

# PRACTICE DIRECTION – ANTI-SOCIAL BEHAVIOUR AND HARASSMENT

## THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 65

### SECTION I – HOUSING ACT 1996 INJUNCTIONS

#### ISSUING THE CLAIM

- 1.1 An application for an injunction under section Chapter III of Part V of the 1996 Act must be made by form N16A and for the purposes of applying the practice direction that supplements Part 8 to applications under Section I of Part 65, form N16A shall be treated as the Part 8 claim form.

#### WARRANT OF ARREST ON AN APPLICATION UNDER SECTION 155(3) OF THE 1996 ACT

- 2.1 In accordance with section 155(4) of the 1996 Act, a warrant of arrest on an application under section 155(3) of that Act shall not be issued unless –
  - (1) the application is substantiated on oath; and
  - (2) the judge has reasonable grounds for believing that the defendant has failed to comply with the injunction.

#### APPLICATION FOR BAIL

- 3.1 An application for bail by a person arrested under –
  - (1) a power of arrest attached to an injunction under Chapter III of Part V of the 1996 Act; or
  - (2) a warrant of arrest issued on an application under section 155(3) of that Act,  
may be made either orally or in an application notice.
- 3.2 An application notice seeking bail must contain –
  - (1) the full name of the person making the application;
  - (2) the address of the place where the person making the application is detained at the time when the application is made;
  - (3) the address where the person making the application would reside if he were to be granted bail;
  - (4) the amount of the recognizance in which he would agree to be bound; and
  - (5) the grounds on which the application is made and, where previous application has been refused, full details of any change in circumstances which has occurred since that refusal.
- 3.3 A copy of the application notice must be served on the person who obtained the injunction.

## REMAND FOR MEDICAL EXAMINATION AND REPORT

- 4.1 Section 156(4) of the 1996 Act provides that the judge has power to make an order under section 35 of the Mental Health Act 1983 in certain circumstances. If he does so attention is drawn to section 35(8) of that Act, which provides that a person remanded to hospital under that section may obtain at his own expense an independent report on his mental condition from a registered medical practitioner chosen by him and apply to the court on the basis of it for his remand to be terminated under section 35(7).

## SECTION III – DEMOTION CLAIMS

### DEMOTION CLAIMS MADE IN THE ALTERNATIVE TO POSSESSION CLAIMS

- 5.1 If the claim relates to residential property let on a tenancy and if the claim includes a demotion claim, the particulars of claim must –
- (1) state whether the demotion claim is a claim under section 82A(2) of the 1985 Act or under section 6A(2) of the 1988 Act;
  - (2) state whether the claimant is a local housing authority, a housing action trust or a registered social landlord;
  - (3) provide details of any statement of express terms of the tenancy served on the tenant under section 82A(7) of the 1985 Act or under section 6A(10) of the 1988 Act, as applicable; and
  - (4) state details of the conduct alleged.

### OTHER DEMOTION CLAIMS

- 6.1 Demotion claims must be made in the county court for the district in which the property to which the claim relates is situated.
- 6.2 The claimant must use the appropriate claim form and particulars of claim form set out in Table 1 to the Part 4 practice direction. The defence must be in form N11D as appropriate.
- 6.3 The claimant's evidence should include details of the conduct alleged.

### PARTICULARS OF CLAIM

- 7.1 In a demotion claim the particulars of claim must –
- (1) state whether the demotion claim is an claim under section 82A(2) of the 1985 Act or under section 6A(2) of the 1988 Act;
  - (2) state whether the claimant is a local housing authority, a housing action trust or a registered social landlord;
  - (3) identify the property to which the claim relates;

- (4) provide the following details about the tenancy to which the demotion claim relates –
  - (a) the parties to the tenancy;
  - (b) the period of the tenancy;
  - (c) the amount of the rent;
  - (d) the dates on which the rent is payable; and
  - (e) any statement of express terms of the tenancy served on the tenant under section 82A(7) of the 1985 Act or under section 6A(10) of the 1988 Act, as applicable; and
- (5) state details of the conduct alleged.

