

SUMMARY PROCEEDINGS, ENGLAND

The Maintenance Orders Act, 1950 (Summary Jurisdiction) Rules, 1950

1950 No. 2035 (L. 30)

<i>Made</i> - - - -	15th December, 1950
<i>Laid before Parliament</i>	15th December, 1950
<i>Coming into Operation</i>	1st January, 1951

I, William Allen, Viscount Jowitt, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by section 29 of the Summary Jurisdiction Act, 1879(a), as extended by section 5, subsections (1) and (3) of section 25 and subsection (1) of section 28 of the Maintenance Orders Act, 1950(b), as those provisions of the said Act of 1950 are adapted by subsection (2) of section 30 thereof, and of all other powers enabling me in this behalf, do hereby make the following Rules:—

PART I

Transfer of Wife Maintenance Proceedings

1.—(1) Where proceedings under section 4 of the Summary Jurisdiction (Married Women) Act, 1895(c), are begun against a defendant residing in Scotland or Northern Ireland in a court having jurisdiction by virtue of subsection (1) of section 1 of the Maintenance Orders Act, 1950, then, upon an application in that behalf made by the defendant in accordance with paragraph (2) of this Rule, a justice acting for the same place as that court may, if it appears that the case could be more conveniently heard in a court of summary jurisdiction having jurisdiction in the place where the parties last ordinarily resided together as man and wife, determine that the proceedings shall be removed into the last-mentioned court.

(2) An application under the foregoing paragraph may be made orally or in writing by or on behalf of the defendant and, unless the defendant applies in person, there shall be lodged with the clerk of the court in which the proceedings under the said section 4 have been begun a statutory declaration by the defendant which shall state the grounds upon which the application is made and the address of the defendant to which notices may be sent.

(3) The justice adjudicating on an application made under paragraph (1) of this Rule shall, unless he determines that the application shall be refused forthwith, afford to the complainant an opportunity of making representations, either orally or in writing, thereon.

(4) Where a justice determines under paragraph (1) of this Rule that the proceedings under the said section 4 shall be removed into another court of summary jurisdiction, he shall cause the clerk of the court in which the said proceedings have been begun to send to the clerk of that other court the complaint, a copy of the summons and any other relevant documents; and, on receipt thereof in that other court, the complaint shall be deemed to have been made in, and the summons to have been issued by, that other court, and any justice acting for the same place as that other court may

appoint a time and place for the hearing of the proceedings which, upon notice thereof being sent by registered post to the complainant and defendant, shall be deemed to have been the time and place appointed in the summons.

PART II

Procedure under Part II of the Act in relation to Maintenance Orders made by Courts of Summary Jurisdiction in England

2.—(1) An application for the registration in a court in Scotland or Northern Ireland under Part II of the Act of a maintenance order made by a court of summary jurisdiction in England may be made, either orally or in writing by or on behalf of the person entitled to the payments thereunder, to a justice acting for the same place as the court which made the order; and, unless the applicant appears in person, there shall be lodged with the clerk of the court which made the order a statutory declaration by the applicant which shall contain the particulars specified in paragraph (2) of this Rule.

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

- (a) the address of the person liable to make the payments under the order;
- (b) the reason why it is convenient that the order should be enforced in Scotland or Northern Ireland, as the case may be;
- (c) unless a certificate of arrears is lodged under section 20 of the Act, the amount of any arrears due under the order;
- (d) that the order is not already registered under Part II of the Act.

(3) If it appears to the justice dealing with an application made as aforesaid that the person liable to make the payments under the order resides in Scotland or Northern Ireland, and that it is convenient that the order should be enforceable there, he shall cause the clerk of the court which made the order to send to the sheriff-clerk of the sheriff court in Scotland, or, as the case may be, to the clerk of the court of summary jurisdiction in Northern Ireland, having jurisdiction in the place in which the person liable to make the payments under the order appears to be—

- (a) a certified copy of the order;
- (b) the certificate of arrears or statutory declaration (if any);
- (c) if no statutory declaration has been lodged, written notice of the address of the person liable to make the payments under the order.

