

1980 No. 225

MAGISTRATES' COURTS

Magistrates' Courts (Re-registration of Maintenance Orders) 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) and by virtue of the provisions of Part II of the Maintenance Orders Act 1950(b) and Part I of the Maintenance Orders Act 1958(c) as amended by Schedule 3 to the Administration of Justice Act 1977(d) on the advice of the Magistrates' Courts Rules Committee and after consultation with the Lord Chief Justice, hereby makes the following rules:—

PART I

GENERAL

Citation, commencement, interpretation and revocation

1.—(1) These rules may be cited as the Magistrates' Courts (Re-registration of Maintenance Orders) Rules (Northern Ireland) 1980 and shall come into operation on 4th August 1980.

(2) In these rules—

“the 1950 Act” means the Maintenance Orders Act 1950;

“the 1958 Act” means the Maintenance Orders Act 1958 as amended;

“the Order Book” means the Order Book kept under Rule 19 of the Magistrates' Courts Rules (Northern Ireland) 1974(e);

“maintenance order” includes decree for payment of aliment;

“England” includes Wales;

“magistrates' court” includes the sheriff court;

“clerk of the magistrates' court” includes the sheriff clerk of the sheriff court in Scotland;

“Senior Registrar” means the Senior Registrar of the principal registry of the Family Division of the High Court in England.

(3) Except as expressly provided in paragraph (2) any expression used in these rules and in the 1950 and 1958 Acts shall, unless the contrary intention appears, have the meaning given to it by those Acts.

(4) Parts II and III of the Maintenance Orders Act 1950 (Summary Jurisdiction) Rules (Northern Ireland) 1951(f) are hereby revoked.

(a) 1964 c. 21 (N.I.)

(b) 1950 c. 37

(c) 1958 c. 39

(d) 1977 c. 38

(e) S.R. 1974 No. 334 (II, p. 1541)

(f) S.R. & O. (N.I.) 1951 No. 126 (p. 253)

Application

2.—(1) Part II of these rules shall have effect in relation to the registration in other parts of the United Kingdom of maintenance orders made by a court of summary jurisdiction in Northern Ireland to which the 1950 and 1958 Acts apply and such orders are referred to in these Rules as “outgoing orders”.

(2) Part III of these rules shall have effect in relation to the registration in a court of summary jurisdiction in Northern Ireland of maintenance orders made by courts in other parts of the United Kingdom to which the 1950 and 1958 Acts apply and such orders are referred to in these Rules as “incoming orders”.

Prescribed officer

3. The officer of any court, by or in relation to whom anything is to be done in pursuance of any provision of the 1950 Act or the 1958 Act shall, where that Court is a court of summary jurisdiction, be the clerk of petty sessions.

Duties of the clerk of petty sessions

4. The clerk of petty sessions shall make and sign appropriate entries in the Order Book in respect of any action taken by him or notified to him in relation to outgoing and incoming orders in accordance with the provisions of the 1950 Act and the 1958 Act and shall keep in such manner as he considers appropriate any documents sent to him in connection with any such action.

PART II

OUTGOING ORDERS

Commencement of proceedings

5.—(1) Every complaint by which proceedings are initiated in a court of summary jurisdiction under or by virtue of Part I of the 1950 Act against a person residing in another part of the United Kingdom and all relevant documents lodged in any proceedings under or by virtue of the 1950 Act or the 1958 Act shall be headed “Maintenance Orders Act 1950” or as the case may be “Maintenance Orders Act 1958”.

(2) The summons which by virtue of the 1950 Act or the 1958 Act is to be served on a person residing in another part of the United Kingdom shall be in ordinary form and shall proceed upon fourteen days notice to be calculated from the date of service and such summons may be signed by the clerk of petty sessions.

Application for registration

6.—(1) An application for the registration in a magistrates' court in England or Scotland of a maintenance order made by a court of summary jurisdiction in Northern Ireland to which Part II of the 1950 Act applies shall be made in writing, by or on behalf of the payee under the order, to a resident magistrate acting for the same petty sessions district as the court which made the order; and, unless the applicant appears in person, there shall also be lodged with the clerk of petty sessions of the court which made the order—

- (a) a certified copy of the maintenance order; and
- (b) a statutory declaration with one copy containing the particulars set out in paragraph (2) of this Rule.

(2) A statutory declaration lodged under paragraph (1) shall state:—

- (a) the name and address of the payer under the order;
- (b) the reason why it is convenient that the order should be enforced in England or Scotland, as the case may be;

- (c) unless a certificate of arrears is lodged under section 20 of the 1950 Act, the amount of any arrears due under the order and the date to which they are calculated; and
- (d) that the order is not already registered under Part II of the 1950 Act.

