STATUTORY INSTRUMENTS

1980 No. 1583 (L.21)

MAGISTRATES' COURTS

PROCEDURE

The Magistrates' Courts (Amendment) (No. 2) Rules 1980

Made - - - -	17*th October* 1980
Laid before Parliament	28*th October* 1980
Coming into Operation	1*st February* 1981

The Lord Chancellor, in exercise of the power conferred on him by section 15 of the Justices of the Peace Act 1949(a), after consultation with the Rule Committee appointed under the said section 15, hereby makes the following Rules:—

1. These Rules may be cited as the Magistrates' Courts (Amendment) (No. 2) Rules 1980 and shall come into operation on 1st February 1981.

2. The Magistrates' Courts Rules 1968(b) shall have effect subject to the amendments specified in the Schedule to these Rules:

Provided that the said amendments shall not have effect in relation to any such application or order as is referred to in paragraph 1, 2 or 3 of Schedule 1 to the Domestic Proceedings and Magistrates' Courts Act 1978(c) (transitional provisions) and, accordingly, the said Rules of 1968 shall have effect in relation to any such application or order as if these Rules had not been made.

Dated 17th October 1980. *Hailsham of St. Marylebone*, C.

SCHEDULE *Rule 2*

AMENDMENTS TO MAGISTRATES' COURTS RULES 1968

1. Rule 18A shall be omitted.

2. After rule 31 there shall be inserted the following heading and rules:—

"DOMESTIC PROCEEDINGS

Reasons for decisions in certain domestic proceedings to be recorded

31A.—(1) Where a magistrates' court makes a decision in any domestic proceedings to which this rule applies, the court shall cause the reasons for its decision to be recorded in writing.

(2) Any record of a decision kept in pursuance of this rule shall indicate the names of the justices constituting the court by which the decision was made.

(a) 1949 c. 101, as extended by section 122 of the Magistrates' Courts Act 1952 (c. 55), sections 24(2), 84 and 85 of the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22) and section 41(2A) of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (c. 18) (as inserted by the said Act of 1978, section 89(2) and Schedule 2, paragraph 36).

(b) S.I. 1968/1920; relevant amending instruments are S.I. 1970/1791; 1979/1221.

(c) 1978 c. 22.

(3) Where a magistrates' court makes a decision in any proceedings for which the reasons are required by this rule to be recorded, the court shall draw up the terms of the record in consultation with the clerk of the court or any person employed to assist him as a clerk in court in the proceedings, and shall do so before the decision is announced.

(4) This rule applies to the following domestic proceedings, that is to say:—

(*a*) proceedings on an application for an order under section 2 or 7 of the Domestic Proceedings and Magistrates' Courts Act 1978 where the court, in pursuance of section 3(1)(*g*) of that Act, has regard to the conduct of each of the parties in relation to the marriage and in consequence determines that the amount of any payment to be made by the respondent should be less than it would have ordered apart from such conduct;

(*b*) proceedings where—

(i) an order regarding the legal custody of or access to a child is made under section 8(2) or 14 of the said Act of 1978 or section 9, 10, 11 or 14A of the Guardianship of Minors Act 1971**(a)**; or

(ii) any order made as aforesaid is varied,

and a party objects to any of the terms of the order or variation.

Copies of records to be supplied in connection with appeals

31B. The clerk of a magistrates' court shall supply a copy of the record of the reasons for a decision kept in pursuance of rule 31A of these rules to any person on application, if satisfied that it is required in connection with an appeal or possible appeal.

Certification of records

31C. For the purposes of section 84(2) of the Domestic Proceedings and Magistrates' Courts Act 1978 (which provides that a copy of any record made by virtue of section 84 of the reasons for a decision of a magistrates' court shall, if certified by such officer of the court as may be prescribed, be admissible as evidence of those reasons) the certifying officer shall be the clerk of the magistrates' court concerned.".

3. For rule 33 there shall be substituted the following rule:—

"*Duty of clerk to notify arrears of periodical payments*

33. Where an order under section 52(1) of the Act requires periodical payments to be made to the clerk of a magistrates' court and the payments are at any time in arrears to an amount equal—

(*a*) in the case of payments to be made monthly or less frequently, to twice the sum payable periodically; or

(*b*) in any other case, to four times the sum payable periodically,

the clerk shall, unless it appears to him that it is unnecessary or inexpedient to do so, give to the person entitled to the payments or, if that person is a child, to the child or the person with whom the child has his home notice in writing stating the particulars of the arrears.".

4. In rule 34—

(*a*) in paragraph 1(*a*) for the words "having jurisdiction in the place" there shall be substituted the words "appointed for the commission area";

(*b*) after paragraph (8) there shall be inserted the following paragraph:—

"(8A) Where a magistrates' court makes an order on a complaint to which this rule applies affecting an order made by another magistrates' court or affecting an order under which payments are made to the clerk of another magistrates' court, the clerk of the first-mentioned court shall cause a copy of the order to be sent to the clerk of that other court.".

