1978 No. 376

MAGISTRATES' COURTS

Magistrates' Courts (Blood Tests) Rules (Northern Ireland) 1978

Made . . . . . 13*th December* 1978
Coming into operation . . . 1*st March* 1979
To be laid before Parliament

The Secretary of State in pursuance of section 23 of the Magistrates' Courts Act (Northern Ireland) 1964(a), on the recommendation 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 (Blood Tests) Rules (Northern Ireland) 1978 and shall come into operation on 1st March 1979.

Interpretation

2.—(1) In these rules save where the context otherwise requires:—

"the Order" means the Family Law Reform (Northern Ireland) Order 1977(b);

"the applicant" means an applicant for a direction;

"blood samples" and "blood tests" have the same meaning as in Part III of the Order;

"complaint" means a complaint in the hearing of which the paternity of any person falls to be determined;

"court" means a court of summary jurisdiction or a resident magistrate sitting out of petty sessions;

"direction" means a direction given in accordance with the provisions of article 8(1) of the Order;

"direction form" means Form 1 in Schedule 1 to the Blood Tests (Evidence of Paternity) Regulations (Northern Ireland) 1978(c);

"photograph" means a recent photograph, taken full face without a hat, of the size required for insertion in a passport, that is to say, not exceeding 6 centimetres by 6 centimetres;

"proceedings" means any proceedings in a court of summary jurisdiction for the hearing of a complaint;

"sampler" means a registered medical practitioner appointed by the Secretary of State under regulation 3 of the Blood Tests (Evidence of Paternity) Regulations (Northern Ireland) 1978 and nominated in a direction form to take blood samples for the purpose of the direction;

"subject" means a person from whom a court directs that blood samples shall be taken;

(a) 1964 c. 21 (N.I.) as modified by S.I. 1973/2163 (1973 III, p. 7541)
(b) S.I. 1977/1250 (N.I. 17)
(c) S.R. 1978 No. 379

"tester" means a person appointed by the Secretary of State to carry out blood tests.

(2) Any reference in these rules to a form other than a direction form is a reference to a form contained in the Schedule.

(3) Any reference in these rules to a person who is under a disability is a reference to a person who has not attained the age of 16 years or who is suffering from a mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961(**d**) and is incapable of understanding the nature and purpose of blood tests.

Notice of Explanation to be served

3. Form 1 shall be served on any person who makes a complaint under the Illegitimate Children (Affiliation Orders) Act (Northern Ireland) 1924(**e**) or any other complaint in the hearing of which it appears to the clerk of petty sessions that the paternity of any person falls to be determined and on any person who is served with a summons to answer such a complaint.

Application for direction before hearing

4. A party to any proceedings may apply in writing to the court for a direction at any time after the making of the complaint, and, on receipt of the application, the clerk of petty sessions shall inform the other party to the proceedings that the application has been made and that he may consent to the court giving a direction before the commencement of the hearing of the complaint, and that if he does not so consent the application will be determined by the court in the presence of the parties.

Direction in absence of parties

5. A court may give a direction in the absence of the applicant and the other party to the proceedings if it appears to the court that that other party, or, where he is under a disability, the person having the care and control of him has consented to the giving of the direction.

Direction when subject under disability

6. The court, when giving a direction, shall name the person appearing to the court to have the care and control of any subject who is under a disability.

Form of direction and service

7. A direction shall be in Form 2 and a copy of it shall be served on every subject or, where the subject is under a disability, on the person named in the direction as having the care and control of him.

Applicant for direction to pay fees

8. Within 14 days, or such longer period as the court may order, of the giving of the direction, the applicant, unless he has been granted legal aid under the Legal Aid and Advice Act (Northern Ireland) 1965(**f**) shall pay to the clerk of petty sessions such sum as appears to the clerk to be sufficient to pay the fees of the sampler and tester in respect of taking and testing samples for the purpose of giving effect to the direction.

(**d**) 1961 c. 15 (N.I.)
(**e**) 1924 c. 27 (N.I.)
(**f**) 1965 c. 8 (N.I.)

