1986 No. 359

MAGISTRATES' COURTS

The Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) Rules (Northern Ireland) 1986

Made	*8th December 1986*
Coming into operation . . .	*1st January 1987*

The Lord Chancellor, in exercise of the powers conferred on him by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981(**a**), section 11A(1) of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966(**b**), sections 2(3), 8(5) and 33(4) of the Maintenance Orders (Reciprocal Enforcement) Act 1972(**c**), and sections 12 and 48 of the Civil Jurisdiction and Judgments Act 1982(**d**), 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 (Civil Jurisdiction and Judgments Act 1982) Rules (Northern Ireland) 1986 and shall come into operation on 1st January 1987.

Interpretation

2. In these Rules—

"The 1982 Act" means the Civil Jurisdiction and Judgments Act 1982;

"the Order Book" means the Order Book kept under Rule 19 of the Magistrates' Courts Rules (Northern Ireland) 1984(**e**);

"the 1968 Convention" and "Contracting State" have the same meaning as in the 1982 Act.

The prescribed officer

3. The prescribed officer of a court of summary jurisdiction for the purposes of the 1982 Act shall be the clerk of petty sessions.

Registration of maintenance orders

4.—(1) Where the clerk of petty sessions receives an application under Article 31 of the 1968 Convention for enforcement of a maintenance order made in a Contracting State other than the United Kingdom he shall, subject to Articles 27 and 28 of that Convention and to paragraphs (3) and (4) of this Rule, cause the order to be registered in his court by means of a minute or memorandum entered and signed by him in the Order Book.

(**a**) S.I. 1981/1675 (N.I. 26)
(**b**) 1966 c. 35 (N.I.) section 11A was inserted by Schedule 11 to the Civil Jurisdiction and Judgments Act 1982
(**c**) 1972 c. 18; section 8(5) was amended by Schedule 11 to the Civil Jurisdiction and Judgments Act 1982
(**d**) 1982 c. 27
(**e**) S.R. 1984 No. 225

(2) Before registering an order under paragraph (1) of this Rule the clerk of petty sessions shall take such steps as he thinks fit for the purpose of ascertaining whether the payer under the order to which the application relates is residing within the jurisdiction of the court, and shall consider any information he possesses (whether provided by the applicant or otherwise) as to the nature and location of the payer's assets.

(3) If, after taking such steps and considering such information as are mentioned in paragraph (2) above, the clerk of petty sessions is satisfied that the payer under the order is not residing within the jurisdiction of the court he shall, subject to paragraph (4) of this Rule, refuse the application and return the documents relating thereto to the Lord Chancellor with a statement giving such information as he possesses as to the whereabouts of the payer and the nature and location of his assets.

(4) If, after taking such steps and considering such information as are mentioned in paragraph (2) above, the clerk of petty sessions is satisfied that the payer is not residing within the jurisdiction of the court but that there are assets against which after registration in the High Court under Part II of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 the order could be effectively enforced, he shall cause the order to be registered in accordance with paragraph (1) of this Rule.

Provided that where the clerk of petty sessions is of the opinion that the payer is residing within the jurisdiction of another court of summary jurisdiction in Northern Ireland he may, if he thinks fit, and notwithstanding the provisions of this paragraph, refuse the application and return the documents relating thereto to the Lord Chancellor in accordance with paragraph (3) above.

(5) If the clerk of petty sessions refuses an application under Article 31 of the 1968 Convention, on one or more of the grounds specified in Articles 27 and 28 of that Convention, he shall cause notice of his decision to be sent to the applicant by ordinary post at the address provided by the applicant.

(6) Where an order has been registered under paragraph (1) of this Rule the clerk of petty sessions who was responsible for its registration shall cause a written notice stating that it has been duly registered in his court to be sent by ordinary post to:

(*a*) the Lord Chancellor;

(*b*) the payer under the order to which the registration relates;

(*c*) the applicant, at the address provided by the applicant.

(7) Where an order has been registered under paragraph (1) of this Rule and the clerk of petty sessions who was responsible for its registration is of the opinion that the order, or a part thereof, is one which would be appropriate for enforcement in the High Court he shall notify the applicant accordingly and shall notify the applicant also of the possibility of an application by the applicant for registration of the whole or part of the order in the High Court under Part II of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966.