(a) 1971 c. 3; section 14A was inserted by the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), section 40.

5. In rule 36—

(*a*) after the word "discharges," there shall be inserted the word "suspends,";

(*b*) after the words "enforceable as an affiliation order" there shall be inserted the words "or allows time or further time for payment of a lump sum under any such order or orders payment of a lump sum under any such order to be paid by instalments or varies any such order for payment by instalments".

6. In rule 37A—

(*a*) in paragraph (2)—

(i) in sub-paragraph (*a*) after the words "Maintenance Orders (Facilities for Enforcement) Act 1920" there shall be inserted the words "or section 3 of the Maintenance Orders (Reciprocal Enforcement) Act 1972(**a**)";

(ii) in sub-paragraph (*b*) after the words "Maintenance Orders (Facilities for Enforcement) Act 1920" there shall be inserted the words "or section 2 of the Maintenance Orders (Reciprocal Enforcement) Act 1972";

(*b*) in paragraph (3)—

(i) for the words "section 7(4) of the Matrimonial Proceedings (Magistrates' Courts) Act 1960" there shall be substituted the words "section 4(2) of the Domestic Proceedings and Magistrates' Courts Act 1978";

(ii) for the words "section 22 of the Matrimonial Proceedings and Property Act 1970" there shall be substituted the words "section 38 of the Matrimonial Causes Act 1973(**b**)".

7. In rule 42 after the word "Act" there shall be inserted the words ", section 22 of the Domestic Proceedings and Magistrates' Courts Act 1978, section 12B(5) of the Guardianship of Minors Act 1971(**c**) or section 6A(5) of the Affiliation Proceedings Act 1957(**d**)".

8. Rule 43A shall be omitted.

9. After rule 49 there shall be inserted the following rule:—

"49A.—(1) Where periodical payments are required to be made to any person by another person under more than one periodical payments order, proceedings for the recovery of the payments may be brought by way of one complaint. Any such complaint shall indicate the payments due under each order referred to in the complaint.

(2) Any sum paid to the clerk of a magistrates' court on any date under two or more periodical payments orders by the person liable to make payments under the orders which is less than the total sum required to be paid on that date to that clerk by that person in respect of those orders (being orders one of which requires payments to be made for the benefit of a child to the person with whom the child has his home and one or more of which requires payments to be made to that person either for his own benefit or for the benefit of another child who has his home with him) shall be apportioned equally between the orders to the extent of the amount due under each order and if, as a result of the apportionment, the payments under any such order are no longer in arrears the residue shall be applied to the amount due under the other order or (if there is more than one other order) shall be apportioned equally in the same way between the other orders.

(3) In this rule—

"child" means a person who has not attained the age of eighteen;

"periodical payments order" means an order made by a magistrates' court, or registered in a magistrates' court under Part II of the Maintenance Orders Act 1950(**e**) or Part I of the Maintenance Orders Act 1958(**f**), which requires the making of periodical payments,

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(**a**) 1972 c. 18. (**b**) 1973 c. 18.

(**c**) 1971 c. 3; section 12B(5) was inserted by the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22) section 42.

(**d**) 1957 c. 55; section 6A(5) was inserted by the Act of 1978, section 3.

(**e**) 1950 c. 37. (**f**) 1958 c. 39.

and any payments required under a periodical payments order to be made to a child shall for the purposes of this rule be treated as if they were required to be made to the person with whom the child has his home.".

10. After rule 50 there shall be inserted the following rule:—

"*Particulars relating to payment of lump sum under affiliation order, etc. to be entered in register*

50A. Where a magistrates' court allows time for payment of a lump sum required to be paid under an affiliation order, or order enforceable as an affiliation order, or orders that any such lump sum shall be paid by instalments or varies the number of instalments payable, the amount of any instalment payable or the date on which any instalment becomes payable, particulars thereof shall be entered in the register or in any separate record kept for the purpose of recording particulars of lump sum payments.".

11. In rule 57—

(*a*) after the words "discharging,", "discharge," and "discharged," there shall be inserted the word "suspending,", "suspension," and "suspended," respectively;

(*b*) after the words "enforceable as an affiliation order," there shall be inserted the words "or an order made under Part I of the Domestic Proceedings and Magistrates' Courts Act 1978 enforceable otherwise than as an affiliation order,".

12. In rule 82(5A) sub-paragraph (*b*) shall be omitted.

13. After rule 87 there shall be inserted the following rule:—

"*Proceedings against person outside the United Kingdom on application for variation, etc. of certain maintenance and custody orders*

87A.—(1) The period referred to in section 24(2) of the Domestic Proceedings and Magistrates' Courts Act 1978 and in section 41(2A) of the Maintenance Orders (Reciprocal Enforcement) Act 1972**(a)** (which provide that, subject to certain conditions, a magistrates' court may, if it is satisfied that the respondent has been outside the United Kingdom during such period as may be prescribed by rules, proceed on an application made under section 20 or 21 of the said Act of 1978, section 53 of the Magistrates' Courts Act 1952 or section 9, 10, 11 or 12C(5) of the Guardianship of Minors Act 1971**(b)** notwithstanding that the respondent has not been served with the summons) shall be the whole of the period beginning one month before the making of the application and ending with the date of the hearing.

