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STATUTORY RULES OF NORTHERN IRELAND

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**1984 No. 225**

**Magistrates' Courts Rules (Northern Ireland) 1984**

**PART IV**

**Debt and Ejectment Proceedings**

*A. RULES APPLICABLE TO BOTH DEBT AND EJECTMENT PROCEEDINGS*

**Definitions**

- 53.** In these Rules the following expressions have the meanings hereby assigned to them:—
- “debt proceedings” or “ejectment proceedings”, where necessary, include proceedings for the enforcement of orders made in such proceedings;
  - “formal order” refers to the document issued by the court and includes a decree, a dismiss, an order under Article 107 of the Judgments Enforcement (Northern Ireland) Order 1981(1) and an attachment of earnings order under Article 99 of the said Order;
  - “process” includes an application for a duplicate of an order, and (save as expressly excepted by Rules 58 and 60) art enforcement or committal process under Articles 106 to 110 of the said Order of 1981.

**Time of issue of process**

- 54.** A process shall be deemed to have been issued when it has been stamped, signed, and handed or sent by post to a summons server or to such other person as may be authorised to serve it, or to the clerk of petty sessions of the petty sessions district in which a proceeding is brought for delivery to a summons server or when service is effected in accordance with Rule 60.

**Signature on process**

- 55.** Every process and every copy thereof for service shall be signed by the plaintiff or by his solicitor or firm of solicitors, or in the name of such solicitor by some person duly authorised to sign.

**Times of hearing of processes**

- 56.** Processes shall be issued for hearing at such sittings of the court of summary jurisdiction as may from time to time be directed by the resident magistrate acting for the petty sessions district for which the court in which a proceeding is brought acts.

### **Costs of process to be stated**

**57.**—(1) The amount of the costs of a process payable by the defendant if the claim is paid or, if possession of the premises the recovery of which is sought is surrendered before entry day as provided by Rule 66, shall be stated on the face of the process. If the amount of the claim is paid or if possession is surrendered and such costs are so paid before entry day the proceeding shall be stayed.

(2) The amount of the costs payable where the claim is paid or possession is surrendered or both, as the case may be, before entry day in accordance with this Rule shall be either fifty per centum of the solicitor's costs in column (2) in Table 1 of Schedule 2 or of the solicitor's costs in column (1) in Table 1 of Schedule 3, as appropriate, together with the plaintiff's outlay properly incurred to date of settlement.

(3) Where proceedings for arrears of rent or for sums due under Article 69 of the Order are joined with a claim for the recovery of the premises, the appropriate Table is that applicable to ejectment proceedings.

### **Modes of service of process**

**58.**—(1) Except where otherwise provided by these Rules service of a process shall be effected—

- (a) by delivering to the defendant personally a true copy thereof; or
- (b) subject to paragraph (2), by leaving a true copy thereof for the defendant at his usual or last known place of abode or at his place of business with some person apparently over the age of sixteen years.

(2) Sub-paragraph (b) of paragraph (1) shall not apply to the service of an enforcement process or a committal process.

(3) Without prejudice to paragraph (1), a process in ejectment proceedings may be served on the tenant and on any person in actual possession or occupation of the land or premises.

(4) If for any reason service of a process issued in ejectment proceedings cannot be effected in accordance with paragraph (1) or (3), such process may be deemed to be served, if a true copy thereof is affixed to some conspicuous part of the premises.

(5) The provisions of this Rule shall be in addition to and not in derogation of the provisions of any enactment authorising the service of documents in any proceedings upon any person or body.

### **Persons entitled to serve processes**

**59.**—(1) Subject to paragraph (2) and to Rules 60 and 130(2) no person other than a summons server for the petty sessions district in which proceedings are brought or in which the defendant resides shall have authority to serve a process.

(2) Where in any such district a summons server is absent or unable to carry out his duties through illness or other cause, or when the office of summons server is vacant, a process may be served by some other person, if permission for such other person to serve the process has been given by a resident magistrate or by the clerk of petty sessions and has been endorsed or signed by him on the original process.

(3) Nothing in this Rule shall affect the provisions of section 60 of the Miscellaneous Transferred Excise Duties Act (Northern Ireland) 1972(2).

### **Special mode of service**

**60.**—(1) Notwithstanding anything in Rules 58 and 59 where—

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(2) 1972 c. 11 (N.I.)

- (a) it is made to appear to a resident magistrate or clerk of petty sessions that a process cannot be served because the defendant is evading service or admission cannot be gained to his residence or business premises or it is not reasonably practicable to serve the process otherwise, he may give permission by an endorsement signed by him on the original process for service to be effected by registered post or by the recorded delivery service or in such other manner as may seem to him appropriate or sufficient and such service shall be deemed to be sufficient service; or
  - (b) a solicitor represents that he is authorised to accept service of a process on behalf of any defendant, such service may be effected by the delivery by any person of a copy of the process to that solicitor provided that the solicitor endorses and signs on the original a memorandum stating that he is so authorised as aforesaid and that he accepts service accordingly.
- (2) This Rule shall not apply to the service of an enforcement process or a committal process.