(4) A memorandum of any proceedings taken under the foregoing provisions of this Rule for the registration of a maintenance order in a court in Scotland or Northern Ireland shall be entered in the register kept pursuant to section 22 of the Act of 1879; and on the receipt by the clerk of the court which made the order (who shall be the prescribed officer of that court for the purposes of subsection (4) of section 17 of the Act) of notice under the said subsection (4) of the registration of the order he shall cause particulars of the notice to be registered in his court by means of a memorandum entered and signed by him in the register kept pursuant to the said section 22.

3.—(1) An application to a court of summary jurisdiction in England under subsection (5) of section 22 of the Act to adduce evidence in connection with a maintenance order made by that court and registered in a court in Scotland or Northern Ireland 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 the last foregoing paragraph shall cause a transcript or summary of any evidence taken therein to be sent to the clerk of the court in which the order is registered.

(3) The clerk of the court of summary jurisdiction in England by which a maintenance order registered in a court in Scotland or Northern Ireland was made shall be the prescribed officer to whom any transcript or summary of evidence adduced in the court in Scotland or Northern Ireland under the said subsection (5) shall be sent.

4.—(1) Where a maintenance order made by a court of summary jurisdiction in England and registered in a court in Scotland or Northern Ireland is varied under subsection (1) of section 22 of the Act by the court in which it is registered, the clerk of the court which made the order shall be the prescribed officer to whom, under subsection (1) of section 23 of the Act, notice of the variation shall be given; and on receipt of such notice he shall cause particulars of the same to be registered in his court by means of a memorandum entered and signed by him in the register kept pursuant to section 22 of the Act of 1879.

(2) Where a maintenance order made by a court of summary jurisdiction in England and registered in a court in Scotland or Northern Ireland is discharged or varied by the court which made it, the clerk of that court shall give notice of the discharge or variation to the clerk of the court in which the order is registered by sending to him a certified copy of the order discharging or varying the maintenance order.

5.—(1) An application under subsection (2) of section 24 of the Act for the cancellation of the registration of a maintenance order made by a court of summary jurisdiction in England and registered in a court in Scotland or Northern Ireland may be made, either orally or in writing by or on behalf of the person liable to make the payments thereunder, to a justice acting for the same place as the court which made the order; and, unless the applicant appears in person, there shall be lodged with the clerk of the court which made the order a statutory declaration by the applicant stating the facts upon which he relies in support of the application.

(2) If it appears to the justice dealing with an application made as aforesaid that the person liable to make the payments under the order has ceased to reside in Scotland or Northern Ireland, as the case may be, he shall cause the clerk of the court which made the order to send notice to that effect to the clerk of the court in which the order is registered.

6. On the cancellation under section 24 of the Act of the registration in a court in Scotland or Northern Ireland of a maintenance order made by a court of summary jurisdiction in England, the clerk of the last-mentioned court shall be the prescribed officer to whom, under subsection (3) of the said section 24, notice of the cancellation shall be given; and on receipt of such notice he shall cause particulars of the same to be registered in his court by means of a memorandum entered and signed by him in the register kept pursuant to section 22 of the Act of 1879.

PART III

Procedure in Courts of Summary Jurisdiction in England under Part II of the Act in relation to Maintenance Orders made by Courts in Scotland or Northern Ireland

7. The clerk of the court of summary jurisdiction in England specified in paragraph (b) of subsection (3) of section 17 of the Act shall be the prescribed officer for the purpose of subsection (2) of the said section 17, and on

receiving, in pursuance of that section, a certified copy of a maintenance order made by a court in Scotland or Northern Ireland he shall cause the order to be registered in his court by means of a memorandum entered and signed by him in the register kept pursuant to section 22 of the Act of 1879, and shall send written notice to the clerk of the court by which the order was made that it has been duly registered.

8. An application for the variation under subsection (1) of section 22 of the Act of the rate of the payments under a maintenance order registered under Part II of the Act in a court of summary jurisdiction in England shall be made by way of complaint in accordance with the Summary Jurisdiction Acts, and thereupon a summons may be issued directed to any person whom the justice to whom the complaint is made may consider proper to answer the same.

