

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 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 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.

SCHEDULE 1

FORM 1

MAGISTRATES' COURTS ACT (NORTHERN IRELAND) 1964

MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT) ACT 1972

(Section 6(8); Rule 7(1))

Notice to Payer of Registration of a Maintenance Order (under section 6(8); Rule 7(1)).

of

Complainant

Petty Sessions District of

of

County Court Division of

Defendant

TAKE NOTICE that on day of 19, I registered a maintenance order (copy attached) made by the ordering you to pay to (2) the sum of (3) court in (1) clerk of petty sessions for the above mentioned district.

You are entitled to appeal to the Court of Summary Jurisdiction at within 28 days from the date of the service of this notice to set aside the registration of the order on one of the following grounds:—

- (a) that the Court making the order did not have jurisdiction to do so (4);
(b) that the registration is contrary to public policy;
(c) that the order was obtained by fraud in connection with a matter of procedure;
(d) that proceedings between you and the payee and having the same purpose are pending before a court in the United Kingdom and those proceedings were instituted before these proceedings;
(e) that the order is incompatible with a judgment given in proceedings between you and the payee and having the same purpose, either in the United Kingdom or in a Hague Convention Country;
(f) if you did not appear in the proceedings in the Hague Convention Country that you were not given notice of the institution of the proceedings, including notice of the substance of the claim, in accordance with the law of that country and in sufficient time to enable you to defend the proceedings.

Dated this day of 19

Clerk of Petty Sessions

Notes

- (1) Insert name of Hague Convention Country.
- (2) Insert name of payee.
- (3) Insert amount in sterling and period, e.g., monthly.
- (4) Jurisdiction may be based
 - (a) On the habitual residence of the payer or payee in that State;
 - (b) On the payer and payee being nationals of that State;
 - (c) On your submission to the jurisdiction of the Court; or
 - (d) In the case of an order made on divorce, etc., on any ground which is recognised by United Kingdom law.

FORM 2

MAGISTRATES' COURTS ACT (NORTHERN IRELAND) 1964

MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT) ACT 1972

(Section 6(11); Rule 7(2))

Notice to payee that maintenance order has not been registered

of

Complainant

Petty Sessions District of

of

County Court Division of

Defendant

TAKE NOTICE that I have not registered a maintenance order made by the court in (1) ordering (2) to pay you the sum of (3) on the ground that (4)

You are entitled to appeal against my decision to the Court of Summary Jurisdiction sitting at to have the order registered. If you wish to appeal, you may do so by completing and returning to me the notice of appeal attached. If you wish to be legally represented, you may apply to (5) for legal aid and advice.

Dated this day of 19

Clerk of Petty Sessions

Notes

- (1) Insert name of Hague Convention Country.
- (2) Insert name and address of payer.
- (3) Insert amount in sterling and period, e.g., monthly
- (4) Insert one of the grounds specified in section 6(5), (6) or (7) of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (as extended by the Reciprocal Enforcement of Maintenance (Hague Convention Countries) Order 1978).
- (5) Insert the name and address of the Secretary of the Legal Aid Committee.

MAGISTRATES' COURTS ACT (NORTHERN IRELAND) 1964

MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT) ACT 1972

(Section 6(12))

Notice of Appeal

of

Appellant

Petty Sessions District of

of

Respondent

County Court Division of

TAKE NOTICE that the Court at in having on the day of made a maintenance order requiring the respondent to pay the undersigned the sum of £ [a week/month] and the order having been sent to the Clerk of Petty Sessions for the above-named petty sessions district for registration; the Clerk of Petty Sessions has refused to register the order on the ground that

I hereby appeal to a Court of Summary Jurisdiction for the said petty sessions district against the refusal to register this order.

Dated day of 19

Signed

(Appellant)

EXPLANATORY NOTE

(This note is not part of the rules, but is intended to indicate their general purport.)

These rules make provision, in relation to courts of summary jurisdiction, for the various matters which are to be prescribed under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 as set out in Schedule 3 to the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1979.

Rule 3 provides that the clerk of petty sessions is the prescribed officer.

Rule 4 specifies the matters to be included in an application under section 2 of the 1972 Act. Rule 5 provides for the form of registration of a maintenance order. Rule 6 lays down that certain documents to be served on the payee are to be sent by recorded delivery post. Rule 7 prescribes the form of notice of registration of a maintenance order which has to be served on the payer and the form of notice to the payee that a maintenance order has not been registered. Rule 8 provides for the enforcement of sums due under a registered maintenance order. Rule 9 provides for the taking of evidence needed for foreign proceedings. Rule 10 requires the clerk of petty sessions to give notice of the cancellation of a registration of a maintenance order.

Rule 11 requires the clerk of petty sessions to notify the Secretary of State of notices served on a payer who resides in a Hague Convention Country. Rule 12 makes provision, in cases where proceedings are brought in a Hague Convention Country against a person residing in Northern Ireland, for notice of the institution of those proceedings to be served on that person.