Appeals from decisions as to registration

5.—(1) An appeal under Article 36 or Article 40 of the 1968 Convention shall be by way of a request in writing to the court of summary jurisdiction in which the order is registered, or in which the application for its registration has been refused, as the case may be.

(2) An appeal on a point of law under Article 37 or 41 of the 1968 Convention shall be by way of case stated and Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 shall apply accordingly.

Payment of sums due under a registered order

6.—(1) Payment of sums due under a registered order shall, while the order is so registered in a court of summary jurisdiction, be made to the clerk of the registering

court during such hours and at such place as that clerk may direct; and the clerk to whom payments are made under this paragraph shall send those payments by ordinary post to the court which made the order or to such other person or authority as that court or the Lord Chancellor may from time to time direct.

(2) Where it appears to a clerk of petty sessions to whom payments by way of periodical payments under any maintenance order are made by virtue of paragraph (1) above that any sums payable under the order are in arrear he may and, if such sums are in arrear to an amount equal to four times the sum payable weekly, he shall, whether the person for whose benefit the payment should have been made requests him to do so or not, proceed in his own name for the recovery of those sums, unless it appears to him that it is unreasonable in the circumstances to do so.

(3) Without prejudice to the foregoing provisions of this Rule, the clerk of petty sessions of the registering court shall take reasonable steps to notify the person to whom payments are due under a registered order of the means of enforcement available in respect of it, including, in an appropriate case, the possibility of registration of the whole or part of the order in the High Court under Part II of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966.

Variation and revocation of registered orders

7. Where a maintenance order which has been registered for enforcement in a court of summary jurisdiction has been varied or revoked by an order made by a competent court in a Contracting State the clerk of petty sessions for the court in which the order is registered shall, on receiving notice of the variation or revocation, register the order of variation or revocation by means of a minute or memorandum entered and signed by him in the Order Book and shall cause notice of the same to be given in writing by ordinary post to the payee and to the payer under the order to which the variation or revocation relates.

Transfer of registered orders

8.—(1) Where the clerk of petty sessions for the court where an order is registered is of opinion that the payer is residing within the jurisdiction of another court of summary jurisdiction in Northern Ireland he shall transfer the order to that other court by sending the information and documents relating to the registration of the order (that is, the information and documents required under Articles 46 and 47 of the 1968 Convention) to the clerk of petty sessions for that other court, and shall cause notice of the same to be given by ordinary post to the payee under the order to which the transfer relates and to the Lord Chancellor.

Provided that where an application is pending in the court where the order is registered for the registration of the whole or part of the order in the High Court under Part II of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966, the clerk of petty sessions shall not transfer the order, or such part of it to which the application relates, under this paragraph.

(2) On the transfer of an order under paragraph (1) above the clerk of petty sessions for the court to which it is transferred shall register the order in the like manner as if an application for registration had been received under Rule 4 of these Rules.

(3) The clerk of petty sessions who is required by the foregoing provisions of this Rule to send to the clerk of petty sessions for another court information and documents relating to the registration of an order shall send with that information and those documents:—

(*a*) a certificate of arrears, if applicable, signed by him;

(*b*) a statement giving such information as he possesses as to the whereabouts of the payer and the nature and location of his assets; and

(*c*) any other relevant documents in his possession relating to the case.

Cancellation of registered orders

9. Subject to Rule 8 of these Rules, where the clerk of petty sessions for the court in which an order is registered is of the opinion that the payer under a registered order is not residing within the jurisdiction of that court and has no assets against which after registration in the High Court under Part II of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 the order could be effectively enforced, he shall cancel the registration of the order and shall cause notice of the same to be given by ordinary post to the payee under the order to which the cancellation relates and shall send the information and documents required under Articles 46 and 47 of the 1968 Convention) to the Lord Chancellor, together with such information and documents as are referred to in Rule 8(3)(*a*), (*b*) and (*c*) of these Rules.

Complaint against a person residing outside the United Kingdom

10.—(1) This Rule applies where a complaint is made to a court of summary jurisdiction by a person who is habitually resident in Northern Ireland against a person residing in a Contracting State other than the United Kingdom, and the complaint is one in respect of which the court has jurisdiction to make a maintenance order by virtue of Article 5(2) of the 1968 Convention.

