1971. No. 355 **[C]**

COUNTY COURT RULES

Applications to Court under Payments of Debt (Emergency Provisions) Act (Northern Ireland) 1971

RULES, DATED 16TH NOVEMBER 1971, MADE BY THE MINISTER OF HOME AFFAIRS UNDER SECTION 146 OF THE COUNTY COURTS ACT (NORTHERN IRELAND) 1959.

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 146 of the County Courts Act (Northern Ireland) 1959(**a**), sections 1(6) and 9(1) of the Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971(**b**), and all other powers thereunto enabling, on the recommendation of the County Court Rules Committee and after consultation with the Lord Chief Justice, do hereby make the Rules hereinafter set forth.

Dated this 16th day of November 1971.

Brian Faulkner,
Minister of Home Affairs
for Northern Ireland.

Citation

1. These Rules may be cited as the County Court (Payments for Debt) (Emergency Provisions) Rules (Northern Ireland) 1971.

Interpretation

2. In these Rules—

"the Act" means the Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971

and any reference to a Form by number is a reference thereto as numbered in the Schedule hereto.

Applications under section 1(6) *of the Act*

3.—(1) An application under section 1(6) of the Act shall be made by notice in Form 1.

(2) The applicant shall lodge the application at the office of the clerk of the Crown and peace for the County Court Division in which the respondent has its office for the receipt of payments or where it has more than one such office, the office at which the sum alleged to be due by the applicant would have been payable were it due in fact.

(3) The applicant shall at the same time serve a copy of the application in accordance with Order 6 of the County Court Rules (Northern Ireland) 1965(**c**)—

(a) 1959. c. 25. (b) 1971. c. 30 (N.I.).
(c) S.R. & O. (N.I.) 1965, No. 261, as amended by S.R. & O. (N.I.) 1971, No. 35.

(*a*) on the respondent at the office referred to in paragraph (2); and

(*b*) upon the government department or local or public authority by whom payment under section 1 of the Act was made.

(4) Such lodgment and service shall be not less than fifteen days before the day appointed for the commencement of the sitting of the court for the hearing of ordinary civil bills next to be held thereafter.

(5) That sitting shall be so specified in the application as that at which it is to be heard and upon lodgment of the application the clerk of the Crown and peace shall enter the application for hearing accordingly without the need for production of an entry sheet.

(6) An order under section 1(6) of the Act (or, where payment under the order is to be made by a government department a certificate thereof for the purposes of section 25 of the Crown Proceedings Act 1947) shall be in Form 2.

(7) The applicant shall in lodging an order under section 1(6) of the Act for signature by the clerk of the Crown and peace attach a duplicate thereof signed by him or by his solicitor on his behalf and the clerk of the Crown and peace shall compare such duplicate with the original order, certify it as correct and forthwith transmit it to the government department or local or public authority referred to in the order as having made the payment under section 1(1) of the Act.

(8) An order dismissing an application under section 1(6) of the Act shall be in Form 3.

Applications under section 9(1) *of the Act*

4.—(1) An application under section 9(1) of the Act shall be in Form 4, and paragraphs (2) to (5) (other than paragraph (3)(*b*)) of Rule 3 shall apply thereto.

(2) An order under section 9(1) (or, where payment under the order is to be made by a government department a certificate thereof for the purposes of section 25 of the Crown Proceedings Act 1947) shall be in Form 5.

(3) An order dismissing an application thereunder shall be in Form 6.

SCHEDULE

Forms

FORM 1 [Rule 3(1)]

Application under section 1(6) of the Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971

IN THE COUNTY COURT/RECORDER'S COURT
for the Division of

IN THE MATTER OF the Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971;

AND IN THE MATTER OF the application of
for an order that the amount of a payment under section 1(1) of the said Act be paid or, as the case may be, credited to the applicant.

BETWEEN
of in the County
[Borough] of and the County Court
division of

Applicant

AND

having its office for the receipt of any payments due
by the applicant at
in the Division of

Respondent

WHEREAS certain moneys amounting to £ (*state amount*)
were on the day of 19 due to

(*full name of applicant*)

[*or* to (*full names*)
being the spouse of and who ordinarily resides with

(*full names of applicant*)

(hereinafter referred to as "the applicant") for the following reason or on the following account—

(*state reason or on what account*)

being moneys due by or on behalf of, or out of a fund administered by or on behalf of

(*state paying department or public or local authority*);

AND WHEREAS the applicant was notified by post of payment by that department [*or* public [local] authority] on the day of 19 of the sum of £ being a sum appearing to be due (as it was so alleged) by the applicant [*or* by the said his spouse], to the [same] [*or* to the following department] [*or* public [local] authority or person]; namely (*state full title of department or authority or person*) (hereinafter called "the respondent") in respect of the following—

(*state nature of tax, duty, levy, rate, service, rent, purchase instalment, etc. which was alleged to be due by applicant or spouse*);

AND WHEREAS the applicant claims that the sum so paid and alleged to be due by him at the time of making of such payment was not due by him [*or* his spouse] [to the following extent—

];

the applicant hereby applies to the above-named court for an order that the amount of such payment or such part thereof as was not due at that time be paid or credited to him by the respondent.

