1960 No. 2229 (L. 19)

The Magistrates' Courts (Matrimonial Proceedings) Rules, 1960

Made - - - -	1*st December*, 1960
Laid before Parliament	7*th December*, 1960
Coming into Operation	1*st January*, 1961

I, the Right Honourable David, Viscount Kilmuir, Lord High Chancellor of Great Britain, in exercise of the power conferred on me by section fifteen of the Justices of the Peace Act, 1949(a), as extended by section one hundred and twenty-two of the Magistrates' Courts Act, 1952(b), do hereby, after consultation with the Rule Committee appointed under the said section fifteen, make the following Rules :—

Notice to local authority with regard to child

1. At least ten days before including in a matrimonial order a provision committing a child to the care of a local authority the court shall cause notice in the form numbered 1 in the Schedule to these Rules to be delivered or sent by post to that authority.

Substitution of new supervisor for child

2.—(1) Where a matrimonial order provides for a child to be under the supervision of a probation officer appointed for or assigned to a petty sessions area or under the supervision of a local authority, and the court is of the opinion, upon representations made to it orally or in writing by or on behalf of a probation officer appointed for or assigned to that area or, as the case may be, by or on behalf of that local authority, that the child is or will be resident in a petty sessions area other than that for which the probation officer has been appointed or to which he is assigned or, as the case may be, in the area of another local authority, the court may vary the order by substituting a probation officer appointed for or assigned to the other petty sessions area or, as the case may be, by substituting the other local authority.

(2) Where the court varies a matrimonial order in accordance with this Rule, the court shall cause a notice in the form numbered 2 in the Schedule to these Rules to be given or sent by post—

(*a*) to the person to whom the legal custody of the child is committed by the matrimonial order; and

(*b*) in duplicate, to the clerk to the justices for the petty sessions area, or, as the case may be, the local authority, substituted by the order under this Rule,

and shall cause the probation officer or local authority by or on whose behalf the representations were made to be informed that the order has been so varied.

(a) 12, 13 & 14 Geo. 6. c. 101. (b) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 55.

Notice to parties of court's power to make provision with regard to children

3. In a case where the special powers of the court under section four of the Act to make provision with regard to any child of the family of the parties are or may be exercisable, the clerk of the court shall—

(*a*) upon the making of a complaint under section one or section eight of the Act, cause a notice in the form numbered 3 in the Schedule to these Rules to be given to the complainant;

(*b*) upon the issue of a summons after the making of such a complaint as aforesaid, cause a similar notice to be served on the defendant with the summons.

Notice to parent of child (other than a party) of court's power to make provision with regard to children

4.—(1) In the case of a complaint under section one of the Act where—

(*a*) there is a child of the family of the parties who is not a child of both parties; and

(*b*) the court is required, under subsection (6) of section four of the Act, to take steps with a view to giving notice of the complaint, and of the time and place appointed for the hearing, to any person who, though not one of the parties, is a parent of that child,

the court may make a matrimonial order on the complaint in accordance with paragraph (*b*) of the said subsection (6) if there has been read aloud before the court at the hearing of the complaint a statement signed by the clerk of the court that the steps required by the following paragraphs of this Rule have been taken with a view to giving notice to the parent as aforesaid.

(2) Subject to the next following paragraph, the steps required by this Rule are the following:—

(*a*) before the summons is issued on the complaint the complainant shall be required to say whether or not there is a child of the family who is not a child of both the parties and in respect of whom a notice is required to be given to his parent under subsection (6) of section four of the Act, and, if there is, to give the name and address of that parent so far as this information is known to, or can in the opinion of the clerk conveniently be obtained by, the complainant;

(*b*) at least ten days before the hearing at which the court proposes to make a matrimonial order on the complaint the clerk shall cause a notice in the form numbered 4 in the Schedule to these Rules to be sent by post addressed to any such parent as is referred to in sub-paragraph (*a*) of this paragraph whose name and address are known to the clerk, whether from information given by the complainant in accordance with that sub-paragraph or otherwise.

(3) Where, after notice has been sent to a parent in accordance with sub-paragraph (*b*) of the last foregoing paragraph, the hearing at which the court proposes to make a matrimonial order in accordance with this Rule is adjourned, the court may make the order at the adjourned hearing if it is satisfied that reasonable steps have been taken to give the parent adequate notice of the time and place thereof.

