1978 No. 376

MAGISTRATES' COURTS

Magistrates' Courts (Blood Tests) Rules (Northern Ireland) 1978

Made . . . . . 13*th December* 1978
Coming into operation . . . 1*st March* 1979
To be laid before Parliament

The Secretary of State in pursuance of section 23 of the Magistrates' Courts Act (Northern Ireland) 1964(**a**), on the recommendation 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 (Blood Tests) Rules (Northern Ireland) 1978 and shall come into operation on 1st March 1979.

Interpretation

2.—(1) In these rules save where the context otherwise requires:—

"the Order" means the Family Law Reform (Northern Ireland) Order 1977(**b**);

"the applicant" means an applicant for a direction;

"blood samples" and "blood tests" have the same meaning as in Part III of the Order;

"complaint" means a complaint in the hearing of which the paternity of any person falls to be determined;

"court" means a court of summary jurisdiction or a resident magistrate sitting out of petty sessions;

"direction" means a direction given in accordance with the provisions of article 8(1) of the Order;

"direction form" means Form 1 in Schedule 1 to the Blood Tests (Evidence of Paternity) Regulations (Northern Ireland) 1978(**c**);

"photograph" means a recent photograph, taken full face without a hat, of the size required for insertion in a passport, that is to say, not exceeding 6 centimetres by 6 centimetres;

"proceedings" means any proceedings in a court of summary jurisdiction for the hearing of a complaint;

"sampler" means a registered medical practitioner appointed by the Secretary of State under regulation 3 of the Blood Tests (Evidence of Paternity) Regulations (Northern Ireland) 1978 and nominated in a direction form to take blood samples for the purpose of the direction;

"subject" means a person from whom a court directs that blood samples shall be taken;

(**a**) 1964 c. 21 (N.I.) as modified by S.I. 1973/2163 (1973 III, p. 7541)
(**b**) S.I. 1977/1250 (N.I. 17)
(**c**) S.R. 1978 No. 379

"tester" means a person appointed by the Secretary of State to carry out blood tests.

(2) Any reference in these rules to a form other than a direction form is a reference to a form contained in the Schedule.

(3) Any reference in these rules to a person who is under a disability is a reference to a person who has not attained the age of 16 years or who is suffering from a mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961(**d**) and is incapable of understanding the nature and purpose of blood tests.

Notice of Explanation to be served

3. Form 1 shall be served on any person who makes a complaint under the Illegitimate Children (Affiliation Orders) Act (Northern Ireland) 1924(**e**) or any other complaint in the hearing of which it appears to the clerk of petty sessions that the paternity of any person falls to be determined and on any person who is served with a summons to answer such a complaint.

Application for direction before hearing

4. A party to any proceedings may apply in writing to the court for a direction at any time after the making of the complaint, and, on receipt of the application, the clerk of petty sessions shall inform the other party to the proceedings that the application has been made and that he may consent to the court giving a direction before the commencement of the hearing of the complaint, and that if he does not so consent the application will be determined by the court in the presence of the parties.

Direction in absence of parties

5. A court may give a direction in the absence of the applicant and the other party to the proceedings if it appears to the court that that other party, or, where he is under a disability, the person having the care and control of him has consented to the giving of the direction.

Direction when subject under disability

6. The court, when giving a direction, shall name the person appearing to the court to have the care and control of any subject who is under a disability.

Form of direction and service

7. A direction shall be in Form 2 and a copy of it shall be served on every subject or, where the subject is under a disability, on the person named in the direction as having the care and control of him.

Applicant for direction to pay fees

8. Within 14 days, or such longer period as the court may order, of the giving of the direction, the applicant, unless he has been granted legal aid under the Legal Aid and Advice Act (Northern Ireland) 1965(**f**) shall pay to the clerk of petty sessions such sum as appears to the clerk to be sufficient to pay the fees of the sampler and tester in respect of taking and testing samples for the purpose of giving effect to the direction.

(**d**) 1961 c. 15 (N.I.)
(**e**) 1924 c. 27 (N.I.)
(**f**) 1965 c. 8 (N.I.)

Photograph of subjects to be furnished to clerk

9. Within 14 days, or such longer period as the court may order, of service of a copy of the direction, each subject who is not under a disability and the person having the care and control of a subject who is under a disability but has attained the age of 12 months by the date of the direction shall furnish to the clerk of petty sessions a photograph of the subject:

Provided that this requirement shall not apply in the case of a subject who is suffering from a mental disorder if the medical practitioner in whose care he is certifies that a photograph cannot or should not be taken of the subject.

Court to be informed of failure to comply with rule 8 *or* 9

10.—(1) If any person fails to comply with the provisions of rule 8 or 9 the clerk of petty sessions shall not take any further steps required of him by these rules without first informing the court and receiving its instructions to do so.

(2) If the court is informed by the clerk of petty sessions in accordance with paragraph (1), it may vary or revoke the direction or may make such order as to the hearing or the continuation of the hearing of the complaint as appears to the court to be appropriate in all the circumstances and shall cause the parties to be notified.

Clerk to arrange for sampling and testing

11. Where a court has given a direction and the clerk of petty sessions is satisfied that the requirements of rule 8 (where applicable) have been met and he is in possession of a photograph (or a certificate under the proviso to rule 9) in respect of each subject who has attained the age of 12 months by the date of the direction, the clerk shall arrange for blood samples to be taken and for blood tests to be made on those samples, or shall arrange for the parties' solicitors to make the arrangement on his behalf.

Notice of arrangements for sampling

12. When arrangements have been made for the taking of samples, the clerk of petty sessions shall—

(*a*) give notice in Form 3 to each subject or, where a subject is under a disability, the person having the care and control of the subject, of the arrangements made for the taking of samples from the subject and shall require him, or where he is under a disability, the person having the care and control of him, to comply with the arrangements;

(*b*) complete Parts I and II of a direction form in respect of each subject and send the direction form to the sampler who is to take the blood sample from that subject.

Procedure where direction forms returned by sampler or tester

13. When a direction form is returned to the court by a sampler, or by a tester, unless it is accompanied by a report under article 8(2) of the Order, the court shall cause a copy of the form to be served on each party to the proceedings and shall consider any entries made on the direction form by the sampler, tester or any other person and may vary or revoke the direction or make such an order as to the hearing or the continuation of the hearing of the complaint as appears to the court to be appropriate in all the circumstances.

Service of copies of report of tester

14. On receipt of the report by the tester under article 8(2) of the Order, the clerk of petty sessions shall serve a copy of the report on each of the parties to the proceedings.

Sum paid under rule 8 to be used in payment of fees

15. The clerk of petty sessions shall use any sum paid to him under rule 8 in paying the fees due to the sampler and tester and shall repay the balance, if any, to the applicant.

Service of documents

16. Service of any document required to be served by these rules may be effected by delivering it to the person upon whom it is required to be served or to his solicitor or by sending it by the recorded delivery service to him at his last known or usual place of abode or to his solicitor at his office.

Roy Mason
One of Her Majesty's Principal Secretaries of State

Northern Ireland Office
13th December 1978