STATUTORY INSTRUMENTS

1988 No. 329 (L. 4)

MAGISTRATES' COURTS

PROCEDURE

The Magistrates' Courts (Family Law Act 1986) Rules 1988

Made - - - -	*26th February 1988*
Laid before Parliament	*1st March 1988*
Coming into force	*4th April 1988*

ARRANGEMENT OF RULES

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The Lord Chancellor, in exercise of the powers conferred upon him by section 144 of the Magistrates' Courts Act 1980(a), as extended by section 145 of that Act and by sections 27, 39 and 42(1) of the Family Law Act 1986(b), section 15 of the Guardianship of Minors Act 1971 (c) and section 100(7) of the Children Act 1975(d), after consultation with the Rule Committee appointed under the said section 144, hereby makes the following Rules:

Citation and commencement

1. These Rules may be cited as the Magistrates' Courts (Family Law Act 1986) Rules 1988 and shall come into force on 4th April 1988.

(a) 1980 c.43.
(b) 1986 c.55. *See* the definition of "prescribed" in section 42(1).
(c) 1971 c.3. Section 15 was amended by paragraph 10 of Schedule 1 to the Family Law Act 1986.
(d) 1975 c.72. Section 100(7) was amended by paragraph 20 of Schedule 1 to the Family Law Act 1986.

Interpretation

2.—(1) In these Rules the following expressions have the meaning hereby respectively assigned to them–

"the Act" means the Family Law Act 1986;

"commission area" has the same meaning as in the Justices of the Peace Act 1979 (**a**);

"custody order" means a custody order within the meaning of any of sections 1, 32, 40 and 42(5) and (6) of the Act;

"the appropriate court" means, in relation to Scotland, the Court of Session and, in relation to Northern Ireland, the High Court;

"the Deputy Principal Clerk" means the Deputy Principal Clerk of Session;

"the Master" means the Master (Care and Protection) of the High Court in Northern Ireland.

(2) Any requirement in these Rules for any matter to be entered in the register of a magistrates' court is a requirement that it be entered in the register kept by the clerk of that court in accordance with Rule 66 of the Magistrates' Courts Rules 1981(**b**).

Registration of custody orders

3.—(1) An application under section 27 of the Act for the registration in the appropriate court of a custody order made by a magistrates' court in England and Wales shall be made in writing in Form 1 in the Schedule to these Rules or in a similar form containing the information specified in the said Form 1, to the court which made the order.

(2) An application to which paragraph (1) above relates shall be accompanied by the following documents, namely–

(a) a certified copy of the order;

(b) where the order has been varied, a certified copy of any variation order which is in force;

(c) any other document relevant to the application.

(3) Subject to paragraph (4) below, if it appears to the court to which an application is made in accordance with paragraphs (1) and (2) above that the order to which the application relates is in force it shall cause the clerk of the court to send a copy of the application, together with copies of the documents set out in paragraph (2) above, to the Deputy Principal Clerk or the Master of the appropriate court, or to both, as the case may be.

(4) If it appears to the court to which an application is made in accordance with paragraphs (1) and (2) above that the order to which the application relates is no longer in force in respect of a child in respect of whom the order was made or that any such child has attained the age of 16, it shall refuse to send the documents referred to in paragraph (2) above to the appropriate court, or shall indicate thereon with respect to which child or children the order is not to be registered, and the clerk of the court shall notify the applicant of its refusal or indication accordingly.

(5) A memorandum of the granting of an application made in accordance with paragraphs (1) and (2) above shall be entered in the register of the court to which the application was made.

(6) Where the clerk of the court which granted an application made in accordance with paragraphs (1) and (2) above receives notice of the registration in the appropriate court of the order he shall cause particulars of the notice to be entered in the register of his court.

Notice of revocation or variation of a registered order, and of cancellation of registration

4.—(1) Where a custody order made by a magistrates' court in England and Wales and registered in the appropriate court in Scotland or Northern Ireland is revoked or varied, the clerk of the court making the order of revocation or variation shall cause a

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(**a**) 1979 c.55.

(**b**) S.I. 1981/552.

certified copy of that order to be sent to the Deputy Principal Clerk or the Master of the appropriate court, or both, as the case may be, and to the court which made the custody order, if that court is different from the court making the order of revocation or variation.

(2) Where the clerk of the court which made an order revoking or varying a registered order receives notice of the registration in the appropriate court of the order of revocation or variation he shall cause particulars of the notice to be entered in the register of his court.

(3) Where the clerk of the court which made a custody order receives, in accordance with paragraph (1) above, a certified copy of an order of revocation or variation of that order by another court, he shall cause notice thereof to be entered in the register of his court.

(4) Where the clerk of a court which made a custody order receives notice of the registration in the appropriate court of an order revoking or varying the custody order he shall cause particulars of the notice to be entered in the register of his court.

(5) Where the clerk of a court which made a custody order receives notice of the cancellation of the registration of that order in the appropriate court, he shall cause particulars of the notice to be entered in the register of his court.

Courts authorised to hear applications under the Guardianship of Minors Act 1971 and Part II of the Children Act 1975

5.—(1) A magistrates' court for the commission area in which a child has habitual residence or, where the child has no habitual residence, for the commission area in which the child is present at the time when proceedings are commenced shall be the court authorised to hear an application in respect of the child under the Guardianship of Minors Act 1971 or Part II of the Children Act 1975.