#### **Time for service**

61. In all cases service of a process shall be effected at least ten days before the date of hearing.

#### **Summons server's Process Book**

62.—(1) A summons server shall keep a book (called a Process Book) in which he shall enter the names of the parties to any process handed to him for service, with the date on which he receives it and the date and place of service and the manner in which he has served it.

(2) In any case in which a process has not been duly served, the summons server shall enter the cause of non-service in the Process Book.

(3) The summons server shall endorse upon the original of each process he has served the date, place and manner of service, and sign the endorsement.

(4) The summons server shall lodge his Process Book with the clerk of petty sessions and, except where the court allows proof of the service of a process by affidavit in accordance with Article 126 of the Order or where a resident magistrate otherwise directs, shall attend at each sitting of a court of summary jurisdiction for the hearing of processes served by him and produce his Process Book or give evidence as to service, as may be directed by the court.

(5) In the case of the death, illness, or unavoidable absence of a summons server from a sitting of a court at which he would otherwise be required to attend, his Process Book, if produced to the court and verified on oath as to his handwriting by some credible person, shall be prima facie evidence of any matter entered therein.

#### **Person other than summons server to prove service**

63. In any case where a process is served by a person other than a summons server, except as provided by Rule 60(1)(b), that person shall endorse upon the original the date, place and manner of service and affix his signature thereto, and shall also, unless proof of service is given by affidavit in accordance with Article 126 of the Order, attend the sitting of the court at which the process is to be heard, and give such evidence as to the date, place and manner of service as the court may require.

#### **Service deemed good**

64. A resident magistrate may in any case declare the service of a process however effected sufficient.

### **Process Register and extract therefrom**

65.—(1) The clerk of petty sessions shall keep a register (to be called the Process Register) in which he shall make the entries relating to each proceeding as specified by the headings to the columns in the register.

(2) Separate Process Registers shall be kept for debt and ejectment proceedings and are referred to in these Rules as “the Debt Process Register” or “the Ejectment Process Register”, respectively.

(3) The Process Register shall be signed at the foot of each page by the resident magistrate who had adjudicated upon the proceedings entered thereon, but in case any page contains records of proceedings heard on more than one date or by more than one resident magistrate, it shall be signed by the appropriate resident magistrate at the last entry on each date, or at the last entry of any proceedings heard by him.

(4) Any person who satisfies a resident magistrate or a clerk of petty sessions that he has a bona fide interest in the matter may obtain from the clerk of petty sessions, upon payment of the prescribed fee, a memorandum of a proceeding entered in the Process Register.

### **Entry of process**

66.—(1) When it is desired to enter or re-enter a process for hearing, the plaintiff or his solicitor shall lodge the original with the clerk of petty sessions on or before the entry day and details of such process shall be entered into the Process Register and where the hearing is adjourned or after the court has made an order in favour of the plaintiff the process shall be returned to the plaintiff or his solicitor.

(2) For the purposes of Rule 57 and of this Rule the entry day shall be the fourth day before the hearing; but when such day is a Saturday, Sunday or a public holiday, the entry shall be made on the previous week-day other than Saturday.

### **Re-entry of process where hearing adjourned.**

67.—(1) Where the hearing of a debt or ejectment proceeding is adjourned the court shall not continue with the proceeding until the process is re-entered in accordance with Rule 66.

(2) Where the court in the absence of the defendant or his solicitor adjourns the proceedings, the plaintiff or his solicitor shall notify the defendant or his solicitor of the fact that the process has been re-entered and of the time and place of the adjourned hearing.

### **Striking out of proceeding**

68. The entry of the words “Struck Out” in the Process Register shall be a sufficient record of the striking out of a proceeding under Article 73(3) of the Order.

### **Withdrawal of proceeding**

69. Where the court acting under Article 73(4) of the Order allows a proceeding to be withdrawn the word “Withdrawn” shall be entered in the appropriate column of the Process Register.

### **Order on consent where defendant appears**

70.—(1) In a proceeding in which a defendant appears and admits that the amount stated in the process is due by him, or agrees to surrender possession of the premises sought to be recovered by the plaintiff and to pay any rent or arrears of rent which may be due to the plaintiff, the court may without hearing evidence make an order against him for the amount or for recovery of possession

with costs and in doing so may postpone the issue of the decree in accordance with Article 116 of the Order for such period and upon such terms as it thinks fit.

(2) Where the plaintiff does not appear before the court in person an order shall be made under this Rule only where the plaintiff's solicitor or counsel is present and applies for it to be made.

#### **Order on written consent**

71. If a defendant in the presence of a solicitor or his apprentice or clerk has signed a document consenting to an order, other than a committal order, being made against him, the court may make such order with costs upon such proof of the defendant's signature to the consent as the court may require.

#### **Undefended proceedings**

72. For the purposes of these Rules a claim in debt or ejectment proceedings shall be treated as undefended where—

- (a) the defendant fails to appear and the court, after proof of service of the process, makes an order against him; or
- (b) where an order is made on the consent of the defendant; or
- (c) the court so directs.

