

1988 No. 71

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

**The Rules of the Supreme Court (Northern Ireland)
(Amendment No. 2) 1988**

Made 7th March 1988

Coming into operation 4th April 1988

To be laid before Parliament

We, the Northern Ireland Supreme Court Rules Committee, being the authority having for the time being power under section 55 of the Judicature (Northern Ireland) Act 1978(a) to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature of Northern Ireland, hereby, with the concurrence of the Lord Chancellor, exercise those powers as follows—

Citation, interpretation and commencement

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment No. 2) 1988, and shall come into operation on 4th April 1988.

(2) In these Rules an Order referred to by number means the Order so numbered in the Rules of the Supreme Court (Northern Ireland) 1980(b).

Business of the Supreme Court

2. Order 1, rule 12(a)(iii) shall be amended by substituting for the words “wardship, adoption, guardianship of minors and the Child Abduction and Custody Act 1985” the words “wardship, adoption, guardianship of minors, the Child Abduction and Custody Act 1985 and the Family Law Act 1986”.

Proceedings relating to the Family Law Act 1986

3. Order 90 shall be amended as follows—

(1) By substituting for the title to the Order the title “PROCEEDINGS RELATING TO MINORS, THE CHILD ABDUCTION AND CUSTODY ACT 1985 AND THE FAMILY LAW ACT 1986”.

(2) By adding, after rule 25, the Part set out in the Schedule hereto.

(a) 1978 c. 23

(b) S.R. 1980 No. 346

Dated 24th February 1988.

John MacDermott
Donald Murray
J. B. E. Hutton
R. D. Carswell
Owen Catchpole
Aidan A. Canavan

I concur,

Mackay of Clashfern, C.

Dated 7th March 1988.

“TV Family Law Act 1986*Interpretation*

26.—(1) In this Part of this Order, unless the context otherwise requires—

“the Act” means the Family Law Act 1986;

“the appropriate court” means, in relation to England and Wales the High Court, and, in relation to Scotland, the Court of Session;

“custody order” means a custody order within the meaning of sections 1, 32, 40, 42(5) and 42(6) of the Act;

“the Deputy Principal Clerk” means the Deputy Principal Clerk of Session;

“the Secretary of the Principal Registry” means the Secretary of the Principal Registry of the Family Division of the High Court of Justice in England and Wales;

“register” means the register kept for the purposes of the Act;

“registration” means registration under Part I of the Act and “registered” shall be construed accordingly.

(2) The prescribed officer for the purposes of sections 27(4) and 28(1) of the Act shall be the Master, and the jurisdiction of the court under sections 27(3) and 28(1) of the Act shall be exercised by the prescribed officer.

Application to register custody order

27.—(1) An application under section 27 of the Act for the registration of a custody order made by the High Court shall be made by lodging in the Office a certified copy of the order, together with a certified copy of any order which has varied any of the terms of the original order and an affidavit by the applicant and a copy thereof stating:—

- (a) the name and address of the applicant and his interest under the order;
- (b) the name and date of birth of the child in respect of whom the order was made, his whereabouts or suspected whereabouts and the name of any person with whom he is alleged to be;
- (c) the name and address of any other person who is known to the applicant to have an interest under the order and whether it has been served on him;
- (d) whether the order is to be registered in England and Wales or Scotland or in both jurisdictions;
- (e) that, to the best of the applicant’s information and belief the order is in force;
- (f) whether, and if so where, the order is already registered; and
- (g) details of any order affecting the child which is in force in the jurisdiction in which the custody order is to be registered.

(2) There shall be exhibited to the affidavit any document relevant to the application.

(3) Where the documents referred to in paragraphs (1) and (2) are to be sent to the appropriate court the prescribed officer shall—

- (a) retain the affidavit and send the copy thereof and the other documents to the Secretary of the Principal Registry or to the Deputy Principal Clerk, as the case may be, indicating, where the order relates to more than one child, with respect to which child or children it is to be registered, and
- (b) record the fact of transmission.

(4) On receipt of notice of the registration of a custody order in the appropriate court the prescribed officer shall record particulars of the registration.

(5) If it appears to the prescribed officer that the custody order is no longer in force with respect to a child or more than one child or that a child or more than one child has attained the age of 16, he shall refuse to send the documents referred to in paragraphs (1) and (2) to the appropriate court or shall indicate thereon with respect to which child or children the order is not to be registered and he shall within 14 days give notice to the applicant of his refusal or indication and the reason for it.

(6) If the prescribed officer refuses to send the documents referred to in paragraph (1) and (2) to the appropriate court the applicant may apply by summons to a judge in chambers for an order that the documents be sent to the appropriate court or that they be sent with respect to a particular child or children.

