
STATUTORY INSTRUMENTS

1959 No. 3

The Magistrates' Courts (Maintenance Orders Act, 1958) Rules 1959

PART I

PROCEDURE UNDER PART I OF THE ACT

Applications for registration under section 2 (3) of the Act

1. An application for the registration in the High Court of a magistrates' court order need not be in writing or on oath.

Manner in which magistrates' court is to be satisfied as to various matters

2.—(1) On an application for the registration in the High Court of a magistrates' court order, the court shall be satisfied in the manner provided by paragraph (4) of this Rule as to the amount due and unpaid under the order at the time the application was made.

(2) Where such an application as aforesaid is granted, the court shall be satisfied in the manner provided by paragraph (4) of this Rule that no process for the enforcement of the order issued before the grant of the application remains in force.

(3) Where the court receives a notice given under section five of the Act (which relates to the cancellation of registration), the court shall be satisfied in the manner provided by paragraph (4) of this Rule that no process for the enforcement of the order issued before the giving of the notice remains in force and that no proceedings for the variation of the order are pending in a magistrates' court.

(4) For the purpose of satisfying the court as to the matters referred to in this Rule—

- (a) if the person through or to whom payments are ordered to be made is the clerk of a magistrates' court, there shall be produced a certificate in that behalf purporting to be signed by the clerk in the form numbered 1, 2 or 3, as the case may be, in the Schedule to these Rules;
- (b) in any other case, there shall be produced a document purporting to be a statutory declaration in that behalf in the form numbered 4, 5 or 6, as the case may be, in the Schedule to these Rules.

Copy of magistrates' court order sent to the High Court for registration

3. Where an application for the registration of a magistrates' court order is granted and the court is satisfied that no process issued for the enforcement of the order before the grant of the application remains in force, the court shall, in accordance with paragraph (c) of subsection (4) of section two of the Act, cause the clerk to send a copy of the order, certified to be a true copy thereof in the form numbered 7 in the Schedule to these Rules—

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- (a) in the case of an order made under the Guardianship of Infants Act, 1925, to the Senior Master of the High Court (Queen's Bench Division);
- (b) in the case of an order made under the Affiliation Proceedings Act, 1957, under section forty-three or forty-four of the National Assistance Act, 1948, under section twenty-six of the Children Act, 1948, or under section eighty-seven of the Children and Young Persons Act, 1933, to the Senior Master of the High Court (Queen's Bench Division) or to such district registrar as may be specified by the applicant;
- (c) in any other case, to the Senior Registrar of the Principal Probate Registry of the High Court or to such district registrar of a Registry in which proceedings can be taken under the Matrimonial Causes Rules, 1957, as may be specified by the applicant.

Registration of High Court or county court order in a magistrates' court

4. Where a clerk of a magistrates' court in accordance with paragraph (b) of subsection (2) of section two of the Act receives from an officer of the High Court or the registrar of a county court a certified copy of a High Court or county court order, he shall cause the order to be registered in his court by means of a memorandum entered and signed by him in the register and shall send written notice to that officer of the High Court or the registrar of the county court, as the case may be, that it has been duly registered.

Notices as respects payments through a clerk of a magistrates' court

5.—(1) A notice under subsection (4) of section nineteen of the Maintenance Orders Act, 1950, as applied by subsection (6) of section two of the Act, that the payments under a High Court or county court order have, on its registration in a magistrates' court, become payable through the clerk of a magistrates' court shall be given by the clerk of the court of registration in the form numbered 8 in the Schedule to these Rules.

(2) A notice under the said subsection (4), as so applied, that the payments under a magistrates' court order have, on its registration in the High Court, ceased to be payable to a clerk to a magistrates' court shall be given by the clerk of the original court and shall be in the form numbered 9 in the Schedule to these Rules and, where payments have been payable through a clerk other than the clerk of the original court, he shall send a copy of the said notice to that other clerk.

