1988 No. 112

COUNTY COURTS

County Court (Amendment No. 2) Rules (Northern Ireland) 1988

Made	*29th March 1988*
Coming into operation—	
Rules 1, 2, 3 and 4	*4th April 1988*
Rule 5	*1st May 1988*

We, the County Court Rules Committee, appointed by the Lord Chancellor under Article 46 of the County Courts (Northern Ireland) Order 1980(**a**), in exercise of the powers conferred on us by Article 47 of that Order and by Sections 27 and 39 of the Family Law Act 1986(**b**) and all other powers enabling us in that behalf, hereby make the following rules:—

Citation

1. These rules may be cited as the County Court (Amendment No. 2) Rules (Northern Ireland) 1988.

Interpretation

2. In these rules a reference to an Order or Rule is a reference to that Order or Rule as numbered in the County Court Rules (Northern Ireland) 1981(**c**).

Proceedings under the Guardianship of Infants Act 1886

3.—(1) Order 1 shall be amended by the addition at the end of the following new rule—

"Proceedings under the Guardianship of Infants Act 1886

15. For the purposes of section 9 of the Guardianship of Infants Act 1886(**d**) a county court which is authorised to hear an application under that Act shall be—

(*a*) the county court for the division in which the minor to whom the application relates has his habitual residence, or

(*b*) where the minor has no habitual residence in any division, the county court for the division in which he is present at the time when the proceedings are commenced, or

(*c*) where the minor, having been habitually resident in a division, leaves or is removed from that division either without the agreement of the person or of all the persons having the right to

(**a**) S.I. 1980/397 (N.I. 3)
(**b**) 1986 c. 55
(**c**) S.R. 1981 No 225 to which the only relevant amendments were made by S.R. 1982 No. 120, S.R. 1986 No. 218 and S.R. 1987 No. 124
(**d**) 1886 c. 27

determine where he is to reside or in contravention of an order made by a court in any part of the United Kingdom, the county court for that division, for the period of one year beginning with the date of leaving or removal.".

(2) Paragraph 1 shall not apply to proceedings commenced before 4th April 1988.

Family Proceedings

4. Order 51 shall be amended as follows:—

(*a*) by substituting for the title to the Order the title "Family Proceedings";

(*b*) by dividing the Order into parts, of which Part I shall consist of Rules 1 to 5 under the heading "CHILD ABDUCTION AND CUSTODY ACT 1985";

(*c*) by inserting in Rule 1, before the word "Order" the words "Part of this";

(*d*) by adding after Rule 5 the Part set out in Schedule 1 hereto.

Costs

5.—(1) Order 19 shall be amended at Rule 5 by deleting the figure "£17·35" and substituting the figure "£18·13".

(2) Order 24 shall be amended, at paragraph 7(*a*) of Rule 9, by deleting the figure "£6·80" and substituting the figure "£7·10" and by deleting the figure "£9·60" and substituting the figure "£10·03".

(3) Order 33 shall be amended, at paragraph (6) of Rule 10, by deleting the figure "£3·95" and substituting the figure "£4·13".

(4) Order 55 shall be amended as follows—

(*a*) by deleting, at paragraph (1) of Rule 2, the words "20th April 1987" and substituting the words "1st May 1988";

(*b*) by deleting, in Rule 13, the figure "60p" and substituting the figure "63p";

(*c*) by deleting, in Rule 17, the figure "£1·40" and substituting the figure "£1·46".

(5) For Appendix 2 there shall be substituted the new Appendix set out in Schedule 2.

We, the undersigned members of the County Court Rules Committee, having by virtue of the powers vested in us in this behalf made the foregoing rules, do hereby certify the same under our hand and submit them to the Lord Chancellor accordingly.

John K. Pringle
C. Nelson M. Rountree
S. D. Massey
K. G. Nixon
B. F. Walker
Barry Valentine
John J. Curran
J. F. B. Russell

Dated 15th March 1988.

After consultation with the Lord Chief Justice, I allow these rules.

Rules 1, 2, 3 and 4 shall come into operation on 4th April 1988. Rule 5 shall come into operation on 1st May 1988.