Notice to person outside United Kingdom of complaint for revocation, etc., of order

5.—(1) Where a complaint is made by virtue of section eight of the Act for the revocation, revival or variation of a matrimonial or interim order and the defendant does not appear at the time and place appointed for the

hearing of the complaint but the court is satisfied that there is reason to believe that he has been outside the United Kingdom during the whole of the period beginning one month before the making of the complaint and ending with the date of the hearing, then, subject to paragraph (2) of this Rule, the court may, if it thinks it reasonable in all the circumstances to do so, proceed to hear and determine the complaint in accordance with subsection (2) of section nine of the Act if it is proved to the satisfaction of the court that the complainant has taken any of the following steps to give notice to the defendant of the making of the complaint and of the time and place aforesaid, that is to say :—

(*a*) has caused a notice in the form numbered 5 in the Schedule to these Rules to be delivered to the defendant ; or

(*b*) has caused a notice in the form aforesaid to be sent by post addressed to the defendant 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 him ; or

(*c*) has caused a notice summarising the effect of that in the form aforesaid to be inserted in one or more newspapers on one or more occasions.

(2) Where it is proposed to take any such steps as are mentioned in subparagraph (*b*) or (*c*) of the preceding paragraph, the complainant shall apply for directions to a justice of the peace acting for the same petty sessions area as that of the court by which the complaint is to be heard, and the taking of such steps shall be effective for the purposes of this Rule only if they were taken in accordance with the directions given by the said justice.

(3) Paragraph (1) of Rule 55 of the Magistrates' Courts Rules, 1952(**a**), shall apply for the purpose of proving the delivery of a written notice in pursuance of sub-paragraph (*a*) of paragraph (1) of this Rule 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.

(4) Paragraph (2) of the said Rule 55 shall apply for the purpose of proving the sending of a written notice in pursuance of sub-paragraph (*b*) of paragraph (1) of this Rule, or the insertion of a notice in a newspaper in pursuance of sub-paragraph (*c*) thereof, 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.

Certificate by clerk when maintenance payments are forwarded abroad

6. A complainant for the revocation or variation of a matrimonial order under which payments fall to be made by the complainant to the defendant through the clerk of a magistrates' court may apply to that clerk for such a certificate as is mentioned in subsection (4) of section nine of the Act, and, if the facts warrant it, the clerk shall supply such a certificate to the complainant in the form numbered 6 in the Schedule to these Rules.

(a) S.I. 1952/2190 (1952 II, p. 1593).

Defendants to complaint for revocation, revival or variation of order

7.—(1) Where a complaint is made by virtue of section eight of the Act for the revocation, revival or variation of a matrimonial or interim order, the persons to be made defendants to the complaint in accordance with subsection (2) of section ten of the Act shall be the following persons (not being the complainant), that is to say, the parties to the marriage in question and the persons specified in the following paragraphs of this Rule.

(2) Where the complaint relates to a provision of the order for the legal custody of a child, the following persons shall be made defendants to the complaint :—

(*a*) any person who, though not a party to the marriage in question, is a parent of the child ;

(*b*) any person to whose legal custody the child is for the time being committed by the order ;

(*c*) where under the order the child is for the time being committed to the care, or under the supervision, of a local authority, that local authority ;

(*d*) where under the order the child is for the time being under the supervision of a probation officer, that probation officer.

The father of an illegitimate child shall not be treated as a parent of that child for the purpose of sub-paragraph (*a*) of this paragraph unless he has been adjudged by a court to be the father of that child.

(3) Where the complaint is for the revocation of a provision committing a child to the care of a local authority, the persons specified in sub-paragraphs (*a*), (*b*) and (*c*) of the foregoing paragraph shall be made defendants to the complaint.

(4) Where the complaint is for the revocation or variation of a provision that a child be under the supervision of a probation officer or a local authority, the following persons shall be made defendants to the complaint :—

(*a*) the persons specified in sub-paragraphs (*a*) and (*b*) of paragraph (2) of this Rule ;

(*b*) the probation officer or local authority under whose supervision the child is for the time being under the order ;

(*c*) if the complaint is for the variation of the provision, the probation officer or local authority whom it is sought by the complaint to substitute for the officer or authority specified in the last foregoing sub-paragraph.