(3) A notice under subsection (5) of section five of the Act that the registration in a magistrates' court of a High Court or county court order has been cancelled and that payments thereunder have ceased to be payable through a clerk of a magistrates' court shall be given by the clerk of the court of registration and shall be in the form numbered 10 in the Schedule to these Rules and, where payments have been payable through a clerk other than the clerk of the court of registration, he shall send a copy of the said notice to that other clerk.

(4) A notice given in accordance with the preceding provisions of this Rule shall be delivered to the person liable to make payments under the order to which the notice relates or sent by post to that person at his last known address.

Remission to the original court of application for variation of registered maintenance order

6. An order under subsection (4) of section four of the Act remitting an application for the variation of a High Court or county court order registered in a magistrates' court to the original court shall be in the form numbered 11 in the Schedule to these Rules.

Notice of variation, remission, discharge or cancellation of registration by a magistrates' court of a registered order

7.—(1) Where a High Court or county court order registered in a magistrates' court is, under subsection (2) of section four of the Act, varied by a magistrates' court, the clerk of the last-mentioned court shall give notice of the variation to the High Court or county court, as the case may be.

(2) Where an application for the variation of a High Court or county court order registered in a magistrates' court is, under subsection (4) of section four of the Act, remitted to the original court by a magistrates' court, the clerk of the last-mentioned court shall give notice of the remission to the High Court or county court, as the case may be.

(3) Where the registration of a High Court or county court order in a magistrates' court is, under subsection (4) of section five of the Act, cancelled by the court of registration, the clerk of the last-mentioned court shall give notice of cancellation to the High Court or county court, as the case may be, stating, if such be the case, that the cancellation is in consequence of a notice given under subsection (1) of the said section five.

(4) Where a magistrates' court order registered in the High Court is varied or discharged by a magistrates' court, the clerk of the last-mentioned court shall give notice of the variation or discharge, as the case may be, to the High Court.

(5) Notice under the preceding provisions of this Rule shall be given by sending to the appropriate officer of the High Court or the registrar of the county court, as the case may be, a copy of the order of variation, remission, cancellation or discharge, as the case may be, certified to be a true copy thereof by the clerk of the magistrates' court and marked, in the case of a High Court maintenance order, with the title and cause number, if any, and in the case of a county court maintenance order, with the plaint or application number.

(6) For the purposes of the preceding paragraph the appropriate officer of the High Court shall be—

- (a) in relation to a High Court order registered in a magistrates' court, the officer to whom notice of registration was given under Rule 4 of these Rules;
- (b) in relation to a magistrates' court order registered in the High Court, the officer to whom a copy of the order was sent under Rule 3 of these Rules.

(7) Where a magistrates' court order registered in the High Court is discharged by a magistrates' court and it appears to the last-mentioned court that no arrears remain to be recovered, notice under subsection (3) of section five of the Act shall be given by an endorsement in the form numbered 12 in the Schedule to these Rules on the certified copy of the order of discharge referred to in paragraph (5) of this Rule.

Notices received from the High Court or a county court or from a person entitled to payments

8. Where any notice is received—

- (a) of the registration in the High Court of a magistrates' court order;
- (b) of the discharge or variation by the High Court or a county court of a High Court or county court order registered in a magistrates' court;
- (c) under subsection (1) or (2) of section five of the Act (which relates to the cancellation of registration);

the clerk of the magistrates' court 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 and, in the case of a notice under subsection (1) or (2) of section five of the Act, shall cause the person in possession of any

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warrant of commitment, issued but not executed, for the enforcement of the order to be informed of the giving of the notice.

Jurisdiction as respects complaints for variation of High Court maintenance orders

9. Rule 34 of the Magistrates' Courts Rules, 1952, (which relates to jurisdiction to hear certain complaints), shall apply to a complaint for the variation of a High Court order registered in a magistrates' court as if the order were an affiliation order made by the court of registration and as if in paragraph (4) of the said Rule for the words "shall cause" there were substituted the words "may cause".