IT IS INTENDED that the said claim be entered by the clerk of the Crown and peace for the above-named Division at the sitting of the court commencing on the day of 19 at the Courthouse at at o'clock a.m./p.m.

Dated this day of 19 .

Applicant/or Solicitor for Applicant.

FORM 2 [Rule 3(6)]

Order under section 1(6) of the Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971

BY THE COUNTY COURT JUDGE/RECORDER for the County Court/Recorder's Court for the Division of ;

IN THE MATTER OF the Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971;

AND IN THE MATTER OF the application of
for an order that the amount of a payment under section 1(1) of the said Act be paid or, as the case may be, credited to the applicant.

BETWEEN
of in the County
[Borough] of and the County Court
division of

Applicant

AND

having its office for the receipt of payments
by the applicant at
in the Division of

Respondent

UPON AN APPLICATION made by the applicant on the day of 19 under section 1(6) of the Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971 for hearing at the sitting;

AND UPON READING the application due service of a copy thereof upon the respondent and also upon the following [government department] [*or* public [local] authority] (*specify government department or local or public authority by whom payment under section* 1(1) *of the Act of* 1971 *was made*) having been proved to the satisfaction of the Court;

AND UPON HEARING

IT APPEARING to the Court that certain moneys amounting to £ (*state amount*) were on the day of 19 due to the applicant [*or* to the spouse of the applicant] on account of

(*state reason or on what account*) being moneys due by or on behalf of or out of a fund administered by or on behalf of the said [department] [authority];

AND IT FURTHER APPEARING that the applicant was notified by post of payment by it on the day of 19 of £ [being part of those moneys] in [*or* towards] settlement of the sum of £ being a sum appearing to be due, it was alleged, by the applicant [*or* by the said his spouse] to the [same] [*or* to the] [department] [authority] [*or* to (*state other person to whom sum was alleged to be due*)] in respect of the following—

(*state nature of tax, duty, levy, rate, service, rent, purchase instalment, etc. which was alleged to be due by applicant or spouse*); [to the following extent—] which the applicant claims was not so due by him [*or* his spouse]

AND THE COURT HAVING EXAMINED into the matter of such application and having found that the sum so paid to the respondent and alleged to be due by the applicant at the time of the making of such payment was not due by him at all [*or* to the following extent—];

IT IS ORDERED that the sum of £ be paid [*or* credited] to the applicant by the respondent ;

AND IT IS FURTHER ORDERED that the applicant be paid by the respondent the sum of £ for the costs of this application and the sum of £ for witnesses' expenses.

[*To be added to this Form* ONLY *where order is for payment by government department—*

I hereby certify for the purposes of section 25 of the Crown Proceedings Act 1947 that the aforesaid sums are payable by the said department.]

Dated at this day of 19 .

Clerk of the Crown and peace.

(Seal)

Solicitor for the Applicant.

FORM 3 [Rule 3(8)]

Order dismissing application under section 1(6) of the Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971

[*Title as in Form 2*]

IT APPEARING to the Court that on the day of 19 the applicant caused an application under section 1(6) of the Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971 to be served in which he claimed that the payment under section 1(1) of that Act of £ on the day of 19 (being [part of] moneys due to the applicant [*or* his spouse] by the following [government department] [public [local] authority]—

(*name of department or authority*)
on account of by or on behalf of or out of a fund administered by or on its behalf) in or towards settlement of the sum of £ due to [that] department [*or* to the [department] [authority]] [*or* to (*state other person to whom sum alleged to be due*)] in respect of the following—

(*state nature of tax, duty, levy, rate, service, rent, purchase instalment, etc. which was alleged to be due by applicant or spouse*) should be paid [*or* credited] to him by the respondent and that the applicant has failed to prove that the last-mentioned sum was not so due at the time of the making of such payment;

IT IS THEREFORE ORDERED by the Court that the application be and the same is hereby dismissed and that the respondent do recover against the applicant the sum of £ for costs and the sum of £ for witnesses' expenses.

Dated at this day of 19 .

Clerk of the Crown and peace.

(Seal)

Solicitors for the Respondent.

FORM 4 [Rule 4(1)]

Application under section 9(1) of the Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971

IN THE COUNTY COURT/RECORDER'S COURT
for the Division of

IN THE MATTER OF the Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971;

AND IN THE MATTER OF the application for an order that the amount of a payment of a sum pursuant to an emergency enforcement order by the Master for the Enforcement of Judgments be paid or, as the case may be, credited to the applicant.