#### **Order where more than one defendant**

73.—(1) In a proceeding in which two or more persons are named as defendants in a process, the court may make an order for payment of the amount claimed or for the recovery of possession of premises sought to be recovered against one or more of these persons, and strike out, dismiss, or allow to be withdrawn the proceeding against the remainder.

(2) Where a proceeding is dismissed under this Rule, the court may order that any costs awarded on the dismiss, and which the plaintiff is liable to pay, shall be recovered by way of recoupment by the plaintiff from the defendant or defendants against whom an order is made, in addition to the plaintiff's costs of the order.

#### **Dismiss**

74. Where the court dismisses a claim upon the merits or without prejudice to a further claim in the same matter, the court shall so state by its formal order and the entry of the words "Dismissed on the Merits" or, as the case may be, "Dismissed Without Prejudice" in the appropriate Process Register shall be a sufficient record of the order.

#### **Procedure where previous dismiss is produced**

75. Where in a proceeding a defendant produces a dismiss without prejudice obtained by him against the plaintiff for the same cause of action, the plaintiff shall not be at liberty to proceed until he has paid to, or satisfied the defendant for the amount for costs shown in such dismiss.

#### **Where process not entered by plaintiff it may be entered on application of defendant**

76.—(1) Where a process which has been duly served has not been entered or re-entered for hearing by the plaintiff or his solicitor, the defendant or his solicitor may, on the day of the hearing, lodge in court the copy served on the defendant and apply to have it entered or re-entered as the case may be.

(2) Upon such an application the court may order the process to be entered or re-entered and dismiss the claim without prejudice to a further claim in the same matter, with costs.

### **Preparation of forms in debt or ejectment proceedings**

77.—(1) The party who brings the proceedings, or his solicitor, shall be responsible for the preparation of the process and all copies required for service.

(2) The party in whose favour an order is made in a proceeding, or his solicitor, shall be responsible for the preparation of the formal order to be issued by the court.

(3) The proper officer for the purposes of Article 116(3) of the Judgments Enforcement (Northern Ireland) Order 1981 shall be the clerk of petty sessions and, when an attachment of earnings order under Article 99 or an enforcement order or a committal order under Article 107 of that Order is lodged with the clerk, a duplicate of the formal order shall be attached thereto which, when signed in accordance with Rule 79(1), shall be transmitted to the Enforcement of Judgments Office in accordance with the said Article 116(3).

### **Disposal of process**

78.—(1) A plaintiff in whose favour an order has been made shall lodge the original process with the clerk of petty sessions when the form of the formal order is handed to the clerk who shall return the process to the plaintiff or his solicitor together with the formal order.

(2) Where a process has been entered or re-entered by the plaintiff for hearing and upon the hearing the court orders a dismiss, the defendant or his solicitor shall lodge the copy of the process served on him with the clerk of petty sessions when the form of the formal order is handed to the clerk who shall return it to the defendant or his solicitor together with the formal order.

(3) A copy process entered or re-entered by the defendant or his solicitor in accordance with Rule 76 and in respect of which a dismiss without prejudice with costs has been obtained, may be returned to the defendant or his solicitor for the purpose of preparing the formal order and shall otherwise be dealt with as an original process under paragraph (1).

### **Signing of formal orders in debt or ejectment proceedings**

79.—(1) A formal order issued by the court shall be signed by the resident magistrate who made the order or by some other resident magistrate or by the clerk of petty sessions.

(2) A formal order shall be deemed to be issued on the earliest day it may lawfully be issued whether or not in fact it is actually issued on that day and such day shall be entered on the formal order as the date of issue.

### **Transfer of proceedings to county court**

80. Where the court orders proceedings to be transferred to the county court under Article 75 of the Order it shall cause the clerk of petty sessions to transmit forthwith the original process and any notice of set-off or counterclaim or other document lodged in court in relation to the matter, together with a statement of the reasons for the transfer, to the county court, and, at the same time, to send all parties to the proceeding notice in writing of the transfer.

### **Enlargement or abridgement of times**

81. The court may, upon such terms as it thinks fit, enlarge or abridge any of the times fixed by these Rules for taking any step or doing an act in debt or ejectment proceedings, or declare any step taken or act done to be sufficient even though not taken or done within the time or manner prescribed by the Rules.

### **Effect of non-compliance with Rules**

**82.**—(1) Non-compliance with any of the Rules in this Part shall not render any proceeding void, but, in case of such non-compliance, the court may direct that the proceeding be treated as void, or that it may be set aside in part as irregular, or that it be amended or otherwise dealt with in such manner or upon such terms as the court thinks fit.

(2) The clerk of petty sessions shall make a note of any ruling under paragraph (1) in the appropriate Process Register.

(3) When the court directs that the proceeding be treated as void, it shall have power to award, if it thinks fit, such costs as it could have awarded if it had dismissed the proceeding.

### **Claims for rent joined under Article 72(3) of the Order with claims in ejectment**

**83.** In a proceeding in which a claim for rent or sums due under Article 69 of the Order is joined to a claim for the recovery of premises in accordance with Article 72(3) of the Order so much of Rules 85 to 90 as is applicable shall have effect in relation to the proceeding.