STATUTORY INSTRUMENTS

1979 No. 1221 (L. 17)

MAGISTRATES' COURTS

PROCEDURE

The Magistrates' Courts (Amendment) Rules 1979

Made - - - -	*28th September* 1979
Laid before Parliament	*9th October* 1979
Coming into Operation	*1st November* 1979

The Lord Chancellor, in exercise of the power conferred on him by section 15 of the Justices of the Peace Act 1949(**a**), as extended by section 122 of the Magistrates' Courts Act 1952(**b**) and section 17(2) of the Domestic Proceedings and Magistrates' Courts Act 1978(**c**), 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) Rules 1979 and shall come into operation on 1st November 1979.

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

Dated 28th September 1979.

Hailsham of St. Marylebone, C.

(**a**) 1949 c. 101. (**b**) 1952 c. 55. (**c**) 1978 c. 22.
(**d**) S.I. 1968/1920; relevant amending instruments are S.I. 1973/790; 1978/758.

Rule 2

SCHEDULE

AMENDMENTS TO MAGISTRATES' COURTS RULES 1968

1. After rule 18 there shall be inserted the following rule:—

"*Consideration of applications for family protection orders*

18A.—(1) Where an application has been made to a magistrates' court for an order under section 16 of the Domestic Proceedings and Magistrates' Courts Act 1978 and the applicant makes a written statement to the effect that there is imminent danger of physical injury to the applicant or a child of the family, the clerk of the court shall take such steps as may be necessary to ensure that the court considers as soon as practicable whether or not to exercise its power to make an expedited order under section 16(2) and (6) of that Act.

(2) On an application to a magistrates' court for an order under section 16(3) of the said Act of 1978, the date fixed for the hearing of the application shall be as soon as practicable and in any event not later than 14 days after the date on which the summons is issued.".

2. In rule 32 for paragraph (2) there shall be substituted the following paragraph:—

"(2) A clerk of a magistrates' court shall send any periodical payments by post to—

(*a*) the person entitled to them; or

(*b*) if the person entitled to them is a child, to the child or to the person with whom the child has his home:

Provided that the clerk may—

(*a*) at the request of the person entitled to the payments; or

(*b*) if the person entitled to them is a child, at the request of the child or the person with whom the child has his home,

make other arrangements for making the payments.".

3. In rule 33 for the words "give to that person" there shall be substituted the words "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".

4. In rule 37—

(*a*) in paragraph (1) after the words "the person in whose favour the order is made" there shall be inserted the words "or, if that person is a child, the child or the person with whom the child has his home";

(*b*) in paragraph (2) at the end there shall be inserted the words "or, if that person is a child, by or on behalf of the child or the person with whom the child has his home.".

5. In rule 39 in paragraph (2) after the words "payment to be made" there shall be inserted the words "or, in the case of a child, is the person with whom the child has his home".

6. In rule 41 in paragraph (1) after the words "the person on whose behalf the order was made" there shall be inserted the words "or, if that person is a child, the child or the person with whom the child has his home".

7. In rule 43—

(*a*) in paragraph (2) the words "other than an order to pay money" shall be omitted and at the end there shall be inserted the following proviso: —

"Provided that this paragraph shall not apply to—

(*a*) an order to pay money; or

(*b*) an expedited order under section 16(2) and (6) of the Domestic Proceedings and Magistrates' Courts Act 1978.".

(*b*) after paragraph (3) there shall be inserted the following paragraph: —

"(4) In relation to an order under section 16 of the said Act of 1978 (other than an expedited order under subsections (2) and (6) of that section) paragraphs (2) and (3) of this rule shall have effect as if for the references to a copy of a minute of the order there were substituted references to a copy of the order.".

8. After rule 43 there shall be inserted the following rule: —

"*Notification of certain family protection orders*

43A.—(1) Where a magistrates' court makes an expedited order under section 16(2) and (6) of the Domestic Proceedings and Magistrates' Courts Act 1978 (hereinafter referred to as an "expedited order"), the clerk of the court shall serve notice of the making of the order on the respondent by causing a copy of the order to be delivered to the respondent personally:

Provided that if a justice of the peace is satisfied by evidence on oath that prompt personal service on the respondent is impracticable he may allow service to be effected—

(*a*) by leaving a copy of the order for him with some person at his last known or usual place of abode; or

(*b*) by sending a copy of the order by post in a letter addressed to him at his last known or usual place of abode.

