1980 No. 224

MAGISTRATES' COURTS

The Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) Rules (Northern Ireland) 1980

Made . . . . . *18th June 1980*

Coming into operation . . . *4th August 1980*

The Lord Chancellor, in exercise of the powers conferred on him by section 23 of the Magistrates' Courts Act (Northern Ireland) 1964(**a**) as extended by sections 2(3) and (4), 3(5)(*b*), (6A), (6B) and (6D), 5(3), (4)(*b*) and (*c*), (7) and (10), 6(2), (3), (5), (6), (7), (8), (10), (11), (12) and (13), 8(5) and (6), 9(3), (4)(*b*) and (*c*), (6), (7) and (8), 10(1), (2), (3), (4), (5) and (7), 11(1)(*b*), 14(1), 16(1) and 18(1) of the Maintenance Orders (Reciprocal Enforcement) Act 1972(**b**) as amended by Article 3 of the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1979(**c**) 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 (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) Rules (Northern Ireland) 1980 and shall come into operation on 4th August 1980.

Interpretation

2.—(1) In these rules—

"the Act" means the Maintenance Orders (Reciprocal Enforcement) Act 1972 as applied with such exceptions, adaptations and modifications as are specified in the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1979; and

"the Order Book" means the Order Book kept under Rule 19 of the Magistrates' Courts Rules (Northern Ireland) 1974(**d**).

(2) Expressions used in these rules shall have the same respective meanings as in the Act.

Duties of a clerk of petty sessions

3. The officer of any court, by or in relation to whom anything is to be done in pursuance of any provision of Part I of the Act shall, where that Court is a court of summary jurisdiction, be the clerk of petty sessions.

Applications under section 2 of the Act

4.—(1) An application under section 2 of the Act (transmission of maintenance order made in the United Kingdom for recognition and enforcement in Hague Convention Country) shall, where the court which made the maintenance order to

(**a**) 1964 c. 21 (N.I.)
(**b**) 1972 c. 18
(**c**) S.I. 1979/1317
(**d**) S.R. 1974 No. 334 (II, p. 1541)

which the application relates is a court of summary jurisdiction, be made in writing by or on behalf of the payee under the order.

(2) Any application made in pursuance of paragraph (1) above shall—

(*a*) specify the date on which the order was made;

(*b*) contain such particulars as are known to the applicant of the whereabouts of the payer;

(*c*) specify any matters likely to assist in the identification of the payer; and

(*d*) where possible be accompanied by a recent photograph of the payer.

(3) In this rule "the payer" means the payer under the order to which the application relates.

Registration of Orders

5.—(1) Where a clerk of petty sessions is required under any provision of Part I of the Act to register a maintenance order, he shall cause the order to be registered in his court by means of a minute or memorandum entered in the Order Book.

(2) Every minute or memorandum entered in pursuance of paragraph (1) above shall specify the section of the Act under which the order in question is registered.

(3) Where a maintenance order is under any provision of Part I of the Act registered in a court of summary jurisdiction, the clerk of petty sessions shall send written notice of the registration to the Secretary of State and to the payer under the order.

Notice of evidence in connection with variation or revocation

6. Where under section 5(4)(*b*) of the Act a copy of any representations made or evidence adduced by or on behalf of the payer in an application by the payee for the variation or revocation of a maintenance order to which section 5 of the Act applies, is required to be served on the payee before the hearing, the clerk of petty sessions for the court of summary jurisdiction to which the application is made shall arrange for a copy of such representations or evidence to be sent to the payee by recorded delivery post.

Service of notices in connection with registration

7.—(1) Any notice required under section 6(8) of the Act (Notice of registration in United Kingdom court of maintenance order made in Hague Convention Country) to be served on the payer under a maintenance order shall, where the order is registered in a court of summary jurisdiction be in Form 1 in the Schedule to these Rules or in a Form to the like effect and the notice to the payee required thereunder shall be sent by recorded delivery post.

(2) Where a court of summary jurisdiction to which an appeal is made under section 6(9) of the Act sets aside the registration of a maintenance order the clerk of petty sessions shall send written notice of the court's decision to the Secretary of State and to the payee under the order and such notice shall, in the case of the payee, be sent by recorded delivery post.