Registration of English and Scottish custody orders

28. On receipt of a certified copy of a custody order made in England and Wales or Scotland for registration, the prescribed officer shall—

- (a) register the order in the register by entering particulars of—
 - (i) the name and address of the applicant and his interest under the order;
 - (ii) the name and whereabouts or suspected whereabouts of the child, his date of birth, and the date on which he will attain the age of 16; and
 - (iii) the terms of the order, its date and the court which made it;
- (b) file the certified copy and accompanying documents; and
- (c) give notice to the court which sent the certified copy and to the applicant for registration that the order has been registered.

Revocation and variation of Northern Ireland order

29.—(1) Where a custody order which is registered in the appropriate court is revoked or varied by the High Court, the prescribed officer shall—

- (a) send a certified copy of the subsequent order to the Secretary of the Principal Registry or to the Deputy Principal Clerk, as the case may be, and to the court which made the custody order if that court is different from the court making the subsequent order;
- (b) record the fact of transmission; and
- (c) retain the subsequent order.

(2) On receipt of notice from the appropriate court of the amendment of its register, there shall be entered, in the records of the court which made the custody order and the court which made the subsequent order, if different, particulars of the revocation or variation, as the case may be.

Registration of revoked, recalled or varied English or Scottish orders

30.—(1) On receipt of a certified copy of an order made in England and Wales or Scotland which revokes, recalls or varies a registered custody order, the prescribed officer shall enter particulars of the revocation, recall or variation, as the case may be, in the register, and give notices of the entry to—

- (a) the court which sent the certified copy,
- (b) if different, the court which made the custody order,
- (c) the applicant for registration, and
- (d) if different, the applicant for the revocation, recall or variation of the order.

(2) An application under section 28(2) of the Act shall be made by summons and may be heard and determined by the Master.

(3) If the applicant for the custody order is not the applicant under section 28(2) of the Act he shall be made a defendant to the application.

(4) Where the Master cancels a registration of his own motion or on an application under paragraph (2), he shall amend the register accordingly and shall give notice of the amendment to the court which made the custody order.

Interim directions

31.—(1) An application for interim directions under section 29 of the Act shall be made by summons and may be heard and determined by the Master.

(2) The parties to the proceedings for enforcement and, if he is not a party thereto, the applicant for the custody order, shall be made parties to the application.

Staying and dismissal of enforcement proceedings

32.—(1) An application under section 30(1) or 31(1) of the Act shall be made by summons and may be heard and determined by the Master.

(2) The parties to the proceedings for enforcement which are sought to be stayed and, if he is not a party thereto, the applicant for the custody order, shall be made parties to an application under either of the said sections.

(3) Where the court makes an order under section 30(2) or (3) or section 31(3) the prescribed officer shall amend the register accordingly and shall give notice of the amendment to the court which made the custody order and to the applicants for registration, for enforcement and for the stay or dismissal of the proceedings for enforcement.

Particulars of other proceedings

33. A party to proceedings for or relating to a custody order who knows of other proceedings (including proceedings out of the jurisdiction and concluded proceedings) which relate to the child concerned shall file an affidavit which shall state—

- (a) in which jurisdiction and court the other proceedings were instituted;
- (b) the nature and current state of such proceedings and the relief claimed or granted;
- (c) the names of the parties to such proceedings and their relationship to the child;
- (d) if applicable, and if known, the reasons why the relief claimed in the proceedings for or relating to the custody order were not claimed in the other proceedings.

Stay of proceedings

34.—(1) Where under section 22(2) of the Act the High Court stays proceedings on an application for a custody order it shall cause notice of the stay to be given to the parties to the proceedings.

(2) Where under section 22(3) of the Act the High Court removes a stay granted in accordance with section 22(1) it shall cause notice of the removal of the stay to be given to the parties to the proceedings and shall proceed to deal with the application accordingly.

Inspection of Register

35. The following persons:

- (a) the applicant for registration of a registered custody order,

(b) any person who satisfies the Master that he has an interest under the custody order, and

(c) any person who obtains the leave of the Master

may inspect any entry in the register relating to the order and may bespeak copies of the order and of any document relating thereto”.

EXPLANATORY NOTE

(This note is not part of the Rules.)

These rules amend the Rules of the Supreme Court (Northern Ireland) 1980 to make the necessary provision in relation to Supreme Court procedure for the implementation of the Family Law Act 1986. Under that Act a custody order made in one part of the United Kingdom may be registered and enforced in another part of the United Kingdom.