Transmission

7.—(1) If it appears to the court that the payer under the order resides in England or Scotland, and that it is convenient that the order should be enforceable there, the clerk of petty sessions of the court which made the order shall send to the clerk of the magistrates' court in England or Scotland having jurisdiction in the place in which the payer under the order appears to be:—

- (a) a certified copy of the maintenance order;
 - (b) a copy statutory declaration of the applicant and the certificate of arrears (if any); and
 - (c) a letter stating that the application has been granted and requesting registration of the order.
- (2) The clerk of petty sessions shall make and sign an entry in the Order Book recording:—
- (a) particulars of the maintenance order; and
 - (b) details of the steps taken to effect the registration.
- (3) On receiving notice from the clerk of the magistrates' court in England or Scotland that the order has been registered, the clerk of petty sessions shall make and sign an entry in the Order Book to that effect.

Application to adduce evidence

8.—(1) An application to a court of summary jurisdiction in Northern Ireland under section 22(5) of the 1950 Act to adduce evidence in connection with a maintenance order made by that court and registered in a court in England or Scotland may be made orally by or on behalf of the applicant and the proceedings may be *ex parte*.

(2) The court in which application is made under paragraph (1) shall cause a transcript or summary of any evidence taken in pursuance of the application to be signed by the deponent and sent to the clerk of the court in which the order is registered.

Re-registration in the High Court

9.—(1) Where an order has been registered in the magistrates' court in England or Scotland an application for the re-registration of that order in the High Court in England under the 1958 Act shall be made in writing by or on behalf of the payee under the order to a resident magistrate acting for the same petty sessions district as the court which made the order and there shall also be lodged with the clerk of petty sessions of the court which made the order the following documents:—

- (a) a certified copy of the maintenance order; and
 - (b) a statutory declaration by the applicant with one copy containing the particulars set out in paragraph (2) of this Rule.
- (2) A statutory declaration lodged under paragraph (1) shall state:—
- (a) the name and address of the payer under the order;
 - (b) the reason for the application;
 - (c) the date and place of the original registration;
 - (d) where the order has been re-registered, the date and place of the last registration and whether or not that has been cancelled, or, where any of these facts is not known, a statement to that effect;

- (e) the steps, if any, taken to enforce the registered order; and
- (f) the amount of any arrears due under the order and to date to which they are calculated.

Transmission for re-registration

10.—(1) If the application under Rule 9 is granted, and the court is satisfied by the applicant, that no process for the enforcement of the order issued before the grant of the application remains in force or pending, the clerk of petty sessions shall send to the Senior Registrar—

- (a) the statutory declaration of the applicant;
- (b) a certified copy of the maintenance order; and
- (c) a letter stating that the application has been granted and requesting him to take steps to have the order registered in the High Court.

(2) On receiving notice that the order has been so registered the clerk of petty sessions shall make and sign an entry in the Order Book recording details of such registration.

Discharge and variation

11.—(1) Where a maintenance order made by a court of summary jurisdiction in Northern Ireland and registered under the 1950 Act or the 1958 Act in a court in England or Scotland is varied by the court in which it is registered, the clerk of petty sessions shall on receipt of notice of variation, make and sign an entry in the Order Book recording the particulars of such variation.

(2) Where a maintenance order made by a court of summary jurisdiction in Northern Ireland and registered under the 1950 Act or the 1958 Act in a Court in England or Scotland, is discharged or varied by the court which made it—

- (a) the clerk of petty sessions of that court shall give notice of variation by sending to the clerk of the magistrates' court or to the Senior Registrar, as the case may be:—
 - (i) a certified copy of the order discharging or varying the maintenance order; and
 - (ii) a letter requesting that the appropriate action be taken under the Acts, in accordance with the order and that he be notified of the result.
- (b) the clerk of petty sessions shall make and sign an entry in the Order Book recording:—
 - (i) the date and nature of the order;
 - (ii) the date of its transmission under sub-paragraph (a)(i); and
 - (iii) on receiving notice under sub-paragraph (a)(ii), the particulars contained in that notice.