(2)(*a*) Where a magistrates' court makes an order under section 16 of the said Act of 1978 to which a power of arrest is attached, the clerk of the court shall cause a copy of the order to be sent to the officer for the time being in charge of any police station for the address at which the person who applied for the order resides.

(*b*) Where a magistrates' court makes an order under section 17(1) of the said Act of 1978 varying or revoking any order under the said section 16 to which a power of arrest is attached, the clerk of the court shall cause a copy of the order under section 17(1) to be sent to the officer for the time being in charge of the police station to which a copy of the order under section 16 was sent in pursuance of sub-paragraph (*a*) of this paragraph and, if the person who applied for the order under section 16 has since changed address, any police station for the new address.

(3) In the case of an expedited order a copy thereof shall not be sent to the police in pursuance of paragraph (2)(*a*) above until notice of the

making of the order has been served on the respondent in accordance with paragraph (1) of this rule and the clerk of the court shall, before sending it to the police, enter on it an endorsement indicating that it has been so served and the date on which the order takes effect.

(4) Where a copy of an expedited order is sent to the police in pursuance of paragraph (2)(*a*) of this rule, a copy of the order and its endorsement shall also be sent to the person who applied for the order.

(5) Where, by virtue of section 16(8)(*b*) of the said Act of 1978, an expedited order to which a power of arrest is attached expires on the date of the commencement of the hearing by a magistrates' court of an application for an order under section 16 of that Act the clerk of the court shall cause notice of the expiry to be sent to the officer for the time being in charge of the police station to which a copy of the order was sent in pursuance of paragraph (2)(*a*) of this rule.".

9. In rule 49—

(*a*) in paragraph (1) for sub-paragraph (*a*) of the proviso there shall be substituted the following sub-paragraph: —

"(*a*) where—

(i) the complainant is the person in whose favour the order was made or, if that person is a child, is the child or the person with whom the child has his home; and

(ii) the complainant resides in a petty sessions area other than that for which that court acts; and

(iii) payment is directed to be made either to the complainant or the clerk of a magistrates' court acting for that petty sessions area,

the complaint may be heard by the last-mentioned court;"

(*b*) in paragraph (5) after the words "person specified in the order" there shall be inserted the words "or, in the case of a child, to the person with whom the child has his home".

10. In rule 82 after paragraph (5) there shall be inserted the following paragraph:—

"(5A) In the case of a summons issued on an application for an order under section 16 or 17(1) of the Domestic Proceedings and Magistrates' Courts Act 1978 (powers of court to make orders for the protection of a party to a marriage or a child of the family)—

(*a*) service of the summons shall not be effected in manner authorised by sub-paragraph (*b*) or (*c*) of paragraph (1) of this rule unless a justice of the peace is satisfied by evidence on oath that prompt personal service of the summons is impracticable and allows service to be effected in such manner; and

(*b*) a notice in the prescribed form indicating the powers conferred on a court by sections 16 and 18(1) of that Act shall be served on the respondent with the summons.".

11. In rule 94 after paragraph (1C) there shall be inserted the following paragraphs: —

"(1D) In these Rules a reference to the person with whom a child has his home shall be construed in accordance with Part IV of the Children Act 1975(**a**), except that, in the case of any child in the care of a local authority, the local authority shall be treated for the purposes of these rules as the person with whom the child has his home.

(1E) In these Rules a reference to a child is a reference to a person who has not attained the age of eighteen.".

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules amend the Magistrates' Courts Rules 1968 in consequence of sections 16 to 18 (powers of the court to make orders for the protection of a party to a marriage or a child of the family) and section 77 (provisions as to payments required to be made to a child etc.) of the Domestic Proceedings and Magistrates' Courts Act 1978 which come into force on 1st November 1979 (S.I. 1979/731). The amendments in paragraphs 1, 7, 8 and 10 of the Schedule to these Rules relate to sections 16 to 18 and those in paragraphs 2 to 6, 9 and 11 relate to section 77.

(**a**) 1975 c. 72.

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