I of this Order as if it had not included a claim for an interim possession order.

Matters arising after making of an interim possession order

14.—(1) Before the return date the applicant shall file an affidavit of service in the prescribed form in relation to the documents specified in rule 13(2), and no final order for possession may be made unless such an affidavit has been filed.

(2) The interim possession order shall expire on the return date.

(3) On the return date the court may make such order as appears appropriate and may in particular—

- (a) make a final order for possession;
- (b) dismiss the claim for possession;
- (c) give directions for the application for possession to continue under Part I of this Order as if it had not included a claim for an interim possession order.

(4) An order may be made on the return date in the absence of one or both of the parties.

(5) If the court holds that the applicant was not entitled to an interim possession order, the respondent may apply for relief pursuant to any undertakings given by the applicant, notwithstanding Order 13, rule 1(2) and (3) (notice of application made in the course of proceedings).

(6) Unless it otherwise directs, the court shall serve a copy of any order or directions made under this rule on the parties.

(7) Unless the court otherwise directs, service on the respondent under paragraph (6) shall be in accordance with rule 11(2) and (3).

(8) Rule 6 (warrant of possession) shall apply to the enforcement of a final order for possession made under this rule.

Application to set aside an interim possession order

15.—(1) If the respondent has vacated the premises, he may apply on grounds of urgency for the interim possession order to be set aside before the return date.

(2) An application under this rule shall be supported by an affidavit.

(3) On receipt of an application to set aside, the judge or district judge shall give directions as to—

(a) the date for the hearing; and

(b) the period of notice, if any, to be given to the applicant and the mode of service of any such notice.

(4) No application to set aside an interim possession order may be made under Order 37, rule 2 (setting aside judgment given in party's absence).

(5) Where no notice is required under paragraph (3)(b), the only matter to be dealt with at the hearing shall be whether the interim possession order should be set aside (and the consequent application of any undertaking given under rule 12(4)(a)) and all other matters shall be dealt with on the return date.

(6) The court shall serve on the applicant a copy of any order made under paragraph (5) and, where no notice is required under paragraph (3)(b), the court shall at the same time serve a copy of the respondent's application to set aside and the affidavit in support.

(7) Where notice is required under paragraph (3)(b), the court may treat the application as an application to bring forward the return date, in which case paragraph 14(2) to (8) shall apply accordingly.”.

Jurisdiction of district judges

4. Rule 5 shall be amended as follows—

(a) paragraph (2) shall omitted;

(b) in paragraph (3), for “plaintiff” there shall be substituted “applicant”.

5. In rule 7, after “the judge” insert “or district judge”.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

The undersigned members of the Rule Committee, appointed by the Lord Chancellor under section 75 of the County Courts Act 1984(3), having made these Rules, certify them and submit them to the Lord Chancellor.

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I allow these Rules, which shall come into force on 24th August 1995.

Dated 12th June 1995

Mackay of Clashfern, C.

(3) 1984 c. 28; section 75 was amended by the Courts and Legal Services Act 1990 (c. 41), sections 2(4) and 16 and Schedule 18, paragraph 47.

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EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules insert a new Part II in Order 24 of the County Court Rules 1981 containing a procedure for obtaining an interim possession order in summary proceedings for possession. These Rules also give district judges jurisdiction to make orders for possession in summary proceedings under Part I of Order 24.