Cancellation

12.—(1) An application under section 24(2) of the 1950 Act in connection with a maintenance order made by a court of summary jurisdiction in Northern Ireland and registered in a court in England or Scotland under the 1950 Act or the 1958 Act may be made, either orally or in writing by or on behalf of the payer under the order to a resident magistrate acting for the same petty sessions district as the court which made the order; and unless the applicant appears in person there shall be lodged with the clerk of petty sessions of the court which made the order a statutory declaration by the applicant stating the facts upon which the application is founded.

(2) If it appears to the resident magistrate that the applicant has ceased to reside in England or Scotland, as the case may be, the clerk of petty sessions shall send notice to that effect to the clerk of the magistrates' court or the Senior Registrar, as the case may be, of any court in which the order is registered.

(3) Where the registration of a maintenance order made by a court of summary jurisdiction in Northern Ireland and registered in England or Scotland is cancelled under section 24(1) or (2) of the 1950 Act the clerk of petty sessions, on receipt of notice of the cancellation, shall make and sign an entry in the Order Book recording particulars of that cancellation.

PART III

INCOMING ORDERS

Registration

13.—(1) Where a clerk of petty sessions receives a certified copy of a maintenance order made by a court in England or Scotland he shall:—

- (a) register the order in his court by means of an entry made and signed by him in the Order Book;
- (b) retain in his office the certified copy maintenance order and any certificate or statutory declaration sent with the certified copy order as to the amount of any arrears due thereunder; and
- (c) send written notice to the clerk of the court by which the order was made that it has been duly registered.

Variation of rate of payment

14. An application for the variation under section 22(1) of the 1950 Act of the rate of payments under a maintenance order made by a court in England or Scotland and registered in a court of summary jurisdiction in Northern Ireland shall be made by way of complaint.

Application to adduce evidence

15.—(1) An application made to a court of summary jurisdiction in Northern Ireland under section 22(5) of the 1950 Act to adduce evidence in connection with a maintenance order made by a court in England or Scotland and registered in that court of summary jurisdiction may be made orally by or on behalf of the applicant and the proceedings may be *ex parte*.

(2) The court in which the application is made under paragraph (1) shall cause a transcript or summary of any evidence taken in pursuance of the application to be signed by the deponent and sent to the clerk of the court in England or Scotland by which the order was made.

(3) Any transcript or summary of evidence adduced under the said section 22(5) in the court in England or Scotland by which the order was made shall be sent to the clerk of petty sessions.

Discharge and variation

16.—(1) Where a maintenance order made by a court in England or Scotland and registered under the 1950 Act in a court of summary jurisdiction in Northern Ireland is varied under section 22(1) of that Act by that court the clerk of petty sessions shall—

- (a) give notice of the variation by sending to the clerk of the court in England or Scotland, by which the order was made, a certified copy of the order of variation; and
- (b) make and sign an entry in the Order Book recording the particulars of the variation.

(2) Where a maintenance order made by a court in England or Scotland and registered under the 1950 Act in a court of summary jurisdiction in Northern Ireland is discharged or varied by the court which made it the clerk of petty sessions on receipt of a certified copy of an order discharging or varying the registered order shall:—

- (a) make and sign an entry in the Order Book recording the particulars of the discharge or variation; and
- (b) notify the clerk of the court which made the discharge or variation order that he has done so.

Cancellation

17.—(1) An application for the cancellation under section 24(1) of the 1950 Act of the registration of a maintenance order made by a court in England or Scotland and registered in a Court of summary jurisdiction in Northern Ireland shall be made to the clerk of petty sessions of that court by lodging with him:—

- (a) a written application stating the date of registration of the order signed by or on behalf of the applicant; and
- (b) a copy of the order the registration of which is sought to be cancelled.

(2) Where under section 24(1) or (2) of the 1950 Act the clerk of petty sessions cancels the registration of a maintenance order, he shall:—

- (a) make and sign an entry in the Order Book recording such cancellation;
- (b) notify the clerk of the court by which the order was made; and
- (c) notify the payer under the order.

Dated 18th June 1980

Hailsham of St. Marylebone, C.

EXPLANATORY NOTE

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

These rules re-enact with minor modifications the provisions of the Maintenance Orders Act 1950 (Summary Jurisdiction) Rules (Northern Ireland) 1951 insofar as they relate to courts of summary jurisdiction and the machinery for registration of maintenance orders under the Maintenance Orders Act 1950. Rules 9 and 10 make new provision consequential on the amendments made to the Maintenance Orders Act 1958 by Schedule 3 to the Administration of Justice Act 1977.

These Rules enable a payee under a maintenance orders made by a court of summary jurisdiction which has been registered in a magistrates' court in England to have the order re-registered and enforced in the High Court in England.