

1971. No. 180 [C]

**MAGISTRATES' COURTS RULES****Maintenance and Affiliation**

RULES, DATED 17TH JUNE 1971, MADE BY THE MINISTER OF HOME AFFAIRS UNDER SECTION 23 OF THE MAGISTRATES' COURTS ACT (NORTHERN IRELAND) 1964.

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 23 of the Magistrates' Courts Act (Northern Ireland) 1964(a), section 3(3) of the Maintenance and Affiliation Orders Act (Northern Ireland) 1970(b), and all other powers thereunto enabling, do hereby, upon the recommendation of the Magistrates' Courts Rules Committee and after consultation with the Lord Chief Justice, make the Rules hereinafter set forth.

Dated this 17th day of June 1971.

*Brian Faulkner,*  
Minister of Home Affairs  
for Northern Ireland.

*Citation*

1. These Rules shall be cited as the Magistrates' Courts (Maintenance and Affiliation) Rules (Northern Ireland) 1971:

*Interpretation*

2. In these Rules—

“the Act” means the Maintenance and Affiliation Orders Act (Northern Ireland) 1970;

“the 1965 Rules” means the Magistrates' Courts Rules (Northern Ireland) 1965(c).

*Order for return to payer of money received by collecting officer to be included in order for revocation etc. of order for periodical payment*

3. Where a court makes an order under section 3(1) of the Act upon the hearing of a complaint for the revocation, suspension, variation or discharge of an order for the periodical payment of money there shall be added to the order made in Form 66 in Schedule 1 to the 1965 Rules the paragraph prescribed by Form 1 in the Schedule to these Rules.

(a) 1964, c. 21 (N.I.).  
(c) S.R. & O. (N.I.) 1965, No. 206.

(b) 1970, c. 16 (N.I.).

*Procedure where collecting officer applies for return to payer of money received under order for periodical payment*

4.—(1) A collecting officer who intends to apply for an order under section 3(2) of the Act shall not less than one month before the hearing of the application—

- (a) serve notice thereof in Form 2 in the Schedule upon the person against whom the order for periodical payment was made (in these Rules referred to as “the payer”); and
  - (b) send a copy of such notice to the person named in the order as entitled to receive payments thereunder (in these Rules referred to as “the payee”) at the address of his or her last known place of abode or to which the last payment was sent at his or her request in accordance with Rule 88(2) of the 1965 Rules and, where appropriate, his or her last known place of business.
- (2) The said officer shall serve or send the notice—
- (a) in the same manner as a summons issued upon complaint in a civil matter may be served under Rule 11 of the 1965 Rules; or
  - (b) by sending it himself or by a member of his staff by means of first-class post in an envelope marked “confidential” using the recorded delivery service; or
  - (c) where the notice is addressed to a place outside Northern Ireland, or in any case where a resident magistrate sees fit to make a direction, in such manner as may be so directed.

(3) A resident magistrate may direct that a notice be sent to the payee at the address (or where appropriate the addresses) referred to in paragraph (1)(b) on more than one occasion and by one or more of the methods referred to in paragraph (2).

(4) An order under section 3(2) of the Act shall be in Form 3 in the Schedule and signed by the resident magistrate who made it.

*Evidence that the sum cannot be paid to person entitled thereto*

5. Testimony by a summons server or other person referred to in Rule 11(2) of the 1965 Rules that he was unable to serve the summons for the revocation, suspension, variation or discharge of the order for periodical payment or notice under Rule 4(1) or, where the notice was sent by post, the production of the envelope returned by the Post Office accompanied by the certificate of its non-delivery shall (in addition to any other relevant evidence adduced by the payer or by the clerk of petty sessions) be evidence (until the contrary is proved) that the sum unpaid to the payee cannot be paid at the time of the hearing of the complaint or application.

*Copy of order under section 3 of the Act to be sent to payee*

6.—(1) Where a court makes an order under section 3 of the Act of 1970, the clerk of petty sessions shall send a copy of the order to the payee by any of the methods applicable to the sending of a notice under Rule 4.

