1993 No. 132

MAGISTRATES' COURTS

Magistrates' Courts (Child Support) Rules (Northern Ireland) 1993

Made	*24th March 1993*
Coming into operation . .	*5th April 1993*

The Lord Chancellor, in exercise of the powers conferred on him by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981(**a**) and of all other powers enabling him in that behalf, 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 (Child Support) Rules (Northern Ireland) 1993 and shall come into operation on 5th April 1993.

Interpretation

2.—(1) In these rules a reference to an Article by number is a reference to that Article as numbered in the Child Support (Northern Ireland) Order 1991(**b**).

(2) Any reference in these rules to the clerk of petty sessions is a reference to the clerk of petty sessions for the petty sessions district in which the application is made.

(3) Any reference in these rules to a form by number is a reference to that form so numbered in the Schedule.

Sending of Notices

3. In any case where rules 6 or 7 provide for a notice to be sent to the applicant or to the respondent it may instead be sent to the applicant's solicitor or to the respondent's solicitor, as the case may be.

Application for declaration of parentage

4.—(1) Any application for a declaration in accordance with Article 28 shall be made to the court of summary jurisdiction for the petty sessions district in which the respondent ordinarily resides.

(2) The respondent to the application shall be the alleged parent in respect of whom the declaration is sought.

(**a**) S.I. 1981/1675 (N.I. 26)
(**b**) S.I. 1991/2628 (N.I. 23)

Form of application

5.—(1) A notice of application for a declaration in accordance with Article 28 shall be served on the respondent at least fourteen days and on the clerk of petty sessions at least seven days before the hearing of the application.

(2) The notice served on the clerk of petty sessions shall be endorsed with the date upon which and the manner in which notice was served on the respondent.

(3) Notice of application for a declaration in accordance with Article 28 shall be in Form 1.

Applications which are precluded by the Child Support (Northern Ireland) Order 1991

6.—(1) Where an application is made for an order which in the opinion of the resident magistrate the court would be prevented from making by Article 10 or 11 he may cause a notice in Form 2 to be sent to the applicant and to the respondent.

(2) In the first instance, the resident magistrate shall consider the matter under paragraph (1) himself, without holding a hearing.

(3) An applicant who has been sent a notice under paragraph (1) may within 14 days of receipt of the notice inform the clerk of petty sessions in writing that he wishes to pursue his application and upon being so informed the clerk of petty sessions shall refer the matter to the resident magistrate who shall act in accordance with paragraph (4).

(4) Where the resident magistrate acts in accordance with this paragraph he shall fix a date and time at which the court shall hear and determine the matter and may direct that the hearing shall be ex parte.

(5) Where a date and time have been fixed in accordance with paragraph (4) the clerk of petty sessions shall give the applicant notice of the date and time so fixed and in relation to the other parties:

(*a*) where the hearing is to be ex parte, inform them that the matter is being resolved ex parte and that they will be informed of the result in due course;

(*b*) where the hearing is to be inter partes, inform them of the date and time of the appointment.

(6) Where a notice is sent under paragraph (1) and the clerk of petty sessions is not informed under paragraph (3) the application shall be treated as having been withdrawn.

(7) Where the matter is heard in accordance with paragraph (4) and the court determines that it would be prevented by Article 10 or 11 from making the order sought it shall dismiss the application.

(8) Where the court dismisses an application under this rule it shall give its reasons in writing, copies of which shall be sent to the parties by the clerk of petty sessions.

(9) In this rule "the matter" means the question whether the making of an order in the terms sought by the application would be prevented by Article 10 or 11.

Non-free standing applications

7.—(1) Where a notice is sent under rule 6(1) in respect of an application contained in a summons which contains material extrinsic to the application—

(*a*) the summons shall, until the contrary is directed under sub-paragraph (*c*) of this rule be treated as if it did not contain the application in respect of which the notice was served;

(*b*) the clerk of petty sessions shall, when he sends a copy of the notice under rule 6(1) to the parties also send a notice informing them of the effect of sub-paragraph (*a*) and

(*c*) where it is determined under rule 6 that the court would not be prevented from making the order sought by the application, the court shall direct that the summons shall be treated as if it contained the application, and it may give such directions as it considers appropriate for the conduct of the proceedings in consequence of that direction.

Dated 24th March 1993 *Mackay of Clashfern*, C.