1988 No. 113

MAGISTRATES' COURTS

Magistrates' Courts (Family Law Act 1986) Rules (Northern Ireland) 1988

Made	*30th March 1988*
Coming into operation . .	*4th April 1988*

The Lord Chancellor, in exercise of the powers conferred on him by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981(**a**), sections 27 and 39 of the Family Law Act 1986(**b**) and of all other powers enabling him in that behalf 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 (Family Law Act 1986) Rules (Northern Ireland) 1988 and shall come into operation on 4th April 1988.

Interpretation

2.—(1) In these rules, the following expressions have the meanings hereby assigned to them:—

"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 any of sections 1, 32, 40, 42(5) and (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.

(2) Any requirement in these rules for a clerk of petty sessions to note any matter in his court is a requirement for him to note it by means of a minute entered in the Order Book kept under Rule 19 of the Magistrates' Courts Rules (Northern Ireland) 1984(**c**).

(**a**) S.I. 1981/1675 (N.I. 26)
(**b**) 1986 c. 55
(**c**) S.R. 1984 No. 225

Application for registration of a custody order

3.—(1) An application under section 27 of the Act for the registration in the appropriate court of a custody order made by a magistrates' court in Northern Ireland shall be made in writing in Form 1 in the Schedule to these Rules or in a similar form containing the information specified in the said Form 1 to the court which made the order.

(2) An application to which paragraph (1) above relates shall be accompanied by the following documents, namely—

(*a*) a certified copy of the order; and

(*b*) where the order has been varied, a certified copy of any variation order which is in force; and

(*c*) any other documents relevant to the application.

(3) Subject to paragraph (4) below, unless it appears to the court to which an application is made in accordance with paragraphs (1) and (2) above that the order to which the application relates is no longer in force it shall cause the clerk of petty sessions to send a copy of the application, together with copies of the documents set out in paragraph (2) above, to the Secretary of the Principal Registry or the Deputy Principal Clerk of the appropriate court or to both, as the case may be.

(4) If it appears to the court to which an application is made in accordance with paragraphs (1) and (2) above that the order to which the application relates is no longer in force in respect of a child in respect of whom the order was made or that any such child has attained the age of 16, it shall refuse to send the documents referred to in paragraph (2) above to the appropriate court, or shall indicate thereon with respect to which child or children the order is not to be registered, and the clerk of the court shall notify the applicant of its refusal or indications accordingly.

(5) Where the documents referred to in paragraph (2) are to be sent to the appropriate court the clerk of petty sessions shall cause particulars of the application for registration and the sending of the documents to be noted in his court.

(6) Where the clerk of petty sessions of the court to which an application has been made under paragraphs (1) and (2) above receives notice of the registration in the appropriate court of the order to which the application relates, he shall note particulars thereof in his court.

Revocation and variation of a registered order

4.—(1) Where a magistrates' court in Northern Ireland has revoked or varied a registered order it shall cause the clerk of petty sessions to send a certified copy of the order of revocation or variation to the Secretary of the Principal Registry or the Deputy Principal Clerk or to both, as the case may be, and to the court which made the custody order, if that court is different from the court making the order of revocation or variation.

(2) Where a certified copy of an order of revocation or variation is sent to the appropriate court in accordance with paragraph (1) of this rule, the clerk of petty sessions shall cause the sending of the certified copy to be noted in his court.

(3) Where the clerk of petty sessions of the court which made an order revoking or varying a registered order receives notice of the registration in the appropriate court of the order of revocation or variation he shall cause particulars thereof to be noted in his court.

(4) Where the clerk of petty sessions of the court which made a custody order receives notice of the revocation or variation of the order by another court he shall cause particulars thereof to be noted in his court.

(5) Where the clerk of petty sessions of the court which made a custody order receives notice of the registration in the appropriate court of an order revoking or varying the custody order he shall cause particulars thereof to be noted in his court.

Other proceedings

5. A party to proceedings for or relating to a custody order in a magistrates' court who knows of other proceedings (including proceedings out of the jurisdiction and concluded proceedings) which relate to the child concerned shall provide to the court a statement giving the following information—

(*a*) the jurisdiction and court in which 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

6.—(1) Where under section 22(2) of the Act a magistrates' 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 a magistrates' court removes a stay granted in accordance with section 22(2) 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.

Dated 30th March 1988. *Mackay of Clashfern, C.*

SCHEDULE Rule 3(1)

FORM 1 Rule 3(1)

Application for registration in England and Wales or Scotland of a custody order (section 27 of Family Law Act 1986)

Petty Sessions District of

To the Clerk of Petty Sessions at (*address*)

Name of applicant:

Address:

Order made on: (*date*)

To be registered in: (*England and Wales, Scotland or both*)

Name of child:

Date of birth:

Address (or suspected whereabouts) of child:

Name of person with whom child is presently residing (or suspected to be residing):

The applicant's interest under the order is .....

.....

The following other persons have an interest under the order .....

.....

(*State whether the order has been served on each person named*)

[The order is not registered in any other court]*

[The order is already registered in .....]*

To the best of the applicant's information and belief the order is in force and [no other order affecting the child is in force in the place where the order is to be registered]* [the following other orders are in force in the place where the order is to be registered .....]*

Dated this day of 19

.....
(Signature of Applicant)

*Delete if inapplicable.

Note: This application MUST be accompanied by a certified copy of the order to which it relates, a certified copy of any variation order which is in force, and any other document which is relevant to the application.

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules make the necessary provision in relation to magistrates' courts procedure for the implementation of Part I 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.

Under Rule 3 of these Rules provision is made for applications for the registration of a custody order made by a magistrates' court in Northern Ireland and the transmission of such custody orders for registration in the appropriate court in England and Wales or Scotland.

Rule 4 makes provision for the transmission of an order of revocation or variation of such custody order to the appropriate registering court.

The Family Law Act 1986 also makes provision in relation to the procedure for applications for custody orders. Rules 5 and 6 supplement those provisions in relation to applications in magistrates' courts. Rule 5 imposes a requirement for parties to proceedings for or relating to a custody order to give information about any other proceedings relating to the child concerned. Rule 6 makes provision for parties to proceedings in a magistrates' court to be notified of the imposition or lifting of a stay of the proceedings where other proceedings are continuing outside Northern Ireland in relation to the child concerned.

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This Order has been exempted from printing by the Statutory Rules (Northern Ireland) Order 1979. A summary is given in the List of Statutory Rules of a Local Character under the heading ROADS.