(2) Any expenses incurred by the clerk under paragraph (1) or paid by him to a summons server as service fees or for expenses in connection with an application under section 3(2) of the Act shall be deducted from any sum otherwise due to the payer.

## SCHEDULE

## FORM 1

**Order made under Section 3(1) of the Maintenance and Affiliation Orders Act (Northern Ireland) 1970**

Where such an order is made no costs shall be recoverable by the person named as Defendant in the order for periodical payment and the following paragraph shall be added to the order of revocation etc. in Form 66 in Schedule 1 to the Magistrates' Courts Rules (Northern Ireland) 1965:—

“And it is further ordered that \_\_\_\_\_, the collecting officer, do pay to the Defendant the sum of £ \_\_\_\_\_, being an amount received by him and which cannot be paid to the Complainant, less £ \_\_\_\_\_, being the costs incurred by the collecting officer in connection with the proceeding.”

FORM 2

Notice of Application by Collecting Officer under section 3(2) of the Maintenance and Affiliation Orders Act (Northern Ireland) 1970

MAGISTRATES' COURTS (MAINTENANCE AND AFFILIATION) RULES (NORTHERN IRELAND) 1971

(Rule 4(1))

of	Complainant	}	Petty Sessions District of
of	Defendant	}	County [Borough] of

TAKE NOTICE that I, the undersigned collecting officer for the above-named petty sessions district, intend to apply to a court of summary jurisdiction sitting at \_\_\_\_\_ for that district at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ for an order under section 3(2) of the Maintenance and Affiliation Orders Act (Northern Ireland) 1970 for the return of such sum as on that day cannot be paid to the above-named Complainant under an order of that court made under the [Illegitimate Children (Affiliation Orders) Act (Northern Ireland) 1924] [or the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945] (or state other enactment under which order for periodical payment was made) on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ and for a suspension of the said order.

The amounts to be paid under the last-mentioned order were as follows:—

and payment to the Complainant ceased on the \_\_\_\_\_ 19 \_\_\_\_\_ when his/her whereabouts became unknown.

The Complainant is hereby notified that upon receipt of this notice, he/she should forthwith communicate with me at the above-named courthouse [telephone number \_\_\_\_\_] giving me his/her present address.

Failure to do so may mean that the sums received by me from the Defendant and which have not been paid to the Complainant may be returned to the Defendant and that the order for periodical payment to the Complainant will be suspended.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

Collecting Officer.

FORM 3

Order under section 3(2) of the Maintenance and Affiliation Orders Act (Northern Ireland) 1970

MAGISTRATES' COURTS (MAINTENANCE AND AFFILIATION) RULES (NORTHERN IRELAND) 1971

(Rule 4(5))

of	Complainant	Petty Sessions District of
of	Defendant	County [Borough] of

WHEREAS the collecting officer for the above-named Petty Sessions District applied on notice dated for an order under section 3(2) of the Maintenance and Affiliation Orders Act (Northern Ireland) 1970;

It is hereby ordered that an order made against the above-named Defendant on the day of 19, whereby he/she was ordered to pay to the above-named Complainant by [weekly] [monthly] payments the following sums:—

(set out terms of order for periodical payment) under the [Illegitimate Children (Affiliation Orders) Act (Northern Ireland) 1924] [Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945] (or state other enactment under which order made) be suspended pending application for its discharge:

And it is further ordered that the sum of £ received by the said collecting officer (being [part of] a sum of £ received by him under an order made under section 95 of the Magistrates' Courts Act (Northern Ireland) 1964 which cannot be paid to the Complainant, less the sum of £ for the costs of the application) be paid to the Defendant.

Dated this day of 19

Resident Magistrate.

EXPLANATORY NOTE

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

These Rules provide for the procedure to be adopted where an order is sought or made under section 3 of the Maintenance and Affiliation Orders Act (Northern Ireland) 1970 for the return of money received by a collecting officer who is unable to pay it to a person named in an order made by a court of summary jurisdiction for periodical payment to that person.