Photograph of subjects to be furnished to clerk

9. Within 14 days, or such longer period as the court may order, of service of a copy of the direction, each subject who is not under a disability and the person having the care and control of a subject who is under a disability but has attained the age of 12 months by the date of the direction shall furnish to the clerk of petty sessions a photograph of the subject:

Provided that this requirement shall not apply in the case of a subject who is suffering from a mental disorder if the medical practitioner in whose care he is certifies that a photograph cannot or should not be taken of the subject.

Court to be informed of failure to comply with rule 8 *or* 9

10.—(1) If any person fails to comply with the provisions of rule 8 or 9 the clerk of petty sessions shall not take any further steps required of him by these rules without first informing the court and receiving its instructions to do so.

(2) If the court is informed by the clerk of petty sessions in accordance with paragraph (1), it may vary or revoke the direction or may make such order as to the hearing or the continuation of the hearing of the complaint as appears to the court to be appropriate in all the circumstances and shall cause the parties to be notified.

Clerk to arrange for sampling and testing

11. Where a court has given a direction and the clerk of petty sessions is satisfied that the requirements of rule 8 (where applicable) have been met and he is in possession of a photograph (or a certificate under the proviso to rule 9) in respect of each subject who has attained the age of 12 months by the date of the direction, the clerk shall arrange for blood samples to be taken and for blood tests to be made on those samples, or shall arrange for the parties' solicitors to make the arrangement on his behalf.

Notice of arrangements for sampling

12. When arrangements have been made for the taking of samples, the clerk of petty sessions shall—

(*a*) give notice in Form 3 to each subject or, where a subject is under a disability, the person having the care and control of the subject, of the arrangements made for the taking of samples from the subject and shall require him, or where he is under a disability, the person having the care and control of him, to comply with the arrangements;

(*b*) complete Parts I and II of a direction form in respect of each subject and send the direction form to the sampler who is to take the blood sample from that subject.

Procedure where direction forms returned by sampler or tester

13. When a direction form is returned to the court by a sampler, or by a tester, unless it is accompanied by a report under article 8(2) of the Order, the court shall cause a copy of the form to be served on each party to the proceedings and shall consider any entries made on the direction form by the sampler, tester or any other person and may vary or revoke the direction or make such an order as to the hearing or the continuation of the hearing of the complaint as appears to the court to be appropriate in all the circumstances.

Service of copies of report of tester

14. On receipt of the report by the tester under article 8(2) of the Order, the clerk of petty sessions shall serve a copy of the report on each of the parties to the proceedings.

Sum paid under rule 8 to be used in payment of fees

15. The clerk of petty sessions shall use any sum paid to him under rule 8 in paying the fees due to the sampler and tester and shall repay the balance, if any, to the applicant.

Service of documents

16. Service of any document required to be served by these rules may be effected by delivering it to the person upon whom it is required to be served or to his solicitor or by sending it by the recorded delivery service to him at his last known or usual place of abode or to his solicitor at his office.

Roy Mason
One of Her Majesty's Principal Secretaries of State

Northern Ireland Office
13th December 1978

SCHEDULE

FORM 1

FAMILY LAW REFORM (NORTHERN IRELAND) ORDER 1977

An explanation of the use of blood tests in paternity disputes (M.C. (B.T.) Rules (N.I.) 1978 r. 3)

Introduction

In a case where there is a dispute about the paternity of a child blood tests may provide important evidence and courts now have power to order their use if a party in a case asks for them. This leaflet explains about blood tests and how to get them.

Evidence from blood tests

A small amount of blood is taken from the mother, her child and the man said to be the child's father. Tests upon this blood can show that the man is not the father of the child. They cannot definitely prove that a man is the father, but they can in some cases show that he is likely to be the father. Giving blood for this purpose is simple and not harmful to the health.

Applying for blood tests

Any party in a case where the paternity of a child is disputed can apply for blood tests. If both parties agree, the court may order tests before the case is heard. If one party does not agree, the case must come before the court which will then decide whether or not to order tests.

Refusal to comply with an order

No-one can be forced to give a blood sample. But if a person does not comply with the court's order, the court will consider his reason, and if it does not think he has good reason for not complying, it can draw its own conclusions. One of these may be that the person knew that the result of tests might not support his case.