9.—(1) An application to a court of summary jurisdiction in England under subsection (5) of section 22 of the Act to adduce evidence in connection with a maintenance order registered therein under Part II of the Act 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 the last foregoing paragraph shall cause a transcript or summary of any evidence taken therein to be sent to the clerk of the court in Scotland or Northern Ireland by which the order was made.

(3) The clerk of the court of summary jurisdiction in England in which a maintenance order is registered under Part II of the Act shall be the prescribed officer to whom any transcript or summary of evidence adduced under the said subsection (5) in the court in Scotland or Northern Ireland by which the order was made shall be sent.

10.—(1) Where a maintenance order registered under Part II of the Act in a court of summary jurisdiction in England is varied under subsection (1) of section 22 of the Act by that court, the clerk of the court shall give notice of the variation to the clerk of the court in Scotland or Northern Ireland by which the order was made by sending to him a certified copy of the order of variation.

(2) Where a maintenance order registered under Part II of the Act in a court of summary jurisdiction in England is discharged or varied by any other court, the clerk of the court in which it is registered shall be the prescribed officer to whom under subsection (2) of section 23 of the Act notice of the discharge or variation shall be given; and on receipt of a certified copy of an order discharging or varying the registered order, he shall cause particulars of the same to be registered in his court by means of a memorandum entered and signed by him in the register kept pursuant to section 22 of the Act of 1879.

11.—(1) An application under subsection (1) of section 24 of the Act for the cancellation of the registration of a maintenance order registered under Part II of the Act in a court of summary jurisdiction in England shall be made to the clerk of that court by lodging with him a written application in that behalf (which shall state the date of the registration of the order) together with a copy of the order the registration of which it is sought to cancel.

(2) Where, in pursuance of an application made as aforesaid, the clerk cancels the registration of the maintenance order he shall send written notice of the cancellation to the clerk of the court by which the order was made.

12. Where a maintenance order is registered under Part II of the Act in a court of summary jurisdiction in England, the clerk of that court shall be the prescribed officer to whom notice shall be sent under subsection (2) of section 24 of the Act that the person liable to make the payments under the order has ceased to reside in England ; and on receipt of such notice the clerk shall cancel the registration of the order and shall send written notice of the cancellation to the clerk of the court by which the order was made.

PART IV

Forms

13.—(1) A notice under subsection (4) of section 19 of the Act that the payments under a maintenance order have, on its registration under Part II of the Act in a court of summary jurisdiction in England, become payable through or to any officer or person shall be in the form number 1 in the Schedule to these Rules, or any form to the like effect, and shall be sent by registered post by the clerk of that court to the person liable to make the payments under the order at his last known address.

(2) A notice under the said subsection (4) that the payments under a maintenance order made by a court of summary jurisdiction in England have, on its registration under Part II of the Act in a court in Scotland or Northern Ireland, ceased to be payable through or to any officer or person shall be in the form number 2 in the Schedule to these Rules, or any form to the like effect, and shall be sent by registered post by the clerk of the first-mentioned court to the person liable to make the payments under the order at his last known address.

14. A certificate lodged under subsection (1) of section 20 of the Act as to the amount of any arrears due under a maintenance order made by a court of summary jurisdiction in England shall be in the form number 3 in the Schedule to these Rules, or any form to the like effect.

15. A notice under subsection (5) of section 24 of the Act of the cancellation of the registration under Part II of the Act of a maintenance order in a court of summary jurisdiction in England shall be in the form number 4 in the Schedule to these Rules, or any form to the like effect, and shall be sent by registered post by the clerk of that court to the person liable to make the payments under the order at his last known address.

PART V

Interpretation and Commencement

16.—(1) In Parts II to V of these Rules, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them:—

“ maintenance order ” has the same meaning as in Part II of the Act ;

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

“ the Act of 1879 ” means the Summary Jurisdiction Act, 1879 ;

and other expressions used in these Rules have the meanings assigned to them in section 28 of the Act.