(5) Where the complaint relates to a provision for access to a child, the following persons shall be made defendants to the complaint :—

(*a*) the persons specified in sub-paragraphs (*a*) and (*b*) of paragraph (2) of this Rule ;

(*b*) where under the order the child is for the time being committed to the care, or under the supervision, of a local authority, that local authority ;

(*c*) where under the order the child is for the time being under the supervision of a probation officer, that probation officer.

(6) Where the complaint relates to a provision for payments for the maintenance of a child, any person to whom such payments fall to be made shall be made a defendant to the complaint.

Interpretation

8.—(1) In these Rules "the Act" means the Matrimonial Proceedings (Magistrates' Courts) Act, 1960(**a**).

(2) Section sixteen of the Act shall apply to the interpretation of these Rules as it applies to the interpretation of the Act.

(3) The Interpretation Act, 1889(**b**), shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

(4) Any reference in these Rules to a form in the Schedule to these Rules shall include a reference to a form to the like effect with such variations as the circumstances may require.

Citation and commencement

9. These Rules may be cited as the Magistrates' Courts (Matrimonial Proceedings) Rules, 1960, and shall come into operation on the first day of January, 1961.

Dated the first day of December, 1960.

Kilmuir, C.

SCHEDULE

FORMS

1

Notice to local authority of proposal to commit a child to their care
(*M.P.* (*M.C.*) *Act*, 1960, *ss.* 2(1)(*e*), 3(1).)

In the [county of . Petty Sessional Division of].

Before the Magistrates' Court sitting at .

To the [County] [Borough] Council.

Proceedings are pending under the Matrimonial Proceedings (Magistrates' Courts) Act, 1960, before this Court between A.B., of , and B.B., of .

Notice is hereby given that the Court proposes to commit the following children of the family of the parties to the care of the council, namely:—

C.B., D.B. and E.F.

If the council wishes to make any representations in this matter, including representations about payments to the council for the maintenance of the said children, the Court will hear such representations on day the day of , 19 , at the hour of o'clock in the noon.

Dated the day of , 19 .

J.C.,
Clerk of the Magistrates' Court.

2

Notice of appointment of new supervisor for child
(*M.P.* (*M.C.*) *Act*, 1960, *ss.* 2(1)(f), 3(8).)

In the [county of . Petty Sessional Division of

Before the Magistrates' Court sitting at

(**a**) 8 & 9 Eliz. 2. c. 48. (**b**) 52 & 53 Vict. c. 63.

To A.B., to whom the legal custody of C.B. has been committed by a matrimonial order.

To the clerk to the justices for the petty sessions area.
[*or* To the [County] [Borough] Council].

By a provision dated the day of , 19 , of the matrimonial order mentioned above, C.B., then of , was placed under the supervision of a probation officer for the petty sessions area [*or* of the [County] [Borough] Council].

You are hereby given notice that the Court, being of the opinion that the child is now [*or* will be] resident in the petty sessions area [*or* the area of the [County] [Borough] Council] at , has varied the provision so that the child shall be under the supervision of a probation officer for that petty sessions area [*or* of that council].

Dated the day of , 19 .

J.C.,
Clerk of the Magistrates' Court.

3

Notice to parties of Court's power to make provision with regard to children
(*M.C.* (*M.P.*) *Rules*, 1960, *r.*3.)

Parties to complaints under the Matrimonial Proceedings (Magistrates' Courts) Act, 1960, are informed that at the hearing of such a complaint the Court has power to make provision for any of the following purposes as regards any child of both parties or any child of one party who has been accepted by the other as one of the family: (*a*) custody (which may be awarded to either party or to a third person); (*b*) access to the child by either or both of the parties (or anybody else who is a parent of the child); (*c*) the payment of maintenance for the child by either or both of the parties.

In certain exceptional circumstances the Court may commit the child to the care of the county or county borough council or place him under the supervision of a probation officer or of the council.

The Court may exercise these powers whether the complaint asks for any provision about the child or not and whether any other order is made on the complaint or the complaint is dismissed.

At the hearing of the complaint the Court will hear anything the parties may wish to say on these matters.