(2) Before proceeding in any such case as is referred to in the said section 24(2) or the said section 41(2A), the court shall be satisfied that, in addition to the matter referred to in those subsections, the applicant has taken steps to notify the respondent of the making of the application and of the time and place appointed for the hearing by—

(*a*) causing a notice in writing to that effect to be delivered to the respondent: or

(*b*) causing a notice in writing to that effect to be sent by post addressed to the respondent at his last known or usual place of abode or at his place of business or at such other address at which there is ground for believing that it will reach the respondent, in accordance with directions given for the purpose by a justice of the peace acting for the same petty sessions area as that of the court; or

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(a) 1972 c. 18; subsection (2A) of section 41 was inserted by the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), section 89(2) and Schedule 2, paragraph 36.

(b) 1971 c. 3; section 12C was inserted by the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), section 43.

(*c*) causing a notice to that effect to be inserted in one or more newspapers, in accordance with directions given as aforesaid;

and that it is reasonable in all the circumstances to proceed in the absence of the respondent.

(3) In any such case as is referred to in the said section 24(2) or the said section 41(2A), the court shall not make the order for which the application is made unless it is satisfied that during the period of 6 months immediately preceding the making of the application the respondent was continuously outside the United Kingdom or was not in the United Kingdom on more than 30 days and that, having regard to any communication to the court in writing purporting to be from the respondent, it is reasonable in all the circumstances so to do.

(4) Paragraph (1) of rule 55 of these Rules shall apply for the purpose of proving the delivery of a written notice in pursuance of paragraph (2)(*a*) above as it applies for the purpose of proving the service of a summons.

In relation to a solemn declaration made outside the United Kingdom, paragraph (1) of the said rule 55, as applied by this paragraph, shall have effect as if for the reference to the authorities mentioned in the said paragraph (1) there were substituted a reference to a consular officer of Her Majesty's Government in the United Kingdom or any person for the time being authorised by law, in the place where the declarant is, to administer an oath for any judicial or other legal purpose.

(5) Paragraph (2) of the said rule 55 shall apply for the purpose of proving the sending of a written notice in pursuance of paragraph (2)(*b*) above or the insertion of a notice in a newspaper in pursuance of paragraph (2)(*c*) above, as it applies for the purpose of proving the service of any process, provided, as respects the insertion of a notice in a newspaper, that a copy of the newspaper containing the notice is annexed to the certificate.".

EXPLANATORY NOTE

(This Note is not part of the Rules.)

1. These Rules amend the Magistrates' Courts Rules 1968 consequent upon the coming into force on 1st February 1981 (S.I. 1980/1478) of certain provisions in Parts I, II and III of the Domestic Proceedings and Magistrates' Courts Act 1978.

2. In conformity with the transitional provisions contained in Schedule 1 to the Act of 1978 the amendments do not apply in relation to applications and orders made before the new provisions come into force (rule 2, proviso).

3. The principal changes are as follows:—

(*a*) Provision is made, in new rules 31A, 31B and 31C, for the matters mentioned in section 84 of the Act of 1978 which relates to the recording of reasons for decisions in domestic proceedings (paragraph 2 of the Schedule).

(*b*) Rule 33 which requires a justices' clerk to notify arrears of payments when they amount to four times the weekly payment is amended so as to require him to do so when the arrears amount to four times the periodical payment or, if due at intervals of a month or more, twice the periodical payment (paragraph 3 of the Schedule).

(*c*) Rule 34 (revocation, variation, etc. of orders for periodical payment) is amended so as to require the clerk of a magistrates' court which makes an order affecting an order made or being enforced by another magistrates' court to notify the clerk of the other court accordingly (paragraph 4(*b*) of the Schedule).

(*d*) Provision is made, in a new rule 49A, for the matters mentioned in section 85 of the Act of 1978 which relates to the recovery and apportionment of periodical payments payable by one person under more than one order (paragraph 9 of the Schedule).

(*e*) Provision is made, in a new rule 50A, requiring particulars relating to lump sum payments to be formally recorded (paragraph 10 of the Schedule).

(*f*) Rules 18A, 43A and 82(5A)(*b*) are omitted. These provisions are contained in the new Magistrates' Courts (Matrimonial Proceedings) Rules 1980 (S.I. 1980/1582) and are therefore no longer required in the Rules of 1968 (paragraphs 1, 8 and 12 of the Schedule).

(*g*) Provision is made, in a new rule 87A, for the procedure to be followed where the respondent to an application for the variation, etc. of certain maintenance and custody orders is outside the United Kingdom and has not been served with a summons (paragraph 13 of the Schedule). This procedure is similar to that laid down in corresponding provisions in the Matrimonial Proceedings (Magistrates' Courts) Act 1960 and in the Rules made in connection with those provisions (S.I. 1960/2229, 1974/706).

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