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STATUTORY INSTRUMENTS

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**1971 No. 1991 (L. 49)**

**MAGISTRATES' COURTS**

**PROCEDURE**

**The Magistrates' Courts (Blood Tests) Rules 1971**

<i>Made</i>	- - - -	<i>6th December 1971</i>
<i>Laid before Parliament</i>		<i>16th December 1971</i>
<i>Coming into Operation</i>		<i>1st March 1972</i>

The Lord Chancellor, in exercise of the power conferred on him by section 15 of the Justices of the Peace Act 1949 as extended by section 122 of the Magistrates' Courts Act 1952, 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 (Blood Tests) Rules 1971 and shall come into operation on 1st March 1972.

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

“the Act” means the Family Law Reform Act 1969;

“the applicant” means an applicant for a direction;

“blood samples” and “blood tests” have the same meaning as in Part III of the Act;

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

“court” means a magistrates' court;

“direction” means a direction given in accordance with the provisions of section 20(1) of the Act;

“direction form” means Form 1 in Schedule 1 to the Blood Tests (Evidence of Paternity) Regulations 1971(1);

“photograph” means a recent photograph, taken full face without a hat, of the size required for insertion in a passport;

“proceedings” means any proceedings in a magistrates' court for the hearing of a complaint;

“sampler” means a registered medical practitioner or tester, 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;

“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 to these Rules.

(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 1959 and is incapable of understanding the nature and purpose of blood tests.

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

**3.** Form I shall be served on any person who makes a complaint under the Affiliation Proceedings Act 1957 or any other complaint in the hearing of which it appears to the justices' clerk 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.

**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 justices' clerk 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.

**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.

**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.

**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.

**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 1949, shall pay to the justices' clerk such sum as appears to the justices' 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.

**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 justices' clerk 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.

**10.—(1)** If any person fails to comply with the provisions of Rule 8 or 9 of these Rules, the justices' clerk 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 justices' clerk in accordance with paragraph (1) of this Rule, 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.

**11.** Where a court has given a direction and the justices' clerk is satisfied that the requirements of Rule 8 of these Rules (where applicable) have been met and he is in possession of a photograph (or a

certificate under the proviso to Rule 9 of these Rules) in respect of each subject who has attained the age of 12 months by the date of the direction, the justices' 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.

**12.** When arrangements have been made for the taking of samples, the justices' clerk 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.

**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 section 20(2) of the Act, 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 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.

**14.** On receipt of the report by the tester under section 20(2) of the Act, the justices' clerk shall serve a copy of the report on each of the parties to the proceedings.

**15.** The justices' clerk shall use any sum paid to him under Rule 8 of these Rules in paying the fees due to the sampler and tester and shall repay the balance, if any, to the applicant.

**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 first class post to him at his last known or usual place of abode or to his solicitor at his office.

Dated 6th December 1971

*Hailsham of St. Marylebone, C*

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## SCHEDULE

Rule 2(2)

### FORM 1

#### FAMILY LAW REFORM ACT 1969

*An explanation of the use of blood tests in paternity disputes (M.C.(B.T.) Rules 1971, r.3.)*

##### *Introduction*

In a case where there is dispute the paternity of child blood tests may provide important evidence and courts now have power to order thier 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 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 said to be the father are living in the same area they will have to attend the same doctor on the same day.

##### *Identification of parties*

It is essential that the right people are tested. For this purpose a passport size photograph 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 £36. This must be paid by the person asking for the tests before they will be carried out. However, a party to 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 tests can effect their value. If a person has had a recent transfusion, his solicitor or the clerk of the court should be informed before the court order tests.

##### *Report*

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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 Blood test direction (M.C.(B.T.) Rules 1971, r.7.)

FAMILY LAW REFORM ACT 1969

FORM 3 Requirement to give blood sample (M.C.(B.T.) Rules 1971, r.12.)

FAMILY LAW REFORM ACT 1969

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### EXPLANATORY NOTE

Part III of the Family Law Reform Act 1969 (which comes into force on 1st March 1972) 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.