(2) On the making of a complaint to which paragraph (1) of this Rule applies, the following documents, that is to say:—

(*a*) notice of the institution of the proceedings, including a statement of the grounds of the complaint;

(*b*) a statement signed by the clerk of petty sessions, giving such information as he possesses as to the whereabouts of the defendant;

(*c*) a statement giving such information as the clerk possesses for facilitating the identification of the defendant; and

(*d*) where available, a photograph of the defendant;

shall be sent by that clerk to the Lord Chancellor.

(3) The clerk of petty sessions shall give the defendant notice in writing of the date fixed for the hearing by sending the notice by ordinary post addressed to his last known or usual place of abode.

(4) Where the defendant makes any written representations or adduces any documentary evidence in advance of the hearing, a copy of the representations or evidence shall be served by ordinary post on the complainant by the clerk of petty sessions before the hearing.

(5) In considering whether or not to make a maintenance order pursuant to a complaint to which paragraph (1) of this Rule applies, where the defendant does not appear and is not represented at the hearing the court shall take into account any representations made and any evidence adduced by him or on his behalf under paragraph (4) above and, where the defendant does appear or is represented at the hearing, the court may take any such representations or evidence into account in addition to any oral representations made or evidence adduced at the hearing.

(6) Where a maintenance order has been made under this Rule, the clerk of petty sessions shall cause notice thereof to be given to the defendant by sending a copy of the order by ordinary post addressed to his last known or usual place of abode and, on application by the complainant, shall give to the complainant the following documents, that is to say:—

(*a*) a certified copy of the order;

(*b*) a written statement signed by the clerk of petty sessions as to whether or not the defendant appeared in the proceedings in which the order was made, and, if he did not appear, the original or a certified copy of a document which establishes that the document mentioned in paragraph (2)(*a*) of this Rule had been served on the defendant;

(*c*) a document which establishes that notice of the order was sent to the defendant; and

(*d*) a written statement signed by the clerk of petty sessions as to whether or not the complainant received legal aid in the proceedings;

with a view to an application being made by the complainant for registration and enforcement under Articles 31 and 32 of the 1968 Convention.

Complaint for variation and revocation of a maintenance order

11.—(1) This Rule applies where an application is made to a court of summary jurisdiction for the variation or revocation of a maintenance order where the payer under the order is residing in a Contracting State other than the United Kingdom.

(2) Where an application to which this Rule applies is made by the payee, the following documents, that is to say:—

(*a*) notice of the institution of the proceedings, including a statement of the grounds of the application;

(*b*) a statement signed by the clerk of petty sessions giving such information as he possesses as to the whereabouts of the defendant;

(*c*) a statement giving such information as the clerk possesses for facilitating the identification of the defendant; and

(*d*) where available, a photograph of the defendant;

shall be sent by that clerk to the Lord Chancellor.

(3) Where an application to which this Rule applies is made by the payee:—

(*a*) the clerk of petty sessions shall give the defendant notice in writing of the date fixed for the hearing by sending the notice by ordinary post addressed to his last known or usual place of abode;

(*b*) where the defendant makes any written representations or adduces any documentary evidence in advance of the hearing, a copy of the representations or evidence shall be served by ordinary post on the complainant by the clerk of petty sessions before the hearing;

(*c*) the court, in considering whether to vary or revoke the order, shall, where the payer does not appear and is not represented at the hearing, take into account any representations made and any evidence adduced by or on his behalf under sub-paragraph (*b*) above and, where the payer does appear or is represented at the hearing, the court may take any such representations or evidence into account, in addition to any oral representation or evidence adduced at the hearing.

(4) Where an application to which this Rule applies is made by the payer, the clerk of petty sessions shall arrange for the service by ordinary post of the document mentioned in paragraph (2)(*a*) of this Rule on the payee.

(5) Where upon an application to which this Rule applies the court varies or revokes the order, the clerk of petty sessions shall cause notice thereof to be given to the defendant by sending a copy of the order of variation or revocation by ordinary post addressed to his last known or usual place of abode and, on application by the complainant, shall give to the complainant the following documents, that is to say:—

(*a*) a certified copy of the order of variation or revocation;

(*b*) a written statement, signed by the clerk of petty sessions as to whether or not the defendant appeared in the proceedings for the variation or revocation of the order and if he did not appear the original or a certified copy of a document which establishes that the notice of the institution of the proceedings had been served on the defendant;