The Court cannot make its final decision on the complaint until it has decided whether or not, and if so how, to exercise these powers.

4

Notice to parent of child (other than a party) of Court's power to make provision with regard to children
(*M.P.* (*M.C.*) *Act*, 1960, *s.* 4(1), (6).)

In the [county of . Petty Sessional Division of].

To D.E.

You are hereby given notice that proceedings are pending under the Matrimonial Proceedings (Magistrates' Courts) Act, 1960, between A.B. and B.B. and it has been stated that their family includes a child C.B. whose parents are [A.B.] and yourself but who has been accepted as one of the family by [B.B.].

If this information is correct, the Court has power to make provision at the hearing for any of the following purposes as regards C.B.: (*a*) custody (which may be awarded to either party or to a third person, including yourself; (*b*) access to the child by either or both of the parties or yourself; (*c*) the payment of maintenance for the child by either or both of the parties.

In certain exceptional circumstances the Court may commit the child to the care of the county or county borough council or place him under the supervision of a probation officer or of the council.

The hearing will take place on day the day of , 19 , at the hour of in the noon before the Magistrates' Court sitting at .

At the hearing the Court will hear anything which you may, as a parent of the child, wish to say on these matters. For this purpose you may appear in person or be represented by a barrister or solicitor. Whether you exercise this right or not, you cannot be ordered to pay any of the parties' costs.

Dated the day of . 19 .

J.C.,
Clerk of the Magistrates' Court.

5

Notice to person outside United Kingdom of complaint for revocation, etc.
(*M.P.* (*M.C.*) *Act*, 1960, *s.* 9(2), (3).)

In the [county of . Petty Sessional Division of].

To A.B.

A complaint has been made by me the undersigned this day [*or* on the day of , 19 ,] to the Magistrates' Court sitting at under section 8 of the Matrimonial Proceedings (Magistrates' Courts) Act, 1960, that the matrimonial [*or* interim] order made by that Court on the day of , 19 , should be [revoked] [*or* revived] [*or* varied by].

The complaint will be heard by that Court on day the day of , 19 , at the hour of in the noon.

You may appear in person or be represented by a barrister or solicitor at the hearing. If you do neither, the Court may, if it thinks it reasonable, deal with the case in your absence.

[*To be completed in a case where the complaint is for the revocation or variation of a provision for the making of payments by the complainant to the defendant and is based on the defendant's prolonged absence abroad as mentioned in s.* 9 (3) *of the M.P.* (*M.C.*) *Act*, 1960. At the hearing I intend to satisfy the Court that there is reason to believe that during the period of six months immediately preceding the making of the complaint you were continuously outside the United Kingdom or were not in the United Kingdom on more than thirty days. If the Court is satisfied of this, it may, after having regard to any communication to the Court in writing from you, revoke the order for payments by me to you or reduce the amount of the payments. If you wish to make any written communication, you should do so by letter addressed to the clerk of the Magistrates' Court at (*address*) so that it will reach him before the hearing.]

(Signed) B.B.

Dated the day of , 19 .

6

Certificate by clerk when maintenance payments are forwarded abroad
(*M.P.* (*M.C.*) *Act*, 1960, *s.* 9(4).)

I, J.C., the clerk to the Magistrates' Court sitting at , through whom payments fall to be made by A.B. to B.B. under a matrimonial order made by the Magistrates' Court sitting at , on the day of , 19 , hereby certify that (*a*) during the period from the day of , 19 , to the day of , 19 , every payment made under the order has been forwarded by me to an address outside the United Kingdom, namely ; and (*b*) during the period from the day of , 19 , to the day of , 19 , the said B.B. has not, to my knowledge, been in the United Kingdom at any time [*or* on more than thirty days, namely from the day of , 19 , to the day of , 19].

Dated the day of , 19 .

J.C.

EXPLANATORY NOTE

(This Note is not part of the Rules, but is intended to indicate their general purport.)

These Rules prescribe forms for use in proceedings in magistrates' courts under the Matrimonial Proceedings (Magistrates' Courts) Act, 1960, and contain other provisions about the procedure to be followed in those proceedings. Rule 7 specifies the persons who are to be made defendants to complaints for the revocation, revival or variation of matrimonial or interim orders under that Act.