1971. No. 180 [C]

MAGISTRATES' COURTS RULES

Maintenance and Affiliation

RULES, DATED 17TH JUNE 1971, MADE BY THE MINISTER OF HOME AFFAIRS UNDER SECTION 23 OF THE MAGISTRATES' COURTS ACT (NORTHERN IRELAND) 1964.

I, the Right Honourable Brian Faulkner, D.L., Minister of Home Affairs for Northern Ireland, in exercise of the powers conferred on me by section 23 of the Magistrates' Courts Act (Northern Ireland) 1964(**a**), section 3(3) of the Maintenance and Affiliation Orders Act (Northern Ireland) 1970(**b**), and all other powers thereunto enabling, do hereby, upon the recommendation of the Magistrates' Courts Rules Committee and after consultation with the Lord Chief Justice, make the Rules hereinafter set forth.

Dated this 17th day of June 1971.

Brian Faulkner,
Minister of Home Affairs
for Northern Ireland.

Citation

1. These Rules shall be cited as the Magistrates' Courts (Maintenance and Affiliation) Rules (Northern Ireland) 1971.

Interpretation

2. In these Rules—

"the Act" means the Maintence and Affiliation Orders Act (Northern Ireland) 1970;

"the 1965 Rules" means the Magistrates' Courts Rules (Northern Ireland) 1965(**c**).

Order for return to payer of money received by collecting officer to be included in order for revocation etc. of order for periodical payment

3. Where a court makes an order under section 3(1) of the Act upon the hearing of a complaint for the revocation, suspension, variation or discharge of an order for the periodical payment of money there shall be added to the order made in Form 66 in Schedule 1 to the 1965 Rules the paragraph prescribed by Form 1 in the Schedule to these Rules.

(a) 1964. c. 21 (N.I.). (b) 1970. c. 16 (N.I.).
(c) S.R. & O. (N.I.) 1965, No. 206.

Procedure where collecting officer applies for return to payer of money received under order for periodical payment

4.—(1) A collecting officer who intends to apply for an order under section 3(2) of the Act shall not less than one month before the hearing of the application—

(*a*) serve notice thereof in Form 2 in the Schedule upon the person against whom the order for periodical payment was made (in these Rules referred to as "the payer"); and

(*b*) send a copy of such notice to the person named in the order as entitled to receive payments thereunder (in these Rules referred to as "the payee") at the address of his or her last known place of abode or to which the last payment was sent at his or her request in accordance with Rule 88(2) of the 1965 Rules and, where appropriate, his or her last known place of business.

(2) The said officer shall serve or send the notice—

(*a*) in the same manner as a summons issued upon complaint in a civil matter may be served under Rule 11 of the 1965 Rules; or

(*b*) by sending it himself or by a member of his staff by means of first-class post in an envelope marked "confidential" using the recorded delivery service; or

(*c*) where the notice is addressed to a place outside Northern Ireland, or in any case where a resident magistrate sees fit to make a direction, in such manner as may be so directed.

(3) A resident magistrate may direct that a notice be sent to the payee at the address (or where appropriate the addresses) referred to in paragraph (1)(*b*) on more than one occasion and by one or more of the methods referred to in paragraph (2).

(4) An order under section 3(2) of the Act shall be in Form 3 in the Schedule and signed by the resident magistrate who made it.

Evidence that the sum cannot be paid to person entitled thereto

5. Testimony by a summons server or other person referred to in Rule 11(2) of the 1965 Rules that he was unable to serve the summons for the revocation, suspension, variation or discharge of the order for periodical payment or notice under Rule 4(1) or, where the notice was sent by post, the production of the envelope returned by the Post Office accompanied by the certificate of its non-delivery shall (in addition to any other relevant evidence adduced by the payer or by the clerk of petty sessions) be evidence (until the contrary is proved) that the sum unpaid to the payee cannot be paid at the time of the hearing of the complaint or application.

Copy of order under section 3 of the Act to be sent to payee

6.—(1) Where a court makes an order under section 3 of the Act of 1970, the clerk of petty sessions shall send a copy of the order to the payee by any of the methods applicable to the sending of a notice under Rule 4.

(2) Any expenses incurred by the clerk under paragraph (1) or paid by him to a summons server as service fees or for expenses in connection with an application under section 3(2) of the Act shall be deducted from any sum otherwise due to the payer.

SCHEDULE

FORM 1

Order made under Section 3(1) of the Maintenance and Affiliation Orders Act (Northern Ireland) 1970

Where such an order is made no costs shall be recoverable by the person named as Defendant in the order for periodical payment and the following paragraph shall be added to the order of revocation etc. in Form 66 in Schedule 1 to the Magistrates' Courts Rules (Northern Ireland) 1965:—

"And it is further ordered that , the collecting officer, do pay to the Defendant the sum of £ , being an amount received by him and which cannot be paid to the Complainant, less £ , being the costs incurred by the collecting officer in connection with the proceeding."