(2) References in Part III of these Rules to the clerk of the court by which the order was made shall be construed, in relation to a maintenance order made by a county court in Northern Ireland, as references to the Clerk of the Crown and Peace for the appropriate county in Northern Ireland.

(3) The Interpretation Act, 1889(a), shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

17. These Rules may be cited as the Maintenance Orders Act, 1950 (Summary Jurisdiction) Rules, 1950, and shall come into operation on the first day of January, 1951.

Dated the fifteenth day of December, 1950.

Jowitt, C.

Rules 13 to 15

SCHEDULE

FORMS

1

Notice to person liable to make payments that sums payable under a maintenance order registered in a court of summary jurisdiction in England have become payable through collecting officer. (Maintenance Orders Act, 1950, s. 19 (4).)

In the [county of . Petty Sessional Division of].
Court of Summary Jurisdiction sitting at

To A.B., of

You are hereby given notice that the sums payable by you under (*insert particulars of maintenance order*) made on the day of 19 , by (*state court in Scotland or Northern Ireland by which order was made*), and registered in this Court under Part II of the Maintenance Orders Act, 1950, have, under an order of this Court dated the day of , 19 , become payable through [*or to*] the Collecting Officer of this Court [*or the Court of Summary Jurisdiction sitting at*].

Payments under the order (including payments in respect of any sums due at the date of the receipt by you of this notice) should henceforth be sent to me [*or to the said Collecting Officer*] at (*state address*).

Dated the day of , 19 .

A.B.,

Clerk [*and Collecting Officer*] of the
Court of Summary Jurisdiction sitting
at

2

Notice to person liable to make payments that sums payable under a maintenance order made by a court of summary jurisdiction in England have ceased to be payable to or through any officer or person. (Maintenance Orders Act, 1950, s. 19 (4).)

In the [county of . Petty Sessional Division of].
Court of Summary Jurisdiction sitting at

To A.B., of

You are hereby given notice that the sums payable by you under (*insert particulars of maintenance order*) made on the day of 19 , by this Court have, by reason of the registration of the said order in (*state court in Scotland or Northern Ireland in which order is registered*), ceased to be payable through [*or to*] (*state officer or person through or to whom payments have hitherto been required to be made*).

Payments under the order (including payments in respect of any sums due at the date of the receipt by you of this notice) should henceforth be paid to (*state name and address of the person entitled to payments under the order*) [, unless you receive, or have meanwhile received, notice from the clerk of the said court in Northern Ireland that they are to be paid to any other person].

Dated the day of , 19 .

A.B.,

Clerk [and Collecting Officer] of the
Court of Summary Jurisdiction sitting
at

3

Certificate of Arrears. (Maintenance Orders Act, 1950, s. 20 (1).)

I hereby certify that the arrears due at the date of this certificate under (*insert particulars of maintenance order*) made on the day of , 19 , by the Court of Summary Jurisdiction sitting at , the payments whereunder are at present required to be made to [or through] me, amount to

Dated the day of , 19 .

A.B.,

Collecting Officer of the Court
of Summary Jurisdiction sitting
at

4

Notice of cancellation of registration of maintenance order in court of summary jurisdiction in England. (Maintenance Orders Act, 1950, s. 24 (5).)

In the [county of . Petty Sessional Division of].
Court of Summary Jurisdiction sitting at .
To A.B., of .

You are hereby given notice that the registration in this Court under Part II of the Maintenance Orders Act, 1950, of the (*insert particulars of maintenance order*) made on the day of , 19 , by (*state court in Scotland or Northern Ireland by which order was made*) has been cancelled.

Sums payable by you under the said order have, by reason of the cancellation of the registration of the said order, ceased to be payable through [or to] (*state officer or person through or to whom payments have hitherto been required to be made*).

Payments under the order (including payments in respect of any sums due at the date of the receipt by you of this notice) should henceforth be paid to (*state name and address of person entitled to payments under the order*) [, unless you receive, or have meanwhile received, notice from the clerk of a competent court that they are to be paid to any other person].

Dated the day of , 19 .

A.B.,

Clerk [and Collecting Officer] of the
Court of Summary Jurisdiction sitting
at