BETWEEN
of in the County
[Borough] of and the County Court
division of

Applicant

AND

having its office for the receipt of any
payments due by the applicant at
in the Division of

Respondent

WHEREAS on the day of 19 an emergency order of

(*insert nature of emergency enforcement order in terms of section* 4 *of the Act*) was made against
(*full names*) (hereinafter referred to as "the applicant") under the Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971 by the Master for the enforcement of judgments (or a designated officer in that behalf) ordering that the sum of £

which was claimed by the following [government department] [*or* public [local] authority] [*or* person], namely—

(*state full title of department, authority or person*) (hereinafter called "the respondent") in respect of the following—

(*state nature of tax, duty, levy, rate, service, rent, purchase instalment, etc. which was alleged to be due by applicant or spouse*); together with the sum of £ for the costs and expenses of enforcement under that Act (making £ in the aggregate) be recovered from the applicant;

AND WHEREAS the applicant having paid the said sum pursuant to the said emergency enforcement order claims that the said sum was not due by him at the time of the making of such payment, the applicant hereby applies to the above-named Court for an order that the amount of such payment or such part thereof as was not due at that time be paid or credited to him by the respondent.

It is intended that the said claim be entered by the clerk of the Crown and peace for the above-named Division at the sitting of the Court commencing on the day of 19 at the Courthouse at at o'clock a.m./p.m.

Dated this day of 19 .

Applicant/or
Solicitor for Applicant.

FORM 5 [Rule 4(2)]

Order under section 9(1) of the Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971

BY THE COUNTY COURT JUDGE/RECORDER for the County Court/Recorder's Court for the Division of ;

IN THE MATTER OF the Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971;

AND IN THE MATTER OF the application for an order that the amount of a payment of a sum pursuant to an emergency enforcement order by the Master for the enforcement of judgments be paid or, as the case may be, credited to the applicant.

BETWEEN

of in the County
[Borough] of and the county court
division of

Applicant

AND

having its office for the receipt of any
payments due by the applicant at
in the Division of

Respondent

UPON AN APPLICATION made by the applicant on the day of 19 under section 9(1) of the Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971 for hearing at the sittings;

AND UPON READING the application, due service of a copy thereof upon the respondent having been proved to the satisfaction of the Court;

AND UPON HEARING

IT APPEARING that on the day of 19 an emergency order of

(*insert nature of emergency enforcement order in terms of section 4 of the Act*) was made against the applicant under the Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971 by the Master for the enforcement of judgments (or a designated officer in that behalf) ordering that the sum of £ which was claimed by the respondent in respect of

(*state nature of tax, duty, levy, rate, service, rent, purchase instalment, etc. which was alleged to be due by applicant or his spouse*); together with the sum of £ for the costs and expenses of enforcement under that Act making £ in the aggregate be recovered from the applicant;

AND IT FURTHER APPEARING that the applicant having paid the said sum pursuant to the said emergency enforcement order claims that the said sum was not due by him [*or* his spouse] at the time of the making of such payment [to the following extent—];

AND THE COURT HAVING EXAMINED into the matter of such application and having found that the sum so paid to the respondent and alleged to be due by the applicant at the time of making of such payment was not due by him at all [*or* to the following extent—];

IT IS ORDERED that the sum of £ be paid [*or* credited] to the applicant by the respondent;

AND IT IS FURTHER ORDERED that the applicant be paid by the respondent the sum of £ for the costs of this application and the sum of £ for witnesses' expenses.

[*To be added to this Form* ONLY *where order is for payment by government department*—

I hereby certify for the purposes of section 25 of the Crown Proceedings Act 1947 that the aforesaid sums are payable by the said department.]

Dated at this day of 19 .

Clerk of the Crown and peace.

(Seal)

Solicitor for the Applicant.

FORM 6 [Rules 4(3)]

Order dismissing application under section 9(1) of the Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971

[*Title as in Form 5*]

IT APPEARING to the Court that on the day of 19 the applicant caused an application under section 9(1) of the Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971 to be served in which he/she claimed that, whereas an emergency order of

(*insert nature of emergency enforcement order in terms of section 4 of the Act*) was made against him/her under that Act by the Master of the enforcement of judgments (or a designated officer in that behalf) ordering that the sum of £ which was claimed by the respondent in respect of the following—

(*state nature of tax, duty, levy, rate, service, rent, purchase instalment, etc. which was alleged to be due by applicant or spouse*) together with the sum of £ for the costs and expenses of enforcement under that Act (making £ in the aggregate) be recovered from the applicant, and the applicant having paid the said sum pursuant to the said order, the amount of such payment or part thereof which was not due at the time of the making thereof, should be paid [*or* credited] to him/her by the respondent;

AND IT FURTHER APPEARING that the applicant has failed to prove that the sum was not so due at the time of the making of such payment;

IT IS THEREFORE ORDERED by the Court that the application be and the same is hereby dismissed and that the respondent do recover against the applicant the sum of £ for costs and the sum of £ for witnesses' expenses.

Dated at this day of 19 .

Clerk of the Crown and peace.

(Seal)

Solicitors for the Respondent.

EXPLANATORY NOTE

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

These Rules provide for the procedure and forms to be used in connection with applications under the Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971 to the county court for the payment or credit to an applicant of sums paid by a department or authority or ordered to be recovered from the applicant which it is alleged were not due at the time of payment (including payment pursuant to such order).