(3) Any notice required under section 6(11) of the Act (notice that maintenance order made in Hague Convention Country has not been registered in United Kingdom Court) to be given to the payee under a maintenance order shall, where the appropriate court is a court of summary jurisdiction, be in Form 2 in the said Schedule or in a Form to the like effect.

(4) Notice in writing of the date of hearing of an appeal under section 6(10) or 6(13) of the Act shall be given to the parties by the clerk of petty sessions and such notice shall be sent by recorded delivery post.

Payment of sums under registered orders

8.—(1) Payment of sums due under a registered order shall, while the order is registered in a court of summary jurisdiction, be made to the clerk of petty sessions of the registering court during such hours and at such place as that clerk of petty sessions may direct; and a clerk of petty sessions to whom payments are made may send those payments by post to the payee under the order.

(2) Where it appears to a clerk of petty sessions to whom payments under any maintenance order are made by virute 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 under the order 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, and he shall give to the payee notice in writing stating the particulars of the arrears.

Taking of evidence at request of court in Hague Convention Country

9.—(1) Subject to paragraph (2) below, where a request is made by or on behalf of a court in a Hague Convention Country for the taking in Northern Ireland of the evidence of a person residing therein the following courts of summary jurisdiction shall have power under section 14(1) of the Act (obtaining of evidence needed for purpose of certain proceedings) to take that evidence, that is to say—

(*a*) where the maintenance order to which those proceedings in the Hague Convention Country relate was made by a court of summary jurisdiction, the Court which made the order;

(*b*) where the maintenance order to which those proceedings in the Hague Convention Country relate was made by a court in a Hague Convention Country, the court in which the order is registered; and

(*c*) a court of summary jurisdiction which has received such a request from the Secretary of State.

(2) The power conferred by paragraph (1) above may, with the agreement of a court having that power, be exercised by any other court of summary jurisdiction which, because the person whose evidence is to be taken resides within its jurisdiction or for any other reason, the first mentioned court considers could more conveniently take the evidence; but nothing in this paragraph shall derogate from the power of any court specified in paragraph (1) above.

(3) Subject to paragraph (4) below, where the evidence of any person is to be taken by a court of summary jurisdiction under the foregoing provisions of this Rule—

(*a*) the evidence shall be taken in the same manner as if that person were a witness in proceedings on a complaint;

(*b*) any oral evidence so taken shall be put into writing and read to the person who gave it who shall be required to sign the document; and

(*c*) the court by which the evidence of any person is so taken shall certify at the foot of any document setting out the evidence of, or produced in evidence by, that person that such evidence was taken, or document received in evidence, as the case may be, by it.

(4) Where such a request as is mentioned in paragraph (1) above includes a request that the evidence be taken in a particular manner, the court of summary jurisdiction by which the evidence is taken shall, so far as circumstances permit, comply with that request.

Cancellation of Registration

10. Where a clerk of petty sessions cancels the registration of a maintenance order under section 10(1) of the Act (Cancellation of registration and transfer of order) he shall send written notice of such cancellation to the payer under the order.

Notice to Secretary of State

11. Where a clerk of petty sessions serves a notice on a payer under a maintenance order who resides in a Hague Convention Country under any provision of Part 1 of the Act, he shall inform the Secretary of State in writing that the notice has been served.

Notice of institution of proceedings in Hague Convention Country

12.—(1) Where a clerk of petty sessions receives from the Secretary of State notice of the institution of proceedings, including notice of the substance of the claim, in a Hague Convention Country in relation to the making, variation or revocation of a maintenance order and it appears to the clerk of petty sessions that the person against whom those proceedings have been instituted is residing within his petty sessions district he shall serve notice on that person by sending it to him by recorded delivery post at his last known or usual place of abode.

(2) Where such service has been effected, the clerk of petty sessions shall send the notice, together with the affidavit of service thereof by post to the Secretary of State for transmission to the appropriate authority in the Hague Convention Country.

(3) Where it appears to a clerk of petty sessions who has received such a notice as is referred to in paragraph (1) that the person against whom the proceedings have been instituted is not residing within his petty sessions district, he shall return the notice to the Secretary of State with an intimation to that effect.

Dated 18th June 1980

Hailsham of St. Marylebone, C.