## HEARING DATE

- 8.1 The court may use its powers under rules 3.1(2)(a) and (b) to shorten the time periods set out in rules 65.16(2), (3) and (4).
- 8.2 Particular consideration should be given to the exercise of this power if –
  - (1) the defendant, or a person for whom the defendant is responsible, has assaulted or threatened to assault –
    - (a) the claimant;
    - (b) a member of the claimant's staff; or
    - (c) another resident in the locality;
  - (2) there are reasonable grounds for fearing such an assault; or
  - (3) the defendant, or a person for whom the defendant is responsible, has caused serious damage or threatened to cause serious damage to the property or to the home or property of another resident in the locality.
- 8.3 Where paragraph 8.2 applies but the case cannot be determined at the first hearing fixed under rule 65.16, the court will consider what steps are needed to finally determine the case as quickly as reasonably practicable.

## THE HEARING

- 9.1 Attention is drawn to rule 65.18(3). Each party should wherever possible include all the evidence he wishes to present in his statement of case, verified by a statement of truth.
- 9.2 The claimant's evidence should include details of the conduct to which section 153A or 153B of the 1996 Act applies and in respect of which the demotion claim is made.
- 9.3 If –
  - (1) the maker of a witness statement does not attend a hearing; and

- (2) the other party disputes material evidence contained in the statement, the court will normally adjourn the hearing so that oral evidence can be given.

## SECTION III – PROCEEDINGS RELATING TO DEMOTED TENANCIES

### PROCEEDINGS FOR THE POSSESSION OF A DEMOTED TENANCY

- 10.1 Proceedings against a tenant of a demoted tenancy for possession must be brought under the procedure in Part 55 (Possession Claims).

### PROCEEDINGS IN RELATION TO A WRITTEN STATEMENT OF DEMOTED TENANCY TERMS

- 11.1 Proceedings as to whether a statement supplied in pursuance to section 143M(4)(b) of the 1996 Act (written statement of certain terms of tenancy) is accurate must be brought under the procedure in Part 8.

### RECOVERY OF COSTS

- 12.1 Attention is drawn to section 143N(4) of the 1996 Act which provides that if a person takes proceedings under Chapter 1A of the 1996 Act in the High Court which he could have taken in the county court, he is not entitled to recover any costs.

## SECTION IV – ANTI-SOCIAL BEHAVIOUR ORDERS UNDER THE CRIME AND DISORDER ACT 1998

### SERVICE OF AN ORDER UNDER SECTIONS 1B(4) OR 1D OF THE 1998 ACT

- 13.1 An order under section 1B(4) or an interim order under section 1D of the 1998 Act must be served personally on the defendant.

### Application to join a person to the principal proceedings

- 13.2 Except as provided in paragraph 13.3, an application by a relevant authority under section 1B(3B) of the 1998 Act to join a person to the principal proceedings may only be made against a person aged 18 or over.

### Pilot scheme : application to join a child to the principal proceedings

- 13.3 (1) A pilot scheme shall operate from 1st October 2004 to 31st March 2006 in the county courts specified below, under which a relevant authority may –

- (a) apply under section 1B(3B) of the 1998 Act to join a child to the principal proceedings; and
  - (b) if that child is so joined, apply for an order under section 1B(4) of the 1998 Act against him.
- (2) In this paragraph, 'child' means a person aged under 18.
- (3) The county courts in which the pilot scheme shall operate are Bristol, Central London, Clerkenwell, Dewsbury, Huddersfield, Leicester, Manchester, Oxford, Tameside, Wigan and Wrexham.
- (4) Attention is drawn to the provisions of Part 21 and its practice direction: in particular as to the requirement for a child to have a litigation friend unless the court makes an order under rule 21.2(3), and as to the procedure for appointment of a litigation friend. The Official Solicitor may be invited to act as litigation friend where there is no other willing and suitable person.
- (5) Rule 21.3(2)(b) shall not apply to an application under the pilot scheme, and sub-paragraph (6) shall apply instead.
- (6) A relevant authority may not, without the permission of the court, take any step in an application to join a child to the principal proceedings, except –
  - (a) filing and serving its application notice; and
  - (b) applying for the appointment of a litigation friend under rule 21.6, unless the child has a litigation friend.

## **SECTION V – PROCEEDINGS UNDER THE PROTECTION FROM HARASSMENT ACT 1997**

### **WARRANT OF ARREST ON APPLICATION UNDER SECTION 3(3) OF THE 1997 ACT**

- 14.1 In accordance with section 3(5) of the 1997 Act, a warrant of arrest on an application under section 3(3) of that Act may only be issued if –
  - (1) the application is substantiated on oath; and
  - (2) the judge has reasonable grounds for believing that the defendant has done anything which he is prohibited from doing by the injunction.