(2) Where a child, having been habitually resident in a commission area, leaves or is removed from or retained outside that commission area, either without the agreement of the person or of all the persons having the right to determine where he is to reside or in contravention of an order made by a court in any part of the United Kingdom, he shall be regarded for the purposes of paragraph (1) above as continuing to be habitually resident in that commission area for the period of one year beginning with the date on which he left or was removed therefrom.

(3) This rule shall not apply in relation to proceedings commenced in a magistrates' court before 4th April 1988.

Duty to give statement of other proceedings

6.—(1) A party to proceedings for or relating to a custody order in a magistrates' court in England and Wales who knows of other proceedings (including proceedings out of the jurisdiction and concluded proceedings) which relate to the child concerned shall provide to the court a statement giving the information set out in Form 2 in the Schedule to these Rules, and, for this purpose, the clerk of a magistrates' court in which proceedings for or relating to a custody order are pending shall, as soon in those proceedings as may be practicable, notify the parties of the provisions of this rule by sending to each party a notice in the said Form 2 or in a similar form.

(2) Paragraph (1) above shall not apply in relation to proceedings commenced in a magistrates' court before 4th April 1988.

Stay of proceedings

7.—(1) Where under section 5(2) of the Act a magistrates' court stays proceedings on an application for a custody order it shall cause notice of the stay to be given to the parties to the proceedings.

(2) Where under section 5(3) of the Act a magistrates' court removes a stay granted in accordance with section 5(2) it shall cause notice of the removal of the stay to be given to the parties to the proceedings and shall proceed to deal with the application accordingly.

26th February 1988 *Mackay of Clashfern,* C.

Rule 3(1) and 6

SCHEDULE

Rule 3(1)

FORM 1

APPLICATION FOR REGISTRATION IN SCOTLAND OR NORTHERN IRELAND OF A CUSTODY ORDER (SECTION 27 OF FAMILY LAW ACT 1986)

..... Magistrates' Court (Code)

Date:

To the Justices' Clerk, ... Magistrates' Court, (address)

Name of applicant:

Address:

Order made on: (date)

To be registered in: (Scotland, Northern Ireland or both)

Name of child:

Date of birth:

Address (or suspected whereabouts) of child:

Name of person with whom child is presently residing (or suspected to be residing):

The applicant's interest under the order is .....

.....

The following other persons have an interest under the order .....

.....

(State whether the order has been served on each person named)

[The order is not registered in any other court]

[The order is already registered in .....]

To the best of the applicant's information and belief the order is in force and [no other order affecting the child is in force in the place where the order is to be registered] [the following other orders are in force in the place where the order is to be registered .....]

Signed by the applicant

.....

Note:

This application must be accompanied by a certified copy of the order to which it relates, a certified copy of any variation order which is in force, and any other document which is relevant to the application.

FORM 2 Rule 6

NOTICE OF REQUIREMENT TO GIVE PARTICULARS OF OTHER PROCEEDINGS (S.39 FAMILY LAW ACT 1986)

..... Magistrates' Court (Code)

Date:

To:

Address:

Concerning the application of: (name of applicant)

under: (statute)

As a party to these proceedings you are required to inform the court if you know of any other proceedings (including proceedings out of the jurisdiction and concluded proceedings) relating to: (name of child).

The information you should provide, if known, is:

(a) the place in which and the court in which the other proceedings were instituted;
(b) the names of the parties to the proceedings and their relationship to the child;
(c) the nature and current state of the proceedings and the relief claimed;
(d) if the relief claimed in the proceedings before this court was not claimed in the other proceedings, the reasons why it was not claimed in the other proceedings.

The information should be provided in writing addressed to the Justices' Clerk, at the address below.

Justices' Clerk

..... Magistrates' court

Address .....

.....

EXPLANATORY NOTE

(This note is not part of the Rules)

These rules make the necessary provision in relation to magistrates' courts procedure for the implementation of the Family Law Act 1986. They come into force on 4th April 1988. Under the Family Law Act 1986 a custody order made in one part of the United Kingdom may be registered and enforced in another part of the United Kingdom. The Act also makes provision in relation to the procedure for applications for custody orders.

Under rule 3 of these Rules provision is made for applications for the registration of a custody order made by a magistrates' court in England and Wales and for the transmission of such custody orders for registration in the appropriate court in Scotland or Northern Ireland.

Rule 4 makes provision for the transmission of an order of revocation or variation of such custody orders to the appropriate registering court.

Rules 5, 6 and 7 of these Rules supplement the procedural provisions of the 1986 Act in relation to applications for custody orders in magistrates' courts. Rule 5 determines the magistrates' courts to which application may be made under the Guardianship of Minors Act 1971 and Part II of the Children Act 1975. Rule 6 imposes a requirement for parties to proceedings for or relating to a custody order to give information about any other proceedings relating to the child concerned. Rule 7 makes provision for parties to proceedings in a magistrates' court for a custody order to be notified of the imposition or lifting of a stay of the proceedings where other proceedings are continuing outside England and Wales in relation to the child concerned.

The Schedule provides forms for an application under Rule 3 for the registration of a custody order and for notifying the parties to proceedings of the requirements of Rule 6.

£1.30 net

ISBN 0 11 086329 1

Printed in the United Kingdom for Her Majesty's Stationery Office

790/WO 0362 C34 3/88 452/1 9385/1277/3065 PS 7944003