Arrangements for giving blood

When blood tests are ordered, the parties (and the person looking after the child, if not one of the parties) will be told to attend a named doctor at a stated time and place. Anyone who cannot keep the appointment must tell the doctor immediately so that another appointment can be made. Failure to do this may be taken as a refusal to undergo tests. It is important that, where possible, the three samples of blood are taken by the same doctor at the same time. Distance may make this impossible, but if the mother, child and man alleged to be the father are living in the same area they will normally have to attend the same doctor on the same day. Separate appointments will, of course, be made for the mother and the man alleged to be the father.

Identification of parties

It is essential that the right people are tested. For this purpose a passport size photograph (i.e. not exceeding 6 centimetres by 6 centimetres) must be provided, of all parties over 12 months old. A child under 12 months is identified by the person who is looking after it. Giving a blood sample instead of someone else or allowing the wrong child to be tested is a serious offence. The penalty is a fine of up to £400 or imprisonment for up to two years. The blood test itself can show that the wrong person has been tested.

Cost of blood tests

The cost of blood tests may be as much as £60 or more. This must be paid by the person asking for the tests before they will be carried out. However, a party to a case where the paternity of a child is disputed may be entitled to legal aid, and if he or she is, the cost of the test may be paid by the legal aid fund. Anyone involved in this type of case should consult a solicitor about this possibility.

Effect of blood transfusion

Blood transfusion within 3 months of the test can effect its value. If a person has had a recent transfusion, his solicitor or the clerk of the court should be informed before the court orders tests.

Reports

When tests have been carried out, the tester will send a written report to the court and a copy of this will be sent to the parties to the case.

Further information

Further information about the procedure may be obtained from a solicitor or from the clerk of the court which is dealing with the case.

FORM 2

FAMILY LAW REFORM (NORTHERN IRELAND) ORDER 1977

Blood test direction (M.C. (B.T.) Rules (N.I.) 1978 r. 7)

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

By virtue of the power conferred upon the court by article 8(1) of the Family Law Reform (Northern Ireland) Order 1977 and on the application of the court hereby directs that blood tests be used to ascertain whether such tests show that is or is not excluded from being the father of and that for that purpose blood samples shall be taken from:—

And it is further ordered that such samples shall be taken before the day of 19 .

By order of the court,

.....

Clerk of Petty Sessions

Address .....

Dated this day of 19 .

The person appearing to the court to have the care and control of being a person who [has not attained the age of sixteen years] [is suffering from a mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961 and is incapable of understanding the nature and purpose of blood tests] is .

Note: Under rule 9 of the Magistrates' Courts (Blood Tests) Rules (Northern Ireland) 1978 within 14 days, or such longer period as the court may order, of service of a copy of the direction, each subject who is not under a disability and the person having care and control of a subject who is under a disability but has attained the age of 12 months by the date of the direction must furnish to the clerk of petty sessions a photograph (not exceeding 6 centimetres by 6 centimetres and of the size required for insertion in a passport) of the subject.

FORM 3

FAMILY LAW REFORM (NORTHERN IRELAND) ORDER 1977

Requirement to give blood sample (M.C. (B.T.) Rules (N.I.) 1978 r. 12)

To (*Name of subject/person having care and control of subject*).

Further to the direction for the carrying out of blood tests given on 19 by the court of summary jurisdiction sitting at , a copy of which has been served on you, you are hereby required, for the purpose of giving effect to the direction, to attend on (*insert title and name of sampler*) at (*insert address at which sample is to be taken*) at a.m./p.m. on 19 for a blood sample to be taken from you.

.....
Clerk of Petty Sessions

Address .....

Note: Any travelling or other expenses reasonably incurred in complying with this requirement are payable in the first instance by the person who applied to the court for the direction, namely
whose solicitors are of

The court has power to deal with these expenses when it makes an order for costs at the end of the proceedings.

EXPLANATORY NOTE

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

Part III of the Family Law Reform (Northern Ireland) Order 1977 (which comes into force on 1st March 1979 makes provisions for the use of blood tests in determining paternity in civil proceedings. These rules prescribe the practice and procedure to be adopted in magistrates' courts in civil proceedings in which the paternity of any person falls to be determined.