Dated 29th March 1988. *Mackay of Clashfern, C.*

SCHEDULE 1 Rule 4(*d*)

Rules to be inserted in Order 51

PART II

FAMILY LAW ACT 1986

Interpretation

6. In this Part of this Order, unless the context otherwise requires,—

"the Act" means, the Family Law Act 1986;

"the appropriate court" means, in relation to England and Wales, the High Court and, in relation to Scotland, the Court of Session;

"custody order" means a custody order within the meaning of any of sections 1, 32, 40 and 42(5) and (6) of the Act;

"the Secretary of the Principal Registry" means the Secretary of the Principal Registry of the Family Division of the High Court of Justice in England and Wales;

"the Deputy Principal Clerk" means the Deputy Principal Clerk of Session;

"register" means the register kept for the purposes of the Act;

"registration" means registration under Part I of the Act, and registered shall be construed accordingly.

Application for Recognition and Enforcement of Custody Orders

7.—(1) An application under section 27 of the Act for the registration of a custody order made by a county court shall be made by filing in the office of that court a certified copy of the order, together with a certified copy of any order which has varied any of the terms of the original order and an affidavit by the applicant, and a copy thereof, which shall state—

(*a*) the name and address of the applicant and his interest under the order;

(*b*) the name and date of birth of the child in respect of whom the order was made, his whereabouts or suspected whereabouts and the name of the person with whom he is alleged to be.

(*c*) the name and address of any other person who is known to the applicant to have an interest under the order and whether it has been served on him;

(*d*) whether the order is to be registered in England and Wales or Scotland or in both jurisdictions;

(*e*) that, to the best of the applicant's information and belief, the order is in force;

(*f*) whether, and if so where, the order is already registered; and

(*g*) details of any order known to the applicant which affects the child and is in force in the jurisdiction in which the custody order is to be registered,

and there shall be exhibited to the affidavit any document relevant to the application.

(2) Where the documents referred to in paragraph (1) are to be sent to the appropriate court, the Chief Clerk shall—

(*a*) retain the affidavit in the records of the court and send the copy thereof and the other documents to the Secretary of the Principal Registry or to the Deputy Principal Clerk, as the case may be, indicating, where the order relates to more than one child, with respect to which child or children it is to be registered, and

(*b*) record the fact of transmission in the records of the court.

(3) On receipt of the notice of the registration of a custody order in the appropriate court the Chief Clerk shall note the fact of registration in the records of the court.

Refusal to Register

8.—(1) If it appears to the Chief Clerk that the custody order is no longer in force with respect to a child or more than one child or that a child or more than one child has attained the age of 16, he shall refuse to send the documents referred to in rule 7(1) to the appropriate court or shall indicate thereon with respect to which child or children the order is not to be registered, and shall within 14 days give notice to the applicant of his refusal or indication and the reason for it.

(2) If the Chief clerk refuses to send the documents to the appropriate court, the applicant may apply to the judge in chambers for an order that the documents be sent to the appropriate court, or that they be sent with respect to a particular child or children.

Revocation or Variation of Registered Order

9.—(1) Where a custody order which is registered in the appropriate court is revoked or varied by a county court, the Chief Clerk of the court making the subsequent order shall—

(*a*) send a copy of the subsequent order to the Secretary of the Principal Registry or to the Deputy Principal Clerk or to both, as the case may be, and to the court which made the custody order, if that court is different from the court making the subsequent order, for filing by that court;

(*b*) record the fact of transmission in the records of the court, and

(*c*) retain the subsequent order in the records of the court.

(2) On receipt of notice from the appropriate court of the amendment of its register, the Chief Clerk of the court which made the custody order and of the court which made the subsequent order if different shall each record the fact of amendment.

Other Proceedings

10. A party to proceedings in a county court for or relating to a custody order who knows of other proceedings (including proceedings out of the jurisdiction and concluded proceedings) which relate to the child concerned shall file an affidavit which shall state—

(*a*) in which jurisdiction and court the other proceedings were instituted;

(*b*) the nature and current state of such proceedings and the relief claimed or granted;

(*c*) the names of the parties to such proceedings and their relationship to the child; and

(*d*) if applicable, and if known, the reasons why the relief claimed in the proceedings for or relating to the custody order were not claimed in the other proceedings.

Stay of Proceedings

11.—(1) Where under section 22(2) of the Act a county court stays proceedings on an application for a custody order it shall cause notice of the stay to be given to the parties to the proceedings.

(2) Where under section 22(3) of the Act a county court removes a stay granted in accordance with section 22(2) it shall cause notice of the removal of the stay to be given to the parties to the proceedings and shall proceed to deal with the application accordingly.